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COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
NORTHERN REGIONAL OFFICE
13901 Crown Court, Woodbridge, Virginia 22193
(703) 583-3800 Fax (703) 583-3821
www.deq.virginia.gov

Molly Joseph Ward
Secretary of Natural Resources

David K. Paylor
Director

Thomas A. Faha
Regional Director

STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
TROWBRIDGE STEEL COMPANY, INC.
FOR
TROWBRIDGE STEEL
VPDES Permit No. VAR050906

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 Trowbridge Steel Company, Inc. regarding Trowbridge Steel, 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. "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.

3. "CSCE" means comprehensive site compliance evaluation.

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 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. "Facility" or "Site" means the Trowbridge Steel facility from which the storm water is discharged located at 44886 Old Ox Road, in Sterling, Virginia, from which discharges of storm water associated with industrial activity occur.

10. "Trowbridge" means Trowbridge Steel Company, Inc. a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Trowbridge is a "person" within the meaning of Va. Code § 62.1-44.3.

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

12. "NRO" means the "Northern Regional Office of DEQ, located in Woodbridge, Virginia.

13. "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.

14. "Permit" means VPDES General Permit No. VAR050906, which was issued under the State Water Control Law and the Regulation on August 3, 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 a storm water general permit.

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

20. "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.

21. "SWPPP" means Storm water Pollution Prevention Plan.

22. "Trowbridge" means Trowbridge Steel Company, Inc. a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Trowbridge is a "person" within the meaning of Va. Code § 62.1-44.3.

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. Trowbridge owns and operates the Trowbridge Steel facility. The facility is located at 44886 Old Ox Road in Sterling, Virginia, and discharges storm water associated with industrial activity.

2. The Permit allows Trowbridge Steel to discharge storm water associated with industrial activity from the Facility to Indian Creek in strict compliance with the terms and conditions of the Permit.

3. Indian Creek is in the Broad Run watershed. DEQ has not monitored or assessed the received stream. The segment of Horsepen Run that Indian Creek flows into is assessed in the Draft 2012 Integrated Report as fully supporting the aquatic life and wildlife uses.

4. Part I.A.1.a of the Permit requires Trowbridge to perform and document quarterly visual examinations of the quality of the storm water discharging from the Facility's two outfalls.

5. Part I.A.1.b of the Permit requires Trowbridge to conduct benchmark monitoring of storm water discharges from the Facility's storm water outfalls for the presence of pollutants of concern once during each benchmark monitoring period and record benchmark monitoring results on a DMR.

6. Part I.A.5.a.1 of the Permit states that if benchmark monitoring results exceed the benchmark concentration value for that parameter, the permittee must review the SWPPP and modify it as necessary to address any deficiencies that caused the exceedance. Revisions to the SWPPP must be completed within 30 days after the exceedance is discovered. When BMPs need to be modified or added, implementation must be completed before the next anticipated storm event if possible, but no later than 60 days after the exceedance is discovered, or as otherwise provided or approved by the Department.

7. During a DEQ inspection of the facility and file review conducted on May 16 , 2013, DEQ staff documented the following compliance deficiencies with respect to the monitoring requirements of the Permit:

    a. The quarterly visual examinations of storm water quality required by Part I.A.1.a of the Permit had not been performed for 2009, 2010, and 2012; and only one quarterly visual examination had been documented for 2011.

    b. The benchmark monitoring of storm water discharges required by Part I.A.1.b of the Permit had not been performed for the July-December 2009 monitoring period, the 2010 monitoring period, and the 2012 monitoring period.

    c. The DMRs for the 2011 monitoring period were submitted to DEQ and showed exceedances of benchmark concentration values for iron and aluminum. Investigations into the cause of the exceedance of benchmark concentration values for Total Recoverable Metals and corrective actions taken required by Part I.A.5.a.1 were not documented for the 2011 monitoring period.

    d. The DMRs for the 2013 monitoring period were submitted to DEQ and showed exceedances of benchmark concentration values for Zinc, Iron, and Aluminum.

