



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY

W. Tayloe Murphy, Jr.  
Secretary of Natural Resources

5636 Southern Boulevard  
Virginia Beach, VA 23462  
www.deq.state.va.us

Robert G. Burnley  
Director

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

### STATE WATER CONTROL BOARD ENFORCEMENT ACTION

#### SPECIAL ORDER BY CONSENT WITH THE NORFOLK SHIPBUILDING AND DRYDOCK CORPORATION PERMIT NO. VA0004383

#### SECTION A: Purpose

This is a Consent Special Order issued under the authority of §62.1-44.15(8a) and §62.1-44.15(8d) of the Code of Virginia, between the State Water Control Board and the Norfolk Shipbuilding and Drydock Corporation, for the purpose of resolving certain violations of environmental law and/or regulations.

#### SECTION B: Definitions

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

1. "Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Code §§ 10.1-1184 and 62.1-44.7.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Order" means this document, also known as a Consent Special Order.
6. "Norshipco" means the Norfolk Shipbuilding and Drydock Corporation., certified to do business in Virginia.
7. "Regulation" means 9 VAC 25-31-10 *et seq.* - the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation.
8. "Permit" means VPDES Permit No. VA0004383.

#### SECTION C: Findings of Fact and Conclusions of Law

1. Norshipco owns and operates a ship repair facility, which is located at 750 West Berkley Ave. in Norfolk, Virginia. The facility discharges treated process water

- and storm water to the Southern Branch of the Elizabeth River, which is a tributary of the James River and the Chesapeake Bay. The facility is the subject of the Permit which was issued on November 30, 1999, modified on October 28, 2002, and expires on November 30, 2004.
2. Section 62.1-44.5 of the Code, §9 VAC 25-31-50 of the Regulation and Part II.L of the Permit authorize discharges from the facility, provided that Norshipco complies with all conditions of the Permit.
  3. Parts I.A and I.D.3 of the Permit specify discharge effluent limitations and monitoring requirements for tributyltin ("TBT").
  4. Part II.F of the Permit prohibits unauthorized discharges and Part II.G requires that unauthorized discharges be reported immediately upon discovery but in no case later than 24 hours after discovery.
  5. Norshipco exceeded the Permit's daily discharge effluent limitation for TBT on September 30, 2003 and on October 1, 2, 3, and 4, 2003, which exceedances were believed to be due to a loss of granular activated carbon (GAC) from the treatment system. In addition, the yearly maximum Permit effluent limit for TBT was exceeded.
  6. Norshipco reported the exceedances of the TBT limits to DEQ.
  7. On October 24, 2003 Norshipco discovered that the contents of GAC Unit #1 used in treatment of TBT had probably been discharged from the facility's wastewater treatment system, possibly into the Elizabeth River. A diffuser pipe in the system's first GAC unit had cracked possibly allowing the carbon to be discharged into the River. During normal operation, the diffuser pipe is not visible beneath the GAC in the carbon tank vessel, and no other indication of failure had been observed. The date of release is unknown but probably occurred between July 21 and September 29, 2003. Norshipco failed to report the unauthorized discharge in accordance with the Permit, which requires notification within 24 hours of discovery, but did report the discharge once Norshipco had confirmed that the carbon had not been transferred to the second activated carbon unit.
  8. Norshipco has repaired the broken diffuser pipe in the activated carbon filtration unit. It has also added a third activated GAC filtration unit in series and an ultraviolet treatment system to oxidize residual TBT. The treatment system's outfall pipe has been modified by adding a stainless steel filter box to trap any granular carbon released by a crack or failure in the carbon unit. The filter box is now being monitored every hour during treatment to visually check for release of carbon. Norshipco believes that these corrective actions will ensure compliance with the Permit effluent limitations for TBT.
  9. DEQ issued Norshipco NOV No. W 2004-01-T-0001, on January 27, 2004, advising the corporation of findings and applicable citations related to the exceedances of TBT effluent limits and the unauthorized discharge of GAC.
  10. The exceedances of the TBT limits on September 30 through October 4, 2004 are due to the loss of the GAC treatment capability, caused by the broken diffuser pipe. Norshipco contends that the plant was otherwise properly designed, constructed, and operated. Norshipco contends that the exceedances were an

exceptional and unintentional incident caused by mechanical failure that caused temporary non-compliance with the permit effluent limitations.

#### **SECTION D: Agreement and Order**

Accordingly, the Board, by virtue of the authority granted it in Va. Code § 62.1-44.15(8a) and (8d), orders Norshipco, and Norshipco agrees, to perform the actions described in Appendix A of this Order. In addition, the Board orders Norshipco, and Norshipco voluntarily agrees, to pay a civil charge of \$59,500 within 30 days of the effective date of the Order in settlement of the violations cited in this Order. The payment shall include Norshipco's Federal Identification Number and shall reference that it is being made as a requirement of this Order. Payment shall be made by check, certified check, money order, or cashier's check payable to the "Treasurer, Commonwealth of Virginia", delivered 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 Norshipco, for good cause shown by Norshipco, 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 above cited Notice of Violation. 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 wastewater treatment system as may be authorized by law; or (3) taking subsequent action to enforce the terms of this 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, Norshipco admits the jurisdictional allegations, but does not admit the factual findings and conclusions of law contained herein.
4. Norshipco 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. Norshipco declares it has received fair and due process under the Administrative Process Act, Va. Code §§2.2 - 4000 et seq., 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 enforce this Order.

6. Failure by Norshipco 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. Norshipco 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. Norshipco shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Norshipco 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 48 hours of learning of any condition above, which Norshipco 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 Norshipco. Notwithstanding the foregoing, Norshipco 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 Norshipco. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Norshipco 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, Norshipco voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of Sept. 1, 2004.

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

Norshipco voluntarily agrees to the issuance of this Order.

By: Thomas W. Epley  
Thomas W. Epley

Date: 7/16/2004

Commonwealth of Virginia

City/County of

The foregoing document was signed and acknowledged before me this 16<sup>th</sup> day of July, 2004, by Thomas W. Epley, who is president and general manager of Norshipco, on behalf of the corporation.

My commission expires: 1/31/05

James E. K. [Signature]

APPENDIX A  
NORSHIPCO

Norshipco shall:

1. Mail all submittals and reports required by this Appendix A to:  
Francis L. Daniel, Regional Director  
DEQ, Tidewater Regional Office  
5636 Southern Blvd.  
Virginia Beach, VA 23462
2. From the date of issuance of this Order, refrain from discharging any TBT wastewater until sampling of the wastewater demonstrates that levels of TBT in the wastewater are in compliance with Permit discharge requirements.
3. Modify the treatment system's operations and maintenance manual to reflect modifications to the system's outfall, monitoring of the outfall filter box, and addition of the system's third activated granular carbon filter and ultraviolet system. Submit the modified operations and maintenance manual to DEQ, for review and approval, within 90 days of the effective date of this Order.