COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
PIEDMONT REGIONAL OFFICE
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Molly Joseph Ward
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Director

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Regional Director

STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
BARKSDALE OILS, INC.

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 Barksdale Oils, Inc., 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. "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.

2. "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.

3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

5. "Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying or dumping.

6. "Location" means Interstate 95 exit 58 in Chesterfield County where the oil discharge occurred.

7. "Barksdale" means Barksdale Oils, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, subsidiaries, and parents. Barksdale Oil is a "person" within the meaning of Va. Code § 62.1-44.3.

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. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.

12. "Site" means the facility, land, road, storm drain(s) and surface water(s) adversely affected by the oil discharge.

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. "Va. Code" means the Code of Virginia (1950), as amended.

16. "VAC" means the Virginia Administrative Code.

SECTION C: Findings of Fact and Conclusions of Law

1. Barksdale transports Oil to customers via tanker trucks.

2. On July 24, 2014, DEQ received notification of a discharge of Oil from a Barksdale tanker truck at Interstate 95 near exit 58 in Chesterfield County.

3. The notification indicated that at approximately 6:30 a.m. on July 24, 2014 a Barksdale tanker truck was involved in an accident and overturned on Interstate 95. According to

the State Police report, a reckless driver in a Jeep failed to maintain proper control of his vehicle during a lane change, causing the Jeep to spin out of control in front of the tanker truck. The two vehicles then collided and the truck overturned discharging 7700 gallons of Oil contained in the tanker impacted wetlands and Swift Creek, which are state waters.

4. Chesterfield Fire and EMS, initiated containment and cleanup. Once on the scene environmental contractors, First Call and HEPACO continued containment and cleanup operations.

5. At 10:00 a.m. DEQ staff met with Chesterfield County staff 0.8 miles downstream of the accident scene at the intersection of Touchstone Road and Continental Boulevard and conducted an assessment of spill on the surrounding area. The petroleum odor was very strong in areas and a sheen had formed on the surface of the wetlands. There were several dead minnows observed along the shoreline, and stressed fish were observed in more open water. Absorbent booms had been placed at the storm water outfall point, but since the majority of the oil had spilled immediately following the accident, there was only a small volume of oil being trapped behind the booms

6. Friday, July 25, 2014, DEQ staff met with representatives from EPA and First Call, for the purpose of assessing the impacts to Swift Creek and the adjacent wetlands into which the petroleum products were discharged. Upon observing the wetlands, DEQ, EPA, and First Call determined that the sheen was greatly reduced from the previous evening, though some fish were still visibly stressed. Several dead fish were observed, though the total number could not be determined due to access and visibility issues. Swift Creek and the channels which drain the impacted wetlands were inspected by boat and the absorbent booms that were placed there on Thursday were still in place and appeared to have absorbed some of the petroleum. No significant impacts to Swift Creek were observed.

7. A number of chemical and physical remediation options were considered for the impacted wetlands, but they were rejected; chemicals might further deteriorate water quality in a shallow and confined water body with little tidal flushing. Physical remediation beyond the placement of the existing booms would require shoreline and interior access to the water, which would damage the wetland vegetation with minimal actual removal of Oil. DEQ, EPA, and First Call concluded that since the majority of the discharged petroleum was gasoline, which is highly volatile, the safest course of remediation was to allow the petroleum to naturally dissipate.

8. On August 1, 2014, First Call returned to the site to inspect the creek and stormwater systems. First Call found no odors or evidence of petroleum, so the booms were removed from the stormwater drain.

9. Va. Code § 62.1-44.34:18 prohibit the discharge of oil into or upon state waters, lands, or storm drain systems. Barksdale is subject to the statutory prohibition.

10. On December 10, 2014, the Department issued Notice of Violation No. 2014-12-PRO-201 to Barksdale for a discharge of oil to the environment.

11. On January 6, 2015, Department staff met with Barksdale to discuss the NOV, accident, discharge, and containment and cleanup.

12. Based on the results of July 24, 2014, response to the discharge and the January 6, 2015, meeting, the State Water Control Board concludes that Barksdale 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 above.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code § 62.1-44.34:20 and 62.1-44.34:18(C)(1), the Board orders Barksdale, and Barksdale agrees to:

1. Pay a civil charge of $30,800 in settlement of the violations cited in this Order. The civil charge shall be paid in accordance with the following schedule:

Due Date	Amount
September 15, 2015	$3,850 or balance
December 15, 2015	$3,850 or balance
March 15, 2016	$3,850 or balance
June 15, 2016	$3,850 or balance
September 15, 2016	$3,850 or balance
December 15, 2016	$3,850 or balance
March 15, 2017	$3,850 or balance
June 15, 2017	$3,850

2. Reimburse DEQ $1,314.22 for oil discharge investigative costs within 30 days of the effective date of the Order

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

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

Barksdale shall include its Federal Employer Identification Number (FEIN) with the 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) and that payment of the DEQ oil discharge investigative costs is for reimbursement of DEQ expenditures. If the Department has to refer collection of moneys due under this Order to the Department of Law, Barksdale 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 Barksdale for good cause shown by Barksdale, 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. 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, Barksdale admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. Barksdale 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. Barksdale 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 Barksdale 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. Barksdale 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. Barksdale shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Barksdale 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 Barksdale 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 Barksdale. Nevertheless, Barksdale 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. Barksdale 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

b. The Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Barksdale.

c. The Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Barksdale.

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

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, Barksdale voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 6th day of July, 2015

Michael P. Murphy, Regional Director
Department of Environmental Quality

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Barksdale Oils, Inc. voluntarily agrees to the issuance of this Order.

Date: 5/12/15 By: [signature], President
(Person) (Title)
Barksdale Oils, Inc.

Commonwealth of Virginia
City/County of Petersburg

The foregoing document was signed and acknowledged before me this 12th day of MAY, 2015, by B. Lash Barksdale who is President of Barksdale Oils, Inc., on behalf of the corporation.

Kimberly Sue McCoy
Notary Public

7501533
Registration No.

My commission expires: 5-31-2015

Notary seal:

KIMBERLY SUE McCOY NOTARY PUBLIC REG # 7501533 MY COMMISSION EXPIRES 5/31/2015 COMMONWEALTH OF VIRGINIA