



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
TIDEWATER REGIONAL OFFICE

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Director

Craig R. Nicol
Regional Director

**STATE AIR POLLUTION CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
GUTTERMAN IRON & METAL CORPORATION
.FOR
GUTTERMAN IRON & METAL
Registration No. 61696**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 10.1-1309 and -1316, between the State Air Pollution Control Board and Gutterman Iron & Metal Corporation, regarding Gutterman Iron & Metal Corporation Concrete Crushing Plant, for the purpose of resolving certain violations of the Virginia Air Pollution 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. "Board" means the State Air Pollution Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and -1301.
2. "CFR" means the Code of Federal Regulations, as incorporated into the Regulations.
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 Gutterman Iron & Metal concrete crushing and recycling plant located at 5304 W. Military Highway, in Chesapeake, Virginia.
6. "Gutterman" means Gutterman Iron & Metal Corporation, a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Gutterman is a "person" within the meaning of Va. Code § 10.1-1300.
7. "IPT" means Initial Performance Test required by Condition 6 of the Permit as per 40 CFR 60, Subpart OOO, Standards of Performance for Nonmetallic Mineral Processing Plants.
8. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.
9. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the Virginia Air Pollution Control Law.
10. "Permit" means a Stationary Source Permit to Construct and Operate a concrete crusher, which Gutterman applied for and DEQ issued under Registration No. 61696, issued on February 10, 2015.
11. "Regulations" or "Regulations for the Control and Abatement of Air Pollution" mean 9 VAC 5 chapters 10 through 80.
12. "TRO" means the DEQ Tidewater Regional Office located in Virginia Beach, Virginia.
13. "Va. Code" means the Code of Virginia (1950), as amended.
14. "VAC" means the Virginia Administrative Code.
15. "Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 *et seq.*) of Title 10.1 of the Va. Code.

SECTION C: Findings of Fact and Conclusions of Law

1. Gutterman owns and operates the Facility in the Chesapeake, Virginia. The Facility is the subject of the Permit, which allows Gutterman to construct and operate a concrete crusher.
2. On March 23, 2016, Department staff conducted a site visit at the Facility for compliance with the requirements of the Virginia Air Pollution Control Law, the Regulations, the Permit, and the status of the permitted concrete crusher and conveyors. During the visit, Department staff observed and Facility representatives verified that the concrete crusher listed in the Permit was the operational crusher at the Facility. Facility representatives

also stated that the crusher and conveyors have been operating since approximately September 23, 2014.

3. Based on staff review of DEQ files, an IPT had not been conducted within 180 days after initial startup of the concrete crushing and recycling plant. According to DEQ files, the concrete crushing and recycling plant began operating on or about September 23, 2014.
4. Condition 6 of the Permit requires the Facility to operate in compliance with the requirements of 40 CFR 60, Subpart OOO, Standards of Performance for Nonmetallic Mineral Processing Plants.
5. 40 CFR §60.672(b) states, "where affected facilities must meet the fugitive emission limits and compliance requirements in Table 3 of this subpart within 60 days after achieving the maximum productivity rate at which the affected facility will be operated, but no later than 180 days after initial startup as required under §60.11."
6. Table 3 to Subpart OOO of Part 60-Fugitive Emission Limits states, "for affected facilities that commence construction, modification, or reconstruction on or after April 22, 2008: The owner or operator must meet the following fugitive emissions limit for crushers at which a capture system is not used; 12 percent opacity; an initial performance test according to §60.11 of this part and §60.675 of this subpart. 9 VAC 5-80-1210(E) states that any owner who constructs or operates a stationary source not in accordance with the terms and conditions of any permit to construct or operate, or any owner of a source who commences construction or operation without receiving a permit, shall be subject to appropriate enforcement action."
7. 9 VAC 5-170-160(A) states, "The board may impose conditions upon permits and other approvals which may be necessary to carry out the policy of the Virginia Air Pollution Control Law, and which are consistent with the regulations of the board. Except as otherwise specified, nothing in this chapter shall be understood to limit the power of the board in this regard. If the owner or other person fails to adhere to the conditions, the board may automatically cancel the permit or approvals. This section shall apply, but not be limited, to approval of variances, approval of control programs, and granting of permits."
8. Va. Code § 10.1-1322(A) states, "Pursuant to regulations adopted by the Board and subject to § 10.1-1322.01, permits may be issued, amended, revoked or terminated and reissued by the Department and may be enforced under the provisions of this chapter in the same manner as regulations and orders. Failure to comply with any condition of a permit shall be considered a violation of this chapter and investigations and enforcement actions may be pursued in the same manner as is done with regulations and orders of the Board under the provisions of this chapter."

9. On April 6, 2016, based on the site visit and subsequent file review, the Department issued a Warning Letter to Guttermann for the violations described in paragraph C(2) through C(8), above.
10. On December 5, 2017, DEQ conducted an additional file review and noted that it still had not received any IPT results.
11. On January 29, 2018, based on the site visit, subsequent file reviews, and failure to submit an IPT pursuant to the Warning Letter, the Department issued a NOV to Guttermann for the violations described in paragraphs C(2) through C(8), above.
12. On May 11, 2018, DEQ met with Guttermann representatives at the Facility and observed the IPT of the concrete crusher, and received follow up documentation stating that the passing IPP had been conducted.
13. Based on the results of the March 23, 2016, site visit, subsequent file reviews, and the May 11, 2018, site visit, the Board concludes that Guttermann has violated Condition 6 of the Permit, 40 CFR §60.672(b), Table 3 to Subpart OOO, 9 VAC 5-170-160(A), and Va. Code § 10.1-1322(A), as described in paragraphs C(2) through C(8), above.
14. Guttermann has submitted documentation that verifies that the violations described in paragraphs C(2) and C(8), above, have been corrected.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 10.1-1309 and -1316, the Board orders Guttermann, and Guttermann agrees to pay a civil charge of \$7,000 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, 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

Guttermann Iron & Metal Corporation, shall include its Federal Employer Identification Number (FEIN) 540606811 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, Guttermann 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 Gutterman for good cause shown by Gutterman, 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 the NOV dated January 29, 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, Gutterman admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Gutterman 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. Gutterman declares it has received fair and due process under the Administrative Process Act and the Virginia Air Pollution 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 Gutterman 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. Gutterman 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. Gutterman shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Gutterman 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 Gutterman. Nevertheless, Gutterman 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 Gutterman has completed all of the requirements of the Order;
 - b. Gutterman 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 Gutterman.

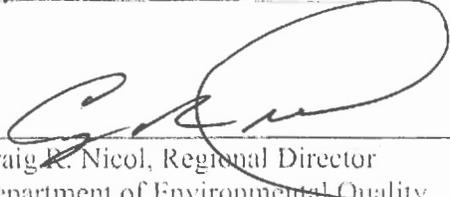
Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Gutterman from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Gutterman 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 Gutterman certifies that he or she is a responsible official [or officer] authorized to enter into the terms and conditions of this Order and to execute and legally bind Gutterman to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Gutterman.
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, Gutterman voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 1st day of MARCH, 2019.



Craig K. Nicol, Regional Director
Department of Environmental Quality

Gutterman Iron & Metal Corporation voluntarily agrees to the issuance of this Order.

Date: 02/27/2019 By: [Signature], Owner
(Person) (Title)
Gutterman Iron & Metal Corporation

Commonwealth of Virginia
City/County of Norfolk

The foregoing document was signed and acknowledged before me this 27th day of February, 2019, by Anthony Calcagni who is owner of Gutterman Iron & Metal Corporation, on behalf of the corporation.

[Signature]
Notary Public
7692173
Registration No.

My commission expires: October 31, 2021

Notary seal:

YVONNE M LOCK
NOTARY PUBLIC
REGISTRATION # 7692173
COMMONWEALTH OF VIRGINIA
MY COMMISSION EXPIRES
OCTOBER 31, 2021