



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

TIDEWATER REGIONAL OFFICE

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Molly Joseph Ward
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Director

Maria R. Nold
Regional Director

**STATE WATER CONTROL BOARD ENFORCEMENT ACTION
ENFORCEMENT ORDER - ORDER BY CONSENT**

ISSUED TO

Tidewater Wood Products, LLC

FOR

Tidewater Wood Products, LLC, Hampton Facility

VPDES Permit No. VA0073555

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 Tidewater Wood Products, LLC regarding the Hampton 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.

5. “Director” means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
6. “Discharge” means discharge of a pollutant. 9 VAC 25-31-10.
7. “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.
8. “DMR” means Discharge Monitoring Report.
9. “Effluent” means wastewater – treated or untreated – that flows out of a treatment plant, sewer, or industrial outfall.
10. “Facility” means Tidewater Wood Products, LLC located at 5604 City Line Road in Hampton, Virginia, which owns and operates a wood preservation treatment facility.
11. “Notice of Violation” or “NOV” means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
12. “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.
13. “Permit” means VPDES Permit No. VA0073555, which was issued under the State Water Control Law and the Regulation to Tidewater Wood Products, LLC on January 1, 2015, and which expires on December 31, 2019.
14. “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.
15. “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.

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

SECTION C: Findings of Fact and Conclusions of Law

1. TWP owns and operates the Facility located at 5604 City Line Road in Hampton, Virginia. TWP treats raw lumber in pressurized chambers with chemical solutions to prevent or retard the growth of mold and fungus, and to prevent infestation by insects. TWP sells the treated lumber to third-party vendors for retail sales.
2. The Permit allows TWP to discharge storm water associated with industrial activity from the Facility to surface water under the conditions outlined in its Permit. Part I.A.1 and Part.I.B of the Permit requires TWP to monitor and limit storm water discharges for pH and final acute toxicity. Part II.C of the Permit contains TWP’s DMR submission requirements for discharges from the Facility to State waters. These DMR submission requirements require TWP to include the

- number of exceptions, cite the correct monitoring period, and submit the DMR to DEQ by the 10th of each month.
3. TWP discharges to an unnamed tributary that flows to Salters Creek and is a part of the James River Basin (Lower). Salters Creek is not listed as impaired.
 4. In submitting its DMRs for the months of April 2015 to June 2016, TWP indicated that it exceeded discharge limits for pH and toxicity. TWP also failed to timely submit its April 2015 DMR, submit its May 2015 DMR, or sample for toxicity for the July 2015 reporting period. TWP incorrectly submitted its July to September 2015 DMR, and failed to provide the number of exceptions for reporting above the maximum concentration of pH and toxicity during the August 2015, September 2015, and April to June 2016 reporting periods.
 5. DEQ issued to TWP a Warning Letter (WL No. W2015-06-T-1005) on June 17, 2015 for failing to timely submit its DMR for final acute toxicity from Outfall 001 for the April 2015 reporting period. By letter dated June 25, 2015, TWP maintained that it was the understanding of TWP that the cover sheet for each drop inlet along with the bioassay data for each respective drop inlet was all that it was required to submit for the temporary monthly samples. According to TWP's response dated June 25, 2015, DEQ staff corrected TWP's misunderstanding and specified that TWP still needed to complete a DMR for the monthly samples that were required for the calendar year 2015. Although past the original May 10th due date, the DMR was completed and received by DEQ on June 8, 2015.
 6. DEQ issued to TWP a Warning Letter (WL No. W2015-07-T-1004) on July 8, 2015 for failing to timely submit its DMR for final acute toxicity from Outfall 001 for the May 2015 reporting period. The DMR monthly data was due on June 10, 2015 and was not received by DEQ.
 7. DEQ issued to TWP a Warning Letter (WL No. W2015-09-T-1003) on September 2, 2015 for failing to sample and submit its DMR data for final acute toxicity from Outfall 001 for the July 2015 reporting period. By letter dated September 15, 2015, TWP maintained that it failed to sample for the July 2015 DMR reporting period because the Facility supervisor was on vacation June 28, 2015 to July 5, 2015. The Facility supervisor also stated that there were only two other rainfall events during July 2015 that were over one-tenth of an inch and likely produced flow, but he was not in the area to sample at those times.
 8. DEQ has issued three (3) Notice of Violations to TWP citing the abovementioned permit violations. The NOV's are cited and dated as follows: W2015-10-T-0001 (dated October 2, 2015), W2015-11-T-0002 (dated November 6, 2015), and W2016-08-T-0003 (dated August 9, 2016).
 9. NOV No. W2015-10-T-0001 cites TWP's failure to sample final acute toxicity for the July 2015 reporting period (also cited in WL No. W2015-09-T-1003), TWP's

permit limit exceedance for final acute toxicity, and TWP's failure to report the number of exceptions for toxicity for the August 2015 reporting period. In addition, TWP incorrectly reported DMR effluent sample results for Outfalls 101, 102, 103, and 104; the DMR showed August 1, 2015 to August 30, 2015 and it should have been July 2015 to September 2015.

10. NOV No. W2015-11-T-0002 cites the permit limit violation for toxicity, as well as TWP's failure to report the number of exceptions for toxicity for the September 2015 reporting period.
11. NOV No. W2016-08-T-0003 cites TWP's permit limit violations for toxicity and pH for the April 1, 2016 to June 30, 2016 reporting period, as well as TWP's failure to report the number of exceptions for toxicity and pH.
12. TWP submitted DMRs indicating that it discharged storm water from the Facility for the months of August 2015, September 2015, December 2015, and April to June 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 other industrial discharge permits or certificates to TWP other than VPDES Permit No. VA0073555.
17. Salters Creek 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 DMRs and accompanying documentation submitted by TWP to DEQ for the months of April 2015 to June 2016, and TWP's responses to DEQ, the Board concludes that TWP has violated Part I.A.1, Part I.B, and Part II.C of the Permit, Va. Code §62.1-44.5, and 9 VAC 25-31-50, by discharging storm water associated with industrial activity from the Facility to surface water while concurrently failing to comply with the conditions of the Permit, as described in paragraphs C(4) through C(11), above.
19. In order for TWP to return to compliance, DEQ staff and representatives of TWP 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 TWP, and TWP agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$11,326.50 within 30 days of the effective date of this 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 shall be delivered to:

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

TWP 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, TWP shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of TWP, for good cause shown by TWP, 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 the purposes of this Order and subsequent actions with respect to this Order only, TWP admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. TWP 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. TWP 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 TWP 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. TWP 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 unforeseen occurrence beyond its control and not due to a lack of good faith or diligence on its part. TWP shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. TWP 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 TWP 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 TWP. Nevertheless, TWP 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 TWP has completed all of the requirements of the Order;
 - b. TWP 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 TWP.

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

And it is so ORDERED this 15 day of December, 2016.


Regional Director

Department of Environmental Quality

Tidewater Wood Products, LLC voluntarily agrees to the issuance of this Order.

Date: 10-21-2016 By: Richard Wahlert operations manager
(Person) (Title)
Tidewater Wood Products, LLC

Commonwealth of Virginia
City/County of Hampton

The foregoing document was signed and acknowledged before me this 21 day of October, 2016, by Richard Wahlert who is operations manager of Tidewater Wood Products, LLC on behalf of Tidewater Wood Products, LLC.

Candis White
Notary Public
7548598
Registration No.

My commission expires: July 31, 2017

Notary seal:



APPENDIX A SCHEDULE OF COMPLIANCE

Tidewater Wood Products, LLC shall:

- a. Submit to DEQ for approval a corrective action plan (CAP) and schedule by April 1, 2017 that fully examine the source(s) of storm water toxicity discharging from the Facility and describes actions TWP has taken or plans to take to comply consistently with its pH and toxicity limits established in the Permit.
- b. Upon DEQ approval of the CAP, TWP shall implement the CAP in accordance with the schedule. Upon its approval, the CAP and schedule shall become a part of and enforceable under the terms of this Order.
- c. Complete the corrective action as expeditiously as possible and in no event later than April 1, 2020.
- d. Unless otherwise specified in this Order, TWP shall submit all requirements of Appendix A of this Order to:

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