



# COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

TIDEWATER REGIONAL OFFICE

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Molly Joseph Ward  
Secretary of Natural Resources

David K. Paylor  
Director

Maria R. Nold  
Regional Director

## STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO TRANSMONTAIGNE OPERATING COMPANY L.P.

**Registration No. 60242**

### **SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code §§ 10.1-1309 and -1316, between the State Air Pollution Control Board and TransMontaigne Operating Company L.P., for the purpose of resolving certain violations of the Virginia Air Pollution Control Law and the applicable permit and regulations.

### **SECTION B: Definitions**

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

1. "Board" means the State Air Pollution Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and -1301.
2. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
3. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
4. "Facility" means the TransMontaigne Terminal located at 7600 Halifax Lane in Chesapeake, Virginia, a bulk petroleum liquids storage and distribution facility.
5. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.

6. “Order” means this document, also known as a “Consent Order” or “Order by Consent,” a type of Special Order under the Virginia Air Pollution Control Law.
7. “Permit” means the Title V Federal Operating air permit issued April 7, 2014 to operate a bulk petroleum product and distribution center, which was issued under the Virginia Air Pollution Control Law and the Regulations to TransMontaigne Operating Company L.P.
8. “Regulations” or “Regulations for the Control and Abatement of Air Pollution” means 9 VAC 5 Chapters 10 through 80.
9. “TransMontaigne” means TransMontaigne Operating Company L.P., a limited liability partnership, and its affiliates, partners, and subsidiaries. TransMontaigne is a “person” within the meaning of Va. Code § 10.1-1300.
10. “TRO” means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
11. “Va. Code” means the Code of Virginia (1950), as amended.
12. “VAC” means the Virginia Administrative Code.
13. “Virginia Air Pollution Control Law” means Chapter 13 (§ 10.1-1300 *et seq.*), of Title 10.1 of the Va. Code.

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

1. TransMontaigne owns and operates the Facility located at 7600 Halifax Lane in Chesapeake, Virginia. The Facility is a bulk petroleum liquids storage and distribution facility. The Facility is the subject of the Permit which allows the storage, transfer and distribution of petroleum products.
2. On December 16, 2015, Department staff conducted a review of TransMontaigne’s first half 2015 Title V Semi-Annual Monitoring Report (“Report”) for compliance with the requirements of the Virginia Air Pollution Control Law and the Regulations. Based on the review and follow-up information, Department staff made the following observations:

TransMontaigne submitted the Report on December 15, 2015; the Report was due September 1, 2015 (105 days late).
3. Condition IX.104 of the Permit states, “ ‘General Conditions-Recordkeeping and Reporting’, the permittee shall submit the results of monitoring contained in any applicable requirement to DEQ no later than March 1 and September 1 of each calendar year.”

4. 9 VAC 5-170-160 (A) states in part, “The Board may impose conditions upon permits and other approvals which may be necessary to carry out the policy of the Virginia Air Pollution Control Law, and which are consistent with the regulations of the Board. Except as otherwise specified, nothing in this chapter shall be understood to limit the power of the Board in this regard. If the owner or other person fails to adhere to the conditions, the Board may automatically cancel the permit or approvals. This section shall apply, but not be limited, to approval of variances, approval of control programs, and granting of permit.”
5. On December 22, 2015, based on the review and follow-up information, the DEQ issued a NOV to TransMontaigne for the violations described in paragraphs C(2) through C(4), above.
6. On December 23, 2015, Department staff met by telephone conference with representatives of TransMontaigne to discuss the violations including the observations and legal requirements listed in the NOV.
7. Based on the results of the December 16, 2015 review, and the December 23, 2015 discussion with TransMontaigne, the Board concludes that TransMontaigne has violated Condition IX.104 of the Permit as described in paragraphs C(2) and C(3), above.
8. In order for TransMontaigne to return to compliance, DEQ staff and representatives of TransMontaigne 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 §§ 10.1-1309 and 1316, the Board orders TransMontaigne and TransMontaigne agrees to:

1. Perform the actions described in Appendix A of this Order;
2. Pay a civil charge of \$6,299.45 within 30 days of the effective date of the Order in settlement of the violations cited in this 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

TransMontaigne 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 Environmental Emergency Response

Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, TransMontaigne shall be liable for attorneys' fees of 30% of the amount outstanding.

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

1. The Board may modify, rewrite, or amend the Order with the consent of TransMontaigne, for good cause shown by TransMontaigne, 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 the purposes of this Order and subsequent actions with respect to this Order, TransMontaigne admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. TransMontaigne 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. TransMontaigne declares it has received fair and due process under the Administrative Process Act, Va. Code and the Virginia 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 TransMontaigne 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. TransMontaigne does not waive any rights or objections it may have in any enforcement action by other federal, state, or local authorities arising out of the same or similar facts to those recited in this Order.
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. TransMontaigne 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. TransMontaigne shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. TransMontaigne 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 within 24 hours and in writing within three business days, of learning of any condition above, which TransMontaigne 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 TransMontaigne. Nevertheless, TransMontaigne 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 TransMontaigne has completed all of the requirements of the Order;
  - (b) TransMontaigne 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 TransMontaigne.

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

And it is so ORDERED this 14 day of September, 2016.

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

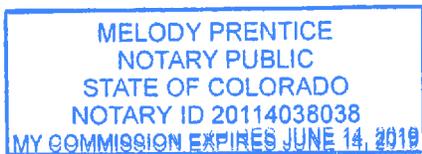
TransMontaigne Operating Company L.P. voluntarily agrees to the issuance of this Order.

Date: 9-12-16 By: D. Turlton, VP  
(Person) (Title)  
TransMontaigne Operating Company L.P.

~~Commonwealth of Virginia~~ State of Colorado vs.  
City/County of Denver

The foregoing document was signed and acknowledged before me this 12 day of September, 2016, by Dudley Turlton, who is VP-ESOH of TransMontaigne Operating Company L.P. on behalf of the partnership.

Melody Prentice  
Notary Public



Registration No. \_\_\_\_\_

My commission expires: 6-14-2019  
Notary Seal:

## **APPENDIX A SCHEDULE OF COMPLIANCE**

TransMontaigne Operating Company L.P. shall:

1. By December 1, 2016, submit to DEQ Tidewater Regional Office for its review and approval, a corrective action plan (“plan”) and schedule to prevent future late submittals of the Permit-required Semi-Annual Monitoring Reports.
2. Mail all submittals required by this Appendix A to:

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