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

Molly Joseph Ward
Secretary of Natural Resources

David K. Paylor
Director

Maria R. Nold
Regional Director

STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO BEACH MARINE SERVICES, INC.

Registration No. 61669

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 10.1-1309 and -1316, between the State Air Pollution Control Board and Beach Marine Services, Inc. for the purpose of resolving certain violations of the Virginia Air Pollution Control Law and the applicable permit and regulations.

SECTION B: Definitions

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

1. "Beach Marine" means Beach Marine Services, Inc., a corporation authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries. Beach Marine is a "person" within the meaning of Va. Code § 10.1-1300.

2. "Board" means the State Air Pollution Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and -1301.

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. "Facility" means the Beach Marine Services, Inc. boat repair and maintenance facility located at 801 Victory Boulevard in Portsmouth, Virginia.

6. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.

7. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the Virginia Air Pollution Control Law.

8. "Regulations" or "Regulations for the Control and Abatement of Air Pollution" means 9 VAC 5 Chapters 10 through 80.

9. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.

10. "Va. Code" means the Code of Virginia (1950), as amended.

11. "VAC" means the Virginia Administrative Code.

12. "Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 *et seq.*), of Title 10.1 of the Va. Code.

SECTION C: Findings of Fact and Conclusions of Law

1. Beach Marine is a boat repair and maintenance company that owns and operates the Facility located at 801 Victory Boulevard in Portsmouth, Virginia.

2. On January 24, 2013, Department staff conducted an inspection of the Facility for compliance with the requirements of the Virginia Air Pollution Control Law and the Regulations. Based on the evaluation and follow-up information, Department staff made the following observations:

   > An indoor spray paint booth and an outdoor abrasive blasting operation had been installed and operated without an air permit.

3. On March 18, 2013, Beach Marine submitted an air permit application for the Facility.

4. 9 VAC 5-80-1120(A) states, "No owner or other person shall begin actual construction, reconstruction or modification of any stationary source without first obtaining from the board a permit to construct and operate or to modify and operate the source."

5. 9 VAC 5-80-1210 (E) states, "Any owner who constructs or operates a new or modified source not in accordance with the terms and conditions of any permit to construct or operate, or any owner of a new or modified source subject to this article who commences construction or operation without receiving a permit hereunder, shall be subject to appropriate enforcement action including, but not limited to, any specified in this section."

6. 9 VAC 5-50-50(A) requires that any owner of a new or modified source subject to the provisions of this chapter shall provide written notifications to the Board for the date of commencement of construction, initial startup, and actual date of startup.

7. On October 23, 2013, based on the January 24, 2013 inspection and follow-up information, the DEQ issued a NOV to Beach Marine for the violations described in paragraphs C(2) through C(6), above.

8. On November 18, 2013, Department staff and Beach Marine representatives discussed the violations including the observations and legal requirements listed in the NOV.

9. Based on the results of the January 24, 2013 inspection, the air permit application submitted on March 18, 2013 and the November 18, 2013 discussion with Beach Marine, the Board concludes that Beach Marine has violated 9 VAC 5-80-1120(A) and 9 VAC 5-50-50(A) as described in paragraphs C(4) and C(6), above.

10. DEQ issued Beach Marine a State Operating Permit for the Facility on October 15, 2013; therefore, the violations described in paragraphs C(2) through C(6), above, have been corrected.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it pursuant to Va. Code §§ 10.1-1309 and 1316, the Board orders Beach Marine and Beach Marine agrees to pay a civil charge of $3,922.00 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

Beach Marine 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, Beach Marine 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 Beach Marine, for good cause shown by Beach Marine, 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, Beach Marine admits the jurisdictional allegations, and agrees not to contest, but does not admit, the findings of fact and conclusions of law in this Order.

4. Beach Marine 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. Beach Marine declares it has received fair and due process under the Administrative Process Act, Va. Code and the Virginia Air Pollution 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 Beach Marine 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. Beach Marine does not waive any rights or objections it may have in any enforcement action by other federal, state, or local authorities arising out of the same or similar facts to those recited in this Order.

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. Beach Marine 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. Beach Marine shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Beach Marine 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 within 24 hours and in writing within three business days, of learning of any condition above, which Beach Marine intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim of 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 Beach Marine. Nevertheless, Beach Marine 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 Beach Marine has completed all of the requirements of the Order;

    b. Beach Marine 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 Beach Marine.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Beach Marine 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 Beach Marine 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 Beach Marine 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 Beach Marine to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Beach Marine.

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, Beach Marine voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 15 day of April, 2014.

Maria R. Nold, Regional Director
Department of Environmental Quality

Beach Marine Services, Inc. voluntarily agrees to the issuance of this Order.

Date: 14 April 14, 2014 By: G.W. Lauterbach, Jr., _____
G.W. Lauterbach, Jr. President
Beach Marine Services, Inc.

Commonwealth of Virginia
City/County of Chesapeake
The foregoing document was signed and acknowledged before me this 14 day of April, 2014, by G.W. Lauterbach, Jr, who is President of Beach Marine Services, Inc. on behalf of the corporation.

Notary Public

ROCHELLE JUDE O'MEALLY
Notary Public
Commonwealth of Virginia
7348192
My Commission Expires Nov 30, 2014

7348192
Registration No.

My commission expires: 11/30/14
Notary Seal: