



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

PIEDMONT REGIONAL OFFICE

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L. Preston Bryant, Jr.
Secretary of Natural Resources

David K. Paylor
Director

Gerard Seeley, Jr.
Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION SPECIAL ORDER BY CONSENT ISSUED TO

Mr. Richard Haywood, Operator of Shells Unlimited

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code §§ 10.1-1185 and 62.1-44.15(8a) and (8d), between the State Water Control Board and Mr. Richard Haywood, for the purpose of resolving certain violations of environmental law and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Order" means this document, also known as a Consent Special Order.
6. "Shells Unlimited" means Ronald T. Sopko doing business as Shells Unlimited.
7. "Facility" means the Shells Unlimited shellfish processing business location located at 9809 Ditch Bank Road in Gloucester County, Virginia.
8. "Mr. Haywood" means Mr. Richard Haywood the operator of Shells Unlimited.

8. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
9. "Regulations" means 9VAC 25-31-10 et seq. – Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation.

SECTION C: Findings of Fact and Conclusions of Law

1. Ronald T. Sopko owns and Mr. Richard Haywood operates a shellfish processing business located at 9809 Ditch Bank Road in Gloucester Virginia (Facility). A seafood processor named Gloucester Seafood Inc (GSI) is located adjacent to the Facility. Neither enterprise is an entity registered to do business with the State Corporation Commission (SCC), and both properties border a tidal marsh, delineated as jurisdictional wetlands, that flows to Monday Creek. During a recent real estate transaction the parcel on which the two businesses are located was subdivided, leaving the wastewater pump station and control panel serving both businesses in the possession and control of GSI.
2. On October 11, 2007, the Gloucester Health Department issued a letter to Shells Unlimited after investigating a complaint about a sewage discharge to the marsh at the Facility. The Health Department investigation revealed that no sewage was being discharged, but there was a discharge from the wash down of the oyster shucking operation. The Health Department also discovered that Shells Unlimited's wastewater pumping system was not operable because GSI had severed the system's connection to the pump station. The letter acts as an Emergency Pump and Haul Permit authorizing Shells Unlimited to set up a pump-out regime to prevent sewage discharges.
3. On October 16, 2007, DEQ performed its own inspection of the Facility after being informed by the Health Department of the results of its October 11th inspection. There was no discharge at the time of DEQ's inspection. When questioned by DEQ staff, Mr. Haywood stated that there were three underground tanks serving the Facility, two for shell stock wash-down operated in series and one separate sewage tank. Mr. Haywood went on to say that after being unable to use the wastewater pumping system, due to GSI's actions, he used a pump in the surface of the second process water tank to discharge an unknown amount of wastewater to the marsh, on the day of the Health Department inspection. DEQ's inspection did not reveal an environmental impact from the discharge.
4. Later the Health Department, DEQ and Mr. Haywood discovered that the third wastewater tank at the Facility was connected to the process wastewater tanks. Neither DEQ nor the Health Department could find evidence of fecal contamination in Monday Creek or at the Facility as a result of the October 11th discharge, even after the Health Department had twice spiked the sanitary wastewater tank with red dye.

5. On November 9, 2007, the Facility was shut down to allow for reconnection of the wastewater pumping system to the regional wastewater treatment system. The Facility was reopened on November 27, 2007, after the connection was made.
6. On November 15, 2007, the Department issued an NOV to Mr. Haywood for the unpermitted discharge and failure to report it. Section 62.1-44.5.B of the Va. Code and § 9VAC 25-31-50.B of the Regulations state any person “who discharges or causes or allows a discharge of sewage, industrial waste, other wastes ... or who discharges or causes or allows a discharge that may reasonably be expected to enter state waters...shall notify the Department of the discharge, immediately upon discovery of the discharge, but in no case later than 24 hours after said discovery.” Section 62.1-44.5 of the Va. Code and § 9 VAC 25-31-50A. of the Regulations state that “Except in compliance with a permit... issued by the Board it shall be unlawful for any person to discharge into State waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances.” DEQ has not issued a permit for the discharge discussed above, nor did Mr. Haywood report the discharge.
7. The Facility wastewater pumping system is now reconnected to municipal sewer and further corrective action is not required to address the process wastewater discharge. According to Mr. Sopko, the connection cost \$27,000.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. Code § 62.1-44.15(8a) and (8d), orders Mr. Haywood and he voluntarily agrees, to pay a civil charge of \$4,000 in settlement of the violations cited in this Order. Payments shall be made in accordance with the following schedule:

<u>Due Date</u>	<u>Amount</u>
October 15, 2008	\$1000
January 15, 2009	\$1000
April 15, 2009	\$1000
July 15, 2009	\$1000

The payment must note that it is being made pursuant to this Order and must note the Social Security Number for Mr. Haywood. Payment shall be by check, certified check, money order, or cashier’s check payable to “Treasurer of Virginia” and delivered to:

Receipts Control
Department of Environmental Quality

Post Office Box 1104
Richmond, Virginia 23218

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Mr. Haywood, for good cause shown by Mr. Haywood, or on his own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the Notice of Violation issued to Mr. Haywood by DEQ on November 11, 2007. This Order will not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the Facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order will not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, Mr. Haywood admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Mr. Haywood consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Mr. Haywood declares he has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the State Water Control Law and he waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein will be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by Mr. Haywood to comply with any of the terms of this Order will constitute a violation of an order of the Board. Nothing herein will waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein will affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.

8. Mr. Haywood will be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Mr. Haywood shall show that such circumstances were beyond his control and not due to a lack of good faith or diligence on his part. Mr. Haywood will notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice must set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which Mr. Haywood intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order will become effective upon execution by both the Director or his designee and Mr. Haywood. Notwithstanding the foregoing, Mr. Haywood agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order will terminate effective upon the Department's receipt and confirmation of the payment described herein. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Mr. Haywood from his obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
12. By his signature below, Mr. Haywood voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of October, 20, 2008.

Gerard Seeley, Jr.
Gerard Seeley, Jr., Regional Director
Department of Environmental Quality

Mr. Haywood voluntarily agrees to the issuance of this Order.

Richard Haywood
Mr. Richard Haywood

Date: Sept 10, 2008

Commonwealth of Virginia
City/County of Gloucester

The foregoing document was signed and acknowledged before me this 10th day of
September, 2008, by Mr. Richard Haywood.

Della P. Barrett
Notary Public

My commission expires: July 31, 2010

