



# 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

L. Preston Bryant, Jr  
Secretary of Natural Resources

David K. Paylor  
Director

Francis L. Daniel  
Regional Director

### STATE WATER CONTROL BOARD ENFORCEMENT ACTION

#### SPECIAL ORDER BY CONSENT

#### ISSUED TO

**Gutterman Iron & Metal Corporation**

**Registration No. VAR050351**

#### SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code §62.1-44.15(8a) and §62.1-44.15(8d), between the State Water Control Board and Gutterman Iron & Metal Corporation, for the purpose of resolving certain violations of environmental law and/or 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. "Order" means this document, also known as a Consent Special Order.
6. "Regulation" means 9 VAC 25-151-10 *et seq.* - the Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Storm Water Discharges Associated with Industrial Activity.
7. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
8. "Permit" means VPDES General Permit No. VAR05 for Storm Water Discharges Associated with Industrial Activity.

9. "Annual monitoring period" means the period from July 1 to June 30 of the following year.

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

1. Gutterman Iron & Metal Corporation ("Gutterman") operates a facility at 706 May Avenue, Norfolk, Virginia ("facility") at which scrap metal is processed for recycling. Storm water discharges from the facility are subject to the Permit, which was effective July 13, 2004 and expires on June 30, 2009, through Registration No. VAR050351.
2. Gutterman is required to develop and implement a facility storm water pollution prevention plan ("SWP3") according to requirements outlined in Part III and Part IV.C (for Sector N – Scrap Recycling and Waste Recycling Facilities) ("Sector N") of the Permit.
3. Part I.A.1.a of the Permit and the unnumbered eighth page of the facility SWP3 require Gutterman to perform quarterly visual examinations of storm water discharges from its three permitted outfalls – Outfalls 001, 002 and 003.
4. Part I.A.1.b of the Permit requires Gutterman to conduct benchmark monitoring of storm water discharges from its three permitted outfalls for the presence of eight pollutants of concern (total suspended solids, aluminum, cadmium, hexavalent chromium, copper, iron, lead and zinc) once during each annual monitoring period; record benchmark monitoring results for each outfall on a Discharge Monitoring Report ("DMR"); and maintain the DMRs with the facility SWP3. Part IV.D (for Sector N) of the Permit establishes a numerical monitoring cut-off concentration ("benchmark value") for each of the eight pollutants of concern. Part I.A.1.b of the Permit provides further that, while exceedance of a benchmark value does not constitute a violation of the Permit, it may necessitate modification of the facility SWP3 or coverage under either an individual permit or alternative general permit.
5. The DMRs for the 2005-2006 annual monitoring period reported concentrations for all eight pollutants of concern that exceeded benchmark values at all three outfalls. The DMRs for the 2007-2008 annual monitoring period reported concentrations for all eight pollutants of concern that exceeded benchmark values at Outfalls 001 and 002 and for six pollutants of concern at Outfall 003.
6. Part I.A.2.c of the Permit requires Gutterman to include, along with monitoring results, in the documentation of benchmark monitoring of storm water discharges discussed in paragraph 4 above, data of the storm events during which the monitoring was conducted.
7. On March 18, 2005 DEQ staff conducted a routine compliance inspection of the facility and noted deficiencies in facility inspections, employee training, quarterly visual monitoring of storm water discharges, and an incomplete SWP3, among other things. These deficiencies were referenced in a Warning Letter issued to Gutterman on April 6, 2005. Gutterman responded to the Warning Letter by submitting an updated SWP3 and a change-of-ownership notification.
8. During a DEQ facility inspection on January 16, 2008 DEQ staff documented the following Permit compliance deficiencies with respect to monitoring requirements:

- a. Quarterly visual monitoring of storm water discharges as required by Part I.A.1.a of the Permit and the unnumbered eighth page of the SWP3 had not been conducted for the 2005-2006, 2006-2007 and 2007-2008 annual monitoring periods.
  - b. Benchmark monitoring of storm water discharges as required by Part I.A.1.b of the Permit had not been conducted for the 2006-2007 annual monitoring period.
  - c. DMRs of benchmark monitoring for the 2005-2006 and 2007-2008 annual monitoring periods did not include storm event data as required by Part I.A.2.c of the Permit.
9. During a DEQ facility inspection on January 16, 2008 DEQ staff documented Permit compliance deficiencies, with respect to SWP3 requirements, including the following:
  - a. Facility employees had not been trained in the components and goals of the SWP3 during the 2005-2006 and 2006-2007 annual monitoring periods as required by Part III and Part IV.C.2.a(4) (for Sector N) of the Permit and the unnumbered tenth page of the SWP3.
  - b. Quarterly facility inspections to ensure compliance with best management practices and the SWP3 had not been performed for the 2005-2006, 2006-2007 and 2007-2008 annual monitoring periods as required by Part III and Part IV.C.2.h (for Sector N) of the Permit and the unnumbered eighth page of the SWP3.
  - c. The SWP3 did not contain a scrap lead-acid battery program or a supplier notification program as required by Part III.B and Part IV.C.2.f and i. (for Sector N) of the Permit.
  - d. The facility SWP3 site map did not accurately identify the locations of all storm water outfalls and the locations of all industrial activities at the facility as required by Part III.B.2.c (7) and (9) and Part IV.C.1 (for Sector N) of the Permit.
  - e. The SWP3 did not include a non-storm water certification as required by Part III.D of the Permit.
  - f. The annual comprehensive site compliance evaluation required by Part III.E of the Permit and the unnumbered eighth page of the SWP3 had not been performed for the 2005-2006 and 2006-2007 annual monitoring periods.
  - g. The SWP3 was not signed and certified as required by Part III.F.1 of the Permit.
10. Gutterman violated Permit conditions Part I.A.1.a., Part I.A.1.b. and Part I.A.2.c. as noted in paragraph C.8 of this Order.
11. Gutterman violated Permit conditions Part III, Part III.B, Part III.B.2.c.(7) and (9), Part III.D, Part III.E, and Part III.F.1, and, for Sector N, Part IV.C.1, Part IV.C.2.a(4), Part IV.C.2.f, Part IV.C.2.h and Part IV.C.2.i as noted in paragraph C.9 of this Order.
12. On April 1, 2008 DEQ issued Notice of Violation ("NOV") W2008-04-T-0001 to Gutterman. The NOV advised Gutterman of the violations of Permit conditions Part I.A.1.a., Part I.A.1.b., Part I.A.2.c., Part III, Part III.B, Part III.B.2.c.(7) and (9), Part

III.D, Part III.E, and Part III.F.1, and, for Sector N, Part IV.C.1, Part IV.C.2.a(4), Part IV.C.2.f, Part IV.C.2.h and Part IV.C.2.i, and the conditions in the unnumbered eighth and tenth pages of the SWP3 revealed during the inspection conducted by DEQ staff on January 16, 2008.

13. Gutterman responded by letters dated April 8, 2008 and May 5, 2008 to the effect that: a site survey for the preparation of a facility site plan was underway; the SWP3 was being updated; quarterly visual monitoring of discharges and a facility inspection had been recently conducted; annual training, discharge monitoring (to include reporting of storm event data), and the CSCE would be conducted in the near future; and permit-required informational material was being distributed to scrap suppliers and Gutterman employees.
14. DEQ enforcement and compliance staff met with the facility manager on May 13, 2008 and were informed that Gutterman's long-range plan is to grade and partially pave the facility so that all storm water from the facility will drain to a single outfall in which will be installed an oil-water separator, a sediment trap, and technology for removing suspended metals from storm water prior to discharge.
15. On June 13, 2008 Gutterman submitted the results of a CSCE performed on June 12, 2008, the most recent quarterly visual monitoring, and a revised SWP3. On June 17, 2008 Gutterman provided to DEQ a record of employee training conducted on June 13, 2008 and a schematic of the conceptual mitigation plan for controlling storm water discharges discussed in paragraph C.14 above. DEQ provided review comments on the revised SWP3 on June 19, 2008.

#### **SECTION D: Agreement and Order**

Accordingly the State Water Control Board by virtue of the authority granted it by Va. Code § 62.1-44.15(8a) and (8d), orders Gutterman, and Gutterman agrees to perform the actions described in Appendix A of this Order. In addition, the Board orders Gutterman, and Gutterman voluntarily agrees to pay a civil charge of \$9,116 within 30 days of the effective date of this Order, in settlement of the violations cited in this Order. The payment shall include Gutterman's Federal Identification Number and shall reference that payment is being made as a requirement of this Order. Payment shall be made by check, payable to the Treasurer of Virginia, delivered 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 Gutterman, for good cause shown by Gutterman, 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 above referenced Notice of Violation. 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; or (3) taking subsequent action

to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.

3. For purposes of this Order and subsequent actions with respect to this Order, Gutterman admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Gutterman 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. Gutterman 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 Gutterman 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. Gutterman 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 act of God, war, strike, or such other occurrence. Gutterman shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Gutterman shall notify the DEQ 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 Gutterman 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 Gutterman. Notwithstanding the foregoing, Gutterman agrees to be bound by any compliance date, which precedes the effective date of this Order.
11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Gutterman. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Gutterman 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, Gutterman voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 17 day of October, 2008.

Francis L. Daniel  
Francis L. Daniel

Gutterman Iron & Metal Corporation voluntarily agrees to the issuance of this Order.

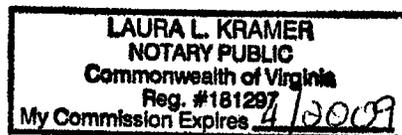
By: Anthony Cal.  
Date: 8.21.08

Commonwealth of Virginia.  
City/County of Virginia Beach

The foregoing document was signed and acknowledged before me this 21 day of August, 2008, by Anthony Calcaagni, who is  
V. Pres of Gutterman Iron & Metal Corporation on behalf of the corporation.  
(title)

Laura L. Kramer  
Notary Public

My commission expires: April 2009



## APPENDIX A

Gutterman shall:

1. Within 30 days of the effective date of this Order submit to DEQ Tidewater Regional Office, certification that all staff who are responsible for implementing activities identified in the SWP3 or otherwise responsible for storm water management have been trained and that the training included all components required by the Permit and SWP3 including guidance on spill response, good housekeeping, material management practices and the inspection and acceptance of inbound recyclable materials.
2. Within 30 days of the effective date of this Order submit to DEQ Tidewater Regional Office, the reports of all facility inspections conducted since June 12, 2008 by or on behalf of Gutterman to ensure compliance with the SWP3 and the Permit.
3. Within 60 days of the effective date of this Order submit to DEQ Tidewater Regional Office for review and approval an updated SWP3 that contains all elements required by Part III and Part IV.C (for Sector N – Scrap Recycling and Waste Recycling Facilities) of the Permit and incorporates the recommendations made by DEQ in the report of the January 16, 2008 compliance inspection and in the June 19, 2008 review comments.
4. Notwithstanding Part I.A.1.b(1), Part I.A.2.a, and Part I.A.4.a of the Permit, beginning with the 4th Quarter 2008 (due January 10, 2009), and continuing for two quarters after completion of the DEQ-approved mitigation action prescribed in Item 5 of this Appendix A, submit to DEQ for its records, quarterly Discharge Monitoring Reports (“DMRs”) for its three permitted outfalls. The DMRs shall conform to Permit requirements in all other respects.
5. Within 90 days of the effective date of this Order submit to DEQ Tidewater Regional Office for its review and approval, the completed mitigation plan and schedule (“plan”) to reduce the concentrations of total suspended solids and recoverable metals in storm water and surface-water runoff from the facility referenced in paragraph C.15 of this Order. Upon its approval, the plan shall become a part of and enforceable under the terms of this Order.
6. Within 60 days of completion of the DEQ-approved mitigation action resulting from the plan prescribed by Item 5 of this Appendix A submit to DEQ Tidewater Regional Office for its review and approval a revised SWP3 that incorporates any structural and nonstructural storm water management controls that result from the completed mitigation action.
7. Comply with all conditions of the Permit, except as noted in Item 4 of this Appendix A.

8. Mail all submittals and reports required by this Appendix A to:

Mr. Francis L. Daniel, Regional Director  
DEQ, Tidewater Regional Office  
5636 Southern Blvd.  
Virginia Beach, VA 23462