



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

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**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
MIL-SPEC ABRASIVES, LLC
FOR
MIL-SPEC ABRASIVES
VPDES Permit No. VAR05
Storm Water Registration No. VAR051844**

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 Mil-Spec Abrasives, LLC, regarding the Mil-Spec Abrasives Facility, 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. “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. Mil-Spec Abrasives, LLC applied for registration under the Permit and was issued Registration No. VAR051844 on July 1, 2019.

3. “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.
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. “DMR” means Discharge Monitoring Report.
9. “Facility” means the Mil-Spec Abrasives facility located at 3306 Peterson Street, in Norfolk, Virginia.
10. “Mil-Spec” means Mil-Spec Abrasives, LLC, a corporation authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries. Mil-Spec, is a “person” within the meaning of Va. Code § 62.1-44.3.
11. “Notice of Violation” or “NOV” means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
12. “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.
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 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.*
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. “TRO” means the DEQ Tidewater Regional Office located in Virginia Beach, Virginia.
20. “Va. Code” means the Code of Virginia (1950), as amended.
21. “VAC” means the Virginia Administrative Code.
22. “VPDES” means Virginia Pollutant Discharge Elimination System.

SECTION C: Findings of Fact and Conclusions of Law

1. Mil-Spec Abrasives, LLC, (“Mil-Spec”) owns and operates Mil-Spec Abrasives, an abrasive materials manufacturing facility (“Facility”), located at 3306 Peterson Street in Norfolk, Virginia. Mil-Spec applied for coverage under the 2019 Permit and was reissued Registration No. VAR051844 on July 1, 2019. The 2019 Permit expires on June 20, 2024.

2. The 2019 Permit, allows Mil-Spec to discharge stormwater associated with industrial activity from the Facility to an unnamed tributary of Broad Creek, in strict compliance with the terms and conditions of the currently active permit.
3. The unnamed tributary flows to Broad Creek, then the Eastern Branch Elizabeth River, which flows to the Chesapeake Bay, Atlantic Ocean and small coastal basin. Broad Creek is listed in DEQ's 305(b) report as impaired for enterococcus, estuarine bioassessments, oxygen, dissolved oxygen, and PCBs in fish tissue
4. On June 5, 2018, and July 24, 2018, DEQ staff conducted compliance inspections ("2018 Inspections") of the Facility. During the inspections DEQ observed the following:
 - a. Well water and recycled wash water from the glass recycling wash operations was observed discharging into Outfall 002. Outfall 002 discharges to the City of Norfolk stormwater drainage ditch and then to the Elizabeth River.
 - b. A pile of material, containing recycled glass was observed on the north side of the Facility with a discharge of this material to the property fence line and into a ditch on the north side of the property.
5. Va. Code § 62.1-44.5(A) states that except in compliance with a certificate or permit issued by the Board or other entity authorized by the Board to issue a certificate or permit pursuant to this chapter, it shall be unlawful for any person to: 1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances.
6. 9 VAC 25-31-50(A) states that Except in compliance with a VPDES permit, or another permit, issued by the board or other entity authorized by the board, it shall be unlawful for any person to: 1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances.
7. On November 1, 2018, DEQ issued NOV No. W2018-11-T-0003 ("2018 NOV"), for the violations listed in C(4) – (6), above. On November 9, 2018, Mil-Spec responded to the 2018 NOV, and stated that it had implemented corrective actions to address the observations noted in the NOV.
8. On March 2, 2020, DEQ staff conducted a compliance inspection of the Facility. During the inspection DEQ observed the following:
 - a. Quarterly Visual Examinations ("QVEs") of stormwater discharge were not documented or maintained in the Stormwater Pollution Prevention Plan ("SWPPP") for the 3rd and 4th quarters of 2019.
 - b. The 2019 second semiannual Chesapeake Bay Total Maximum Daily Load (Outfalls 001, 002) monitoring results required by the 2019 Permit was not received by January 10, 2020.

- c. The SWPPP was signed and certified on November 12, 2018, by the Facility's consultant, who had not been duly authorized as a representative of a Mil-Spec.
 - d. The site map reviewed during the site visit did not include all of the items required by the permit, including:
 - i. The location and extent of significant new structures, including the sediment trap that has been expanded as observed during the site visit.
 - ii. The location of all of the stormwater conveyances.
 - iii. The location of all surface water bodies, including wetlands.
 - iv. The location of potential pollutant sources such as the fuel tanks and equipment wash area observed on site.
 - v. The locations where spills and leaks have occurred.
 - vi. The locations of stormwater outfalls. Outfall 002 was observed as eliminated.
 - vii. A new discharge point was observed on the east side of the site.
 - viii. The longitude and latitude for each outfall.
 - ix. The location of the MS4 conveyance receiving discharge from the facility.
 - e. Training for 2019 was not documented and summarized in the SWPPP. The SWPPP states that employee training is performed annually.
 - f. Routine facility inspections have not been documented and maintained in the SWPPP for the 3rd and 4th quarters of 2019.
 - g. The annual outfall evaluation for unauthorized discharges for 2019 was not observed in the SWPPP.
 - h. Good housekeeping measures to minimize the potential for waste, garbage and floatable debris to be discharged were not observed during the site survey.
 - i. The glass washing area was observed with wastewater outside of the containment basin. No overflow protection was observed.
 - j. Control measures to minimize the generation of dust and off-site tracking of raw, final, or waste materials were not observed during the site survey.
9. 2019 Permit Part I.A.1.a.(1), states, "The permittee shall perform and document a quarterly visual examination of a stormwater discharge associated with industrial activity from each outfall, except discharges exempted in Part I A 3 or Part I A 4. The examinations shall be made at least once in each of the following three-month periods: January through March, April through June, July through September, and October through December. The visual examination shall be made during normal working hours, where practicable, and when considerations for safety and feasibility allow. If no storm event resulted in runoff from the facility during a monitoring quarter, the permittee is excused from visual monitoring for that quarter provided that documentation is included with the monitoring records indicating that no runoff occurred. The documentation shall be signed and certified in accordance with Part II K of this permit."

2019 Permit Part I.A.1.a. (3), states, "The visual examination reports shall be maintained on-site with the SWPPP."

10. 2019 Permit Part I.B.8.a, states, “Owners of facilities in the Chesapeake Bay watershed shall monitor their discharges for total suspended solids (TSS), total nitrogen (TN), and total phosphorus (TP) to characterize the contributions from their facility's specific industrial sector for these parameters.”

2019 Permit Part I.B.8.b.(3), states, “Facilities that did not complete four samples for TSS, TN, and TP during the 2014 industrial stormwater general permit term shall be subject to completing the monitoring requirements in Part I B 8 a beginning with the first full monitoring period after receiving permit coverage. Calculations and a Chesapeake Bay TMDL action plan if required under Part I B 8 f.

2019 Part II.C.1, states, “Reporting Monitoring Results: The permittee shall submit the results of the monitoring required by this permit not later than the 10th day of the month after monitoring takes place, unless another reporting schedule is specified elsewhere in this permit. Monitoring results shall be submitted to the department’s regional office.”

11. 2019 Permit Part II.K.2, states, “Reports, etc. All reports required by permits, and other information requested by the board shall be signed by a person described in Part II K 1 or by a duly authorized representative of that person. A person is a duly authorized representative only if: a. The authorization is made in writing by a person described in Part II K 1; b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. A duly authorized representative may thus be either a named individual or any individual occupying a named position; and c. The written authorization is submitted to the department.”
12. 2019 Permit Part III.B.4.b.(6), states, “Employee training. The permittee shall implement a stormwater employee training program for the facility. The SWPPP shall include a schedule for all types of necessary training, and shall document all training sessions and the employees who received the training. Training shall be provided at least annually for all employees who work in areas where industrial materials or activities are exposed to stormwater, and for employees who are responsible for implementing activities identified in the SWPPP (e.g., inspectors, maintenance personnel, etc.). The training shall cover the components and goals of the SWPPP, and include such topics as spill response, good housekeeping, material management practices, control measure operation and maintenance, etc. The SWPPP shall include a summary of any training performed.”
13. 2019 Permit Part III.B.5, states, “Routine facility inspections. Personnel who possess the knowledge and skills to assess conditions and activities that could impact stormwater quality at the facility and who can also evaluate the effectiveness of

control measures shall regularly inspect all areas of the facility where industrial materials or activities are exposed to stormwater, areas where spills or leaks have occurred in the past three years, discharge points, and control measures. At least one member of the pollution prevention team shall participate in the routine facility inspections. The inspection frequency shall be specified in the SWPPP based upon a consideration of the level of industrial activity at the facility, but shall be at a minimum of once per calendar quarter unless more frequent intervals are specified elsewhere in the permit or written approval is received from the department for less frequent intervals. Inspections shall be performed during operating hours. At least once each calendar year, the routine facility inspection shall be conducted during a period when a stormwater discharge is occurring.”

14. 2019 Permit Part III.D.2, states, “Annual outfall evaluation for unauthorized discharges. a. The SWPPP shall include documentation that all stormwater outfalls associated with industrial activity have been evaluated annually for the presence of unauthorized discharges.”
15. 2019 Permit Part III.B.4.b.(1), states, “Good housekeeping. The permittee shall keep clean all exposed areas of the facility that are potential sources of pollutants to stormwater discharges. The permittee shall perform the following good housekeeping measures to minimize pollutant discharges: (a) The SWPPP shall include a schedule for regular pickup and disposal of waste materials, along with routine inspections for leaks and conditions of drums, tanks, and containers; (d) Manage all waste containers to prevent a discharge of pollutants; (e) Minimize the potential for waste, garbage, and floatable debris to be discharged by keeping areas exposed to stormwater free of such materials or by intercepting such materials prior to discharge; and (f) Perform all vehicle maintenance or equipment cleaning operations indoors, under cover, or in bermed areas that prevent runoff and run-on and also capture any overspray.”
16. 2019 Permit Part III.B.4.b.(2), states, “Eliminating and minimizing exposure. To the extent practicable, manufacturing, processing, and material storage areas (including loading and unloading, storage, disposal, cleaning, maintenance, and fueling operations) shall be located inside, or protected by a storm-resistant covering to prevent exposure to rain, snow, snowmelt, and runoff. Eliminating exposure at all industrial areas may make the facility eligible for the "Conditional Exclusion for No Exposure" provision of 9VAC25-31-120 E, thereby eliminating the need to have a permit. Unless infeasible, facilities shall implement the following: (a) Use grading, berming, or curbing to prevent runoff of contaminated flows and divert run-on away from potential sources of pollutants; (b) Locate materials, equipment, and activities so that potential leaks and spills are contained, or able to be contained, or diverted before discharge; (c) Clean up spills and leaks immediately, upon discovery of the spills or leaks, using dry methods (e.g., absorbents) to prevent the discharge of pollutants; (d) Store leaking vehicles and equipment indoors or, if stored outdoors, use drip pans and adsorbents; (e) Utilize appropriate spill or overflow protections

- equipment; (f) Perform all vehicle maintenance or equipment cleaning operations indoors, under cover, or in bermed areas that prevent runoff and run-on and also capture any overspray; and (g) Drain fluids from equipment and vehicles that will be decommissioned, and for any equipment and vehicles that remain unused for extended periods of time, inspect at least monthly for leaks.”
17. 2019 Permit Part III.B.4.b.(9), states, “Dust suppression and vehicle tracking of industrial materials. The permittee shall implement control measures to minimize the generation of dust and off-site tracking of raw, final, or waste materials.”
 18. On April 14, 2020, DEQ issued NOV No. W2020-04-T-007 (“2020 NOV”), for the violations listed in C(8) – (17), above. On May 12, 2020, Mil-Spec responded to the 2020 NOV, and stated that it had implemented corrective actions to address the observations noted in the NOV.
 19. 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.
 20. 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.
 21. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a “certificate” under the statute.
 22. The Department has issued coverage under no permits or certificates to Mil-Spec other than under VPDES Permit No. VAR05 (Reg. No. VAR051844).
 23. The unnamed tributary of Broad Creek is a surface water located wholly within the Commonwealth and is a “state water” under State Water Control Law.
 24. Based on the 2018 Inspections, and the March 2, 2020 inspection, the Board concludes that Mil-Spec has violated Va. Code § 62.1-44.5(A); 9 VAC 25-31-50(A); 2019 Permit Parts I.A.1.a.(1); I.A.1.a. (3); I.B.8.a; I.B.8.b.(3); II.C.1; II.K.2; III.B.4.b.(6); III.B.5; III.D.2; III.B.4.b.(1); III.B.4.b.(2); III.B.4.b.(9); as noted in paragraphs C(4) – (6), and C(8) – C(17) of this Order.
 25. Mil-Spec has submitted documentation that verifies that the violations as described in paragraphs C(4) – (6), and C(8) – 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 Mil-Spec, and Mil-Spec agrees to:

Pay a civil charge of \$7,600 in settlement of the violations cited in this Order. The civil charge shall be paid in accordance with the following schedule:

Due Date	Amount
Within 30 day of execution of Order	\$3,600 or balance
October 1, 2020	\$2,000 or balance
January 1, 2021	\$2,000 or 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

Mil-Spec 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, Mil-Spec 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 Mil-Spec for good cause shown by Mil-Spec, 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 Nos. W2018-11-T-0003 dated November 1, 2018, and W2020-04-T-007 dated April 14, 2020. 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, Mil-Spec admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. Mil-Spec 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. Mil-Spec 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 Mil-Spec 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. Mil-Spec 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. Mil-Spec shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Mil-Spec 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 Mil-Spec. Nevertheless, Mil-Spec 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 Mil-Spec has completed all of the requirements of the Order;
 - b. Mil-Spec 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 Mil-Spec.

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

And it is so ORDERED this 24 day of July, 2020.



Craig R. Nicol, Regional Director
Department of Environmental Quality

Mil-Spec Abrasives, LLC, voluntarily agrees to the issuance of this Order.

Date: June 4, 2020 By: [Signature], MEMBER
(Person) (Title)
Mil-Spec Abrasives, LLC

Commonwealth of Virginia
City/County of Virginia Beach

The foregoing document was signed and acknowledged before me this 4 day of

June, 2020, by Jerrold Milner who is

Member of Mil-Spec Abrasives, LLC, on behalf of the corporation.

[Signature]
Notary Public

188391
Registration No.

My commission expires: April 30, 2024.

Notary seal:

