COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
TIDEWATER REGIONAL OFFICE
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Doug Domenech
Secretary of Natural Resources

David K. Paylor
Director

Francis L. Daniel
Regional Director

STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
American Marine Group, Inc.
Incident Report No. IR 2010-T-2376

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.34:20, between the State Water Control Board and American Marine Group, Inc., for the purpose of resolving certain violations of the State Water Control Law and the applicable regulations.

SECTION B: Definitions

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

1. "AMG" means American Marine Group, Inc., a corporation authorized to do business in Virginia. AMG charters the tugboat *American*. AMG is a "person" within the meaning of Va. Code § 62.1-44.3.

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, as described in Va. Code § 10.1-1185.

5. "Facility" means the boatyard located at 425 Campostella Road, Norfolk, Virginia, owned by Six M, LLC, at which tugboats, barges, and marine construction equipment are stored.

6. "*M/V Susan Ann*" means the Motor Vessel *Susan Ann*, a tugboat owned by Back River Towing, Inc.

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

8. "Oil" means oil of any kind and in any form, including, but not limited to, petroleum and petroleum by-products, fuel oil, lubricating oils, sludge, oil refuse, oil mixed with other wastes, crude oils and all other liquid hydrocarbons regardless of specific gravity. *See* Va. Code § 62.1-44.34:14. Diesel fuel is a petroleum product, and is included in the definition of "oil" under Va. Code § 62.1-44.34:14.

9. "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.

10. "State Water Control Law" means Chapter 3.1(§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code. Article 11 (Va. Code §§ 62.1-44.34:14 through 62.1-44.34:23) of the State Water Control Law addresses Discharge of Oil Into Waters.

11. "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.

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

13. "Va. Code" means the Code of Virginia (1950), as amended.

14. "VAC" means the Virginia Administrative Code.

SECTION C: Findings of Fact and Conclusions of Law

1. AMG provides marine services, including transport and towing. When not in use, the tugboats, barges and other equipment used by AMG are stored at the Facility.

2. On Monday March 1, 2010, DEQ received notification from the Virginia Department of Emergency Management of a discharge of diesel fuel in the waters near the Facility.

3. The notification indicated that on March 1, 2010, *M/V Susan Ann*, which was moored in the waters near the Facility, was observed lying on its side and had discharged diesel fuel into the water of an unnamed inlet of the Eastern Branch of the Elizabeth River ("Eastern Branch"). The Eastern Branch is a state water.

4. The Eastern Branch is located in the James River Basin and is listed in DEQ's 305(b) report as impaired due to dissolved oxygen (DO), estuarine bioassessments, *enterococcus*, polychlorinated biphenyl (PCB) in fish tissue, and elevated tributylin

(TBT). The source of the TBT impairment is believed to be related to shipbuilding and repair; the sources of the DO impairment include industrial point-source discharges; and the sources of the other impairments are unknown.

5. On Friday February 26, 2010, two AMG employees had secured the tugboat *American* outboard of *M/V Susan Ann,* both being tied to a barge in the inlet and both parallel to the shore. One of the AMG employees acknowledged having observed *M/V Susan Ann* listing to starboard on Saturday, February 27, 2010, but did not notify his supervisor because he had seen it listing on many occasions before.

6. DEQ staff ("staff") responded to the notification by site inspection also on March 1, 2010, and observed that AMG representatives were present and cleanup efforts were underway. Oil-absorbent booms and pads had been deployed and the discharge contained within the inlet. It was noted that AMG had insufficient preventative and cleanup materials available to fully remediate the discharge and called in an oil-response contractor to assist. Staff observed *M/V Susan Ann* resting in shallow water and listing severely to starboard away from the shoreline. The vessel had been moored in water that was too shallow for its draft and had listed after its keel struck the bottom of the inlet when the tide receded, causing diesel fuel stored in the vessel to discharge through openings in the vessel's deck that had become submerged when the ship listed. Staff observed that substantially all of the oil had been recovered.

7. Va. Code § 62.1-44.34:18 prohibits the discharge of oil into or upon state waters, lands, or storm drain systems. AMG is subject to the statutory prohibition.

8. Va. Code § 62.1-44.34:19 requires the reporting of a discharge of oil that enters, or may reasonably be expected to enter, state waters, lands or storm drain systems within the Commonwealth immediately upon learning of the discharge. The owner of *M/V Susan Ann* called a representative of AMG early on March 1, 2010, seeking assistance in righting the vessel and cleaning up the oil. Believing that the owner had notified the proper authorities, AMG did not report the discharge to DEQ immediately upon learning of its occurrence.

9. On April 6, 2010, the Department issued Notice of Violation No. 2010-T-2376 to AMG for a discharge of oil to the environment.

10. An attorney representing AMG responded to the NOV by letter dated May 14, 2010, and affirmed that *M/V Susan Ann* had been moored between the shoreline and the AMG tugboat and had "grounded" when the tide receded causing the vessel to list to the point that water entered the vessel resulting in the list becoming more pronounced. As a consequence, one of the vessel's diesel fuel tanks spilled its contents into the water within the Facility. The letter estimated that one of the fuel tanks holds no more than 400 gallons of diesel fuel and that before the incident the tanks were less than one-third full. The response asserted that the tides in the early morning hours of March 1, 2010, were "higher and lower than usual" and that AMG had responded "diligently to contain the spill and to minimize any effect it may have had on the environment." The response

noted further that the inlet on which the Facility is located is narrow and restricted, thus inhibiting the ability of the discharged oil to have reached the Elizabeth River

11. Based on the results of the March 1, 2010, site inspection and the documentation submitted on May 14, 2010, the State Water Control Board concludes that AMG violated Va. Code § 62.1-44.34:18, which prohibits the discharge of oil into or upon state waters, lands, or storm drain systems, and Va. Code § 62.1-44.34:19, which requires the immediate reporting of such discharges, as described in paragraphs C(2) through C(10), above.

12. In order for AMG to complete its return to compliance, DEQ staff and representatives of AMG 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 § 62.1-44.34:20, the Board orders AMG, and AMG agrees to:

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

2. Pay a civil charge of $7,361 in settlement of the violations cited in this Order in accordance with the following schedule:

a.

Due Date	Amount
January 1, 2011	$1,841
April 1, 2011	$1,840
July 1, 2011	$1,840
October 1, 2011	$1,840

b. If the Department fails to receive a payment pursuant to the schedule, described in the above subparagraphs D.2.a, the payment shall be deemed late. If any payment is late, the Department reserves the right to demand in writing full payment of the balance owed by AMG under this Order. AMG shall pay such balance within 15 days of receipt of a demand letter from the Department. Any allowance by the Department of a late payment by AMG shall not serve as a waiver of the Department's reserved right to accelerate payment of the balance.

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

AMG shall include its Federal Employer Identification Number (FEIN) (26-3404479) 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 Petroleum Storage Tank Fund (VPSTF).

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of AMG for good cause shown by AMG, 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, AMG admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. AMG 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. AMG 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 AMG 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. AMG 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. AMG shall show that such circumstances were

beyond its control and not due to a lack of good faith or diligence on its part. AMG 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 AMG 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 AMG. Nevertheless, AMG 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. AMG 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

    b. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to AMG.

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

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, AMG agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2010.

_____
Francis L. Daniel, Regional Director
Department of Environmental Quality

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American Marine Group, Inc., voluntarily agrees to the issuance of this Order.

Date: 10/29/2010 By: _____
American Marine Group, Inc.

Commonwealth of Virginia
City/County of NORFOLK

The foregoing document was signed and acknowledged before me this 29th day of OCTOBER, 2010, by TIM MULLANE who is PRESIDENT of American Marine Group, Inc., on behalf of the corporation.

Christine T. Myers
Notary Public

7361623
Registration No.

My commission expires: 8/31/2014

Notary seal:

Christine T. Myers
NOTARY PUBLIC
Commonwealth of Virginia
Reg. #7361623
My Commission Expires 8/31/2014

APPENDIX A
SCHEDULE OF COMPLIANCE

AMG shall:

1. By April 1, 2011, submit to DEQ Tidewater Regional Office for its review and approval, an oil discharge contingency plan ("plan") to prevent future discharges of oil to state waters from AMG operations and to properly contain and clean up a discharge should one occur. The plan shall include, at a minimum, the following elements:

   - Locations (e.g., vessels, barges, and marine construction equipment) owned and/or operated by AMG where oil is stored, handled, treated, or disposed of and where potential discharges of oil to state water can occur.
   - The type and quantity of oil associated with those locations.
   - A complete listing, including 24-hour phone numbers, of all federal, state and local agencies required to be notified in the event of a discharge.
   - The position title of the person(s) responsible for making the required notifications.
   - The position title, address and phone number of the individual authorized to act on behalf of AMG to implement containment and cleanup actions.
   - Best management practices for preventing the discharge of oil to state waters.
   - An inventory of equipment available to contain and clean up a discharge of oil to state waters should one occur.
   - Procedures to be followed to contain and clean up a discharge of oil to state waters should one occur.
   - A description of training, equipment testing and periodic oil discharge drills conducted by AMG to mitigate or prevent the discharge of oil to state waters.

   The plan may be a stand-alone document or be incorporated into AMG's Facility storm water pollution prevention plan required by the Virginia Pollutant Discharge Elimination System General Permit for Storm Water Discharges Associated with Industrial Activity (applicable to AMG through Registration No. VAR051681), which was effective July 1, 2009, and expires June 30, 2014.

2. Mail all submittals required by this Appendix A to:

   Regional Director
   DEQ, Tidewater Regional Office
   5636 Southern Boulevard
   Virginia Beach, VA 23462