COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
TIDEWATER REGIONAL OFFICE
5636 Southern Boulevard, Virginia Beach, Virginia 23462
(757) 518-2000 Fax (757) 518-2103
www.deq.virginia.gov

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
SIMS GROUP USA CORPORATION
VPDES Permit No. VAR051540

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code §62.1-44.15(8a), §62.1-44.15(8d), and §62.1-44.34:20 between the State Water Control Board and Sims Group USA 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. "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 Special Order by Consent.

6. "Sims" means Sims Group USA Corporation, certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.

7. "Facility" means Sims Hugo Neu - Chesapeake located in Chesapeake, Virginia.

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

9. "VPDES" means the Virginia Pollutant Discharge Elimination System as described in Virginia Regulations 9 VAC 25-31-10 *et seq.*

10. "Permit" means VPDES general permit VAR051540 for Discharges of Storm Water Associated with Industrial Activity Registration Number VAR051540, which became effective July 1, 2004 and expires June 30, 2009.

11. "Drag Slip" means a sloping ramp extending out into the water to serve as a place for landing or repairing ships.

SECTION C: Findings of Fact and Conclusions of Law

1. Sims owns and operates a scrap metal recycling facility at 4300 Buell St. in Chesapeake, Virginia. Sims is subject to VPDES General Permit for Stormwater Industrial Discharges ("Permit") through Registration No. VAR051540, which was issued July 1, 2004 and expires on June 30, 2009. The general permit authorizes Sims to discharge storm water associated with industrial activities via outfall 001 at the Facility.

2. On May 4, 2006 TRO received a pollution report from Sims personnel, indicating that approximately 100 to 200 gallons of diesel fuel had been spilled that day to tidal waters within the drag slip at the Facility.

3. In response to the report DEQ staff inspected the Facility on May 4, 2006. The inspection of the spill area and discussion with Sims personnel confirmed that the spill had occurred when a Sims crane operator ruptured an oil tank on a barge in the drag slip while cutting the barge with a mechanical shear.

4. During the May 4, 2006 Facility inspection, DEQ staff noted diesel fuel in the water in the immediate vicinity of the barge and an oily sheen on the water and on the bank sediments between the barge and the final boom in place beyond the drag slip. It was observed that Sims had attempted to contain the spill by deploying a series of booms and adsorbent pads, as well as by pumping oil and oily water from the barge and surrounding area.

5. During a follow-up Facility inspection on May 9, 2006 after the sediment had been removed, DEQ staff again noted an oily sheen on the water and adjacent shoreline and requested additional sediment removal at that time. A final DEQ

site visit on May 11, 2006 documented the sediment removal and confirmed completion of the cleanup action.

6. On May 5, 2006 DEQ staff returned to the spill site at the Facility and again noted an oily sheen on the water and adjacent shoreline. DEQ requested that Sims remove and properly dispose of the top three inches of sediment from the drag slip in the area immediately adjacent to the spill. Sims complied with DEQ's request on May 9, 2006 after pumping the remaining diesel fuel out of the barge, completing the scrapping operation, and removing the barge from the drag slip.

7. In a subsequent report to DEQ dated May 9, 2006, Sims estimated that the volume of the diesel fuel spill at the Facility which occurred on May 4, 2006 was approximately 1,500 gallons.

8. The United States Coast Guard (USCG) obtained signed statements regarding the fuel spill at the Facility from several employees of Sims and Bay Bridge Enterprises, a firm that leases space from Sims for its in-water ship scrapping operations. Sims contends that the personnel referenced in these statements were acting contrary to directions from Sims headquarters instructing them not to conduct in-water scrapping activities.

9. Prior to the May 4, 2006 diesel fuel spill, DEQ inspected the Facility on March 16, 2006 and noted some activity that may have constituted scrapping of a barge. When DEQ staff questioned Sims employees, they denied that scrapping operations were being conducted. Sims confirmed during subsequent communications (June 2, 2006 correspondence and June 22, 2006 meeting) that two barges had been scrapped at the Facility; one of these barges was the operation noted during the DEQ March 16, 2006 inspection.

10. At the time of the March 16, 2006 DEQ inspection and the May 4, 2006 diesel fuel spill Sims had not obtained coverage under the Permit to conduct vessel scrapping operations. On June 22, 2006 Sims submitted to DEQ a revised registration statement which included the correct Standard Industrial Classification (SIC) Code for marine wrecking/ships for scrap.

11. Virginia Code §62.1-44.34.18(A) states that the discharge of oil into or upon state waters, lands, or storm drain systems within the Commonwealth is prohibited. Sims violated §62.1-44.34.18(A) by discharging a reported 1,500 gallons of diesel fuel to state waters on May 4, 2006.

12. Permit Parts II.F.1-2 prohibit discharges to state waters except in compliance with the Permit. The Permit does not authorize diesel fuel discharges. Sims violated Parts II.F.1-2 by discharging diesel fuel to state waters.

13. Permit Part II.L states that the permittee shall comply with all conditions of the Permit. The barge scrapping operation conducted by Sims meets the definition of "vessel breaking/scrapping activities" as defined in the Permit and by the U.S. Office of Management and Budget in SIC (Standard Industrial Classification) Code 4499. Coverage under the Permit did not include discharges from operations defined in SIC Code 4499. Sims violated Permit Part II.L by conducting scrapping operations which were not covered under the Permit.

14. Permit Part II.J.2 states that the permittee shall give advance notice to the Department of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements. Sims violated Part II.J.2 of the Permit by failing to notify DEQ of the vessel scrapping operation which was not authorized under the Permit.

15. Permit Part III.B.2(a) states that the Stormwater Pollution Prevention Plan (SWPPP) for the Facility shall include a description of the nature of the industrial activities at the facility. Sims violated Part III.B.2(a) by failing to modify the Facility SWPPP to include ship scrapping as an activity taking place at the Facility.

16. On May 23, 2006 DEQ issued Notice of Violation (NOV) No. W2006-05-T-0001 advising Sims of the above listed observations and applicable regulatory and statutory citations.

17. By letter dated June 2, 2006 Sims agreed that it would not conduct any ship scrapping activities at the Facility until appropriate revisions to the Permit and SWPPP had been made. The letter also stated that Sims had hired an environmental consultant to assist in initiating additional procedures and safeguards to prevent pollution discharges at the Facility.

18. During a June 22, 2006 meeting with DEQ, Sims submitted a revised registration statement for coverage under the Permit for vessel breaking/scrapping activities at the Facility. Sims also informed DEQ that after being notified that the barge scrapping activities documented by DEQ on March 16, 2006 were not authorized by the Permit, Sims management issued a stop work order to Facility personnel regarding all ship scrapping. In addition, Sims initiated an internal investigation.

19. In response to a DEQ request, Sims documented by letter dated July 28, 2006, a profit of $9,572 for two scrapping operations which were conducted without coverage under the Permit.

SECTION D: Agreement and Order

By virtue of the authority granted it pursuant to Va. Code §62.1-44.15 and §62.1-44.34:20 (Oil), and upon consideration of Va. Code § 10.1-1186.2, the Board orders Sims, and

Sims agrees, to perform the actions described below and in Appendix A of this Order. In addition, the Board orders Sims, and Sims voluntarily agrees, to a civil charge of $23,000 in settlement of the violations cited in this Order, to be paid as follows:

1. Sims shall pay $11,000 of the civil charge within 30 days of the effective date of this Order. Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," delivered to:

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

   The payment shall include Sim's Federal ID number and shall identify that payment is being made as a result of this Order.

2. Sims shall satisfy $12,000 of the civil charge by satisfactorily completing the Supplemental Environmental Project (SEP) described in Appendix A of this Order.

3. The net project cost of the SEP to Sims shall not be less than the amount set forth in Paragraph D.2. If it is, Sims shall pay the remaining amount in accordance with Paragraph D. 1 of this Order, unless otherwise agreed to by the Department. "Net project costs" means the net present after-tax cost of the SEP, including tax savings, grants, and first-year cost reductions and other efficiencies realized by virtue of project implementation. If the proposed SEP is for a project for which the party will receive an identifiable tax savings (*e.g.*, tax credits for pollution control or recycling equipment), grants, or first-year operation cost reductions or other efficiencies, the net project cost shall be reduced by those amounts. The costs of those portions of SEPs that are funded by state or federal low-interest loans, contracts, or grants shall be deducted.

4. By signing this Order, Sims certifies that it has not commenced performance of the SEP.

5. Sims acknowledges that it is solely responsible for completing the SEP project. Any transfer of funds, tasks, or otherwise by Sims to a third party, shall not relieve Sims of its responsibility to complete the SEP as described in this Order.

6. In the event it publicizes the SEP or the SEP results, Sims shall state in a prominent manner that the project is part of a settlement of an enforcement action.

7. The Department has the sole discretion to:

   a. Authorize any alternate, equivalent SEP proposed by the Facility; and

   b. Determine whether the SEP, or alternate SEP, has been completed in a satisfactory manner.

8. Should the Department determine that Sims has not completed the SEP, or alternate SEP, in a satisfactory manner, the Department shall so notify Sims in writing. Within 30 days of being notified, Sims shall pay the amount specified in Paragraph D.2., above, as provided in Paragraph D.1., above.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Sims, for good cause shown by Sims, 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 Sims by DEQ on May 23, 2006. 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, Sims admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.

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

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

_____
Francis L. Daniel

Sims Group USA Corporation voluntarily agrees to the issuance of this Order.

