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
TRANSMONTAIGNE OPERATING COMPANY L.P.

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 TransMontaigne Operating Company L.P., 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. "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.

2. "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.

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, as described in Va. Code § 10.1-1185.

5. "Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying or dumping.

6. "Facility" means the TransMontaigne facility, located at 3790 Pickett Road in Fairfax County, Virginia.

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

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

9. "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.

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

11. "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.

12. "Pipeline" means all new and existing pipe, rights-of-way, and any equipment, facility, or building used in the transportation of oil, including, but not limited to, line pipe, valves and other appurtenances connected to line pipe, pumping units, fabricated assemblies associated with pumping units, metering and delivery stations and fabricated assemblies therein, and breakout tanks.

13. "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.

14. "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.

15. "TransMontaigne" means TransMontaigne Operating Company L.P., a limited partnership authorized to do business in Virginia and its general partner, TransMontaigne Operating GP L.L.C. TransMontaigne is a "person" within the meaning of Va. Code § 62.1-44.3.

16. "Va. Code" means the Code of Virginia (1950), as amended.

17. "VAC" means the Virginia Administrative Code.

SECTION C: Findings of Fact and Conclusions of Law

1. TransMontaigne is the operator of the Facility which is a petroleum liquid storage and distribution terminal.

2. At approximately 2:15 pm on January 28, 2010, during a routine monthly check of groundwater monitor wells required by 9 VAC 25-91-190, TransMontaigne observed diesel fuel in monitoring well (MW) # 26. At approximately 10:15 am on January 30, 2010, testing conducted by TransMontaigne identified two short sections of subsurface pipeline at the loading rack as the probable cause for the discharge.

3. TransMontaigne notified the Va. Department of Emergency Management (VDEM) of the discharge by 10:50 am on January 30, 2010, who in turn notified DEQ.

4. TransMontaigne had successfully pressure-tested this section of line between October 2 and November 24, 2009, indicating that the leak began sometime after this date.

5. TransMontaigne has installed numerous monitoring wells in response to this incident. All information gathered from these wells confirms that no subsurface migration of diesel fuel as a result of the January discharge has occurred outside the Facility.

6. Va. Code § 62.1-44.34:18 prohibits the discharge of oil into or upon state waters, lands, or storm drain systems. Discharges of oil into or upon state waters include discharges of oil that case a film or sheen upon or discoloration of the surface of the water. Diesel fuel is a petroleum product, and is included in the definition of "oil" under Va. Code § 62.1-44.34:14. The diesel fuel observed on January 28, 2010, did cause sheen on the surface of the water.

7. Va. Code § 62.1-44.34:19 requires any person discharging or causing or permitting a discharge of oil into or upon state waters, lands or storm drains within the Commonwealth to immediately upon learning of the discharge notify the Board.

8. On February 25, 2010, the Department requested an Interim Corrective Action Plan (CAP) due to the Department by March 25, 2010.

9. On March 8, 2010, TransMontaigne submitted to the Department an Interim Corrective Action Plan (CAP) setting forth the plan for containment and cleanup at the site and proposing the use of a dual phase vacuum extraction system (DPVES). The Department approved the Interim CAP on April 14, 2010 and TransMontaigne started the remediation system on May 6, 2010.

10. On March 9, 2010, TransMontaigne notified the Department of its update to its Oil Discharge Contingency Plan (ODCP) notification procedures.

11. On April 15, 2010, the Department issued a Notice of Violation to TransMontaigne for a discharge of oil to state waters and for failing to immediately report the discharge.

12. On April 29, 2010, Department staff met with representatives of TransMontaigne to discuss the discharge and corrective action required.

13. On May 24, 2010, TransMontaigne immediately notified the Department of a discharge of oil from the DPVES stemming from the overflow of the remediation system discovered on May 24. 2010. TransMontaigne reported that approximately 282 gallons were discharged to a storm water retention pond adjacent to the Facility which is considered state waters. No migration of this discharge occurred outside the Facility or the retention pond.

14. Based on the results of foregoing, the State Water Control Board concludes that TransMontaigne has violated Va. Code § 62.1-44.34:19 for failing to immediately report the discharge of oil to state waters and Va. Code § 62.1-44.34:18, for the discharge of 25,282 gallons of oil into or upon state waters, lands, or storm drain systems, as described in paragraphs C(2) through C(9), above.

15. In order for TransMontaigne to complete its 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 in Va. Code § 62.1-44.34:20, the Board orders TransMontaigne and TransMontaigne agrees to perform the actions described below and in Appendices A and B of this Order. In addition, the Board orders TransMontaigne, and TransMontaigne voluntarily agrees, to a civil charge of $114,385.48 in settlement of the violations cited in this Order to be paid as follows:

1. TransMontaigne shall pay $28,296.37 of the civil charge within 30 days of the effective date of 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

   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 Petroleum Storage Tank Fund (VPSTF).

2. TransMontaigne shall satisfy $85,789.11 of the civil charge by satisfactorily completing the Supplemental Environmental Project (SEP) described in Appendix B of this Order.

3. The net project cost of the SEP to TransMontaigne shall not be less than the amount set forth in Paragraph D.2. If it is, TransMontaigne shall pay the

remaining amount in accordance with Paragraph D.1. of this Order, unless otherwise agreed to by the Department. "Net project costs" means the net present after-tax cost of the SEP, including tax savings, grants, and first-year cost reductions and other efficiencies realized by virtue of project implementation. If the proposed SEP is for a project for which the party will receive an identifiable tax savings (*e.g.,* tax credits for pollution control or recycling equipment), grants, or first-year operation cost reductions or other efficiencies, the net project cost shall be reduced by those amounts. The costs of those portions of SEPs that are funded by state or federal low-interest loans, contracts, or grants shall be deducted.

4. By signing this Order, TransMontaigne certifies that it has not commenced performance of this SEP.

5. TransMontaigne acknowledges that it is solely responsible for completing the SEP project. Any transfer of funds, tasks, or otherwise by TransMontaigne to a third party, shall not relieve TransMontaigne of its responsibility to complete the SEP as described in this Order.

6. In the event it publicizes the SEP or the SEP results, TransMontaigne shall state in a prominent manner that the project is part of a settlement of an enforcement action.

7. The Department has the sole discretion to:

    a. Authorize any alternate, equivalent SEP proposed by TransMontaigne; and
    b. Determine whether the SEP, or alternate SEP, has been completed in a satisfactory manner.

8. Should the Department determine that TransMontaigne has not completed the SEP, or alternate SEP, in a satisfactory manner, the Department shall so notify TransMontaigne in writing. Within 30 days of being notified, TransMontaigne shall pay the amount specified in Paragraph D.2., above, as provided in Paragraph D.1., above.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this 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 purposes of this Order and subsequent actions with respect to this Order only, TransMontaigne admits the jurisdictional allegations and findings of fact, but neither admits nor denies the 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 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 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 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 TransMontaigne intends 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, 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. 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

    b. 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 4th day of August, 2011.

Thomas A. Faha, Regional Director
Department of Environmental Quality

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

Date: March 24, 2011 By: Dudley Tarlton, V.P.-ESOH
(Person) (Title)
TransMontaigne Operating Company GP L.L.C., its general partner

STATE of COLORADO
~~Commonwealth of Virginia~~
City/County of DENVER

The foregoing document was signed and acknowledged before me this 24th day of MARCH, 2011, by DUDLEY TARLTON who is VP-ESOH of TransMontaigne Operating Company GP L.L.C., general partner of TransMontaigne Operating Company L.P., on behalf of the partnership.

Lynda S. Knight
Notary Public

Registration No.

My commission expires:

Notary seal:

LYNDA S. KNIGHT
NOTARY
PUBLIC
STATE OF COLORADO

APPENDIX A
SCHEDULE OF COMPLIANCE

TransMontaigne Shall:

1. Continue to comply with the Interim CAP submitted March 8, 2010, and approved by DEQ on April 14, 2010 and which is considered an enforceable part of this Order. Within 45 days of notification from DEQ, TransMontaigne shall submit a Final CAP for review and approval. Upon approval, said CAP shall become an enforceable part of this Order.

APPENDIX B
SUPPLEMENTAL ENVIRONMENTAL PROJECT

TransMontaigne shall perform the SEP identified below in the manner specified in this Appendix.

1. The SEP to be performed by TransMontaigne is the installation of new above ground piping at the load rack areas as described in TransMontaigne's Proposed Supplemental Environmental Project submitted February 8, 2011.

2. Within 30 days of the execution of this Order, TransMontaigne shall submit to DEQ a plan and schedule for the installation of the above ground piping with a SEP completion date which shall be no later than December 31, 2011. If TransMontaigne is required to make modifications to the plan by the City of Fairfax, TransMontaigne shall submit a revised plan to DEQ within 15 days of modification.

3. TransMontaigne shall submit progress reports on the SEP on a monthly basis, due the 10th of each month.

4. TransMontaigne shall submit a written final report on the SEP, verifying that the SEP has been completed in accordance with the terms of this Order, and certified either by a Certified Public Accountant or by a responsible corporate officer or owner. TransMontaigne shall submit the final report and certification to the Department within 30 days from the completion date of the SEP.

5. If the SEP has not or cannot be completed as described in the Order, TransMontaigne shall notify DEQ in writing no later than September 30, 2011. Such notification shall include:

    a. An alternate SEP proposal, or
    b. Payment of the amount specified in Paragraph D.2 as described in Paragraph D.1.

6. TransMontaigne hereby consents to reasonable access by DEQ to property and documents under the party's control, for verifying progress or completion of the SEP.

7. TransMontaigne shall submit to the Department written verification of the final overall and net project cost of the SEP in the form of a certified statement itemizing costs, invoices and proof of payment, or similar documentation within 30 days of the project completion date. For the purposes of this submittal, net project costs if such projected net project costs statement is accompanied by a CPA certification or certification from TransMontaigne's Chief Financial Officer concerning the projected tax savings, grants or first-year operation cost reductions or other efficiencies.

8. Documents to be submitted to the Department, other than the civil charge payment described in Section D of the Order, shall be sent to:

Department of Environmental Quality
Northern Regional Office
Attn: Enforcement
13901 Crown Court
Woodbridge, VA 22913