



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

TIDEWATER REGIONAL OFFICE

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**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
Little Creek Partners Limited Partnership
FOR
Little Creek Marina
VPDES Permit No. VAR05
Storm Water Registration No. VAR050484**

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 Little Creek Partners Limited Partnership, regarding the Little Creek Marina, for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and regulation.

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. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
5. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
6. "Discharge" means the discharge of a pollutant.
7. "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.
8. "Facility" means the boat fueling and dry storage facility located at 4801 Pretty Lake Avenue in Norfolk, Virginia, from which discharges of stormwater associated with industrial activity occur.
9. "Little Creek Marina" means Little Creek Partners Limited Partnership, a limited liability partnership, and its affiliates, partners, and subsidiaries. Little Creek is a "person" within the meaning of Va. Code § 62.1-44.3.
10. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
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. Little Creek Marina applied for registration under the Permit and was issued Registration No. VAR050484 on July 1, 2014.
13. "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.

14. "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.
15. "Registration statement" means a registration statement for coverage under a storm water general permit.
16. "Regulation" means Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Discharges of Storm Water Associated with Industrial Activity, 9 VAC 25-151-10, *et seq.*
17. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
18. "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.
19. "SWPPP" means Stormwater Pollution Prevention Plan.
20. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
21. "Va. Code" means the Code of Virginia (1950), as amended.
22. "VAC" means the Virginia Administrative Code.
23. "VPDES" means Virginia Pollutant Discharge Elimination System.

SECTION C: Findings of Fact and Conclusions of Law

1. Little Creek Marina owns and operates the Facility located at 4801 Pretty Lake Avenue in Norfolk, Virginia, which discharges stormwater associated with industrial activity.

2. The Permit allows Little Creek Marina to discharge stormwater associated with industrial activity from the Facility to Little Creek, in strict compliance with the terms and conditions of the Permit.
3. Little Creek is located in the Lower Chesapeake Bay Basin. Little Creek is listed in DEQ's 305(b) report as impaired for PCB in fish tissue and shallow-submerged aquatic vegetation use. Among the causes of impairment are atmospheric deposition, industrial point source discharges, and loss of riparian habitat.
4. Part I.A.1.a and Part I.A.2.d.(1) of the Permit requires Little Creek Marina to perform and document quarterly visual examinations of the quality of the storm water discharging from the Facility's outfalls.
5. Part I.A.1.b and Part I.A.2.d.(2) of the Permit requires Little Creek Marina to conduct benchmark monitoring of the storm water discharging from the Facility's outfalls semiannually.
6. Part I.A.1.b and Part I.A.6.a(1) of the Permit requires Little Creek Marina to review and modify the SWPPP as necessary to address any deficiencies that may have caused the benchmark level exceedances unless a justification is provided in the CSCE for why a SWPPP modification is unnecessary.
7. Part I.A.2.d.(2) and Part I.B.7.b of the Permit requires Little Creek Marina to monitor stormwater discharges for Chesapeake Bay total maximum daily load semiannually.
8. Part I.B.1 of the Permit provides that all discharges from the Facility shall be composed entirely of stormwater.
9. During a DEQ Facility inspection on April 6th and 13th, 2016, 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 and Part I.A.2.d.(1) of the Permit had not been performed.
 - b. The benchmark monitoring of storm water discharges for the second semi-annual 2014 and 2015 reporting periods required by Part I.A.1.b and Part I.A.2.d.(2) of the Permit had not been performed.
 - c. The Chesapeake Bay total maximum daily load monitoring of stormwater discharges required by Part I.A.2.d.(2) and Part I.B.7.b of the Permit had not been performed.
 - d. Little Creek Marina personnel indicated that it was discharging boat wash waters from the Facility.
 - e. The Facility had a discharge leaving the engine maintenance area.

10. Little Creek Marina violated conditions Part I.A.1.a, Part I.A.1.b, Part I.A.2.d.(1), Part I.A.2.d.(2), Part I.A.6.a.(1), Part I.B.1, and Part I.B.7.b of the Permit as noted in paragraph C(9) of this Order.
11. Little Creek Marina is required to develop and implement a Facility SWPPP according to requirements outlined in Part III of the Permit.
12. Part III.B.4.b.(1) of the Permit requires Little Creek Marina to keep clean all exposed areas of the Facility that are potential sources of pollutants to stormwater discharges.
13. Part III.B.4.b.(6) of the Permit requires Little Creek Marina to implement a stormwater employee training program and include in the SWPPP a schedule for training, documentation of training sessions, who received training, and a training summary.
14. Part III.B.5 of the Permit requires Little Creek Marina to perform routine Facility inspections at a minimum quarterly, and document in the SWPPP the frequency of routine Facility inspections and inspection results.
15. Part III.E of the Permit requires Little Creek Marina to perform a CSCE at least annually and maintain with the SWPPP a compliance evaluation report summarizing the scope of the inspection.
16. During the DEQ Facility inspection on April 6th and 13th, 2016, DEQ staff documented compliance deficiencies with respect to the SWPPP requirements of the Permit, including the following:
 - a. The Facility SWPPP had not been reviewed or modified within 30 days of the benchmark level exceedances, which were noted first semi-annual monitoring for 2015, to address deficiencies that may have caused the exceedances, as required by Part I.A.1.b and Part I.A.6.a(1) of the Permit. Nor did the Facility CSCE provide a justification for why the SWPPP modification was unnecessary.
 - b. The Facility SWPPP had not been developed or implemented as required by Part III of the Permit. The SWPPP had not been updated or modified to comply with the Permit (e.g., inspections, training, and the CSCE had not been documented).
 - c. Little Creek Marina had not implemented stormwater controls, such as good housekeeping and employee training, as required by the SWPPP and Part III.B.4.b.(1) and Part III.B.4.b.(6) of the Permit. For example, DEQ observed the following:
 - i. The maintenance area had paint, solids, and debris that may discharge with stormwater from the Facility; and
 - ii. Employee training had not been performed or documented.

- d. The routine Facility inspections had not been conducted as required by Part III.B.5 of the Permit.
 - e. The annual CSCE and summary report had not been performed as required by Part III.E of the Permit.
17. Based on the results of the April 6th and April 13th, 2016 inspection, the Board concludes that Little Creek Marina has violated conditions Part III.B.4.b(1), Part III.B.4.b(6), Part III.B.5, and Part III.E of the Permit as noted in paragraph C(16) of this Order.
 18. TRO issued to Little Creek Marina NOV No. W2016-06-T-0001 dated June 9, 2016 for the violations noted above.
 19. Little Creek Marina responded to the June 9, 2016 NOV by email dated June 17, 2016 and by letter dated July 7, 2016 indicating that it had stopped boat washing and discharging from the boat maintenance area, updated its SWPPP to meet 2014 Permit requirements, and completed inspections, a new training schedule, and quarterly visual, benchmark, and Chesapeake Bay TMDL monitoring.
 20. On February 3, 2017, DEQ also issued to Little Creek Marina NOV No. W2017-02-T-0002 for failing to perform and document benchmark monitoring of storm water discharges for the second semi-annual 2016 reporting period, as required by Part I.A.1.b and Part I.A.2.d.(2) of the Permit.
 21. 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
 22. 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.
 23. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a “certificate” under the statute.
 24. The Department has issued coverage under no permits or certificates to Little Creek Marina other than under the Permit.
 25. Little Creek is a surface water located wholly within the Commonwealth and is a “state water” under State Water Control Law.
 26. Based on the results of the April 6th and 13th, 2016 inspection, the Board concludes that Little Creek Marina has violated the Permit, as described in paragraphs C(9) and C(16), above.

27. Little Creek Marina has submitted documentation that verifies that the violations as described in paragraphs C(10) and C(17), above, have been corrected.

SECTION D: Agreement and Order

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

1. Pay a civil charge of \$9,059 in settlement of the violations cited in this Order. The civil charge shall be paid in accordance with the following schedule:

<u>Payment Due Date</u>	<u>Payment Amount</u>
May 31, 2017	\$2,059
June 30, 2017	\$1,000
July 31, 2017	\$1,000
August 31, 2017	\$1,000
September 30, 2017	\$1,000
October 31, 2017	\$1,000
November 30, 2017	\$1,000
December 31, 2017	\$1,000

2. If the Department fails to receive a civil charge payment pursuant to the schedule described in the above paragraphs D.1, the payment shall be deemed late. If any payment is late, the Department shall have the right to demand in writing full payment of the entire remaining balance under this Order by Little Creek Marina. Little Creek Marina shall pay the entire remaining balance within 15 days of receipt of the demand letter from the Department. Any acceptance by the Department of a late payment or a payment of less than the entire remaining balance shall not serve as a waiver of the Department's right to accelerate payment of the balance under this Order.
3. If Little Creek Marina Partners Limited Partnership negotiates sale of the Facility, the entire remaining balance is considered due and shall be paid upon final closing of the sale.
4. 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

5. Little Creek Marina 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, Little Creek Marina 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 Little Creek Marina for good cause shown by Little Creek Marina, 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. W2016-06-T-0001 dated June 9, 2016 and NOV No. W2017-02-T-0002 dated February 3, 2017. 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, Little Creek Marina admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Little Creek Marina 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. Little Creek Marina 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 Little Creek Marina 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. Little Creek Marina 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. Little Creek Marina shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Little Creek Marina 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 Little Creek Marina. Nevertheless, Little Creek Marina 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 Little Creek Marina has completed all of the requirements of the Order;
 - b. Little Creek Marina 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 Little Creek Marina.

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

And it is so ORDERED this 9 day of May, 2017.



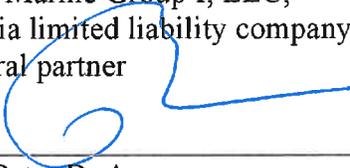
Craig Nicol, Regional Director
Department of Environmental Quality

Little Creek Partners Limited Partnership voluntarily agrees to the issuance of this Order.

Date: _____

LITTLE CREEK PARTNERS LIMITED PARTNERSHIP,
a Delaware limited partnership

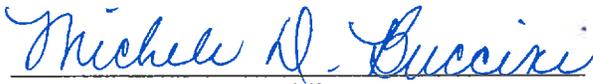
By: Vinings Marine Group I, LLC,
a Georgia limited liability company,
its general partner

By: 

Peter D. Anzo
Manager (SEAL)

Commonwealth of Virginia
City/County of Norfolk

The foregoing document was signed and acknowledged before me this 9th day of March, 2017, by Peter D. Anzo, Manager of Vinings Marine Group, I, LLC, the general partner of Little Creek Partners Limited Partnership, on behalf of the limited partnership.



Notary Public

213479

Registration No.

My commission expires: 8/31/2020

Notary seal:

