COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
NORTHERN REGIONAL OFFICE
13901 Crown Court, Woodbridge, Virginia 22193
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Douglas W. Domenech
Secretary of Natural Resources

David K. Paylor
Director

STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
HP ENTERPRISE SERVICES, LLC

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 HP Enterprise Services, LLC, 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. "Location" or "Facility" means the facility, land, road, storm drain(s) or state water(s) where the oil discharge occurred located at 13600 EDS Drive, Herndon VA.

8. "HPES" means HP Enterprise Services, LLC, a limited liability company authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries. HPES is a "person" within the meaning of Va. Code § 62.1-44.3. HPES is a wholly owned subsidiary of Hewlett-Packard Company ("HP").

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

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

11. "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.

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

13. "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.

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

15. "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.

16. "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.

17. "Underground Storage Tank" or "UST" means any one or combination of tanks (including underground pipes connected thereto) that is used to contain an accumulation of regulated substances, and the volume of which (including the volume of underground pipes connected thereto) is 10% or more beneath the surface of the ground as defined in Va. Code § 62.1-44.34:8 and 9 VAC 25-580-10.

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. HPES owns and operates the Facility in Fairfax County. Located at the Facility is an emergency generator. The emergency generator is fueled by a 100 gallon AST supplied by a 10,000 gallon UST.

2. On March 24, 2013, DEQ received notification of a discharge of Oil, in the form of diesel fuel from the AST, at the Location.

3. On March 25, 2013, DEQ conducted a site visit and observed that diesel fuel had been discharged from the AST which then infiltrated into surrounding gravel and entered a storm drain system which discharged to a subsurface storm water drain pipe. The pipe discharged to a stormwater drainage channel that is part of the onsite storm drain system which flowed approximately 800 feet to an onsite stormwater retention pond. The retention pond overflow discharges to an unnamed tributary to Cub Run, a state water. DEQ observed free product on the surface of the stormwater drainage channel and the stormwater retention pond, but not in the unnamed tributary to Cub Run.

4. 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.

5. On May 8, 2013, the Department issued Notice of Violation No. W2013-05-N-001 to HPES for a discharge of oil to the land and state waters.

6. On May 24, 2013, HPES submitted a written response to the NOV. HPES detailed the cause of the discharge to be a valve that failed in the closed position. As the AST was filled with fuel, the malfunctioning valve prevented the fuel from entering the UST. The fuel eventually discharged through the AST overflow vent. HPES asserts that upon discovery, it immediately stopped the discharge, contacted a clean-up contractor, and began containment and cleanup by placing down absorbent pads. The total estimated volume of the discharge is 6,386 gallons.

7. On June 16, 2013, HPES submitted a plan to DEQ describing the corrective action to take place.

8. Based on the results of the March 25, 2013, inspection, and the documentation submitted on May 24, 2013, the State Water Control Board concludes that HPES 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(6), above.

SECTION D: Agreement and Order

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

1. Pay a civil charge of $31,917.20 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

2. Reimburse DEQ $441.87 for the oil discharge investigative costs within 30 days of the effective date of the 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

HPES 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, HPES 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 HPES for good cause shown by HPES, 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, HPES admits the jurisdictional allegations, and agrees not to contest, but does not admit, the findings of fact and conclusions of law contained herein.

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

    b. HPES 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 HPES.

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

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, HP voluntarily agrees to the issuance of this Order for its wholly owned subsidiary, HPES.

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

Thomas A. Faha

Thomas A. Faha, Regional Director
Department of Environmental Quality

Hewlett-Packard Company voluntarily agrees to the issuance of this Order for its wholly owned subsidiary HP Enterprise Services, LLC.

Date: 7/16/13 By Christopher J. Gill, GRE Sub-Regional Manager
(Person) (Title)
Hewlett-Packard Company, as parent of HP

Commonwealth of ~~Virginia~~ Massachusetts CTE
City/County of Essex

The foregoing document was signed and acknowledged before me this 16th day of July, 2013 by Christopher J. Gill who is GRE Sub-Regional Manager of Hewlett-Packard Company, on behalf of the company.

Christopher T. Garrahan III
Notary Public
Christopher T. Garrahan III

Registration No.

My commission expires: July 11, 2014

Notary seal:

CHRISTOPHER T. GARRAHAN, III
Notary Public
Commonwealth of Massachusetts
My Commission Expires
July 11, 2014