



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY

PIEDMONT REGIONAL OFFICE

4949-A Cox Road, Glen Allen, Virginia 23060

(804) 527-5020 Fax (804) 527-5106

[www.deq.virginia.gov](http://www.deq.virginia.gov)

L. Preston Bryant, Jr.  
Secretary of Natural Resources

David K. Paylor  
Director

Gerard Seeley, Jr.  
Regional Director

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### STATE WATER CONTROL BOARD ENFORCEMENT ACTION SPECIAL ORDER BY CONSENT ISSUED TO CHESAPEAKE MARINE RAILWAY, LLC VPDES Permit No. VA0091294

#### **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 the Chesapeake Marine Railway, LLC, 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. "PRO" means the Piedmont Regional Office of the Department, located in Glen Allen, Virginia.
6. "Order" means this document, also known as a Consent Special Order.

7. "Chesapeake Marine" means Chesapeake Marine Railway, LLC, owner and operator of the boatyard called Chesapeake Marine Railway, LLC, certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.
8. "Facility" means the Chesapeake Marine Railway, LLC boatyard located at 548 Deagle's Road, Deltaville, Virginia.
9. "Permit" means VPDES Permit No. VA0091294, which was issued to Chesapeake Marine on October 31, 2006, and expires on October 30, 2011.
10. "NOV" means Notice of Violation which is a document citing alleged violations of the Permit issued by the Department to the Chesapeake Marine.
11. "DMR" means discharge monitoring report.

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

1. Chesapeake Marine owns and operates a boatyard ("Facility"), which repairs and maintains marine vessels and their diesel engines. The Facility is located at 548 Deagle's Road, Deltaville, Virginia. The Facility is the subject of a minor industrial permit, VPDES Permit No. VA0091294 ("Permit"), which allows the Chesapeake Marine to discharge process water from pressure washing marine vessels and stormwater to Fishing Bay in compliance with terms, limitations and requirements outlined in the Permit. The Permit was issued to Chesapeake Marine on October 31, 2006 and expires on October 30, 2011.
2. A file review of Department records revealed that Chesapeake Marine has been in noncompliance with the Permit since it was issued in 2006 for the following:
  - (a) failure to submit DMRs for the semi-annual sampling of the discharged process wastewater from the Facility's pressure washing wash rack through Outfall 001, as required by Part 1.A.1 of the Permit;
  - (b) failure to submit a DMR for annual sampling of the discharged stormwater runoff from the Facility's pressure washing facility through Outfall 901, as required by Part 1.A.2 of the Permit;
  - (c) failure to submit a DMR for annual sampling of the discharged stormwater runoff from the drainage area through Outfall 002, as required by Part 1.A.3 of the Permit;
  - (d) failure to submit DMRs for the semi-annual sampling of the discharged process water associated with operational railways through Outfalls 008 & 009, as required by Part 1.A.4 of the Permit;
  - (e) failure to submit DMRs for the annual sampling of the discharged stormwater associated with the operational railways through Outfalls 908 and 909, as required by Part 1.A.5 of the Permit;

- (f) failure to submit monthly reports with the DMRs certifying compliance or noncompliance with all conditions of the Best Management Practices (BMPs) specified in the Permit, as required by Part 1.B.3.b of the Permit;
- (g) failure to submit an Operations and Maintenance (O&M) Manual for approval which was due January 29, 2007, as required by Part 1.B.8 of the Permit; and
- (h) failure to submit quarterly acute toxicity testing reports of the process wastewater discharged through Outfalls 001, 008 & 009, as required by Part 1.C.1 and Part 1.C.4 of the Permit.
3. Va. Code § 62.1-44.5 and 9 VAC 25-31-50 states 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 substance; or otherwise alter the physical, chemical or biological properties of such state waters and make them detrimental to the public health, or to animal or aquatic life, or to the use of such waters for domestic or industrial consumption, or for recreation, or for other uses.
  4. On May 8, 2008, the Department issued a NOV to Chesapeake Marine citing the above described violations of the Permit.
  5. On May 27, 2008, the Department met with Chesapeake Marine to discuss resolution of the violations cited in the May 8, 2007, NOV.

#### **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 Chesapeake Marine, and Chesapeake Marine agrees, to perform the actions described in Appendix A of this Order. In addition, the Board orders Chesapeake Marine, and Chesapeake Marine voluntarily agrees, to pay a civil charge of **\$12,550** in accordance with the schedule in Appendix A of the Order in settlement of the violations cited in this Order. The payment shall note that it is being made pursuant to this Order and shall note the Federal Identification Number for Chesapeake Marine. Payment shall be by check, certified check, money order, or cashier's check payable to "Treasurer of Virginia" and sent 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 Chesapeake Marine, for good cause shown by Chesapeake Marine, or on its 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 NOV issued on May 8, 2008, as listed above in Section C. 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 as may be authorized by law; and/or (3) taking subsequent action to enforce the terms of this Order. Nothing herein shall affect appropriate enforcement actions by other federal, state, or local regulatory authority, whether or not arising out of the same or similar facts.
3. For purposes of this Order and subsequent actions with respect to this Order, Chesapeake Marine admits the jurisdictional allegations, factual findings and conclusions of law contained herein.
4. Chesapeake 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. Chesapeake Marine declares it 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 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 enforce this Order.
6. Failure by Chesapeake 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.
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. Chesapeake 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. Chesapeake Marine shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Chesapeake Marine shall notify the Department 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 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 of learning of any condition above, which Chesapeake Marine 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 Chesapeake Marine. Notwithstanding the foregoing, Chesapeake 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. Chesapeake 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
  - b. The Director or Board terminates the Order in his or its sole discretion upon 30 days notice to Chesapeake Marine.

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

12. By its signature below, Chesapeake Marine voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 11<sup>th</sup> day of December, 2008.

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

Chesapeake Marine voluntarily agrees to the issuance of this Order.

By: [Signature]  
Date: 9/11/08

Commonwealth of Virginia  
City/County of Middlesex

The foregoing document was signed and acknowledged before me this 11<sup>th</sup> day of September, 2008, by Jon FARINHOLT, who is  
(name)  
COO of Chesapeake Marine Railways, LLC on behalf of Chesapeake  
(title)

Marine.



Michele C. Hutton  
Notary Public

My commission expires: 4/30/12

**APPENDIX A**

Chesapeake Marine shall:

1. **By October 1, 2008**, submit an O&M Manual for approval.
2. Make payments in settlement of the violations cited in the Order as scheduled below:
  - A payment of **\$3,137.50** shall be due within **30 days of issuance** of the Order
  - A payment of **\$3,137.50** shall be due by .....**April 10, 2009**
  - A payment of **\$3,137.50** shall be due by .....**July 10, 2009**
  - A payment of **\$3,137.50** shall be due by .....**October 10, 2009**
3. Conduct the quarterly toxicity testing in accordance with Part I.C. of the Permit and submit the results of the toxicity test in accordance with the following schedule:

<u>Period</u>	<u>Compliance Periods</u>	<u>DMR/Report Submission Dates</u>
<b>Quarter 1</b>	<b>By 12/31/08</b>	<b>1/10/09</b>
<b>Quarter 2</b>	<b>By 3/31/09</b>	<b>4/10/09</b>
<b>Quarter 3</b>	<b>By 6/30/09</b>	<b>7/10/09</b>
<b>Quarter 4</b>	<b>By 9/30/09</b>	<b>10/10/09</b>
<b>Quarter 5</b>	<b>By 12/31/09</b>	<b>1/10/10</b>
<b>Quarter 6</b>	<b>By 3/31/10</b>	<b>4/10/10</b>
<b>Quarter 7</b>	<b>By 6/31/10</b>	<b>7/10/10</b>
<b>Quarter 8</b>	<b>By 9/30/10</b>	<b>10/10/10</b>
<b>Quarter 9</b>	<b>By 12/31/10</b>	<b>1/10/11</b>
<b>Quarter 10</b>	<b>By 3/31/10</b>	<b>4/10/10</b>

**Adhere to the sampling methodology of Part I.B.4 of the Permit regarding the required toxicity testing.**

4. **Collect the required annual samples** in accordance with Part I.A of the Permit for **outfalls 002, 901, 908 and 909** between **April and June 2009** and **submit the results** of the sample collection on the DMRs by the 10<sup>th</sup> of the month following the sample collection.
5. **Collect the required semi-annual samples** in accordance with Part I.A of the Permit for **outfalls 001, 008, and 009** between **July 1, 2008 and December 31, 2008 and between January 1, 2009 and June 1, 2009**. **Submit the results** of the sample collection on the DMRs by the 10<sup>th</sup> of the month following the sample collection.
6. **Conduct and submit, with the DMRs, the monthly BMP reports** certifying compliance or noncompliance with **all 31 conditions** of the BMPs pertaining to marine railways, piers, wetlands and shore side work areas in accordance with Part I.B.3 of the Permit.

**Pursuant to this Order**, submit all documentation as required by **Appendix A to:**

Cynthia Akers  
Department of Environmental Quality  
Piedmont Regional Office  
4949-A Cox Road, Glen Allen, VA 23060