COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
TIDEWATER REGIONAL OFFICE
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Molly Joseph Ward
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STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO

Six M, L.L.C.

For
Six M, L.L.C. Unpermitted Facility

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 Six M, L.L.C., regarding the Six M, L.L.C. Unpermitted Facility, 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 (USC) § 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. "AMG" means American Marine Group, Inc., a Virginia corporation that was incorporated on April 5, 2007, and terminated by the State Corporation Commission (SCC) on August 31, 2011.

3. "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, as described in Va. Code § 10.1-1185.

6. "Discharge" means the discharge of a pollutant.

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. "Effluent" means wastewater – treated or untreated – that flows out of a treatment plant, sewer, or industrial outfall.

10. "Facility" or "Site" means the Six M, L.L.C. Facility, located at 425 Campostella Road, Norfolk, Virginia.

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

12. "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.

13. "Owner" means the Commonwealth or any of its political subdivisions including, but not limited to, sanitation district commissions and authorities, and any public or private institution, corporation, association, firm or company organized or existing under the laws of this or any other state or country, or any officer or agency of the United States, or any person or group of persons acting individually or as a group that owns, operates, charters, rents, or otherwise exercises control over or is responsible for any actual or potential discharge of sewage, industrial wastes, or other wastes to state waters, or any facility or operation that has the capability to alter the physical, chemical, or biological properties of state waters in contravention of § 62.1-44.5 of the Code of Virginia. *See* 9 VAC 25-151-10 and 9 VAC 25-31-10.

14. "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.

15. "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.

16. "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

17. "Registration statement" means a registration statement for coverage under the storm water general permit, VAR05.

18. "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.*

19. "Six M" means Six M, L.L.C., a limited liability company authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries. Six M is a "person" within the meaning of Va. Code § 62.1-44.3.

20. "SCC" means Virginia State Corporation Commission.

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

22. "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.

23. "SWPPP" means Storm Water Pollution Prevention Plan.

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

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

26. "VAC" means the Virginia Administrative Code.

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

28. "Warning Letter" or "WL" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

SECTION C: Findings of Fact and Conclusions of Law

1. Six M owns and operates the Facility located at 425 Campostella Road, Norfolk, Virginia, which discharges storm water associated with industrial activity to the Eastern Branch Elizabeth River.

2. On or about July 28, 2009, AMG, by Mr. Timothy S. Mullane (Mr. Mullane), President, signed a VPDES General Permit Registration Statement pursuant to 9 VAC 25-151 for coverage for the Facility under the VPDES general permit for industrial storm water discharges.

3. DEQ received this registration statement on or about July 30, 2009, and granted coverage under the general permit to AMG for the Facility. AMG was assigned registration number VAR051681.

4. DEQ issued a Warning Letter dated November 23, 2009, and a Notice of Violation dated April 14, 2011 to AMG. A consultant for AMG filed a response to the NOV dated April 25, 2011, but the issues in the Warning Letter and NOV were not resolved before the SCC terminated AMG's corporate status on August 31, 2011.

5. On or about July 9, 2012, Six M, by Mr. Mullane, Managing Member, signed a VPDES General Permit Registration Statement pursuant to 9 VAC 25-151 for coverage for the Facility under the VPDES general permit for industrial storm water discharges. DEQ received this registration statement on or about July 10, 2012. Six M submitted the $500 fee for coverage under the Permit, which was received by DEQ on or about July 20, 2012.

6. On July 13, 2012, the DEQ TRO Water Permit Manager by email wrote to Six M and asked for several clarifications before coverage under the Permit could be issued. Among the questions were:

    a. Whether the new registration for Six M would cover the same area or same activities as the coverage issued to AMG, or would it cover a separate area or activity. Hand-written notes on a printed copy of the email indicated that the new registration would cover new areas and/or activities.

    b. Whether any work would be done in or over state waters and would any outfalls be associated with work performed in or over the water. Specifically, whether the applicant would be using the observed adjacent boats or floating dock for

performing any work to be covered under the new registration and whether there would be outfalls associated with that work. Hand-written notes on a printed copy of the email indicated that most of the vessels were just adjacent and were not owned by Six M.

c. Whether a SWPPP had been prepared for the areas associated with the new registration. If so, DEQ would need a copy of the SWPPP for the areas associated with the new activities before processing the registration statement. Hand-written notes on a printed copy of the email indicated that Six M was working on the SWPPP.

The email stated that as soon as DEQ received the above information it would begin processing the registration statement to issue coverage under the Permit.

7. Despite numerous requests by DEQ staff since July 13, 2012, DEQ had no record of receiving a response to the information requested in item C(6) until November 1, 2013 (see No. 24, below).

8. Although DEQ had earlier granted coverage under the industrial storm water general permit to AMG for the Facility, DEQ has no record of any other permit or certificate for the Facility issued or granted under State Water Control Law or any record of the permit being transferred to Six M.

9. By emails dated May 29-30, 2012, Mr. Sean Mobley (Mr. Mobley) wrote to DEQ that he was acting as trustee for AMG, terminating business operations and liquidating its assets.

10. On July 26, 2012, DEQ received a DMR for benchmark monitoring (required under the Permit) from Mr. Mobley as Trustee for AMG. The DMR listed that a storm water discharge from the Facility was caused by a rain event on June 25, 2012 of 0.98 inches.

11. Rainfall monitoring records from a monitoring station located at the Ghent MD8176 (Norfolk) weather station, approximately 2 miles from the Facility, include the following recordable precipitation events producing 0.98 inches or greater from May to August 2013:

Month	Day	Precip. (in)
May	18	2.49
Jun	7	1.7
Jun	10	1.65
Jun	11	1.13
Jul	11	1.31
Jul	23	1.8
Aug	3	1.41
Aug	4	1.32
Aug	10	1.36

Aug	11	1.36
Aug	12	1.22

12. The Eastern Branch Elizabeth River is located in the James River Basin. The Eastern Branch Elizabeth River is listed in DEQ's 305(b) report as impaired for Dissolved Oxygen ("DO"). The sources of the DO impairment include industrial point-source discharges and storm water.

13. 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..."

14. 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.

15. Under 9 VAC 25-31-50:

    A. Except in compliance with a VPDES permit, or another permit, issued by the Board, it shall be unlawful for any person to:

        1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; or
        2. 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.

16. The Regulation at 9 VAC 25-151-50 authorizes owners governed by the general permit of 9 VAC 25-151 to discharge storm water associated with industrial activity to surface waters of the Commonwealth of Virginia only if that the owner files the registration statement of 9 VAC 25-151-60, pays any fees required by 9 VAC 25-20, receives a copy of the general permit, and complies with the requirements of 9 VAC 25-151-70 *et seq.*, among other conditions.

17. The Regulation at 9 VAC 25-151-60(A) states in part: "Owners of new facilities, facilities previously covered by an expiring individual permit, and existing facilities not currently covered by a VPDES permit who wish to obtain coverage under this general permit shall prepare and implement a written SWPPP for the facility in accordance with the general permit (9 VAC 25-151-70 *et seq.*) prior to submitting the registration statement."

18. Under Va. Code § 62.1-44.21, "[t]he Board may require every owner to furnish when requested such plans, specifications, and other pertinent information as may be necessary to determine the effect of the wastes from his discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of this chapter."

19. The Eastern Branch Elizabeth River is a surface water located wholly within the Commonwealth and is a "state water" under State Water Control Law.

20. On September 17, 2013, TRO issued a Notice of Violation to Six M for discharging industrial storm water without a permit or certificate from the Board and for failing to respond to requests for information on behalf of the Board.

21. Based on the information in paragraphs C(1) and C(5-7), the Board concludes that Six M is both an owner and an operator of the Six M Facility.

22. Based on the results of documentation and information cited above, the Board concludes that Six M has violated State Water Control Law and the Regulation, as described in paragraphs C(5) through C(20), above.

23. On October 17, 2013, Department staff met with representatives of Six M to discuss the violations.

24. Six M submitted an updated draft SWPPP on November 1, 2013. DEQ staff commented on the draft SWPPP November 6 and November 12, 2013.

25. In order for Six M to complete its return to compliance, DEQ staff and Six M 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 Six M, L.L.C., and Six M, L.L.C. agrees to:

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

2. Pay a civil charge of $6,814 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

Six M shall include its Federal Employer Identification Number (FEIN) **[(xx-xxxxxxx)]** 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, Six M, L.L.C. shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Six M for good cause shown by Six M, 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 purposes of this Order and subsequent actions with respect to this Order only, Six M admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. Six M consents to venue in the Circuit Court of the City of Norfolk for any civil action taken to enforce the terms of this Order.

5. Six M declares that they have 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 Six M 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. Six M 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 circumstances beyond its control and not due to a lack of good faith or diligence on their part. Six M shall demonstrate that such circumstances were beyond their control and not due to a lack of good faith or diligence on their part. Six M 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 the parties intend 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 and any successors in interest, designees and assigns, jointly and severally.

10. This Order shall become effective upon execution by the Director or his designee and Six M. Nevertheless, Six M 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 Six M has completed all of the requirements of the Order;

b. Six M 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 Six M.

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

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, Six M voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 19 day of June, 2014.

Maria R. Nold, Regional Director
Department of Environmental Quality

Six M, L.L.C. voluntarily agrees to the issuance of this Order.

Date: 2/11/14 By: _____, Managing Member
Timothy S. Mullane

Commonwealth of Virginia

City/~~County~~ of Norfolk

The foregoing document was signed and acknowledged before me this 11th day of February, 2014, by Timothy S. Mullane who is Managing Member of Six M, L.L.C., on behalf of the company.

Joyce R. Dunn
Notary Public

7025361
Registration No.

My commission expires: 10-31-14

Notary seal: Joyce R. Dunn
NOTARY PUBLIC
Commonwealth of Virginia
Reg. #7025361
My Commission Expires 10/31/2014

APPENDIX A
SCHEDULE OF COMPLIANCE

1. **Storm Water Discharge**

Six M shall:

a. Within 30 days of this Order, or such longer time as may be specified, respond to DEQ's November 6 and November 12, 2013 comments concerning the draft SWPPP.
b. Upon completion of the review by DEQ staff, implement the SWPPP, including any recommended changes by DEQ. Implementation shall include good housekeeping practices as required by 9 VAC 25-151-80(B)(6)(b)(1).
c. Update the SWPPP and implement the updated SWPPP as necessary to meet changing conditions on the site.
d. Adhere to the terms and conditions of the General Permit once coverage under the General Permit is issued to Six M, including responding to requests for information from DEQ staff.

2. **First-Year Reporting**

By July 10, 2014, October 10, 2014, January 10, 2015, and April 10, 2015, submit to DEQ Tidewater Regional Office, reports of all Facility inspections and visual examinations of storm water quality conducted by or on behalf of Six to ensure compliance with the Facility SWPPP 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.

3. **Additional Activities**

If Six M intends to undertake any dry dock activities at the Facility, Six M shall notify DEQ and apply for and receive any necessary additional permits before beginning dry dock activities.

4. **DEQ Contact**

Unless otherwise specified in this Order, Six M shall submit all requirements of Appendix A of this Order to:

Regional Director
VA DEQ – Tidewater Regional Office
5636 Southern Boulevard
Virginia Beach, Virginia 23462