



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

PIEDMONT REGIONAL OFFICE

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Director

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**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
ROCKTENN CP, LLC
FOR THE
RockTenn CP, LLC West Point Mill
VPDES Permit No. VA0003115**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and RockTenn CP, LLC, regarding the former Smurfit-Stone Container Corporation, West Point Mill, for the purpose of resolving certain violations of the State Water Control Law, VPDES Permit No. VA0003115 and the Regulation.

SECTION B: Definitions

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

1. "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.
2. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
3. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
4. "DMR" means Discharge Monitoring Report.
5. "Facility" or "Plant" means the RockTenn CP, LLC (formerly Smurfit-Stone Container Corporation) West Point Mill located at 19th and Main Street, West Point, Virginia,

which discharges limited and monitored pulping process condensates, landfill leachate, secondary fiber plant effluent, bleach plant effluent, pulp mill effluent, causticizing area effluent, lime kiln effluent, paper mill effluent, effluent generated by an adjacent veneer plant, and other process wastewater.

6. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
7. "O&M" means operations and maintenance.
8. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
9. "Permit" means VPDES Permit No. VA0003115, which was issued under the State Water Control Law and the Regulation to Smurfit-Stone Container Corporation, now RockTenn, on July 28, 2005, and which was administratively continued on July 26, 2010.
10. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water... 9 VAC 25-31-10.
11. "Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are "pollution." Va. Code § 62.1-44.3.
12. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
13. "Regulation" means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*
14. "RockTenn" means RockTenn CP, LLC, a company authorized, as of June 16, 2011, to do business in Virginia and its affiliates, partners, and subsidiaries. RockTenn is a "person" within the meaning of Va. Code § 62.1-44.3.

15. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
16. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
17. "Va. Code" means the Code of Virginia (1950), as amended.
18. "VAC" means the Virginia Administrative Code.
19. "VPDES" means Virginia Pollutant Discharge Elimination System.

SECTION C: Findings of Fact and Conclusions of Law

1. On May 27, 2011, Smurfit-Stone Container Corporation merged into RockTenn Company. RockTenn CP, LLC, a wholly-owned subsidiary of RockTenn Company, currently owns and operates the Facility in West Point, Virginia. The Permit allows RockTenn to discharge pulping process condensates, landfill leachate, secondary fiber plant effluent, bleach plant effluent, pulp mill effluent, causticizing area effluent, lime kiln effluent, paper mill effluent, effluent from an adjacent veneer plant effluent, and other treated process wastewater, from the wastewater treatment plant (WWTP) through Outfall 001, to the Pamunkey River in strict compliance with the terms and conditions of the Permit. The Permit also authorizes the discharge of uncontaminated stormwater through Stormwater Outfalls 004 and 008. No process wastewater, floating solids or visible foam in other than trace amounts is permitted to be discharged through the stormwater outfalls.
2. The Pamunkey River is located in the York River Basin. During the 2010 305(b)/303(d) Water Quality Assessment, the Pamunkey River was assessed as a Category 5A water. The Aquatic Life Use is impaired due to inadequate aquatic plants (SAV) and a degraded benthic community. The Recreation Use is impaired due to "enterococci" exceedences. The Fish Consumption Use is impaired due to PCBs in gizzard shad and mercury in blue catfish; in addition, arsenic is considered a non-impairing observed effect due to exceedence of a screening value. The Wildlife Use is fully supporting. The bacterial TMDL for the Lower Pamunkey River was approved by the EPA on July 28, 2010 and by the SWCB on December 13, 2010; RockTenn was addressed in the TMDL, but it was determined that the Facility does not require a wasteload allocation because RockTenn is not permitted for fecal bacteria control. The river is not proposed for designation as a Tier 3 water.
3. RockTenn, formerly Smurfit-Stone Container Corporation, notified the Department that on August 1, 2010 approximately 500-1000 gallons of reclaimed process water had discharged to the Pamunkey River through Stormwater Outfall 008. RockTenn reported that the unpermitted discharge occurred due to a valve failure on a process water tank; that the reclaimed process water had received partial treatment, and that the discharge did

not exceed the Facility's pH, biological oxygen demand (BOD) or total suspended solids (TSS) Permit limits.

