



# COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY  
TIDEWATER REGIONAL OFFICE

5636 Southern Boulevard, Virginia Beach, Virginia 23462  
(757) 518-2000 Fax (757) 518-2009  
www.deq.virginia.gov

David K. Paylor  
Director

Craig R. Nicol  
Regional Director

Molly Joseph Ward  
Secretary of Natural Resources

**STATE WATER CONTROL BOARD  
ENFORCEMENT ACTION - ORDER BY CONSENT  
ISSUED TO  
Solenis LLC  
FOR  
Solenis LLC's Courtland Facility  
VPDES Permit No. VA0003433**

## **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 Solenis LLC, regarding the Solenis LLC Courtland Facility, for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and regulation.

## **SECTION B: Definitions**

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

1. "305(b) report" means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.
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, as described in Va. Code § 10.1-1185.
5. "Discharge" means discharge of a pollutant. 9 VAC 25-31-10
6. "Discharge of a pollutant" when used with reference to the requirements of the VPDES permit program means:
  - (a) Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
  - (b) Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
7. "DMR" means Discharge Monitoring Report.
8. "Effluent" means wastewater that flows out of industrial outfalls.
9. "Facility" means the Solenis LLC facility located at 27123 Shady Brook Trail in Courtland, Virginia, which discharges combined process and non-contact cooling water, reverse osmosis system discharge, and steam condensate from Outfall 002, and combined treated wastewater from Outfall 201.
10. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
11. "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.
12. "Permit" means VPDES Permit No. VA0003433, which was issued under the State Water Control Law and the Regulation to Solenis on April 2, 2013 and which expires on April 1, 2018.
13. "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.
14. "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.

15. “Regulation” means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*
16. “State Water Control Law” means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
17. “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.
18. “Solenis” means Solenis LLC, a limited liability company authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries. Solenis is a “person” within the meaning of Va. Code § 62.1-44.3.
19. “TRO” means DEQ’s Tidewater Regional Office located in Virginia Beach, Virginia.
20. “Va. Code” means the Code of Virginia (1950), as amended.
21. “VAC” means the Virginia Administrative Code.
22. “VPDES” means Virginia Pollutant Discharge Elimination System.

### **SECTION C: Findings of Fact and Conclusions of Law**

1. Solenis owns and operates the Facility. The Permit allows Solenis to monitor and discharge combined process and non-contact cooling water, reverse osmosis system discharge, and steam condensate from Outfall 002, and combined treated wastewater from Outfall 201, to the Nottoway River, in strict compliance with the terms and conditions of the Permit.
2. The Nottoway River is located in the Chowan and Dismal Swamp Basin watershed. The Nottoway River is listed in DEQ’s 305(b) report as impaired for mercury in fish tissue. The source of impairment is unknown.
3. Part I.A.1 of the Permit requires that Solenis limit and monitor discharges from Outfall 002 for temperature, toxicity, BOD<sub>5</sub>, nitrogen, hardness, chromium, and copper, and limit and monitor BOD<sub>5</sub> from Outfall 201.

4. In submitting its DMRs, as required by the Permit, Solenis has indicated that it exceeded discharge limitations contained in Part I.A.1 of the Permit, for temperature for the month of August 2016 and toxicity for the 4th quarter of 2016 (October through December). Solenis indicated that it believed that the temperature exceedance was due to a high ambient air temperature during August 2016.
5. Solenis has violated Part I.A.1 of the Permit as noted in paragraph C(4) of this Order.
6. Part I.C.8.c of the Permit requires that Solenis report hexavalent chromium as “<QL” if it is less than the QL listed in the Permit; if the QL is not listed in the Permit, then Solenis shall report the numerical value listed as the detection limit reported by the laboratory.
7. Part II.A of the Permit requires that Solenis take samples and measurements representative of the monitored activity, and conduct monitoring procedures in accordance with 40 CFR 136.
8. In submitting its DMRs, as required by the Permit, Solenis indicated that it had not performed sampling for biochemical oxygen demand (BOD<sub>5</sub>), nitrogen, hardness, and copper for the October 2016 reporting period. Solenis failed to determine a quantitative limit (QL) for hexavalent chromium during the 4<sup>th</sup> quarter (October through December) 2016 reporting period. Solenis also incorrectly reported BOD<sub>5</sub> for the September and November 2016 reporting periods. Solenis maintains that the contract analytical laboratory failed to set up correct dilutions for BOD<sub>5</sub> for these reporting periods, which resulted in an analytical result that Solenis reported as a greater than value on the DMRs. This greater than value was lower than the permit limit so that compliance with the permit limit was not able to be determined. Solenis also provided to DEQ, at the December 29, 2016 meeting, results of internal monitoring for BOD and COD, which Solenis believed appeared to contradict the laboratories’ results and indicate that the BOD<sub>5</sub> was below permit limits for those sampling events.
9. Solenis has violated Parts I.C.8.c and II.A of the Permit as noted in paragraph C.8 of this Order.
10. TRO issued Notices of Violation for the temperature and toxicity exceedances, and sampling and reporting errors, as follows: NOV No. W2016-12-T-0002, issued December 6, 2016; and NOV No. W2017-02-T-0005, issued February 6, 2017.
11. Solenis staff responded to the Notices of Violation by discussing the observations by telephone on December 14, 2016 and in person on December 29, 2016. In discussing the observations, Solenis staff indicated that Solenis had implemented a new tracking system to ensure timely and correct sampling, and indicated that the sampling errors for the October 2016 reporting period were due to new personnel. Solenis staff also identified possible causes of the inaccurate BOD<sub>5</sub> reporting and temperature exceedance.
12. Solenis’ operating logs indicate that it discharged wastewater from the Facility every day from August to December 2016.

13. Va. Code § 62.1-44.5 states that: “[E]xcept 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.”
14. 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.
15. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a “certificate” under the statute.
16. The Department has issued no permits or certificates to Solenis other than VPDES Permit No. VA0003433.
17. The Nottoway River is a surface water located wholly within the Commonwealth and is a “state water” under State Water Control Law.
18. Based on the results of the documentation submitted for the August through December 2016 reporting periods and subsequent information, the Board concludes that Solenis has violated the Permit, Va. Code § 62.1-44.5, and 9 VAC 25-31-50, by discharging wastewater from the Facility while concurrently failing to comply with the conditions of the Permit, as described in paragraphs C(4) and C(8), above.
19. In order for Solenis to return to compliance, DEQ staff and representatives of Solenis have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

**SECTION D: Agreement and Order**

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

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$10,039.00 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 payable to the “Treasurer of Virginia,” and delivered to:

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

Solenis 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). If the Department has to refer collection of moneys due under this Order to the Department of Law, Solenis shall be liable for attorneys' fees of 30% of the amount outstanding.

**SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of Solenis for good cause shown by Solenis, 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 and in NOV No. W2016-12-T-0002 dated December 6, 2016, and NOV No. W2017-02-T-0005 dated February 6, 2017. 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, Solenis admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Solenis 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. Solenis 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 Solenis 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. Solenis 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 unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Solenis shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Solenis 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.

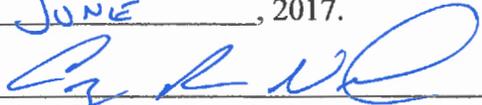
Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any 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 Solenis. Nevertheless, Solenis 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 Solenis has completed all of the requirements of the Order;
  - b. Solenis 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 Solenis.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Solenis 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 Solenis 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 Solenis 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 Solenis to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Solenis.
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, Solenis voluntarily agrees to the issuance of this Order.

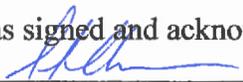
And it is so ORDERED this 19 day of JUNE, 2017.

  
\_\_\_\_\_  
Craig Nicol, Regional Director  
Department of Environmental Quality

Solenis LLC voluntarily agrees to the issuance of this Order.

Date: 4/21/2017 By:  \_\_\_\_\_, Plant Manager  
(Person) (Title)  
Solenis LLC

Commonwealth of Virginia  
City/County of Courtland

The foregoing document was signed and acknowledged before me this 21 day of April 21, 2017, by  \_\_\_\_\_ who is Plant Manager of Solenis LLC, on behalf of the limited liability company.

  
\_\_\_\_\_  
Notary Public

255127  
\_\_\_\_\_  
Registration No.

My commission expires: July 31, 2017

Notary seal:



**APPENDIX A  
SCHEDULE OF COMPLIANCE**

**1. Corrective Action**

- a. Solenis shall submit to DEQ for review and approval by no later than June 1, 2017 a corrective action plan (CAP) and schedule to address incorrect BOD<sub>5</sub> reporting on its DMRs.
- b. Solenis shall complete the corrective action(s) identified in the CAP by no later than August 1, 2017.
- c. Solenis shall present to DEQ documentation that the BOD<sub>5</sub> reporting has been corrected by no later than August 1, 2017.

**2. DEQ Contact**

Unless otherwise specified in this Order, Solenis shall submit all requirements of Appendix A of this Order to:

Craig Nicol  
Regional Director  
VA DEQ – Tidewater Regional Office  
5636 Southern Boulevard  
Virginia Beach, VA 23462