



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY

PIEDMONT REGIONAL OFFICE

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L. Preston Bryant, Jr.  
Secretary of Natural Resources

David K. Paylor  
Director

Gerard Seeley, Jr.  
Regional Director

### AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION ORDER BY CONSENT ISSUED TO EAGLE TRANSPORT CORPORATION

#### **SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code §§ 10.1-1309 and 10.1-1316, between the State Air Pollution Control Board and Eagle Transport Corporation, for the purpose of resolving certain alleged violations of the Air Pollution Control Law and/or Regulations.

#### **SECTION B: Definitions**

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

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Air Pollution Control Board, a permanent collegial body of the Commonwealth of Virginia as described in the Va. Code §§ 10.1-1301 and 10.1-1184.
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.
5. "Order" means this document, also known as a Consent Order.

6. "Eagle Transport" means Eagle Transport Corporation – Richmond Terminal, located at 1649 Commerce Road, Richmond, Virginia, is certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.
7. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
8. "Regulations" mean the State Air Pollution Control Board Regulations for the Control and Abatement of Air Pollution, located in the Virginia Administrative Code ("VAC"), 9 VAC 5-10-10 *et seq.*
9. "Stage I" means vapor recovery systems at gasoline dispensing facilities, as required under 9 VAC 5-40-5220 E 1.
10. "UST" means an underground storage tank.
11. "VOC" means volatile organic compound, which is an air pollutant, as defined by 9 VAC 5-10-20.

#### **SECTION C: Findings of Fact and Conclusions of Law**

1. Eagle Transport Corporation owns and operates a liquid petroleum transport and transfer service located in Richmond, Virginia. Eagle Transport's operations are subject to the requirements of 9 VAC 5-40-5220 E.
2. Pursuant to 9 VAC 5-40-5220 E 1, ("Stage I") "[n]o owner or other person shall transfer or permit the transfer of gasoline from any tank truck into any stationary storage tank unless such tank is equipped with a vapor control system that will remove, destroy or prevent the discharge into the atmosphere of at least 90% by weight of volatile organic compound emissions."
3. Pursuant to 9 VAC 5-40-5230 E 2, vapor tight return lines are to be in place prior to the delivery of gasoline from tank trucks to storage tanks.
4. On August 21, 2007, DEQ staff observed a gasoline transfer, performed by Eagle Transport Corporation personnel operating Tanker #2362, to stationary storage tanks located at Miller Mart #67, 11301 Nuckols Rd, Glen Allen, Virginia. During the fuel transfer process, standard fill adapters were used while filling the UST's at the Miller Mart facility. By utilizing the standard fill adapters, Eagle Transport failed to prevent gasoline vapors from being captured by the tanker, which caused the vapors to be pushed out of the vent stack, through the pressure/vacuum vent cap, and into the atmosphere during the entire gasoline transfer process.
5. On October 16, 2007, the Department issued a Notice of Violation ("NOV") citing Eagle Transport for transferring gasoline from a tank truck into a stationary

storage tank without a vapor control system, as required by 9 VAC 5-40-5220 E and failure to have a vapor tight return line in place prior to delivery of gasoline from the tank truck to storage tank as required by 9 VAC 5-40-5230 E 1.

6. On November 15, 2007, the Department met with Eagle Transport to discuss the violations cited in the above NOV. Eagle Transport personnel admitted that this violation was caused by a rogue employee who is no longer employed by the Corporation. This employee failed to follow the training that he received, and failed to follow the policy and philosophy of Eagle Transport regarding the environment.
7. DEQ staff is satisfied with the training procedures that Eagle Transport has in place. Payment of the below civil charge, with no further actions, resolves the above violations.

#### **SECTION D: Agreement and Order**

1. Accordingly, the Board, by virtue of the authority granted to it in Va. Code § 10.1-1316(C), orders Eagle Transport, and Eagle Transport voluntarily agrees, to pay a civil charge of \$5,025 within 30 days of the effective date of the Order in settlement of the alleged violation cited in this Order. Payment shall be made by check, certified check, money order, or cashier's check payable to the "Treasurer of Virginia," delivered to:

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

Payment shall include the Federal Tax Identification Number for Eagle Transport Corporation.

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of Eagle Transport, for good cause shown by Eagle Transport, or on its own motion after notice and opportunity to be heard.
2. This Order addresses and resolves only those alleged violations specifically identified herein, including those matters addressed in the Notice of Violation issued to Eagle Transport by DEQ on October 16, 2007. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking action regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent

action to enforce this Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities, whether or not arising out of the same or similar facts, for matters not addressed herein.

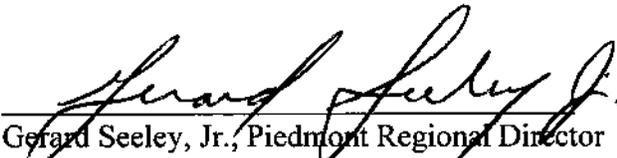
3. For purposes of this Order and subsequent actions with respect to this Order, Eagle Transport admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Eagle Transport consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Eagle Transport declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the Air Pollution 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 Eagle Transport to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall act to waive or bar 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. Eagle Transport 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 other such occurrence. Eagle Transport must show that such circumstances resulting in noncompliance were beyond its control and not due to a lack of good faith or diligence on its part. Eagle Transport shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this 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 in writing within 24 hours of learning of any condition above, which Eagle Transport intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim of 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 Eagle Transport.
11. This Order will terminate effective upon the Department's receipt and confirmation of the payment described herein. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Eagle Transport from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
12. By its signature below, Eagle Transport Corporation voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of May 16, 2008.

  
Gerard Seeley, Jr., Piedmont Regional Director  
Department of Environmental Quality

Eagle Transport Corporation voluntarily agrees to the issuance of this Order.

By: Bob Heinisch, VP Safety

Date: May 13, 2008

North Carolina  
~~Commonwealth of Virginia~~  
City/County of Nash

The foregoing document was signed and acknowledged before me this 13<sup>th</sup> day of

May, 2008, by Bob Heinisch, who is

VP Safety of Eagle Transport Corporation., on behalf of the Corporation.  
(Title)

Susan Weaver  
Notary Public

My commission expires: 2-19-2013

