



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

TIDEWATER REGIONAL OFFICE

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Regional Director

**STATE WATER CONTROL BOARD ENFORCEMENT ACTION
ORDER BY CONSENT
ISSUED TO
Riggins Company, L.C.
VPDES Permit No. VAR05
Storm Water Registration No. VAR050472**

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 Riggins Company, L.C., for the purpose of resolving certain violations of the State Water Control Law and the applicable 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. "2014 Permit" means VPDES General Permit No. VAR05, which was issued under the State Water Control Law and the Regulations on July 1, 2014 and expired on June 30, 2019. Riggins applied for coverage under the 2014 Permit and was issued coverage on July 1, 2014.
3. "2019 Permit" means VPDES General Permit No. VAR05, which was issued under the State Water Control Law and Regulations on July 1, 2019 to expire on June 30, 2024. Riggins applied for registration under the 2019 Permit on January 31, 2020 and was issued coverage under the 2019 Permit on June 10, 2020.

4. "Benchmark monitoring" means periodic collection of stormwater samples for comparison to benchmark pollutant concentrations to assess potential impacts to water quality and the need for improvements in stormwater control measures.
5. "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.
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 discharge of a pollutant. 9 VAC 25-31-10.
9. "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.
10. "Facility" or "Site" means the Riggins Company, L.C. welding and fabrication facility, located at 410 Rotary Street in Hampton, Virginia, from which discharges of stormwater associated with industrial activity occur.
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. "Riggins" means Riggins Company, L.C., a limited company authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries. Riggins is a "person" within the meaning of Va. Code § 62.1-44.3.
14. "Registration statement" means a registration statement for coverage under a storm water general permit.
15. "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.*

16. "Sector AA" means an industrial sector subject to benchmark monitoring, including fabricated metal products.
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. "TMDL" means Total Maximum Daily Load. A calculation of the maximum amount of a pollutant allowed to enter a waterbody so that the waterbody will meet and continue to meet water quality standards for that particular pollutant.
21. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
22. "Va. Code" means the Code of Virginia (1950), as amended.
23. "VAC" means Virginia Administrative Code.
24. "VPDES" means Virginia Pollutant Discharge Elimination System.

SECTION C: Findings of Fact and Conclusions of Law

1. Riggins owns and operates the Facility, which discharges stormwater associated with industrial activity.
2. The 2014 Permit allowed Riggins to discharge stormwater associated with industrial activity from the Facility to an unnamed tributary of Newmarket Creek, in strict compliance with the terms and conditions of the 2014 Permit.
3. Newmarket Creek is located in the James River Basin. Newmarket Creek is listed in DEQ's 305(b) report as impaired for aquatic life use based on dissolved oxygen concentrations that are below the minimum criteria and for recreation use due to exceedance of the fecal coliform bacteria criteria.
4. On November 20, 2019, DEQ water compliance conducted an inspection of the Facility. The inspection observed the following compliance deficiencies:
 - a. Quarterly visual examinations of storm water quality had not been conducted during 2019 (no records);
 - b. Benchmark monitoring reports had not been submitted for Benchmark monitoring of storm water discharges for the 2015, 2016, 2017, 2018,

- and January 1 to June 30, 2019 (first semi-annual 2019) monitoring periods;
- c. Riggins had not submitted a registration statement for the 2019 Permit to continue a regulated activity under VPDES Permit VAR05 after June 30, 2019. The registration statement was submitted on January 31, 2020. The permit fee was not paid at that time.
 - d. The SWPPP employee training had not been conducted during 2019 to date of the inspection (no records). Requests for records, including training, were sent to Riggins by email on November 20, 2019 and November 26, 2019 yet there was not response to these requests, nor information provided that training had been conducted prior to the end of calendar year 2019;
 - e. Routine facility inspections had not been conducted during 2019 (no records);
 - f. An annual outfall evaluation of unauthorized discharges had not been conducted (no records);
5. Part I.A.1a. of the 2014 Permit requires quarterly visual examination of stormwater discharges associated with industrial activity from each outfall.
 6. Part I.A.1.b and I.A.5.a of the 2014 Permit requires benchmark monitoring of storm water discharges and submit to the Department. Part IV.C of the Permit provides specific permit requirements for Sector AA applicable facilities.
 7. Part II.M of the 2014 Permit, requires submittal of a new registration statement to continue regulated activity under the Permit after June 30, 2019, at least 60 days prior to the expiration date of the existing permit. 9VAC25-151-60 requires a complete permit registration statement and 9VAC25-31-120.B.1 requires application for coverage under the Permit.
 8. Part III.B.6.b(6) of the 2014 Permit requires implementation of a stormwater employee training program for the facility, and documentation of the employee training in the SWPPP.
 9. Part III.B.5 and IV.B.2.c (for Sector AA) of the 2014 Permit requires routine facility inspections of conditions and activities that could impact stormwater quality at the facility. The results of the inspections shall be documented in the SWPPP.
 10. Part III.D.2.a of the 2014 Permit requires annual evaluation of outfalls associated with industrial activity for the presence of unauthorized discharges.
 11. On January 21, 2020, TRO issued NOV No. W2020-01-T-0001 for the violations noted in paragraphs C(4) through C(10), above. Also, TRO issued Warning Letters dated August 7, 2015, February 9, 2016, August 5, 2016, February 6, 2017, August 21, 2017, February 12, 2018, August 20, 2018, February 19, 2019, and August 9, 2019 for failure to submit the respective semi-annual monitoring reports. TRO issued Warning Letters

dated August 7, 2015, February 9, 2016, and August 5, 2016 for failure to submit TMDL data.

12. Riggins responded to the NOV by telephone on January 21, 2020. The Riggins representative provided that corrective actions had been taken regarding the violations listed in this Order.
13. Riggins was operating the Facility during the November 20, 2019 inspection conducted by DEQ. However, the 2014 Permit had expired on June 30, 2019 and Riggins did not have coverage to operate under the 2019 Permit because Riggins had yet to pay the 2019 Permit fee. Riggins remained unpermitted until the permit fee was paid and coverage under the 2019 Permit was issued on June 10, 2020.
14. The Department has not issued coverage under any permits or certificates to Riggins other than under the 2014 Permit or the 2019 Permit on June 10, 2020.
15. 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.
16. 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.
17. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a “certificate” under the statute.
18. The unnamed tributary of Newmarket Creek is a surface water located wholly within the Commonwealth and is a “state water” under State Water Control Law.
19. Based on the results of the November 20, 2019 inspection, the Board concludes that Riggins has violated 9 VAC 25-151-60, 9 VAC 25-151-70, 9 VAC 25-21-120.B.1, Va. Code § 62.1-44.5, Va. Code § 62.1-44.15(5a) and Part I.A.1.a, Part I.A.1.b, Part IV.C, Part II.M, Part III.B.6.b(6), Part III.B.5, Part IV.B.2.c, and Part III.D.2.a of the 2014 Permit as described in paragraphs C(4) through C(10) and C(13) through C(17), above.
20. In order for Riggins to complete its return to compliance, DEQ staff and Riggins have agreed to the Schedule of Compliance, 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, the Board orders Riggins, and Riggins agrees to pay a civil charge of \$9,500.00 within 30 days of the effective date of this 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 shall be delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Riggins 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, Riggins shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Riggins, for good cause shown by Riggins, 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. W2020-01-T-0001 dated January 21, 2020, and Warning Letters dated August 7, 2015, February 9, 2016, August 5, 2016, February 6, 2017, August 21, 2017, February 12, 2018, August 20, 2018, February 19, 2019, August 9, 2019. 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 the purposes of this Order and subsequent actions with respect to this Order only, Riggins admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Riggins 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. Riggins 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 Riggins 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. Riggins 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 occurrence. Riggins shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Riggins 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 Riggins intends 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.

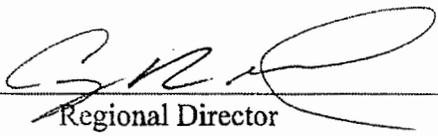
9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Riggins. Nevertheless, Riggins agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after Riggins has completed all of the requirements of the Order;

- b. Riggins 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 Riggins.

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

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



Regional Director
Department of Environmental Quality

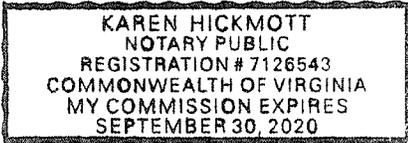
Riggins Company, L.C. voluntarily agrees to the issuance of this Order.

Date: 6/16/20 By: [Signature] PROBIDGES
(Person) (Title)
Riggins Company, L.C.

Commonwealth of Virginia
City/County of Hampton

The foregoing document was signed and acknowledged before me this 16th day of
June, 2020, by John D Munford who is
President of Riggins Company, L.C., on behalf of the company.

Karen Hickmott
Notary Public
7126543
Registration No.



My commission expires: September 30, 2020

Notary seal: