COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
TIDEWATER REGIONAL OFFICE
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Molly Joseph Ward
Secretary of Natural Resources

David K. Paylor
Director

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STATE WATER CONTROL BOARD ENFORCEMENT ACTION ORDER BY CONSENT ISSUED TO SMM Southeast LLC VPDES Permit No. VAR05 Storm Water Registration No. VAR051540

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 SMM Southeast LLC, 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.

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. "Facility" means Sims Metal Management – Chesapeake facility, a scrap metal recycling facility located at 4300 Buell Street in Chesapeake, Virginia, from which discharges of stormwater associated with industrial activity occur.

9. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

10. "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.

11. "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. SMM Southeast LLC has applied for registration under the Permit and was issued Registration No. VAR051540 on July 1, 2009.

12. "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.

13. "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.

14. "Regulation" means 'The General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Discharges of Storm Water Associated with Industrial Activity," 9 VAC 25-151-10, *et seq.*

15. "SMM" means SMM Southeast LLC, a limited liability company authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries. SMM is a "person" within the meaning of Va. Code § 62.1-44.3.

16. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.

17. "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.

18. "SWP3" means Stormwater Pollution Prevention Plan.

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

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

21. "VAC" means Virginia Administrative Code.

22. "VPDES" means Virginia Pollutant Discharge Elimination System.

SECTION C: Findings of Fact and Conclusions of Law

1. SMM owns and operates the Facility, a 41.32-acre scrap metal recycling facility located at 4300 Buell Street in Chesapeake, Virginia.

2. The Permit allows SMM to discharge stormwater associated with industrial activity from the Facility to Milldam Creek, in strict compliance with the terms and conditions of the Permit.

3. Milldam Creek is located in the Southern Branch of the Elizabeth River Basin. Milldam Creek is listed in DEQ's 305(b) report as impaired for fish consumption use based on dioxin in Blue Crab heptatopancreas contamination and PCB's in fish tissue, and for aquatic life and open-water aquatic life use based on dissolved oxygen concentrations that are below the minimum criteria. The potential sources for the impairments include industrial point source discharges. SMM has not been identified as a contributor to the impairments.

4. During a DEQ Facility inspection on February 8, 2013, DEQ staff documented the following compliance deficiencies with respect to the requirements of the Permit:

a. Discharges were observed at two locations, including from a pond at the front of the site and near the railroad spur on the western side of the site, that are not permitted outfalls for the Facility;
b. The SWP3 was not updated to reflect the discharge points identified during the site inspection;
c. Discharges at the front of the Facility and Outfall 002 were brown in color, turbid with oil sheens;
d. Storm water runoff was circumventing hay bales used as Best Management Practices ("BMPs") allowing the discharge of pollutants to state waters;
e. Discharges from the front of the Facility had no controls in place to control or minimize the discharge of pollutants to state waters.

5. Part II.F of the Permit prohibits unpermitted discharges to state waters.

6. Part I.B.9 of the Permit requires the SWP3 to be updated if outfalls are added or deleted.

7. Part I.B.2 of the Permit requires discharges of hazardous substances or oil to be prevented or minimized.

8. Part III.B.6.a of the Permit requires the implementation of BMPs to prevent or control pollutants in storm water discharges.

9. Part I.B.8 of the Permit, 9 VAC 25-151-70 and §62.1-44.5 require discharges to be controlled as necessary to meet water quality standards.

10. On February 27, 2013, SMM met with DEQ-TRO and presented proposed short-term and long-term corrective actions to improve the water quality of stormwater discharges from the Facility.

11. As a follow up to that meeting, on April 3, 2013, SMM submitted a letter to DEQ-TRO documenting the proposed corrective actions and including a revised DEQ Registration Statement for additional outfalls and a plan for implementation of storwater Best Management Practices ("BMPs").

12. On April 8, 2013, TRO issued NOV No. W2013-04-T-0001 for the violations noted in paragraphs C(4) through C(9), above.

13. On May 8, 2013, SMM met with DEQ staff to discuss the NOV and submitted a Plan for Implementation of Storm Water BMPs ("PISWB") that provided a timeline for the previously submitted corrective actions to address the violations noted in paragraphs C(4) through C(9), above.

14. 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

15. The Regulation, at 9 VAC 25-151-70, 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.

16. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a "certificate" under the statute.

17. The Department has issued coverage under no permits or certificates to SMM other than under VPDES General Permit No. VAR05.

18. Milldam Creek is a surface water located wholly within the Commonwealth and is a 'state water' under State Water Control Law.

19. Based on the results of the February 8, 2013 inspection and information provided by SMM, the Board concludes that SMM has violated Part II.F, Part I.B.9, Part I.B.2, Part III.B.6.a and Part I.B.8 of the Permit, as well as the Va. Code and the Regulation, as described in paragraphs C(4) through C(9), above.

20. The short-term corrective actions included in the PISWB have been completed by SMM.

21. In order for SMM to complete its return to compliance, DEQ staff and SMM 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 SMM, and SMM agrees to:

1. Perform the actions described in Appendix A of this Order; and

2. Pay a civil charge of $9,100.00 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

SMM 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, SMM 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 SMM, for good cause shown by SMM, 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, SMM admits the jurisdictional allegations, and agrees not to contest, but neither admits nor denies the findings of fact and conclusions of law contained herein.

4. SMM 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. SMM 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 SMM 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. SMM 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 unforeseeable circumstance beyond its control and not due to a lack of good faith or diligence on its part. SMM shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. SMM 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 SMM 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 SMM. Nevertheless, SMM 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 SMM has completed all of the requirements of the Order;

b. SMM 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 SMM.

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

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, SMM voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 14 day of August, 2014.

Regional Director
Department of Environmental Quality

SMM Southeast LLC voluntarily agrees to the issuance of this Order.

Date: 6/18/14 By: Ivan Padilla, GM
(Person) (Title)
SMM Southeast LLC

Commonwealth of Virginia
City/County of Chesapeake

The foregoing document was signed and acknowledged before me this 18th day of June, 2014, by Ivan Padilla who is General Manager of SMM Southeast LLC, on behalf of the company.

Notary Public

Registration No.

Maristela Carvalho
Notary Public
Commonwealth of Virginia
Registration Number: 7589394
My Commission Expires: July 31, 2018

My commission expires:

Notary seal:

APPENDIX A
SCHEDULE OF COMPLIANCE

SMM shall:

1. By September 30, 2014, complete and implement the following long-term corrective actions:

    a. Install BMP Pond #1;
    b. Install BMP Pond #2;
    c. Install piping/conveyance to Pond #1;
    d. Install/dig conveyance to Pond#2;
    e. Install rail crossing for Pond#1 conveyance;
    f. Install collection trench and connect it to Pond #1 conveyance;
    g. Curb/re-grade concrete in northeast side to direct storm water into Pond #1 conveyance
    h. Install drainage ditch along fence line, leading to Pond #3 on boat slip area.

2. By October 30, 2014, submit to DEQ a report of the completion of the long-term corrective actions listed above.

3. Comply with all conditions of the Permit.

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

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