COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
TIDEWATER REGIONAL OFFICE
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L. Preston Bryant, Jr.
Secretary of Natural Resources

David K. Paylor
Director

Francis L. Daniel
Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION

SPECIAL ORDER BY CONSENT

ISSUED TO

COLONNA'S SHIP YARD, INCORPORATED

VPDES Permit No. VA0053813

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code §62.1-44.15(8a) and §62.1-44.15(8d), between the State Water Control Board and Colonna's Ship Yard, Incorporated, 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. "Va. 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 Va. 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 Va. 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. "Regulation" means 9 VAC 25-31-10 *et seq.* - the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation.

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

8. "Permit" means VPDES Permit VA0053813, which was issued to Colonna August 19, 2004 and expires on August 18, 2009.

9. "Needle gunning" means the process of using a needle impact gun against the paint substrate, which breaks and chips away coating, scale, slag, etc.

SECTION C: Finding of Facts and Conclusions of Law

1. Colonna's Ship Yard, Incorporated ("Colonna") owns and operates a vessel repair and maintenance facility, located at 400 East Indian River Road, Norfolk, Virginia ("Shipyard").

2. Colonna is subject to the Permit which authorizes Colonna to discharge process wastewater from outfalls 001, 002, 003, 004, and 008, and storm water runoff associated with regulated industrial activity from outfalls 904 and 908.

3. Colonna is required to monitor discharges at its permitted outfalls at the frequency specified in the Permit and to submit a discharge monitoring report ("DMR") to DEQ no later than the tenth day of each month following the monitoring period.

4. Colonna is required to comply with the best management practices ("BMPs") outlined in the Permit.

5. On September 28, 2005, the Board entered into a consent special order ("2005 Order") with Colonna to address the release of untreated tributyltin wastewater to waters of the state. The 2005 Order incorporated a schedule of compliance actions to ensure compliance with the Permit requirements.

6. The 2005 Order required Colonna to provide certification of staff training regarding tributyltin control requirements within 90 days of the effective date of the 2005 Order, which was due no later than December 28, 2005. DEQ received the certification of staff training from Colonna on February 6, 2006.

7. On March 6, 2006, DEQ inspection staff ("staff") conducted a routine inspection of the Shipyard and documented deficiencies including the following staff observations: (a) needle gunning performed at the edge of a barge with no fixed or floating platform to prevent debris from entering water; (b) work performed on a tugboat on the railway below the high tide mark, with debris falling to the ground below the high tide mark; (c) an oil containment structure without a plug, and evidence oil leaks on the ground from the containment structure; (d) drip pans or other protective device not in place during paint operations on the drydock (no documented evidence of a release to state waters); and (e) spray painting in progress on a vessel without shrouds in place.

8. On March 10, 2006, staff conducted a follow-up inspection of the Shipyard and documented deficiencies including the following staff observations: (a) floating platform with spent abrasive blast material and debris not cleared of the spent

abrasive blast material and debris which was observed by staff during the March 6, 2006 inspection referenced in paragraph 7 of this Order; (b) spray painting being performed during high winds without shrouds in place, with paint observed blowing towards the river; (c) a fire hose was leaking onto abrasive blast material which created an erosion trail to the water near railway #3; (d) paint removal conducted at the edge of a barge with debris entering the water with no fixed or floating platform to prevent debris from entering water.

9. On or about March 10, 2006, DEQ compliance staff conducted a review of agency files and determined that the DMR submitted by Colonna to DEQ for the fourth quarter of 2005 indicated 'no sample required' for outfall 004 and outfall 008.

10. Va. Code § 62.1-44.31 provides that it shall be unlawful for any owner to fail to comply with any special order adopted by the Board, which has become final under the provisions of this chapter, or to fail to furnish information required by the Board. Colonna violated the 2005 Order by failing to submit the certification of staff training by the due date outlined in the 2005 Order.

11. Part I.A of the Permit requires Colonna to sample and monitor process wastewater discharges at outfalls 004 and 008 and submit DMR for outfall 004 and 008 to DEQ no later than the tenth day of the month following each quarter. Colonna violated the Permit by failing to sample and monitor process wastewater discharges (flow and pH) at outfalls 004 and 008 for the fourth quarter of 2005.

12. Part I.C.9.a (6) of the Permit specifies that fixed or floating platforms shall be used as work surfaces when working at the water surface to provide a surface to catch spent abrasive, slag, paint, trash and other debris/pollutants. Colonna violated the Permit by failing to use fixed or floating platforms to prevent debris from entering state waters while needle gunning at the edge of a barge at its Shipyard as observed by staff during a routine inspection conducted on March 6, 2006, and while removing paint at the edge of a barge at its Shipyard during a follow-up inspection conducted on March 10, 2006.

13. Part I.C.9.a (6) of the Permit further specifies that fixed or floating platforms shall be cleaned at the end of each work shift. Colonna violated the Permit by failing to clear the floating platform at its Shipyard of spent abrasive blast material and debris at the end of the work shift March 6, 2006 as observed by staff during a follow-up inspection conducted on March 10, 2006.

14. Part I.C.9.a (7) of the Permit specifies that dust and overspray from abrasive blasting and painting in yard facilities shall be controlled to minimize the spreading of wind blown materials. Colonna violated the Permit by failing to control dust and overspray to minimize the spreading of wind blown materials while spray painting a vessel at its Shipyard as observed by staff during a routine inspection conducted on March 6, 2006 and during a follow-up inspection conducted on March 10, 2006.

15. Part I.C.9.a (9) of the Permit specifies that all shipboard cooling water and process water shall be directed away from contact with spent abrasive, paint and

other debris; and contact of spent abrasive and paint with water will be prevented by proper segregation and control of wastewater streams. Colonna violated the Permit by failing to prevent the contact of water with spent abrasive blast materials as observed by staff during a follow-up inspection conducted on March 10, 2006.

16. Part I.C.9.a (16) of the Permit specifies that solid chemicals, chemical solutions, paints, oils, solvents, acids, caustic solutions and waste materials, including used batteries, shall be stored in a manner which will prevent the entry of these materials into waters of the State, including ground waters; and that storage shall be in a manner that will prevent entry into State waters by overfilling, tipping, rupture, or other accidents within the storage area. Colonna violated the Permit by failing to properly store oil at its Shipyard as evidenced by the missing plug on the oil containment structure and the oil stains observed by staff during a routine inspection conducted on March 6, 2006.

17. Part I.C.9.a (19) of the Permit specifies that drip pans or other protective devices shall be required for all paint mixing and solvent transfer operations, unless the mixing operation is carried out in controlled areas away from storm drains, surface waters, shorelines and piers and that drip pans, drop cloths or tarpaulins shall be used whenever paints and solvents are mixed. Colonna violated the Permit by failing to use drip pans or other protective devices during paint operations at its Shipyard as observed by staff during a routine inspection conducted on March 6, 2006.

18. Part I.C.9.a (27) of the Permit specifies that all vessels that are hauled shall be beyond the normal high tidal zone and that in the event of vessel overhang during abnormally high tides, all exterior abrasive/water blasting and coating work on the overhanging portion of the vessel shall be discontinued. Colonna violated the Permit by performing work on a tugboat at its Shipyard below the high tide mark, with debris falling to the ground below the high tide mark as observed by staff during a routine inspection conducted on March 6, 2006.

19. On February 17, 2006, DEQ issued a Warning Letter to Colonna advising Colonna of the due date for the certification of staff training required by Appendix A.6 of the 2005 Order. Colonna violated the 2005 Order by not submitting the required certification of staff training by the due date.

20. On April 12, 2006, DEQ issued Notice of Violation ("NOV") W2006-04-T-0002 to Colonna. The NOV advised Colonna of the deficiencies revealed during the inspections conducted by staff on March 6, 2006 and March 10, 2006, the monitoring and reporting deficiencies referenced in paragraph 9 of this Order, and of the applicable Permit and Regulatory requirements.

21. By letter dated May 1, 2006 Colonna provided a response to the NOV indicating that changes have been made to Colonna's procedures to resolve the BMP deficiencies outlined in the inspection reports referenced in paragraph 7 and paragraph 8 of this Order.

22. On June 7, 2006, DEQ met with representatives of Colonna to discuss the deficiencies revealed during the inspections conducted by staff on March 6, 2006 and March 10, 2006 and to clarify the Permit requirements regarding monitoring and reporting. Additionally, Colonna provided documentation indicating that it has made significant improvements to its site to prevent and/or minimize pollutants in storm water discharges and has developed and implemented a training program focused on BMP compliance. Colonna has indicated its understanding of reporting requirements and has instituted measures to ensure that they will be met.

SECTION D: Agreement and Order

Accordingly the State Water Control Board by virtue of the authority granted it by Va. Code § 62.1-44.15(8a) and (8d), orders Colonna, and Colonna voluntarily agrees to pay a civil charge of $5,000 within 30 days of the effective date of this Order, in settlement of the violations cited in this Order. The payment shall include Colonna's Federal Identification Number and shall reference that payment is being made as a requirement of this Order. Payment shall be made by check, payable to the Treasurer of Virginia, delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Colonna, for good cause shown by Colonna, 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 referenced warning letter and 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 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, Colonna admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.

4. Colonna 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. Colonna 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 Colonna 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. Colonna 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 act of God, war, strike, or such other occurrence. Colonna shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Colonna 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 Colonna 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 Colonna. Notwithstanding the foregoing, Colonna 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 Colonna. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Colonna 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, Colonna voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2006.

_____
Francis L. Daniel

Colonna's Ship Yard, Incorporated voluntarily agrees to the issuance of this Order.

By: _____

Date: October 13, 2006

Commonwealth of Virginia
City/County of Norfolk

The foregoing document was signed and acknowledged before me this 13th day of October, 2006, by Thomas W. Godfrey, Jr (*name*), who is President / CEO (*title*) of Colonna's Ship Yard, Incorporated, on behalf of Colonna.

Jayne Cox
Notary Public

My commission expires: November 30, 2007.