



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

TIDEWATER REGIONAL OFFICE
5636 Southern Boulevard, Virginia Beach, Virginia 23462
(757) 518-2000 FAX (757) 518-2009
www.deq.virginia.gov

Matthew J. Strickler
Secretary of Natural Resources

David K. Paylor
Director
(804) 698-4000

Craig R. Nicol
Regional Director

**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
GUTTERMAN IRON AND METAL CORPORATION
FOR
GUTTERMAN IRON AND METAL
VPDES Permit No. VAR05
Storm Water Registration No. VAR050351**

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 Gutterman Iron and Metal Corporation, regarding the Gutterman Iron and Metal Facility, for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and regulation. This Order supersedes and terminates the Consent Order issued by the Board to Gutterman Iron and Metal Corporation on October 17, 2008.

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. "2004 Permit" means VPDES General Permit No. VAR05, which was issued under the State Water Control Law and the Regulation on July 1, 2004 and which expired on June 30, 2009. Gutterman Iron and Metal Corporation applied for registration under the Permit and was issued Registration No. VAR050351 on July 1, 2004.

3. “2009 Permit” means VPDES General Permit No. VAR05, which was issued under the State Water Control Law and the Regulation on July 1, 2009 and which expired on June 30, 2014. Gutterman Iron and Metal Corporation applied for registration under the Permit and was issued Registration No. VAR052410 on July 1, 2009.
4. “2014 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 expired on June 30, 2019. Gutterman Iron and Metal Corporation applied for registration under the Permit and was issued Registration No. VAR052410 on July 1, 2014.
5. “2019 Permit” means VPDES General Permit No. VAR05, which was issued under the State Water Control Law and the Regulation on July 1, 2019 and which expires on June 30, 2024. Gutterman Iron and Metal Corporation applied for registration under the Permit and was issued Registration No. VAR052410 on July 1, 2019.
6. “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.
7. “Department” or “DEQ” means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
8. “Director” means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
9. “Discharge” means the discharge of a pollutant.
10. “Discharge of a pollutant” when used with reference to the requirements of the VPDES permit program means:
 - a. Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
 - b. Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
11. “DMR” means Discharge Monitoring Report.
12. “Facility” means the Gutterman Iron and Metal Corporation facility located at 706 May Ave., in Norfolk, Virginia.
13. “GIMC” means Gutterman Iron and Metal Corporation, a corporation authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries. Gutterman Iron and Metal Corporation, is a “person” within the meaning of Va. Code § 62.1-44.3.

14. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
15. "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.
16. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water... 9 VAC 25-31-10.
17. "Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are "pollution." Va. Code § 62.1-44.3.
18. "Registration statement" means a registration statement for coverage under a storm water general permit.
19. "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.*
20. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
21. "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.
22. "TRO" means the DEQ Tidewater Regional Office located in Virginia Beach, Virginia.
23. "Va. Code" means the Code of Virginia (1950), as amended.

24. "VAC" means the Virginia Administrative Code.

25. "VPDES" means Virginia Pollutant Discharge Elimination System.

SECTION C: Findings of Fact and Conclusions of Law

1. Gutterman Iron and Metal Corporation ("GIMC") owns and operates the GIMC Facility ("Facility") located at 706 May Ave., in Norfolk, Virginia.
2. The 2004 Permit, the 2009 Permit, and the 2014 Permit allowed, and the 2019 Permit allows GIMC to discharge stormwater associated with industrial activity from the Facility to an unnamed tributary of the Eastern Branch Elizabeth River, in strict compliance with the terms and conditions of the currently active permit.
3. The unnamed tributary flows to the Eastern Branch Elizabeth River, which flows to the Chesapeake Bay, Atlantic Ocean and small coastal basin. The Eastern Branch Elizabeth River is listed in DEQ's 305(b) report as impaired estuarine bioassessments, dissolved oxygen, and PCBs in fish tissue.
4. On October 17, 2008, GIMC and DEQ entered into an Order ("2008 Order") to address violations of the 2004 Permit. The 2008 Order is effective, but will be superseded and terminated with this Order ("2020 Order").
5. On July 24, 2018, DEQ staff conducted a compliance inspection of the Facility. During the inspections and report DEQ observed the following:
 - a. Records for Quarterly Visual Examinations of stormwater discharges were requested but not provided for the 1st and 2nd quarters of 2017 and 2018.
 - b. DMRs were not received for the first semi-annual monitoring periods of 2017 (listed in Warning Letter ("WL")W2017-08-T-1032 ("2017 WL"), sent to GIMC on August 21, 2017) and 2018 (listed in Warning Letter W2018-08-T-1006 ("2018 WL"), sent to GIMC on August 9, 2018); DMRs for Outfalls 003 and 006 for the second semiannual period of 2017 did not include results for Total Suspended Solids.
 - c. Routine facility inspection records for the first and second quarters of 2017 do not indicate that a member of the pollution prevention team participated in the facility inspections, none of the records reviewed indicate that the inspections were conducted while a stormwater discharge was occurring, and weather conditions were not recorded for the third quarter inspection of 2017 and the first quarter inspection of 2018.
 - d. GIMC was not in compliance with all conditions of the Permit as required by Appendix A(7) of the 2008 Order.

6. 2014 Permit Part I.A.1.a states that permittee must perform and document quarterly visual examination of stormwater discharges. Part I.A.1.a.(3) of the permit provides that the visual examination reports shall be maintained on-site with the Stormwater Pollution Prevention Plan.

7. 2014 Permit Part I.A.2.d states that the benchmark monitoring is to be performed once each of the following semiannual periods of each year of permit coverage: January through June and July through December.

2014 Permit Part I.A.5 provides that samples must be collected and analyzed in accordance with Permit Part I.A.2 of the permit. For each outfall, one signed DMR form must be submitted. Table 70-4 provides the monitoring reporting requirements with semiannual monitoring to be submitted by January 10 and July 10.

8. 2014 Permit Part III.B.5 states that at least one member of the pollution prevention team shall participate in the routine facility inspections.

2014 Permit Part III.B.5 states that the results of the inspection are documented in the SWPPP and shall include at a minimum: a. The inspection date and time; b. The name(s) and signature(s) of the inspector(s); c. Weather information and a description of any discharges occurring at the time of the inspection; d. Any previously unidentified discharges of pollutants from the site; e. Any control measures needing maintenance or repairs; f. Any failed control measures that need replacement; g. Any incidents of noncompliance observed; and h. Any additional control measures needed to comply with the permit requirements.

2014 Permit Part III.B.5 states that at least once each calendar year, the routine facility inspection shall be conducted during a period when a stormwater discharge is occurring.

9. Va. Code § 62.1-44.31 provides that it shall be unlawful for any owner to fail to comply with an Order by the Board.

10. On August 29, 2018, DEQ electronically sent GIMC the inspection report from the July 24, 2018, inspection. The inspection report noted the observations above. On September 18, 2018, GIMC electronically sent DEQ a response (“Inspection Response”) to the inspection report and stated the corrective actions that were taken and detailed additional corrective actions that will be implemented at the Facility.

11. On November 1, 2018, DEQ issued NOV No. W2018-11-T-0002, for the violations listed in C(5) – (9), above. On November 12, 2018, GIMC responded to the NOV (“NOV Response”), and stated that the observations noted in the NOV had been corrected following the inspection, as previously stated in the Inspection Response.

12. Subsequent to the NOV response, DEQ observed that the DMR due on July 10, 2019, was not received by DEQ until July 26, 2019.
13. 2014 Permit Part I.A.5 provides that samples must be collected and analyzed in accordance with Permit Part I.A.2 of the permit. For each outfall, one signed DMR form must be submitted. Table 70-4 provides the monitoring reporting requirements with semiannual monitoring to be submitted by January 10 and July 10.
14. 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.
15. 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.
16. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a “certificate” under the statute.
17. The Department has issued coverage under no permits or certificates to GIMC other than under VPDES Permit No. VAR05 (Reg. No. VAR050351).
18. The unnamed tributary of the Eastern Branch Elizabeth River is a surface water located wholly within the Commonwealth and is a “state water” under State Water Control Law.
19. Based on the July 24, 2018, inspection, and the DMRs due July 10, 2019, the Board concludes that GIMC has violated 2014 Permit Parts I.A.1.a, I.A.2.d, I.A.5, III.B.5, Va. Code § 62.1-44.31, and 2008 Order Appendix A(7); as noted in paragraphs C(5) – (9), and C(12) – (13), of this Order.
20. GIMC has submitted documentation that verifies that the violations as described in paragraphs C(5) – (9), and C(12) – (13), above, have been corrected.

SECTION D: Agreement and Order

Both the State Water Control Board and GIMC understand and agree that this Order supersedes and terminates the Consent Order issued by the Board to GIMC on October 17, 2008.

Accordingly, by virtue of the authority granted it in Va. Code § 62.1-44.15, the Board orders GIMC, and GIMC agrees to:

Pay a civil charge of \$4,200 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

GIMC 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, GIMC 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 GIMC for good cause shown by GIMC, 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. W2018-11-T-0002 dated November 1, 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, GIMC admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. GIMC 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. GIMC declares it has received fair and due process under the Administrative Process Act and the Virginia Waste Management Act 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 GIMC 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. GIMC 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. GIMC shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. GIMC 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 GIMC. Nevertheless, GIMC 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 GIMC has completed all of the requirements of the Order;

- b. GIMC 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 GIMC.

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

And it is so ORDERED this 21 day of AUGUST, 2020.



Craig R. Nicol, Regional Director
Department of Environmental Quality

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

Date: 06/29/2020 By: [Signature], Owner
(Person) (Title)
Gutterman Iron and Metal Corporation

Commonwealth of Virginia
City/County of Norfolk

The foregoing document was signed and acknowledged before me this 29 day of June, 2020, by Anthony Calcagni who is Owner of Gutterman Iron and 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