4. On October 1, 2010, RockTenn notified the Department that approximately 100,000 to 300,000 gallons of treated effluent had discharged between September 30, 2010 and October 1, 2010 to the Pamunkey River through Stormwater Outfall 004. Due to a heavy rainfall event, a large volume of water flowed from the WWTP to the Parshall Flume at Outfall 001. The Parshall Flume was unable to funnel all the water through the discharge diffuser pipe at Outfall 001, and as a result, the treated effluent flowed over land from the Parshall Flume and discharged to the Pamunkey River through Stormwater Outfall 004.
5. On December 15, 2010, RockTenn notified the Department that approximately 500 gallons of untreated paper machine effluent had discharged to the Pamunkey River through Stormwater Outfall 008. RockTenn reported that due to a process upset, excess foam developed which overflowed into a stormwater ditch leading to Outfall 008. RockTenn reported that although personnel closed a spill-gate to contain the foam, some condensate from the foam discharged into the Pamunkey River through Outfall 008.
6. On January 3, 2011, RockTenn notified the Department that approximately 5 gallons of high pH "black liquor," a caustic byproduct from the digestion of wood chips during the pulping process, had discharged to a wetland on Facility property. RockTenn reported that "black liquor" was discovered on December 31, 2010, leaking from an underground pipe at the Facility along C Street. Upon discovery, RockTenn excavated and repaired the leaking pipe, contained and vacuumed the spilled "black liquor", and removed contaminated soil. RockTenn reported that when a heavy rainfall and snowmelt occurred on January 3, 2011, Facility personnel discovered a small amount of "black liquor" in a swale that had flowed into a wetland, both located on the Facility property. An unnamed tributary flows from the wetland and discharges to the Pamunkey River. Investigating DEQ staff reported that no stressed fish or wildlife was observed and that the field pH tests results did not exceed Permit limits where the unnamed tributary discharges to the Pamunkey River.
7. RockTenn reported that on January 15-16, 2011, approximately 5,000 gallons of "black liquor" had discharged to the Pamunkey River through Stormwater Outfall 004. RockTenn notified the National Response Center, since it was estimated that approximately 250 gallons of sodium hydroxide (a component of "black liquor") may have discharged to the Pamunkey River in excess of the Reportable Quantity as a result of this discharge. A contract carrier hired to haul product for the West Point mill, hit the corner of a building with a tractor-trailer and damaged the building and attached pipe that conveys "black liquor," on the evening of January 15, 2011. The damage to the pipe was not reported by the carrier and not discovered by Facility personnel until the morning of January 16, 2011.
8. PRO issued a Notice of Violation for the release events describe in paragraphs C(3) through C(7) above. NOV No. W2011-02-P-0002 was issued on February 7, 2011.

