COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
NORTHERN REGIONAL OFFICE
13901 Crown Court, Woodbridge, Virginia 22193
(703) 583-3800 Fax (703) 583-3821
www.deq.virginia.gov

Douglas W. Domenech
Secretary of Natural Resources

David K. Paylor
Director

STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
CITY OF ALEXANDRIA
FOR THE
ALEXANDRIA TRANSIT COMPANY
OPERATIONS AND MAINTENANCE FACILITY

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 the City of Alexandria for the Alexandria Transit Company Operations and Maintenance facility, 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. "Alexandria Transit" means the Alexandria Transit Company a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Alexandria Transit is a "person" within the meaning of Va. Code § 62.1-44.3.

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. "City" means the City of Alexandria, a political subdivision of the Commonwealth of Virginia. The City of Alexandria is a "person" within the meaning of Va. Code § 62.1-44.3.

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

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

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

8. "Facility" means the Alexandria Transit Company Operations and Maintenance facility (Facility) located at 3000 Business Center Drive, Alexandria, Virginia.

9. "Location" means the land, road, storm drain(s) or state water(s) where the oil discharge occurred within the Alexandria Transit Company Operations and Maintenance Facility (Facility) located at 3000 Business Center Drive, Alexandria, Virginia.

10. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

11. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.

12. "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.

13. "Operator" means any person who owns, operates, charters, rents or otherwise exercises control over or responsibility for a facility or a vehicle or vessel.

14. "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.

15. "Person" means any firm, corporation, association or partnership, one or more individuals, or any governmental unit or agency thereof.

16. "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.

17. "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.

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

19. "VAC" means the Virginia Administrative Code.

SECTION C: Findings of Fact and Conclusions of Law

1. The City is the owner of the Facility operated by Alexandria Transit.

2. On October 20, 2012, DEQ received notification from the City HAZMAT Team of a discharge of Oil, in the form of diesel fuel, at the Facility.

3. The notification indicated that on October 19, 2012, approximately 53 gallons of oil was discharged from the day tank of an emergency generator located at the Facility, onto the ground and into the storm water collection system, including the storm water retention pond located at the Facility.

4. The storm water retention pond feeds into Cameron Run, located within the Potomac River Watershed. The receiving stream is listed in DEQ's Draft 2012 305(b)/303(d) Water Quality Assessment Integrated Report as impaired for recreation due to Escherichia coli.

5. The City's HAZMAT team responded to the location and implemented initial containment and cleanup actions. In response to the spill, the City retained Atlas Environmental Services (Atlas) to continue containment and cleanup.

6. Atlas conducted containment and cleanup at the Facility between October 20, 2012, and December 11, 2012.

7. During the containment and cleanup actions, Atlas determined that the majority of the discharge flowed from the roof top, where the emergency generator is located, into rooftop drains, into a bio-retention rain garden and directly into the storm water pipes located on the property. The oil flowed down the storm drain pipe for approximately 200 feet and into a storm water retention pond.

8. On December 6, 2012, DEQ assigned the incident a Pollution Complaint, PC #2013-3083. In response, the City provided DEQ with the requested Site Characterization Report (SCR) on December 29, 2012.

9. The SCR stated that the discharge of approximately 1,480 gallons of oil was caused by an involuntary malfunction of the fuel distribution system at the Facility. The SCR stated that the fuel system, designed to pump the oil from the underground storage tanks (USTs) to the day tank connected to the emergency generator on the roof of the building, failed to shut off automatically when the fuel fill maximum was reached, causing the tank to overflow.

10. 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.

11. On February 19, 2013, the Department issued Notice of Violation No. 2013-02-N-001 to the City for a discharge of oil to the land and state waters.

12. On April 2, 2013, Department staff met with representatives of the City and Atlas to discuss the accident, discharge, emergency response, containment and cleanup, and future actions. Department staff requested additional information regarding the method used to calculate the amount of Oil recovered during the containment and cleanup. At the meeting the City stated that the discharged fuel that remained in the rain garden had entered the storm water conveyance pipe running parallel with the building through a crack in the pipe.

13. On April 5, 2013, the City submitted to DEQ a meeting follow up detailing the past and future corrective actions and the estimated clean up and monitor costs.

14. On April 26, 2013, the City submitted a Corrective Action Plan (CAP) to DEQ. The CAP detailed the schedule for the relining the pipe and the elimination of a discharge point into the storm water collection system.

15. Based on the results of October 20, 2012, reporting, the April 2, 2013, meeting, and the documentation submitted on December 29, 2012; February 25, 2013; and April 5, 2013; the State Water Control Board concludes that the City 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(3) through C(10), above.

16. In order for the City to complete its return to compliance, DEQ staff and representatives of the City 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 § 62.1-44.34:20, the Board orders the City, and the City agrees to:

1. Perform the actions described in Appendix A of this Order; and

2. Pay a civil charge of $9,516.40 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

3. Reimburse DEQ $292.61 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," for the civil charge and for DEQ oil discharge investigative costs and delivered to:

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

The City 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 Petroleum Storage Tank Fund (VPSTF). If the Department has to refer collection of moneys due under this Order to the Department of Law, the City 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 the City for good cause shown by the City, 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, the City admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

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

   b. the City 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 City.

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

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 City voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 7th day of October, 2013.

Thomas A. Faha

Thomas A. Faha, NRO Regional Director
Department of Environmental Quality

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City of Alexandria voluntarily agrees to the issuance of this Order.

Date: 6-24-13 By: _____, Acting City Manager
MARK JINKS (Person) (Title)
City of Alexandria

Commonwealth of Virginia
City/County of Alexandria

The foregoing document was signed and acknowledged before me this 24 day of June, 2013, by Mark B. Jinks who is Acting City Manager of City of Alexandria, on behalf of the city.

Nancy C. Coats
Notary Public

240469
Registration No.

APPROVED AS TO FORM:
George M. Andrews
ASSISTANT CITY ATTORNEY

My commission expires: 12-31-2016

Notary seal:

NANCY C. COATS
NOTARY PUBLIC
REG. #240469
MY COMMISSION EXPIRES
12/31/2016
COMMONWEALTH OF VIRGINIA

APPENDIX A
SCHEDULE OF COMPLIANCE

The City of Alexandria shall:

1. **Corrective Action Plan (CAP)**

   No later than April 29, 2013, submit to DEQ a Corrective Action Plan (CAP) for review and approval. Upon approval by DEQ the schedule set forth in the CAP shall become an enforceable part of the Order.

2. **DEQ Contact**

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

   VA Department of Environmental Quality
   Northern Regional Office
   Attn: Enforcement
   13901 Crown Court
   Woodbridge, VA 22193