By: _____

Date: Oct. 26. 2006

Commonwealth of Virginia
City/County of RICHMOND

The foregoing document was signed and acknowledged before me this 25th day of OCTOBER, 2006, by RODNEY PERRY COLTON, JR., who is
(name)

GENERAL MANAGER of Sims Group USA Corporation, on behalf of the Corporation.
(title)

_____
Notary Public

My commission expires: May 31, 2007.

APPENDIX A

Sims shall perform the SEP identified below in the manner specified in this Appendix.

1. The SEP to be performed by Sims will be the restoration of two to four acres of tidal wetlands and riparian buffer at Money Point, an area adjacent to the Southern Branch of the Elizabeth River, and approximately one half mile from the Facility. The SEP will be part of a larger Money Point Revitalization Plan that is being coordinated and executed by the Elizabeth River Project, an independent 501-(c)(3) non-profit organization dedicated to improving environmental quality in the Elizabeth River watershed. The wetland restoration plan is described below:

   Currently a small stand (approximately 15 feet) of *Spartina alterniflora* lines the entire shoreline. Landward of the *Spartina* stand is a large stand of *Phragmites australis* and the shoreline has been highly impacted from construction debris. The proposed design would create a marsh toe waterward from the *Spartina* using class 1 rip rap to ensure the wetlands are not undercut by wave action. Then the landward side of the *Spartina* stand will be graded to approximately 0-3 feet above mean low water to achieve approximately 1 acre of low marsh across the entire site. Once the low marsh area has been properly graded, four 20 ft gaps will be placed in the native *Spartina* to allow for tidal action to inundate the wetland area behind the native stand. During this excavation great care will be taken to minimize the impact on the nearby *Spartina.*

   After the grading for the low marsh and marsh toe is completed, the upland area will be graded for high marsh habitat. The width of this area will be approximately 25-35 feet from the upper edge of the low marsh habitat. From the upper edge of the high marsh the remaining area will be graded to the proper elevation for riparian species (approximately 25-35 feet).

   Every effort will be made to remove the majority of the *Phragmites* root system during grading. In addition, professional service will be obtained to prevent the re-colonization of *Phragmites* in the high marsh and riparian areas by cutting and localized application of herbicide in low doses. Once the site grading is complete, a professional contractor will install the low marsh plants and volunteers will assist in the high marsh and riparian planting. Low marsh plantings shall consist of *Spartina alterniflora.* High marsh plantings shall consist of *Spartina patens, Panicum virgatum, and Kosteletsya virginica.* Riparian buffer plantings shall consist of Willow Oak, Bald Cypress, Red Maple, Tulip Poplar, Loblolly Pine, Red Chokeberry, Elderberry, and Winterberry.

2. The SEP shall be completed in accordance with a Project Timeline (Timeline) to be submitted by Sims to DEQ for review by July 10, 2007. Once accepted by DEQ, the Timeline shall become an enforceable provision of this Order.

3. Sims shall submit progress reports on the SEP on a quarterly basis, due the 10th day of each quarter. The first report shall be submitted by July 10, 2007.

4. Sims shall submit a written final report on the SEP, verifying that the SEP has been completed in accordance with the terms of this Order, and certified by a responsible corporate officer or owner. Sims shall submit the final report and certification to the Department within 30 days after completion of the SEP.

5. If the SEP has not or cannot be completed as described in the Order, Sims shall notify DEQ in writing no later than the projected date of completion included in the Timeline. Such notification shall include:

   a. an alternate SEP proposal, or
   b. payment of the amount specified in Paragraph D.2 as described in Paragraph D.1.

6. Sims hereby consents to reasonable access by DEQ or its staff to property or documents under the party's control, for verifying progress or completion of the SEP.

7. Sims shall submit to the Department written verification of the final overall and net project cost of the SEP in the form of a certified statement itemizing costs, invoices and proof of payment within 30 days of the project completion date. For the purposes of this submittal, net project costs can be either the actual, final net project costs or the projected net project costs if such projected net project costs statement is accompanied by a certification from Sims' Chief Financial Officer concerning the projected tax savings, grants or first-year operation cost reductions or other efficiencies.

8. Completion of this SEP may require local, state, and/or federal environmental permits. The issuance of this Order including the described SEP does not obligate DEQ to issue any permit that may be required to complete the SEP. In the case that an application for a permit necessary to complete any component of this SEP is denied, the SEP will be deemed to have failed. In such a case, SIMS shall notify DEQ within 30 days after denial of the permit application. Such notice shall include:

   a. an alternate SEP proposal, or
   b. payment of the amount specified in Paragraph D.2 as described in Paragraph D.1.

9. Documents to be submitted to the Department, other than the civil charge payment described in Section D of the Order, shall be sent to:

   Francis L. Daniel
   Department of Environmental Quality
   5636 Southern Blvd.
   Virginia Beach, VA 23462