COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
TIDEWATER REGIONAL OFFICE
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Preston Bryant
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Director

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STATE WATER CONTROL BOARD ENFORCEMENT ACTION
SPECIAL ORDER BY CONSENT
ISSUED TO
NORFOLK SHIPREPAIR & DRYDOCK COMPANY, INC.
VPDES Permit No. VA0004405

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 Norfolk Shiprepair & Drydock Company, Inc., 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. "Norfolk Shiprepair" means Norfolk Shiprepair & Drydock Company, Inc., certified to do business in Virginia, and its affiliates, partners, subsidiaries, and parents.

7. "Facility" means the Norfolk Shiprepair & Drydock Company., located in Norfolk, Virginia.

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

9. "Permit" means VPDES Permit No. VA0004405, which became effective September 21, 2004 and expires September 20, 2009.

SECTION C: Findings of Fact and Conclusions of Law

1. Norfolk Shiprepair owns and operates a ship repair and dry dock facility at the foot of Claiborne Avenue in Norfolk, Virginia. This Facility is the subject of VPDES Permit No. VA0004405, which allows Norfolk Shiprepair to discharge through outfalls 001 and 002 process wastewaters generated at its marine railway locations. Additionally, the Permit allows Norfolk Shiprepair to discharge through outfall 003 stormwater associated with industrial activity.

2. On May 9, 2006 TRO received a pollution report from the U.S. Army Corps of Engineers (ACOE), indicating that sandblast grit dust and debris was leaving the containment area at Norfolk Shiprepair & Drydock (the Facility) and floating on the water in the Eastern Branch of the Elizabeth River.

3. In response to the ACOE compliant, On May 9, 2006 DEQ staff inspected the Facility. A review of the work area showed red particulate matter floating in the slip, both inside and outside of the protective shrouds intended to contain process materials within the work area.

4. Norfolk Shiprepair was not conducting abrasive blasting at the time of the DEQ May 9, 2006 site visit; however, Facility personnel stated to DEQ staff that they were blasting red paint from a barge at the time the ACOE vessel was observed at the site.

5. During the May 9, 2006 site visit at the Facility, DEQ noted that protective shrouds had gaps between them and did not completely cover the work area, and that the barge on the marine railway extended below the high tide mark and was over the water, rather than a platform.

6. During a follow-up conversation with an ACOE representative on May 10, 2006 TRO staff learned that the red dust floating on the water observed on May 9, 2006, was traced to the Facility, where abrasive blasting of a barge was occurring on one of the marine railways. According to the ACOE report, dust was being carried over protective shrouds and a boom and settling onto the water beyond the slip.

7. Permit Part I.A.2 states that Norfolk Shiprepair may discharge to state waters no floating solids or visible foam in other than trace amounts. Norfolk Shiprepair violated Permit Part I.A.2 by allowing floating solids from the Facility to enter state waters as observed at the May 9, 2006 site visit.

8. Permit Part I.B.3 requires that all materials shall be handled, disposed of, or stored in such a manner so as not to permit a discharge to state waters. Norfolk Shiprepair violated Permit Part I.B.3 by allowing spent abrasive blast material to enter state waters as observed during the May 9, 2006 site visit.

9. Permit Part I.B.7.a(5) requires acceptable methods of control to prevent the discharge of dust during abrasive blasting. Norfolk Shiprepair violated Permit Part I.B.7.a(5) by failing to employ the control measures necessary to prevent dust from paint and blast material from leaving the containment area as observed at the May 9, 2006 site visit.

10. Permit Part I.B.7.a(6) requires floating or fixed platforms be utilized to catch spent abrasives. Norfolk Shiprepair violated Permit Part I.B.7.a(6) by conducting abrasive blasting operations over the water, rather than over a platform as observed at the May 9, 2006 site visit.

11. Permit Part I.B.7.a(7) states that dust and overspray from abrasive blasting and painting in yard facilities shall be controlled to minimize the spreading of wind blown materials. Norfolk Shiprepair violated Permit Part I.B.7.a(7) by allowing windblown dust to discharge into state waters as observed by USACE on May 9, 2006.

12. Permit Part I.B.7.a(27) states that all vessels that are hauled shall be beyond the high tide zone. Norfolk Shiprepair violated Permit Part I.B.&.a(27) by failing to haul the barge completely beyond the high tide zone before beginning work as observed at the May 9, 2006 site visit.

13. On May 31, 2006 DEQ issued Notice of Violation ("NOV") No. W2006-05-T-0002 regarding these operational deficiencies at the Facility. By letter dated June 7, 2006, Norfolk Shiprepair confirms that a barge was being brush sandblasted on May 9, 2006. Reportedly, containment curtains and an oil boom were in place. The release of blast material into the water was cause by a shift in the wind. Once this was noted, blasting operations were immediately halted.

14. Norfolk Shiprepair reports having taken further corrective action to include the following: contracted an environmental cleanup company to clean up paint residue from the water surface, refreshed paint personnel on best management practices, purchased additional blast containment curtains and hay bails, and conducted a comprehensive inspection of the shipyard. Norfolk Shiprepair will also conduct best management practices training.

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 Norfolk Shiprepair, and Norfolk Shiprepair agrees, to comply with all conditions of the Permit. In addition, the Board orders Norfolk Shiprepair, and Norfolk Shiprepair voluntarily agrees, to pay a civil charge of $3,000 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 payable to the "Treasurer 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 Norfolk Shiprepair, for good cause shown by Norfolk Shiprepair, 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 Norfolk Shiprepair by DEQ on May 31, 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, Norfolk Shiprepair admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.

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

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

_____
Francis L. Daniel

Norfolk Shiprepair & Drydock Company, Inc. voluntarily agrees to the issuance of this Order.

By: James C. McNutt

Date: 30 June 06

Commonwealth of Virginia

City/County of Norfolk

The foregoing document was signed and acknowledged before me this 30 day of June, 2006, by James C McNutt, who is
(name)

VP of operations of Norfolk Shiprepair & Drydock Company, Inc,, on behalf of the Corporation.
(title)

Maxine J Sexton
Notary Public

My commission expires: 5-31-07.