



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
GSKS Properties, LC
FOR
Tidewater Yacht Agency
Storm Water Registration No. VAR050336**

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 GSKS Properties, LC, regarding the Tidewater Yacht Agency for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and regulation.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "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.
2. "CSCE" means a comprehensive site compliance evaluation.
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, as described in Va. Code § 10.1-1185.
5. "Discharge" means the discharge of a pollutant.

6. "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.
7. "DMR" means Discharge Monitoring Report.
8. "Facility" means Tidewater Yacht Agency, a full-service marina located at 10 Crawford Parkway, Portsmouth, Virginia, owned and operated by GSKS Properties, LC, ("GSKS") where it provides transient and long-term dockage for vessels in fixed and floating slips. GSKS also provides fueling, maintenance, and repair services for vessels at the Facility. Stormwater associated with industrial activity discharges from the Facility.
9. "GSKS" means GSKS Properties, LC, a company authorized to do business in Virginia, and its affiliates, partners, subsidiaries, and parents. GSKS is a "person" within the meaning of Va. Code § 62.1-44.3.
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 for Storm Water Discharges Associated with Industrial Activity, which was effective September 22, 2009, and expires June 30, 2014. The Facility first became subject to the Permit on July 29, 1994, as documented by Registration Number VAR050336. In its Registration Statement GSKS self-reported the nature of its business under Standard Industrial Code 4493 (Marina). GSKS is responsible for all aspects of compliance with the Permit.
13. "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.
14. "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.

15. “Registration statement” means a registration statement for coverage under a stormwater general permit.
16. “Regulation” means the VPDES General Permit for Storm Water Discharges Associated with Industrial Activity, 9 VAC 25-151-10 *et seq.*
17. “Sector Q” means Industry Sector Q defined by the Regulation as that sector of industry engaged, in part, in transportation by water.
18. “State Water Control Law” means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
19. “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.
20. “SWP3” means a storm water pollution prevention plan.
21. “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.
22. “TRO” means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
23. “Va. Code” means the Code of Virginia (1950), as amended.
24. “VAC” means the Virginia Administrative Code.
25. “VPDES” means Virginia Pollutant Discharge Elimination System.
26. “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. GSKS owns and operates the Facility in the City of Portsmouth, Virginia, which discharges stormwater associated with industrial activity.
2. The Permit allows GSKS to discharge stormwater associated with industrial activity from the Facility to the Elizabeth River, in strict compliance with the terms and conditions of the Permit
3. The Elizabeth River is located in the James River Basin and is listed in DEQ's 305(b) report as impaired for polychlorinated biphenyl in fish tissue, estuarine bioassessments, and low dissolved oxygen. The sources of the impairments are believed to include contaminated sediments.
4. Part I.A.1.a. of the Permit requires GSKS to perform and document quarterly visual examinations of the quality of the storm water discharging from the one storm water outfall (Outfall 001) identified in the Permit.
5. Part I.A.1.b and Part IV.D (for Sector Q) of the Permit require GSKS to conduct benchmark monitoring of storm water discharges from the Facility's one permitted storm water outfall for the presence of three pollutants of concern [total recoverable ("TR") aluminum, TR iron, and TR zinc] once during each benchmark monitoring period and record benchmark monitoring results on DMRs to be submitted to DEQ. Prior to July 1, 2009, DMRs were to be retained at the Facility with the Facility SWP3.
6. DEQ staff had conducted routine compliance inspections on March 27, 2008, and August 13, 2009, and noted failures to perform quarterly visual examinations of storm water quality, benchmark monitoring of storm water discharges, Facility inspections, CSCEs, and the training of Facility employees in storm water pollution prevention, among other things. GSKS asserts that these functions were performed but not properly documented. These deficiencies were noted in Warning Letters dated April 9, 2008, and August 28, 2009. The failures to perform benchmark monitoring of storm water discharges were also the subject of Warning Letters dated March 29, 2010; March 7, 2011; and August 16, 2011.
7. During a DEQ Facility inspection on January 5, 2012, and subsequent document review DEQ staff noted compliance deficiencies with respect to the monitoring requirements of the Permit, including the following:
 - a. GSKS had not performed the quarterly visual examinations of storm water quality required by Part I.A.1.a of the Permit.
 - b. GSKS had not performed benchmark monitoring of storm water discharges prior to the calendar year 2011 monitoring period as required by Part I.A.1.b and Part IV.D (for Sector Q) of the Permit.

- c. On the DMR reporting the results of benchmark monitoring of storm water discharges for the calendar year 2011 monitoring period, GSKS recorded the concentration of nickel in storm water rather than TR aluminum as required by Parts I.A.1.b and Part IV.D (for Sector Q) of the Permit.
8. GSKS is required to develop and implement a Facility SWP3 according to requirements outlined in Part III and Part IV.C (for Sector Q) of the Permit.
9. Part III.B.6.b(5) of the Permit requires that the Facility be inspected at least quarterly for compliance with the Facility SWP3 and the results thereof documented in the Facility SWP3. Part IV.C.2.c (for Sector Q) of the Permit requires that certain areas and industrial activities at the Facility be inspected monthly.
10. Part III.B.6.b(6) and Part IV.C.2.d (for Sector Q) of the Permit require that the training of Facility employees in storm water pollution prevention be conducted annually and documented in the Facility SWP3.
11. Part III.E and Part IV.C.2.e (for Sector Q) of the Permit require that a CSCE be conducted at least annually and documented in the Facility SWP3.
12. During the DEQ Facility inspection on January 5, 2012, and subsequent document review DEQ staff noted compliance deficiencies with respect to the SWP3 requirements of the Permit, including the following:
 - a. The results of routine Facility inspections had not been documented in the Facility SWP3 as required by Part III.B.6.b(5) and Part IV.C.2.c (for Sector Q) of the Permit.
 - b. The annual training of Facility employees in storm water pollution prevention had not been documented as required by Part III.B.6.b(6) and Part IV.C.2.d (for Sector Q) of the Permit.
 - c. Annual CSCEs had not been documented as required by Part III.E and Part IV.C.2.e (for Sector Q) of the Permit.
13. On February 13, 2012, TRO issued NOV W2012-02-T-0001 to GSKS. The NOV advised GSKS of the violations of Permit conditions Part I.A.1.a, Part I.A.1.b, Part III.B.6.b(5), Part III.B.6.b(6), Part III.E, and Parts IV.C.2.c., d. and e. (for Sector Q) and IV.D (for Sector Q) revealed during the inspection conducted by DEQ staff on January 5, 2012.
14. In response to the report of the January 5, 2012, compliance inspection, a representative of GSKS forwarded to DEQ on February 4, 2012, copies of an updated SWP3 and reports of a Facility inspection (performed on January 26, 2012), quarterly visual examinations of storm water quality (performed on January 27, 2012), and employee training (conducted on January 26 and 27, 2012).

15. 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.
16. 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.
17. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a “certificate” under the statute.
18. Department has issued coverage under no permits or certificates to GSKS other than under VPDES General Permit No. VAR05.
19. The Elizabeth River is a surface water located wholly within the Commonwealth and is a “state water” under State Water Control Law.
20. Based on the results of the January 5, 2012, inspection, the Board concludes that GSKS has violated conditions Part I.A.1.a, Part I.A.1.b, Part III.B.6.b(5), Part III.B.6.b(6), Part III.E, Parts IV.C.2.c., d. and e. (for Sector Q), and Part IV.D (for Sector Q) of the Permit and the Va. Code as noted in paragraphs C(7) and C(12) of this Order.
21. A GSKS representative met with DEQ compliance and enforcement staff on February 24, 2012, to discuss the NOV, review the requirements of the Permit and GSKS’s compliance history, and provide substantive comments on GSKS’s revised SWP3. The GSKS representative acknowledged his failure to comply with the administrative requirements of the Permit, but noted that he maintains a clean Facility and performs daily inspections, but has not been documenting inspection results. Staff affirmed that, during recent compliance inspections, only minor housekeeping deficiencies had been observed.
22. DEQ staff visited the Facility on April 11, 2012, and observed that the regulated industrial activity at the Facility takes place on a small concrete pad and consists of the routine maintenance of vessels, including the cleaning, hand-sanding and painting of hulls and superstructures. GSKS representatives advised staff that engines are removed from the vessels and sent off-site for maintenance. A representative showed DEQ staff copies of recent monthly inspection reports and stated that he would be performing benchmark monitoring twice during calendar year 2012.
23. In order for GSKS to complete its return to compliance, DEQ staff and representatives of GSKS 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 GSKS, and GSKS agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$7,272 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

GSKS shall include its Federal Employer Identification Number (FEIN) (26-2606243) 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).

SECTION E: Administrative Provisions

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

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

And it is so ORDERED this 28 day of September, 2012.



Regional Director
Department of Environmental Quality

GSKS Properties, LC, voluntarily agrees to the issuance of this Order.

Date: 6/22/12 By: Gordon W. Shelton III, PRESIDENT
(Person) (Title)
GSKS Properties, LC

Commonwealth of Virginia

City/County of VIRGINIA BEACH

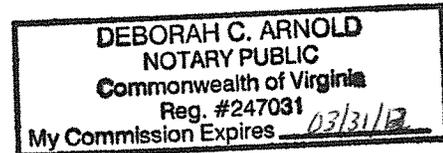
The foregoing document was signed and acknowledged before me this 22nd day of June, 2012, by Gordon W. Shelton III who is Director of GSKS Properties, LC, on behalf of the company.

Deborah C Arnold
Notary Public

247031
Registration No.

My commission expires: 03/31/13

Notary seal:



APPENDIX A SCHEDULE OF COMPLIANCE

GSKS shall:

1. By October 10, 2012, January 10, 2013, April 10, 2013, and July 10, 2013, submit to DEQ Tidewater Regional Office, reports of any training of Facility employees in storm water pollution prevention and of all Facility inspections and visual examinations of storm water quality conducted by or on behalf of GSKS 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. By October 10, 2012, submit to DEQ Tidewater Regional Office for review and approval an updated Facility SWP3 that contains all elements required by Part III and Part IV.C (for Sector Q) of the Permit.
3. Perform benchmark monitoring of the permitted outfall twice during both calendar years 2012 and 2013. The two sampling events during each calendar year will be at least 60 days apart and will be reported to DEQ on DMRs within 30 days of each sampling event.
4. Comply with all conditions of the Permit.
5. Mail all submittals and reports required by this Appendix A to: Regional Director, DEQ, Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach, VA 23462.