



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 SUFFOLK IRON WORKS, INCORPORATED IR No. 2019-T-0568

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.34:20, between the State Water Control Board and Suffolk Iron Works, Incorporated, for the purpose of resolving certain violations of the State Water Control Law and the applicable regulations

SECTION B: Definitions

Unless the context indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "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. This term does not include line pipe and breakout tanks of an interstate pipeline regulated under the Hazardous Liquid Pipeline Safety Act of 1979 or the Natural Gas Pipeline Safety Act of 1968, as amended.
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. "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.
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 any spilling, leaking, pumping, pouring, emitting, emptying or dumping.

7. "Facility" or "Site" means the Suffolk Iron Works Incorporated plant located at 418 East Washington Street, in Suffolk, Virginia, where Suffolk Iron Works Incorporated discharged oil to the land and stormdrain.
8. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
9. "Oil" means oil of any kind and in any form, including, but not limited to, petroleum and petroleum by-products, fuel oil, lubricating oils, sludge, oil refuse, oil mixed with other wastes, crude oils and all other liquid hydrocarbons regardless of specific gravity. *See* Va. Code §62.1-44.34:14.
10. "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.
11. "Person" means any firm, corporation, association or partnership, one or more individuals, or any governmental unit or agency thereof.
12. "SIWI" means Suffolk Iron Works, Incorporated, a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. SIWI is a "person" within the meaning of Va. Code § 62.1-44.3.
13. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code. Article 11 (Va. Code §§ 62.1-44.34:14 through 62.1-44.34:23) of the State Water Control Law addresses discharge of oil into waters.
14. "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.
15. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
16. "Va. Code" means the Code of Virginia (1950), as amended.
17. "VAC" means the Virginia Administrative Code.

SECTION C: Findings of Fact and Conclusions of Law

1. SIWI owns and operates the Suffolk Iron Works, Incorporated facility ("Facility"), a privately owned welding and steel fabrication plant in the City of Suffolk, Virginia.
2. On August 5, 2018, DEQ received notification of a discharge of Oil, in the form of diesel fuel, at the Facility. DEQ Pollution Response Program staff and the Suffolk Fire Department met at the Facility to evaluate the discharge and assigned the discharge Incident Report ("IR") number 2019-T-0568.
3. The notification indicated that between the night of August 4, and the morning of August 5, 2018, an AST at the Facility discharged approximately 800 gallons of diesel fuel onto the Facility ground. This diesel fuel flowed into a nearby storm drain leading to Shingle Creek, a state water, causing a film or sheen upon the surface of the water. The quantity of the diesel fuel discharged was confirmed by SIWI personnel after measuring the remaining fuel in the onsite AST.

4. On the morning of August 5, 2018, SIWI staff observed that the discharge had occurred, and contracted a company specializing in diesel fuel discharges to conduct containment and cleanup and prepare an Initial Abatement Measures Report ("IAMR"). The contractor observed that diesel fuel had impacted the gravel lot in an approximate area of 400 square feet adjacent to the onsite AST and toward the Facility stormdrain. Approximately 6.79 tons of impacted soil was removed from the Facility and transported to a permitted disposal facility. Based on observations by the contractor, SIWI and DEQ, 150 gallons of the diesel fuel that was discharged to the soil was removed in the excavation process, the remaining 650 gallons flowed to the stormdrain and impacted approximately 0.25 miles of Shingle Creek. There was no reported evidence that the released diesel fuel had travelled beyond the immediate Shingle Creek area into the Nansemond River and beyond.
5. Va. Code § 62.1-44.34:18 prohibits the discharge of oil into or upon state waters, lands, or storm drain systems that violate applicable water quality standards or cause a film or sheen upon or discoloration of the surface of the water.
6. On October 4, 2018, DEQ received the IMAR from SIWI which described the diesel fuel discharge and cleanup and containment measures taken. Based on the contractor's reports, the impacts from the discharge had been sufficiently remediated. DEQ staff reviewed the IAMR and determined that no further action was needed at the Facility, stormwater system, or Shingle Creek.
7. On October 18, 2018, the Department issued Notice of Violation No. 05-0568-TRO-2019 to SIWI for a discharge of oil to the land and state waters.
8. On October 31, 2018, Department staff met with representatives of SIWI to discuss the diesel fuel discharge, emergency response, containment and clean-up, and future actions.
9. On November 8, 2018, SIWI submitted documentation, in response to the NOV and meeting, detailing the corrective actions taken, including installing a shut off timer that automatically disables the AST dispenser pump after 20 minutes, and installing fences and gates to create barriers to unauthorized entry to the Facility.
10. Based on the results of August 5, 2018, inspection, the October 31, 2018, meeting, and the documentation submitted on October 4, and November 8, 2018, the State Water Control Board concludes that SIWI has violated Va. Code § 62.1-44.34:18, which prohibits the discharge of oil into or upon state waters, lands, or storm drain systems, as described in paragraphs C(2) through C(4), above.
11. SIWI has submitted documentation that verifies that the violations described in paragraphs C(2) and C(4), above, have been corrected.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code § 62.1-44.34:20, the Board orders SIWI, and SIWI agrees to:

1. Pay a civil charge of \$9,950 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	\$3,950 or balance
July 1, 2019	\$2,000 or balance
October 1, 2019	\$2,000 or balance
January 1, 2020	\$2,000

2. If the Department fails to receive a civil charge payment pursuant to the schedule described above, the payment shall be deemed late. If any payment is late by 30 days or more, the entire remaining balance of the civil charge shall become immediately due and owing under this Order, and the Department may demand in writing full payment by SIWI. Within 15 days of receipt of such letter, SIWI shall pay the remaining balance of the civil charge. Any acceptance by the Department of a late payment or of any payment of less than the remaining balance shall not act as a waiver of the acceleration of the remaining balance under this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

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

SIWI shall include its Federal Employer Identification Number (FEIN) (xx-xxxxxxx) 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 Petroleum Storage Tank Fund (VPSTF). If the Department has to refer collection of moneys due under this Order to the Department of Law, SIWI 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 SIWI for good cause shown by SIWI, 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. 05-0568-TRO-2019 dated October 18, 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 purposes of this Order and subsequent actions with respect to this Order only, SIWI admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. SIWI 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. SIWI 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 SIWI 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. SIWI 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. SIWI shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. SIWI 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 SIWI. Nevertheless, SIWI 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 SIWI has completed all of the requirements of the Order;
- b. SIWI 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 SIWI.

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

And it is so ORDERED this 13 day of JUNE, 2019.



Craig R. Nicol, Regional Director
Department of Environmental Quality

----- (Remainder of Page Intentionally Blank) -----

Suffolk Iron Works, Incorporated voluntarily agrees to the issuance of this Order.

Date: 4/16/19 By: [Signature], President
(Person) (Title)
Suffolk Iron Works, Incorporated

Commonwealth of Virginia
City/County of Suffolk

The foregoing document was signed and acknowledged before me this 16th day of April,
2019, by J. Clinton Harrell, Jr. who is President of
Suffolk Iron Works, Incorporated, on behalf of the corporation.

[Signature]
Notary Public

312400
Registration No.

My commission expires: 6/21

Notary seal:

