



COMMONWEALTH of 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

Craig R. Nicol
Regional Director

**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
Department of the Navy
Commander, Navy Region Mid-Atlantic
FOR
Naval Air Station Oceana
Registration No. 5019359
IR No. 2017-T-3281**

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 the Department of the Navy Commander for the Navy Region Mid-Atlantic, regarding Naval Air Station Oceana, for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and 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. "Aboveground storage tank" or "AST" means any one or combination of tanks, including pipes, used to contain an accumulation of oil at atmospheric pressure, and the volume of which, including the volume of the pipes, is more than ninety percent above the surface of the ground.

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. "Containment and cleanup" means abatement, containment, removal and disposal of oil and, to the extent possible, the restoration of the environment to its existing state prior to an oil discharge.
5. "CNRMA" means the Commander of the Navy Region Mid-Atlantic, the regional command responsible for the operation of the Naval Air Station Oceana in Virginia Beach. CNRMA is a "person" within the meaning of Va. Code § 62.1-44.3.
6. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
7. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
8. "Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying or dumping.
9. "Facility" means the Naval Air Station ("NAS") Oceana facility located at 1750 Tomcat Boulevard in Virginia Beach, Virginia. NAS Oceana is a full service Master Jet Base that serves the Navy, including refueling operations from onsite above ground oil storage tanks and associated fuel (oil) transfer pipelines.
10. "Free product" refers to a regulated substance that is present as a nonaqueous phase liquid (e.g., liquid not dissolved in water).
11. "IR" means incident report.
12. "Navy" means the United States Department of the Navy, the naval warfare branch of the United States Department of Defense.
13. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
14. "Oil" means oil of any kind and in any form, including, but not limited to, petroleum and petroleum byproducts, fuel oil, lubricating oils, sludge, oil refuse, oil mixed with other wastes, crude oils, and all other liquid hydrocarbons regardless of specific gravity.
15. "Operator" means any person who owns, operates, charters, rents or otherwise exercises control over or responsibility for a facility or a vehicle or vessel.
16. "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.

17. "PC" means pollution complaint.
18. "Person" means any firm, corporation, association or partnership, one or more individuals, or any governmental unit or agency thereof.
19. "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. Or, any substance, radioactive material, or heat that causes or contributes to or may cause or contribute to pollution. (9 VAC 25-210-10)
20. "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.
21. "Regulations" mean the AST Regulation at 9 VAC 25-91 *et seq* and the VWP regulation at 9 VAC 25-210 *et seq*.
22. "Significant alteration or degradation of existing wetland acreage or function" means human-induced activities that cause either a diminution of the areal extent of the existing wetland or cause a change in wetland community type resulting in the loss or more than minimal degradation of its existing ecological functions.
23. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
24. "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.
25. "Surface water" means all state waters that are not groundwater as groundwater is defined in Va. Code § 62.1-255.

26. "TRO" means the DEQ Tidewater Regional Office located in Virginia Beach, Virginia.
27. "Va. Code" means the Code of Virginia (1950), as amended.
28. "VAC" means the Virginia Administrative Code.

SECTION C: Findings of Fact and Conclusions of Law

1. The Navy is an operator of the Facility. At the Facility, three field-erected, single wall steel ASTs (OC-F8-AST-01, 939,259 gal; OC-F9-AST-01, 937,004 gal; OC-F10-AST-01, 1,100,266 gal) containing oil in the form of jet propellant ("JP-5") are located within a concrete-walled berm that serves as a release prevention barrier. Prior to receiving JP-5 to the bulk storage tanks, the fuel passes through a filter separator at the bulk storage Facility. A manual low point drain valve on the fuel filter separator is opened to drain off water from the fuel filter separator sump into a 2,000 gallon double-walled Convault AST (OC-F9-AST-02). The 2,000 gallon AST is located just outside of the secondary containment berm for the three field-erected ASTs.
2. The bulk storage tanks and the 2,000 gallon AST are surrounded by a network of drainage ditches. The network of drainage ditches collects stormwater runoff from the bulk fuel farm and channels it offsite to a larger drainage ditch running northerly along London Bridge Road. The larger drainage ditch parallels London Bridge Road, and then discharges to an unnamed tributary, containing Tidal Wetlands that leads to tidal London Bridge Creek.
3. The unnamed tributary that leads to London Bridge Creek is located in the Eastern Branch of the Lynnhaven River. The Eastern Branch of the Lynnhaven River is located in the Chesapeake Bay, Atlantic, and Small Coastal Basins watershed and is listed in DEQ's 305(b) report as impaired for aquatic life use, open-water aquatic life use, shallow-water submerged aquatic vegetation use, recreation use, fish consumption use, shellfishing use. Among the sources of impairment are contaminated sediments, point source discharges, and loss of riparian habitat.
4. London Bridge Creek and the unnamed tributary of London Bridge Creek are surface waters located wholly within the Commonwealth and are "state water" under State Water Control Law.
5. On May 11, 2017, the Navy notified DEQ's Pollution Response Program ("Prep") of the discharge of approximately 96,355 gallons of JP-5 that occurred during a fuel transfer operation at the bulk fuel Facility (PC 2017-5262 (IR No. 2017-T-3281)). During the fuel transfer operation on the evening of May 10, 2017, the valve on the 2,000 gallon AST was left in the open position. As a result, the Navy estimated that approximately 25,000 gallons of the total 96,335 gallons of fuel released flowed offsite into the stormwater drainage ditch that flows from the fuel farm in a westerly direction into the drainage ditch on the east side of the London Bridge Road. From the east side of London Bridge Road,

the JP-5 flowed from the drainage ditch to an unnamed tributary until it reached the tidal London Bridge Creek.

6. The Navy submitted to DEQ an interim Initial Abatement Measures Report (“IAMR”) on June 19, 2017, and a final IAMR on August 25, 2017. The IAMR describes preliminary containment and cleanup measures taken in response to the discharge. In the final IAMR, the Navy reported that it installed absorbent boom and underflow dams (which allow water to pass under the dam while containing free product on the surface) in the drainage ditch parallel to London Bridge Road. The Navy also constructed stormwater retention ponds, earthen dams, a culvert bypass, and a series of dams and flood gates to obstruct the flow and capture free product. The Navy pumped JP-5 from areas onsite to frac trucks, used vacuum trucks at multiple sections of the drainage ditches to skim JP-5 from the surface of the stormwater, and flushed drainage ditches with downstream collection. In addition, air monitoring equipment was installed to measure volatile organic compounds (“VOCs”) at six locations. To manage the free product that reached tidal containment areas, absorbent booms and blankets were placed in tidal London Bridge Creek. Hard and absorbent booms remained in London Bridge Creek until July 28, 2017 to collect any residual JP-5 that may have flushed into the creek as a result of rain events. On July 28, 2017, it was determined that the release no longer presented an immediate hazard to the environment and preventative measures were removed from London Bridge Creek.
7. On June 28, 2017, DEQ issued to the Navy NOV No. 17-3281-TRO-2017 for the abovementioned discharge of JP-5 to waters of the Commonwealth (“June NOV”).
8. The Navy responded to the June NOV by letter dated July 28, 2017 (“July letter”). In the response, the Navy stated that the cause of the discharge was multiple instances of human error, dereliction of duty, and lack of local oversight. The Navy indicated in the July letter that it made the following changes to personnel, policies, and procedures: permanently assigned five sailors to bulk tanks; realigned military personnel to incorporate a shift lead; ceased overnight fuel transfers without approval; conducted roving “watches” of the Facility at least every two hours; retrained personnel on Standard Operating Procedures; retrained personnel on spill drills with the Navy Regional Environmental Safety Center and Fire Department; installed a spring-loaded drain valve on the 2,000 gallon AST fuel separator to ensure the valve closes; installed an overflow prevention valve on the 2,000 gallon AST product recovery tank; reviewed water and air quality monitoring records to ensure public safety; installed and inspected monitoring wells to ensure safe levels of constituents were achieved; conducted soil sampling to determine safe levels of constituents were received; and maintained absorbent boom in London Bridge Creek until no residual jet fuel remained. The Navy also indicated that it had and will continue to monitor the impacted wetland areas through photographic documentation to ensure wetland rehabilitation.
9. Based on the “Situation Report #9 – Final Naval Air Station (NAS) Oceana Fuel Spill ‘Wolfsnare Creek’ 5/25/17” provided by the Unified Command for IR No. 2017-T-3281

and observations made by DEQ staff, it was observed that the discharge of JP-5, a pollutant, to surface waters resulted in the following:

- a. An undetermined amount of Tidal Wetlands were impacted;
 - b. Approximately 1,449 birds, mammals, reptiles, amphibians, fish, crustaceans, invertebrates, and shellfish were impacted;
 - c. The placement of containment and cleanup measures resulted in the temporary loss of recreational use to the unnamed tributary and London Bridge Creek.
10. Va. Code § 62.1-44.34:18 prohibits the discharge of oil into state waters, lands, or storm drain systems within the Commonwealth.
 11. 9 VAC 25-91-130 states that each operator shall institute safe fill, shutdown, and transfer procedures to ensure that spills resulting from overfilling tank or other transfer operations do not occur.
 12. Based on the May 11, 2017, notification and subsequent documentation, the Board concludes that the Navy has violated Va. Code § 62.1-44.34:18 and 9 VAC 25-91-130, by discharging oil from the Facility, as described in paragraph C(4), above.
 13. In order for the Navy to return to compliance, the Navy agrees to the Compliance Plan, 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 and 33 U.S.C. § 2701 *et seq.*, the Board orders the Navy, and the Navy agrees to perform the actions described in Appendix A of this Order.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of the Navy for good cause shown by the Navy, 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. 17-3281-TRO-2017 dated June 28, 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, the Navy admits the jurisdictional allegations, and agrees not to contest, but neither admits nor denies, the findings of fact, and conclusions of law contained herein.
4. The Navy acknowledges that any civil action taken by the Board to enforce the terms of this Order will be in the Circuit Court of the City of Richmond. The Navy does not waive any rights it may have to seek removal of such action to federal court pursuant to 28 U.S.C. § 1441 *et seq.*
5. The Navy 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 the Navy 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. The Navy 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. The Navy shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. The Navy 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 the Navy. Nevertheless, the Navy 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 the Navy has completed all of the requirements of the Order;
 - b. The Navy 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 the Navy.
 - d. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve the Navy from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
- In accordance with the Federal Anti-Deficiency Act, 31 United States Code § 1341, the obligations of the Navy under this Order are expressly conditioned on the availability of Congressional appropriations, which the Navy agrees to seek in amounts sufficient to timely accomplish these undertakings. If sufficient appropriations are not available and cannot be obtained, the Navy will promptly inform the DEQ. In such case, the Director may terminate the Order and take other action, if so desired, or amend the Order with the Navy's consent or in accordance with the Administrative Process Act.
12. Any plans, reports, schedules or specifications attached hereto or submitted by the Navy 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 the Navy 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 the Navy to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of the Navy.

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, the Navy voluntarily agrees to the issuance of this Order.

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And it is so ORDERED this 4 day of December, 20 18.



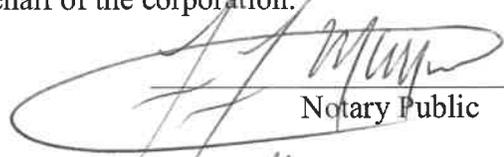
Craig R. Nicol, Regional Director
Department of Environmental Quality

The Department of the Navy Commander of the Navy Region Mid-Atlantic voluntarily agrees to the issuance of this Order.

Date: 24 SEP 2018 By:  _____,
(Person) (Title)
Department of the Navy
Commanding Officer, Naval Air Station Oceana

Commonwealth of Virginia
City/County of Virginia Beach

The foregoing document was signed and acknowledged before me this 24 day of
September, 20 18, by CAPT Chad Vincelette who is
Captain
of the Department of the Navy, Commanding Officer Naval
Air Station Oceana, on behalf of the corporation.



Notary Public
N/A

Registration No.

My commission expires: Indefinite

Notary seal:


LTJG Jesse McMurdo, U.S. Navy
Legal Assistance Attorney
Notary Public
Under the authority of 10 U.S.C. 1044a
Commission Expires: Indefinite

APPENDIX A COMPLIANCE PLAN

By April 1, 2019, the Navy shall submit to DEQ for review and approval a Compliance Plan and schedule to address the below listed requirements. The Compliance Plan shall include approvable action dates.

1. Site Characterization Report

- a. The Navy shall submit to DEQ a Site Characterization Report (“SCR”) for affected areas associated with PC 2017-5262 (IR No. 2017-T-3281).
- b. The Navy shall submit to DEQ for review and approval a Corrective Action Plan (“CAP”) for any containment and cleanup that is identified in the SCR referenced in Appendix A.1 of this Order. The CAP shall include an implementation schedule. The CAP and schedule shall become enforceable under this Order. The CAP must include recovery of free product.

2. Other AST Compliance Actions

- a. Continue recovering free product jet fuel from the groundwater under affected spill areas associated with PC 2017-5262 under timelines approved by DEQ.
- b. Describe measures taken to prevent a future overflow of the 2,000 gallon AST OC-F9-AST-02 referenced in section C.1 of this Order.

3. Final Compliance

- a. Site Characterization Report – The Navy will provide DEQ 60 days’ notice of the anticipated date of PC 2017-5262 completion of corrective actions and case closure.
- b. Compliance Plan – The Navy shall submit a written final report on the Compliance Plan, verifying that the Compliance Plan has been completed in accordance with the terms of this Order.

4. DEQ Contact

Unless otherwise specified in this Order, the Navy shall submit all requirements of Appendix A of this Order to:

VA DEQ – Tidewater Regional Office
5636 Southern Boulevard
Virginia Beach, VA 23462