8. Based on the results of the May 16, 2013 inspection, the Board concludes that Trowbridge has violated Part I.A.1.a, Part I.A.1.b, and Part I.A.5.a.1, of the Permit as noted in paragraph 7 of this Order.

9. Part III of the Permit requires Trowbridge to develop and implement a Facility SWPPP according to requirements outlined in Part III of the Permit.

10. Part III.E of the Permit requires that a CSCE be conducted at least annually.

11. During the DEQ inspection of the Trowbridge Steel Facility and a file review conducted on May 16, 2013, DEQ staff documented compliance deficiencies with respect to the SWPPP requirements of the Permit, including the following:

    a. The SWPPP required by Part III of the Permit had not been developed;

    b. Annual comprehensive site compliance evaluations required by Part III.E of the Permit were not documented for the 2009, 2010, 2011, and 2012 monitoring periods; and annual compliance evaluation reports required by Part III.E.3 of the Permit have not been documented for the 2009, 2010, 2011 or 2012 monitoring periods.

12. Based on the results of the May 16, 2013 inspection, the Board concludes that Trowbridge has violated Part III, and Part III.E, of the Permit as noted in paragraph 11 of this Order.

13. DEQ NRO issued Warning Letters and a Notice of Violation for the violations noted above as follows: WL No. W2010-03-N-1032 issued March 23, 2010; WL No. W2011-03-N-1017 issued on March 31, 2011; WL No. W2013-03-N-1034 issued on April 2, 2013; and NOV No. W2013-06-N-0006 issued on June 17, 2013.

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 Trowbridge for storm water discharges associated with industrial activity other than under VPDES Permit No. VAR050906.

18. Indian 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 May 16, 2013 inspection of the Facility, the Board concludes that Trowbridge has violated the Permit, as described in paragraphs C(7) and C(11) above.

20. On August 13, 2013, Department staff met with representatives of Trowbridge to discuss the violations.

21. In order for Trowbridge to return to compliance, DEQ staff and Trowbridge 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 Trowbridge, and Trowbridge agrees to:

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

2. Pay a civil charge of $3,368.00 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

Trowbridge 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, Trowbridge 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 Trowbridge for good cause shown by Trowbridge, 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, Trowbridge admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

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

    b. Trowbridge 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 Trowbridge.

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

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, Trowbridge voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2014.

_____

Thomas A. Faha, NRO Regional Director
Department of Environmental Quality

Trowbridge Steel Company, Inc. voluntarily agrees to the issuance of this Order.

Date: April 4, 2014 By: _____, President
(Person) (Title)
[Trowbridge Steel Company, Inc.]

Commonwealth of Virginia
City/County of Loudoun

The foregoing document was signed and acknowledged before me this 4 day of April, 2014, by Gregory D. McVeigh who is President of Trowbridge Steel Company, Inc., on behalf of the corporation.

Frances Elaine Brooks
Notary Public

153588
Registration No.

My commission expires: 09-30-2014

Notary seal:

Frances Elaine Brooks
Commonwealth of Virginia
Notary Public
Commission No. 153588
My Commission Expires 9/30/2014

APPENDIX A
SCHEDULE OF COMPLIANCE

Trowbridge Steel Company, Inc. shall:

1. Submit a compliance plan to DEQ for review and comment by March 1, 2014, that will detail how Trowbridge Steel Company, Inc. intends to comply with all requirements of Permit No. VAR050906.

2. Submit a complete SWPPP for the Trowbridge Steel facility to DEQ for review and comment by March 1, 2014. Trowbridge shall respond to any comments from DEQ within 15 days of receipt of the comments.

3. Submit documentation of quarterly visual monitoring and routine facility inspections to DEQ by April 10, 2014 and July 10, 2014. Submit documentation that an annual comprehensive site compliance evaluation and annual compliance evaluation reports required by the Permit have been completed by July 10, 2014.

4. Submit documentation that SWPPP training has been conducted within 30 days of completion of the training.

DEQ Contact

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

Department of Environmental Quality
Northern Regional Office
Attn: Enforcement
13901 Crown Court
Woodbridge, VA 22193