



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

TIDEWATER REGIONAL OFFICE

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**STATE WATER CONTROL BOARD ENFORCEMENT ACTION
ORDER BY CONSENT
ISSUED TO
Riggins Company, L.C.
VPDES Permit No. VAR05
Storm Water Registration No. VAR050472**

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 Riggins Company, L.C., for the purpose of resolving certain violations of the State Water Control Law and the applicable 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. "CSCE" means comprehensive site compliance evaluation.
4. "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. “Facility” means the Riggins Company, L.C. welding and fabrication facility, located at 410 Rotary Street in Hampton, Virginia, from which discharges of stormwater associated with industrial activity occur.
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 General Permit No. VAR05, which was issued under the State Water Control Law and the Regulation on July 1, 2009 and which expires on June 30, 2014. Riggins applied for registration under the Permit and was issued Registration No. VAR050472 on July 1, 2009.
13. “Riggins” means Riggins Company, L.C., a limited liability company authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries. Riggins is a “person” within the meaning of Va. Code § 62.1-44.3.
14. “State Water Control Law” means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
15. “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.
16. “SWP3” means Stormwater Pollution Prevention Plan.
17. “TRO” means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.

18. "Va. Code" means the Code of Virginia (1950), as amended.
19. "VAC" means Virginia Administrative Code.
20. "VPDES" means Virginia Pollutant Discharge Elimination System.

SECTION C: Findings of Fact and Conclusions of Law

1. Riggins owns and operates the Facility located at 410 Rotary Street in Hampton, Virginia, which discharges stormwater associated with industrial activity.
2. The Permit allows Riggins to discharge stormwater associated with industrial activity from the Facility to an unnamed tributary of Newmarket Creek, in strict compliance with the terms and conditions of the Permit.
3. Newmarket Creek is located in the James River Basin. Newmarket Creek is listed in DEQ's 305(b) report as impaired for aquatic life use based on dissolved oxygen concentrations that are below the minimum criteria and for recreation use due to exceedance of the fecal coliform bacteria criteria.
4. During DEQ Facility inspections on April 2, 2013 and April 9, 2013, DEQ staff documented the following compliance deficiencies with respect to the requirements of the Permit:
 - a. The SWP3 had not been updated.
 - b. The SWP3 was not signed in accordance with Part II.K of the Permit.
 - c. The SWP3 site map did not include all required elements.
 - d. Quarterly visual examinations of storm water quality had not been performed for calendar years 2009, 2010, 2011, 2012 and 2013.
 - e. Benchmark monitoring of storm water discharges were not performed during the July 1 to December 31, 2009, 2011, and 2012 monitoring periods.
 - f. The results of benchmark monitoring of storm water discharges reported for the calendar year 2010 monitoring period were incorrect.
 - g. Results of routine facility inspections performed during calendar years 2009, 2010, 2011 and 2012 were not documented in the SWP3.
 - h. Records of employee training were not available for calendar years 2009, 2010, 2011 and 2012.
 - i. An annual CSCE had not be performed during calendar years 2009, 2010, 2011 and 2012.
5. Part III.A.1 and Part III.G of the Permit require the SWP3 to be updated by October 1, 2009.
6. Part III.F.1 of the Permit requires the SWP3 to be signed and dated in accordance with Part II.K of the Permit.

7. Part III.B.2.c of the Permit requires the SWP3 to include a site map that shows material storage areas, stormwater conveyances and outfalls.
8. Part I.A.1.a of the Permit requires quarterly visual examinations to be conducted.
9. Part I.A.1.b and Part IV.C (for Sector AA) of the Permit require benchmark monitoring to be conducted for monitoring periods (1) July 1, 2009 to December 31, 2009; (2) January 1, 2010 to December 31, 2010; (3) January 1, 2011 to December 31, 2011; (4) January 1, 2012 to December 31, 2012; and (5) January 1, 2013 to December 31, 2013.
10. Part III.B.6.b(5) and Part IV.B.2.c (for Sector AA) of the Permit require the documentation of routine facility inspections in the SWP3.
11. Part III.B.6.b(6) of the Permit requires documentation of employee training in the SWP3.
12. Part III.E and Part IV.B.2.d (for Sector AA) of the Permit require an annual CSCE.
13. On June 13, 2013, TRO issued NOV No. W2013-06-T-0002 for the violations noted in paragraphs C(4) through C(12), above.
14. Riggins responded to the NOV on June 21, 2013 by submitting a letter outlining corrective actions that had been taken at the Facility.
15. Based on the results of the April 2, 2013 and April 9, 2013 inspections and documentation submitted by Riggins on June 21, 2013, the Board concludes that Riggins has violated Parts III.A.1, Part III.G, Part III.F.1, Part III.B.2.c, Part I.A.1.a, Part I.A.1.b, Part IV.C (for Sector AA), Part III.B.6.b(5), Part IV.B.2.c, Part III.B.6.b(6), Part III.B.6.b(6), Part III.E and Part IV.B.2.d of the Permit, as described in paragraphs C(4) through C(12), above.
16. On April 17, 2014, DEQ conducted an inspection of the Facility and observed that the violations as described in paragraphs C(4) through C(12), have been corrected.
17. In order for Riggins to complete its return to compliance, DEQ staff and Riggins 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 Riggins, and Riggins agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$4,947.00 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

Riggins 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, Riggins 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 Riggins, for good cause shown by Riggins, 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, Riggins admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Riggins 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. Riggins 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 Riggins 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. Riggins 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. Riggins shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Riggins 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 Riggins 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 Riggins. Nevertheless, Riggins 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 Riggins has completed all of the requirements of the Order;
 - b. Riggins 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 Riggins.

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

And it is so ORDERED this 17 day of July, 2014.



Regional Director
Department of Environmental Quality

Riggins Company, L.C. voluntarily agrees to the issuance of this Order.

Date: 5/30/14 By: [Signature], PRESIDENT
(Person) (Title)
Riggins Company, L.C.

Commonwealth of Virginia
City/County of Hampton

The foregoing document was signed and acknowledged before me this 30th day of May, 2014, by John Munford who is President of Riggins Company, L.C., on behalf of the company.

[Signature]
Notary Public
7305349
Registration No.

My commission expires: 9-30-2017

Notary seal:



APPENDIX A SCHEDULE OF COMPLIANCE

Riggins shall:

1. By July 10, 2014, October 10, 2014, January 10, 2015 and April 10, 2015 submit to DEQ Tidewater Regional Office, results of routine Facility inspections and visual examinations of storm water quality conducted, to ensure compliance with the Facility SWP3 and the Permit during the preceding three-month period. Reports shall include any corrective action taken in response to deficiencies noted during any inspection or examination.
2. Comply with all conditions of the Permit.
3. Mail all submittals and reports required by this Appendix A to:

Regional Director
DEQ, Tidewater Regional Office
5636 Southern Blvd.
Virginia Beach, VA 23462