



# 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

Molly Joseph Ward  
Secretary of Natural Resources

David K. Paylor  
Director

Maria R. Nold  
Regional Director

### STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO Hampton Roads Transit Incident Report No. IR 2014-T-3559

#### 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 Hampton Roads Transit 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 90% above the surface of the ground.
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. "HRT" means Hampton Roads Transit, a political subdivision of the Commonwealth of Virginia. HRT is a 'person' within the meaning of Va. Code § 62.1-44.3.
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 Hampton Roads Transit Bus Garage located at 509 E. 18<sup>th</sup> Street in Norfolk, Virginia.
9. "Location" means the facility, land, road, storm drain(s) or state water(s) where the oil discharge occurred: At the southeast corner of the Hampton Roads Transit Bus Garage located at 509 E. 18<sup>th</sup> Street in Norfolk, Virginia.
10. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
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. Diesel fuel is a petroleum product, and is included in the definition of "oil" under Va. Code § 62.1-44.34:14.
12. "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.
13. "Person" means any firm, corporation, association or partnership, one or more individuals, or any governmental unit or agency thereof.
14. "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 state waters.
15. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
16. "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.
17. "Va. Code" means the Code of Virginia (1950), as amended.
18. "VAC" means the Virginia Administrative Code.

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

1. HRT owns and operates the Facility located at 509 E. 18<sup>th</sup> Street in Norfolk, Virginia. HRT is a regional transportation agency that provides transportation service and facilities for a 369-square-mile area around Hampton Roads, Virginia.
2. On June 27, 2014 DEQ received notification of a discharge of oil, in the form of diesel fuel at the Location.
3. The notification indicated after normal business hours on June 26, 2014, a sensor on the AST of an emergency generator located at the Facility malfunctioned, discharging approximately 3,500 gallons of oil onto the ground and into a nearby onsite stormwater drain.
4. Emergency response personnel responded to the oil discharge on June 27, 2014 and conducted Containment and Cleanup at the Location. Emergency response personnel recovered diesel fuel directly from the onsite stormwater lines with vacuum trucks, flushed the onsite stormwater system with an estimated 25,000 gallons of water, recovered the contaminated flush water, installed and monitored sorbent booms, pads and sweeps at the point of discharge in the onsite stormwater lines and offsite manholes, excavated 15 cubic yards of diesel fuel contaminated soil at the Location, applied Micro-Blaze® (a microbial product to remediate remaining petroleum contamination), installed five monitoring wells at the Location, recovered diesel fuel from the on-site monitoring wells and waterproofed two on-site stormwater line junction vaults to prevent groundwater infiltration.
5. On July 2, 2014, HRT submitted a five-day letter describing the circumstances and details of the discharge, the Containment and Cleanup activities conducted and planned corrective actions.
6. 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.
7. On August 5, 2014, the Department issued Notice of Violation No. 05-3559-TRO-2014 to HRT for a discharge of diesel fuel to the land and storm drain.
8. On August 27, 2014, Department staff met with representatives of HRT to discuss the NOV.
9. Based on the results of the June 27, 2014 notification and documentation submitted on July 2, 2014, the State Water Control Board concludes that HRT 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(5), above.
10. In order for HRT to complete its return to compliance, DEQ staff and HRT 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 pursuant to Va. Code § 62.1-44.34:20, the Board orders HRT, and HRT agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$20,996.00 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.
3. Reimburse DEQ \$802.59 for Oil discharge investigative costs within 30 days of the effective date of this Order

Payment shall be made by separate check, 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

HRT 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, HRT 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 HRT for good cause shown by HRT, 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. 05-3559-TRO-2014 dated August 5, 2014. 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, HRT admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

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

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve HRT from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

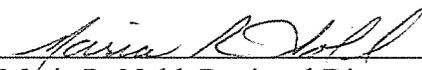
12. Any plans, reports, schedules or specifications attached hereto or submitted by HRT and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.

13. The undersigned representative of HRT 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 HRT to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of HRT.

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, HRT voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 27 day of March, 2015.

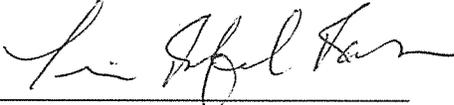
  
\_\_\_\_\_  
Maria R. Nold, Regional Director  
Department of Environmental Quality

Hampton Roads Transit voluntarily agrees to the issuance of this Order.

Date: 1/23/15 By:  President & CEO  
(Person) (Title)  
Hampton Roads Transit

Commonwealth of Virginia  
City/County of Norfolk, VA

The foregoing document was signed and acknowledged before me this 23rd day of January, 2015, by William E. Harrell who is President & CEO of Hampton Roads Transit, on behalf of Hampton Roads Transit.

  
Notary Public

7282271  
Registration No.

My commission expires: March 31, 2017

Notary seal:

**APPENDIX A  
SCHEDULE OF COMPLIANCE**

SMM shall:

1. By April 1, 2015, complete and implement the following corrective actions:
  - a. Disconnect and drain the underground fuel supply and fuel return piping from the UST to the AST, capping both ends, closing all ball valves and disconnecting the wiring to the submersible pump control box that feeds diesel fuel to the generator, disabling the automatic fueling capability of the UST to the generator;
  - b. Install a pneumerator high fuel level audible alarm console and sensor on the AST to be set at 90%-95% fuel capacity;
  - c. Replace the existing Veeder-Root cable that connects the AST probe to the console with a new shielded and continuous cable run for monitoring tank inventory.
2. By April 15, 2015, submit to DEQ a report of the completion of the corrective actions listed above.
3. Mail all submittals and reports required by this Appendix A to:

Regional Director  
DEQ, Tidewater Regional Office  
5636 Southern Blvd.  
Virginia Beach, VA 23462