



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

W. Tayloe Murphy, Jr.
Secretary of Natural Resources

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Robert G. Burnley
Director

Francis L. Daniel
Tidewater Regional Director
(757) 518-2000

VIRGINIA WASTE MANAGEMENT BOARD ENFORCEMENT ACTION ORDER BY CONSENT ISSUED TO

MARPOL, Inc.
EPA ID Number VAD988211884

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§10.1-1182 *et seq.*, 10.1-1402, 10.1-1405, and 10.1-1455 between the Virginia Waste Management Board and MARPOL, Inc., for the purpose of resolving certain violations of environmental law and 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 Virginia Waste Management Board, a permanent collegial body of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1401 and 10.1-1184.
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. "MARPOL" means MARPOL, Inc., certified to do business in Virginia, and its affiliates, partners, subsidiaries, and parents.
6. "Order" means this document, also known as a Consent Order.

7. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
8. "Regulations" means the Virginia Hazardous Waste management regulations, which are set forth at 9 VAC 20-60-12 *et seq.* The Regulations at 9 VAC 20-60-124, 260-266, -268, -270, -273, and -279 adopt by reference certain provisions of Title 40 of the Code of Federal Regulations ("CFR"). Citations made herein will be to the relevant section of the CFR which are incorporated by reference into the Regulations.
9. "Generator" means any person, by site, whose act or process produces hazardous waste identified or listed in 40 CFR Part 261 or whose act first causes a hazardous waste to become subject to regulation.

SECTION C: Findings of Fact and Conclusions of Law

1. MARPOL owns and operates a non-hazardous industrial wastewater pre-treatment facility located at 150 South Main St, Norfolk, VA 23523.
2. MARPOL was subcontracted by the prime contractor, a company named QED, to remove and handle for disposal the contents of a fresh water ballast tank on the naval ship USS Mount Whitney (LCC 20). MARPOL maintains that the contract was to remove non-hazardous fresh water ballast. The USS Mount Whitney was in for repair and located at the Norfolk Naval Base, Pier 11. This repair work included pipe replacement in ballast tank #9-86-5-W, and the water in it had to be removed for repair access. The tank had been sealed for over 10 years.
3. On July 1, 2003, MARPOL removed 2,000 gallons of ballast water from tank #9-86-5-W on the USS Mount Whitney. MARPOL then transported the ballast water under a non-hazardous waste manifest to the MARPOL facility for treatment/disposal as wastewater. MARPOL reports it removed and transported the ballast water as non-hazardous based upon the information provided by the generator of the waste and the prime contractor.
4. On July 15, 2003 MARPOL, Inc. became aware that the ballast water might contain sodium chromate. A MARPOL employee had discovered aboard ship a warning sign, previously blocked from view by stored material, indicating the presence of sodium chromate in the tank. Subsequent testing of retained samples of the ballast water from tank #9-86-5-W indicated the presence of dissolved chromium III at 296 mg/l and hexavalent chromium at 880 mg/l in the ballast water. Both constituents are above the 5.0 mg/l toxicity characteristics level for chromium as a hazardous waste as contained in 40 CFR 261.24(a). MARPOL reports that it received the analytical test results noted above on July 22, 2003.

5. MARPOL notified DEQ on July 22, 2003 that ballast water from the USS Mount Whitney had been removed, transported and treated as a non-hazardous waste, which MARPOL maintains was in accordance with the generator's contract requirements, with the subsequent finding that the water had toxicity levels of a hazardous waste.
6. MARPOL does not operate as a hazardous wastewater treatment facility. MARPOL is a centralized waste treatment ("CWT") facility regulated under 40 CFR 437 for CWT facilities, and is eligible to treat hazardous or non-hazardous industrial wastewater under CWT regulations. MARPOL does not have a hazardous waste treatment permit. The MARPOL CWT facility discharges to the Hampton Roads Sanitation District system.
7. 40 CFR 263.20 provides that a transporter may not accept hazardous waste from a generator unless it is accompanied by a manifest signed in accordance with the provisions of this regulation. Contrary to 40 CFR 263.20 MARPOL accepted the ballast water subsequently determined to be a hazardous waste without a hazardous waste manifest, which MARPOL maintains was unintentional.
8. 9 VAC 20-60-420.E provides that all transporters of hazardous waste originating or terminating or both in the Commonwealth are required to obtain a permit for transportation of hazardous waste. A review of DEQ files did not find a permit for MARPOL as a transporter of hazardous waste.
9. MARPOL violated various provisions of 40 CFR 263.20 and 9 VAC 20-60-460.E as described in Paragraph 10-11 below, which MARPOL maintains was unintentional.
10. MARPOL violated 40 CFR 263.20 by accepting the hazardous waste of the ballast water in the USS Mount Whitney tank #9-86-5-W without a hazardous waste manifest, which MARPOL maintains was unintentional.
11. MARPOL violated 9 VAC 20-60-460.E by not obtaining a permit for transportation of the hazardous waste from the USS Mount Whitney ballast water tank #9-86-5-W, which MARPOL maintains was unintentional.
12. DEQ issued MARPOL a Notice of Violation on January 9, 2004 advising of the above listed facts regarding the hazardous waste transport manifest, transport permit, and applicable regulatory requirements.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. Code §10.1-1455, orders MARPOL, and MARPOL voluntarily agrees, to pay a civil charge of \$2,700.00 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 payable to the "Treasurer of Virginia," shall indicate MARPOL's Federal Identification Number, and shall be sent to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Marpol for good cause shown by MARPOL, 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 Notice of Violation issued to MARPOL by DEQ on January 9, 2004. 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, MARPOL admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. MARPOL 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. MARPOL declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the Virginia Waste Management Act 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 MARPOL 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. MARPOL 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. MARPOL shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. The MARPOL 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 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, 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 MARPOL. Notwithstanding the foregoing, MARPOL 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 the MARPOL. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve MARPOL 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, MARPOL voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of Sept 10, 2004.

Francis L. Daniel
Francis L. Daniel, Regional Director
for Robert G. Burnley, Director
Department of Environmental Quality

MARPOL voluntarily agrees to the issuance of this Order.

By: Julie McDonald
Date: 21 July 04

Commonwealth of Virginia
City/County of Norfolk

The foregoing document was signed and acknowledged before me this 21st day of
July, 2004, by Julie McDonald, who is
(month) (name)

Treasurer of MARPOL, on behalf of MARPOL.
(title)

Vencel J. Harris-Wood
Notary Public

My commission expires: 31 May 2008