9. RockTenn responded to the Notice of Violation on February 10, 2011 by phone and met with DEQ on February 16, 2011 to discuss resolution of the items listed in the NOV. On March 17, 2011, RockTenn personnel submitted a letter to DEQ discussing the unpermitted discharges, corrective actions taken, and a schedule to complete further corrective actions.
10. In addition to the above listed violations, RockTenn reported that on March 11, 2011, the WWTP discharge exceeded the Permit effluent limit for BOD at Outfall 001 as the result of an upset condition that occurred when one of the three secondary clarifiers was out of service from March 8 to March 11, 2011 for emergency repairs. The clarifier was repaired and placed back into service the evening of March 11, 2011. On March 12, 2011, RockTenn reported that the BOD loading was below the permitted effluent limit.
11. Va. Code § 62.1-44.5 states that: "Except in compliance with a certificate 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."
12. The Regulation, at 9 VAC 25-31-50, also states that except in compliance with a VPDES permit, or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes.
13. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a "certificate" under the statute.
14. The Department has issued no individual permits or certificates authorizing discharges to state waters from RockTenn other than VPDES Permit No. VA0003115.
15. The Pamunkey River is a surface water located wholly within the Commonwealth and is a "state water" under State Water Control Law.
16. Based on DEQ inspection reports and correspondence submitted by RockTenn, the Board concludes that RockTenn (formerly Smurfit-Stone Container Corporation) has violated the Permit, Va. Code § 62.-44.5.A and 9 VAC 25-31-50, by discharging reclaimed process water effluent, treated effluent, partially treated effluent, untreated paper machine effluent, and "black liquor" from the Facility while concurrently failing to comply with the conditions of the Permit, as described in paragraphs C(3) through C(7), and C(10) above.
17. RockTenn has taken steps to minimize impacts and prevent an occurrence of a similar unpermitted discharge, by: (1) repairing the valve on the tank that overflowed and including this valve in a regular maintenance schedule for inspection; (2) cleaning the submerged pipe and diffusers on the pipe to allow the flow to move through the pipe more quickly to prevent overflows at the flume; (3) enhancing the storm water pollution training of personnel to know how to quickly activate the spill gates located on the storm water conveyance systems, and to include the monitoring of the spill gates on a regular preventive maintenance schedule; (4) immediately vacuuming the "black liquor", excavating the area and repairing the damaged section of the underground pipe,

inspecting an additional 40 foot section of the pipe to ensure its integrity, and increased monitoring of the pipe by Company personnel; and (5) containing the spilled 'black liquor', having the spilled material cleaned up by a licensed hazardous material responder and constructing a barrier at the corner of the building where the collision occurred to prevent trucks from getting close to the building and attached piping. By letter dated March 17, 2011, RockTenn reported that all immediate corrective actions have been completed. The monitoring and training of Facility personnel will be an on-going activity.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders RockTenn, and RockTenn voluntarily agrees to:

1. Pay civil charge of \$33,033 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

RockTenn shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF).

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of RockTenn for good cause shown by RockTenn, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall 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; or (3) taking subsequent action to enforce the Order.

3. For purposes of this Order and subsequent actions with respect to this Order only, RockTenn admits to the jurisdictional allegations, and agrees not to contest, but neither admits nor denies, the findings of fact, and conclusions of law in this Order.
4. RockTenn 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. RockTenn declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it 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 shall 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 modify, rewrite, amend, or enforce this Order.
6. Failure by RockTenn to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall 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 shall 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. RockTenn shall 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. RockTenn shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. RockTenn shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days 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 shall 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.

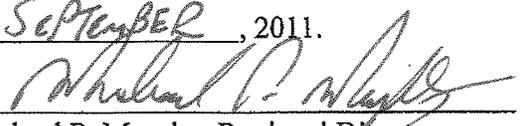
Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which RockTenn intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement 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 shall become effective upon execution by both the Director or his designee and RockTenn. Nevertheless, RockTenn agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after RockTenn has completed all of the requirements of the Order.
 - b. RockTenn petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to RockTenn.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve RockTenn from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by RockTenn and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of RockTenn certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind RockTenn to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of RockTenn.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, RockTenn voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 29th day of SEPTEMBER, 2011.



Michael P. Murphy, Regional Director
Department of Environmental Quality

RockTenn CP, LLC voluntarily agrees to the issuance of this Order.

BARB

Date: 7/26/11 By: [Signature] ^{III}, President
(Person) (Title)
RockTenn CP, LLC

State of Georgia

City/County of Gwinnett

The foregoing document was signed and acknowledged before me this 26 day of July, 2011, by James B. Pater III who is EUP of RockTenn CP, LLC, on behalf of the company.

Carol Anne Francis
Notary Public

Registration No. _____

My commission expires: _____

CAROL ANNE FRANCIS
NOTARY PUBLIC
Barrow County
State of Georgia
My Comm. Expires May 16, 2012

Notary seal: