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Dept. of Env. Quality

COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

L. Preston Bryant, Jr.
Secretary of Natural Resources

NORTHERN VIRGINIA REGIONAL OFFICE
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David K. Paylor
Director

Jeffery A. Steers
Regional Director

STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION ORDER BY CONSENT ISSUED TO

**TransMontaigne Product Services Inc.
DEQ Registration No. 70306**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 10.1-1307.D, 10.1-1316, and 10.1-1309, between the State Air Pollution Control Board (SAPCB) and TransMontaigne Product Services Inc. (TransMontaigne), for the purpose of resolving certain alleged violations of the air permits and regulations as specified in SECTION C of this Order.

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 Code §§ 10.1-1301 and 10.1-1184.
3. "Continuous Emission Monitoring System" or "CEMS" means the equipment required to sample, analyze, measure, and provide, by means of readings recorded at least every 15 minutes (using an automated data acquisition and handling system (DAHS)), a permanent record of VOC emissions from the VRU. CEMS does not

include installed spare or standby equipment that is not online and actively functioning in the collection and recording of real-time operating data.

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.
6. "Facility" means TransMontaigne Product Services, Inc. Fairfax Terminal, located at 3790 Pickett Road, Fairfax, Virginia 22031 (Fairfax City).
7. "TransMontaigne" means TransMontaigne Product Services, Inc.
8. "NVRO" means the Northern Virginia Regional Office of DEQ, located in Woodbridge, Virginia.
9. "Order" means this document, also known as a Consent Order.
10. "Regulations" refers to the Regulations for the Control and Abatement of Air Pollution for the Commonwealth of Virginia.
11. "SAPCB Regulations" mean the State Air Pollution Control Board Regulations for the Control and Abatement of Air Pollution.
12. "VAC" means Virginia Administrative Code.
13. "VOC" means Volatile Organic Compound, a precursor of the criteria pollutant ozone.
14. "VCU" means the vapor combustion unit utilized by TransMontaigne Product Services Inc. as an emission control device.

SECTION C: Findings of Fact

1. TransMontaigne operates a petroleum liquids storage and distribution terminal located at 3790 Pickett Road in Fairfax, Virginia. TransMontaigne is subject to 9 VAC 5 Chapter 40, Article 37 of the SAPCB Regulations for the Control and Abatement of Air Pollution (*Emission Standards for Petroleum Storage and Transfer Operations*), and 40 CFR 60.500 through 40 CFR 60.506 (*Standards of Performance for Bulk Gasoline Terminals*). A Title V Stationary Source Operating Permit was issued to this facility on September 29, 2000, and amended on July 18, 2003. Title V Permit Conditions IV.B.2. and 3 require the following:

IV.B.2. – A photoionization detector (PID) or other suitable VOC monitoring device must monitor the vapor combustion unit (VCU). It shall also be monitored for temperature. The control equipment sensors shall be located in the outlet duct or stack, and the frequency of testing shall be hourly, testing may be performed manually, or it may be continuous on a chart, or by data acquisition. The sensor shall measure total organic compounds (TOC) rather than individual organic compounds. The equipment used shall be operated according to the manufacturer's instructions.

IV.B.3. – The monitoring device(s) shall be certified for accuracy annually at a minimum.

2. A Virginia Permit to Modify and Operate was issued to TransMontaigne on January 12, 2004, with minor amendments dated April 20, 2004, and November 18, 2004 ("MNSR Permit"). MNSR Permit Condition No. 12 requires the following:

12. Testing – In lieu of installing and operating a VOC Continuous Emissions Monitor (CEMS), in accordance with Condition IV.B. of the Title V permit dated September 29, 2000 (amended July 18, 2003), conduct a performance test on an annual basis to measure VOC emissions. VOC emissions will be tested at the outlet of the VCU to demonstrate an emission rate no greater than the 10 mg/L. A performance test protocol shall be submitted to the Air Compliance Manager, Northern Virginia Regional Office, for approval at least 30 days prior to the date scheduled to conduct the performance evaluation. The owner shall conduct testing within 60 days after achieving the maximum operational rate, but not later than 180 days after initial startup of the VCU. Sixty days thereafter, the owner shall provide the board with one, or upon request, more copies of a written report of the results of the test.

3. TransMontaigne conducted stack testing of the VCU on June 3, 2004, and DEQ prepared an inspection report on September 2, 2004, accepting the testing results. The VOC emission rate from the VCU was 7.14 milligrams per liter of gasoline loaded (below permit limit of 10 mg/L) and the calculated recovery efficiency of the VCU was 98.64%.
4. In a letter dated April 27, 2006 (see attached), TransMontaigne reported to DEQ that the Fairfax Terminal did not conduct annual VOC stack testing of the VCU in calendar year 2005. The facility reported that this is an apparent violation of Condition 12 of their Title V permit. However, not stack testing the VCU in CY2005 appears to be in violation of MNSR Permit Condition No. 12 and is not an apparent violation of the facility's Title V permit.

5. TransMontaigne conducted stack testing of the VCU on May 26, 2006, and DEQ prepared an inspection report on July 6, 2006, accepting the testing results. The VOC emission rate from the VCU was 4.72 milligrams per liter of gasoline loaded (below permit limit of 10 mg/L) and the calculated recovery efficiency of the VCU was 98.88%.
6. DEQ issued a Notice of Violation (NOV), dated July 6, 2006, to TransMontaigne indicating the apparent violation of their NSR Permit Condition No. 12 and 9 VAC 5-170-160 (A) of the SAPCB's Regulations. The NOV directed TransMontaigne to contact DEQ within 10 days to discuss the NOV and arrange a meeting.
7. DEQ discussed the NOV with Garrett Clemons of TransMontaigne by telephone on July 10, 2006, and Mr. Clemons responded to the NOV in writing in a letter received by DEQ on July 14, 2006.
8. In drafting this Consent Order, DEQ tempered the severity of the reported apparent violation with the understanding that TransMontaigne self-reported the incident and has already taken internal measures to avoid a similar incident in the future.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §10.1-1316(C), the Board orders TransMontaigne, and TransMontaigne voluntarily agrees, to pay a civil charge in the amount of seventeen thousand five hundred and thirty dollars (\$17,530). The civil charge is due 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 payable to the "Treasurer of Virginia", delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

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 after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the Notice of Violation issued July 6, 2006. 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 as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.

3. For purposes of this Order and subsequent actions with respect to this Order, TransMontaigne admits the jurisdictional allegations, factual findings, 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 §§ 9-6.14:1 *et seq.*, and the State 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 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.
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 in writing 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

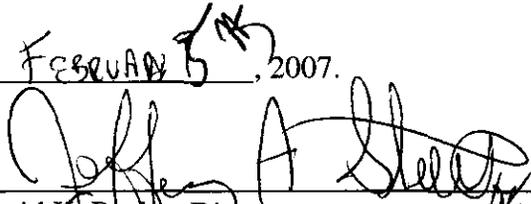
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which the parties intend to assert will result or has resulted 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. Notwithstanding the foregoing, TransMontaigne agrees to be bound by any compliance date that precedes the effective date of this Order.
11. This Order shall continue in effect until 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.

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12. By its signature below, TransMontaigne voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of FEBRUARY 5, 2007.


David K. Paylor, Director
Department of Environmental Quality

TransMontaigne voluntarily agrees to the issuance of this Order.

By: 

Date: 2/2/07

STATE of COLORADO
Commonwealth of Virginia
City/County of DENVER

The foregoing document was signed and acknowledged before me this day of
Feb. 2, 2007, by Dudley Tarlton, who is
(name)

VP-ESOH of TransMontaigne, on behalf of the Corporation.
(title)



Notary Public

My commission expires: March 10, 2007