



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
NORTHERN REGIONAL OFFICE

Matthew J. Strickler
Secretary of Natural Resources

13901 Crown Court, Woodbridge, Virginia 22193
(703) 583-3800
www.deq.virginia.gov

David K. Paylor
Director

Thomas A. Faha
Regional Director

**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
Culpeper Towing & Salvage, Inc.
FOR
Culpeper Towing & Salvage
VPDES Permit No. VAR05
Storm Water Registration No. VAR051952**

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 Culpeper Towing & Salvage, Inc., regarding the Culpeper Towing & Salvage facility, for the purpose of resolving certain violations of the State Water Control Law and the applicable regulations.

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. "Culpeper Towing & Salvage, Inc." means Culpeper Towing & Salvage, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Culpeper Towing & Salvage, Inc. is a "person" within the meaning of Va. Code § 62.1-44.3.
5. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
6. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
7. "DMR" means Discharge Monitoring Report.
8. "Facility" or "Site" means the Culpeper Towing & Salvage facility located at 1419 Old Fredericksburg Road, Culpeper, Virginia 22701, from which discharges of stormwater associated with industrial activity occur.
9. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
10. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
11. "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.
12. "Permit" means VPDES General Permit No. VAR05, which was issued under the State Water Control Law and the Regulation on July 1, 2014 and which expires on June 30, 2019. Culpeper Towing & Salvage, Inc. applied for registration under the Permit and was reissued Registration No. VAR051952 on August 27, 2014.
13. "Registration statement" means a registration statement for coverage under a storm water general permit.
14. "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.*
15. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.

16. "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.
17. "SWPPP" means Stormwater Pollution Prevention Plan.
18. "Va. Code" means the Code of Virginia (1950), as amended.
19. "VAC" means the Virginia Administrative Code.
20. "VPDES" means Virginia Pollutant Discharge Elimination System.

SECTION C: Findings of Fact and Conclusions of Law

1. Culpeper Towing & Salvage, Inc. owns and operates the Facility located at 1419 Old Fredericksburg Road, Culpeper, Virginia, which discharges stormwater associated with industrial activity.
2. The Permit allows Culpeper Towing & Salvage, Inc. to discharge stormwater associated with industrial activity from the Facility to an unnamed tributary of Mountain Run, in strict compliance with the terms and conditions of the Permit.
3. Mountain Run is located in the Rappahannock River Basin. Mountain Run is listed in DEQ's 305(b) report as impaired for recreational use (bacterial), fish consumption use (PCBs in fish tissue), and aquatic life use for benthic macroinvertebrates starting 3.1 miles downstream from this Facility.
4. During a DEQ Facility inspection on May 16, 2017, DEQ staff documented the following compliance deficiencies with respect to the 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 conducted, and reports were not provided upon request.
 - i. Part I.A.1.a of the Permit requires Culpeper Towing & Salvage, Inc. to perform and document quarterly visual examinations of the quality of the storm water discharging from the Facility's outfalls.
 - b. No documentation of reviews or modifications to the SWPPP in response to benchmark exceedances existed.
 - i. Part I.A.6.a of the Permit requires Culpeper Towing & Salvage, Inc. to review the SWPPP and modify it as necessary, within 30 days of

- discovery, to address deficiencies that cause exceedances of any benchmark concentration values of a parameter.
- c. Oil-based waste was observed on the ground in front of the auto-crusher at the Facility.
 - i. Part III.B.4.b.(1) of the Permit requires Culpeper Towing & Salvage, Inc. to keep clean all exposed areas of the Facility that are potential sources of pollutants to stormwater discharges.
 - d. The training of Facility employees in storm water pollution prevention had not been conducted
 - i. Part III.B.4.b.(6) of the Permit requires that Facility employees be trained in storm water pollution prevention.
 - e. Routine inspections had not been conducted, and reports could not be provided upon request.
 - i. Part III.B.5 of the Permit requires Culpeper Towing & Salvage, Inc. perform and document routine Facility inspections for all areas where industrial materials or activities are exposed to stormwater at a minimum quarterly and at least once each year while a discharge is occurring.
 - f. Annual Comprehensive Site Compliance Evaluation (CSCE) inspections were not performed for 2015 or 2016; additionally, no documentation of signed CSCE reports could be provided upon request.
 - i. Part III.E of the Permit requires Culpeper Towing & Salvage, Inc. to conduct and document a CSCE at least annually that evaluates the effectiveness of stormwater control measures.
5. During the DEQ file review of routine submissions from the Facility, DEQ staff documented compliance deficiencies with respect to the monitoring requirements of the Permit, including the following:
- a. The benchmark monitoring Discharge Monitoring Report (DMR) of Outfall 001 for the July 1, 2017 – December 31, 2017, monitoring period was not received by DEQ.
 - i. Part I.A.1.b, Table 70-1 of the Permit requires Culpeper Towing & Salvage to perform benchmark monitoring of stormwater discharges from the Facility's stormwater outfalls for the presence of TSS, aluminum, iron, and lead.

- ii. Part I.A.2.d(2) of the Permit requires Culpeper Towing & Salvage to conduct monitoring at least once in each of the following semiannual periods each year of permit coverage: January through June, and July through December.
 - iii. Part I.A.5.a of the Permit requires Culpeper Towing & Salvage to submit monitoring results for each outfall associated with industrial activity on a DMR according to the requirements of Part II.C.
6. NRO issued Notices of Violation for the violations noted above as follows: NOV No. W2017-08-N-0014, issued August 28, 2017; and NOV No. W2018-03-N-0027, issued March 21, 2018.
7. Culpeper Towing & Salvage, Inc. responded to the August 28, 2017 Notice of Violation by submitting evidence of corrective action to address the violation noted in paragraph C(4.c), and evidence of recent inspections and monitoring reports conducted since the May 16, 2017 inspection. Additionally, a plan to address benchmark exceedances with the aid of an environmental consultant was included.
8. On October 11, 2018, Department staff met with representatives of Culpeper Towing & Salvage, Inc. to discuss the violations, including Culpeper Towing & Salvage, Inc.'s written response.
9. 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
10. 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.
11. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a "certificate" under the statute.
12. The Department has issued coverage under no permits or certificates to Culpeper Towing & Salvage, Inc. other than under VPDES Permit No. VAR05.
13. The unnamed tributary of Mountain Run is a surface water located wholly within the Commonwealth and is a "state water" under State Water Control Law.
14. Based on the results of the: May 16, 2017, inspection; the October 11, 2018 meeting; and the internal file review the Board concludes that Culpeper Towing & Salvage, Inc. has violated conditions Part I.A.1.a; Part I.A.1.b, Table 70-1; Part I.A.2.d(2), Part I.A.5.a, Part I.A.6.a; Part III.B.4.b.(6); Part III.B.5; and Part III.E of the Permit, as noted in paragraphs C(4) – C(5) of this Order.

15. In order for Culpeper Towing & Salvage, Inc. to complete its return to compliance, DEQ staff and Culpeper Towing & Salvage, Inc. 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 Culpeper Towing & Salvage, Inc., and Culpeper Towing & Salvage, Inc. agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of **\$6,562.50** 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

Culpeper Towing & Salvage, Inc. 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, Culpeper Towing & Salvage, Inc. 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 Culpeper Towing & Salvage, Inc. for good cause shown by Culpeper Towing & Salvage, Inc., 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 and in NOV No. W2017-08-N-0014 dated August 28, 2017, and NOV No. W2018-03-N-0027 dated March 21, 2018. 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, Culpeper Towing & Salvage, Inc. admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Culpeper Towing & Salvage, Inc. 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. Culpeper Towing & Salvage, Inc. 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 Culpeper Towing & Salvage, Inc. 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. Culpeper Towing & Salvage, Inc. 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. Culpeper Towing & Salvage, Inc. shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Culpeper Towing & Salvage, Inc. 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 Culpeper Towing & Salvage, Inc. Nevertheless, Culpeper Towing & Salvage, Inc. 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 Culpeper Towing & Salvage, Inc. has completed all of the requirements of the Order;
 - b. Culpeper Towing & Salvage, Inc. 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 Culpeper Towing & Salvage, Inc.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Culpeper Towing & Salvage, Inc. 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 Culpeper Towing & Salvage, Inc. 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 Culpeper Towing & Salvage, Inc. 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 Culpeper Towing & Salvage, Inc. to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Culpeper Towing & Salvage, Inc.
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, Culpeper Towing & Salvage, Inc. voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 7th day of May, 2018.

for Richard C. Doucette
Thomas Faha, Regional Director
Department of Environmental Quality

----- (Remainder of Page Intentionally Blank) -----

Culpeper Towing & Salvage, Inc. voluntarily agrees to the issuance of this Order.

Date: 2-8-19 By: [Signature], [Signature]
(Person) (Title)
Culpeper Towing & Salvage, Inc.

Commonwealth of Virginia
City/County of Culpeper

The foregoing document was signed and acknowledged before me this 8 day of February, 2019, by Charles E. Bates who is President of Culpeper Towing & Salvage, Inc., on behalf of the corporation.

[Signature]
Notary Public

279266
Registration No.

My commission expires: 11/30/2020

Notary seal:



APPENDIX A SCHEDULE OF COMPLIANCE

1. **Culpeper Towing & Salvage, Inc. shall:**

- a. Submit to DEQ NRO copies of the Quarterly Visual Monitoring examination reports (Permit Part I.A.1.a) for the two quarters following execution of this Order. These reports shall be submitted by the 10th day of the month following the end of the monitored quarter, e.g., a visual examination report for the January 1 – March 31 monitoring period shall be submitted to DEQ no later than April 10th.
- b. Submit to DEQ NRO, for comment, a copy of the Facility's SWPPP with modifications pursuant to Part I.A.6.a of the Permit to address deficiencies that cause exceedances of any benchmark concentration values of a parameter within 30 days of execution of this Order.
- c. Submit to DEQ NRO copies of the Facility's completed Routine Facility Inspection reports (Permit Part III.B.5) for the next two inspection periods by the 10th day of the month following the end of the inspection interval, e.g., a Routine Facility Inspection report for the January 1 – March 31 period shall be submitted to DEQ no later than April 10th.
- d. Submit to DEQ NRO a copy of the Facility's Comprehensive Site Compliance Evaluation report (Permit Part III.E) for the 2019 calendar year. (Note that the comprehensive site compliance evaluation report can also count as the routine inspection required under Part III.B.5 for the quarter in which the CSCE is performed.)

2. **DEQ Contact**

Unless otherwise specified in this Order, Culpeper Towing & Salvage, Inc. shall submit all requirements of Appendix A of this Order to:

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