COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
PIEDMONT REGIONAL OFFICE
4949-A Cox Road, Glen Allen, Virginia 23060
(804) 527-5020 Fax (804) 527-5106
www.deq.virginia.gov

Douglas W. Domenech
Secretary of Natural Resources

David K. Paylor
Director

Michael P. Murphy
Regional Director

STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
VANE LINE BUNKERING, INC.

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 Vane Line Bunkering, Inc., 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. "Bay" means the Chesapeake Bay near the mouth of the York River off New Point Comfort in Mathews County (Latitude: 37° 12′ 56″ N Longitude: 076° 17′ 43″ W) where the oil discharge occurred. The Bay is a State Water as defined by Va. Code § 62.1-44.3.

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 discharges of oil into or upon state waters that (i) violate applicable water quality standards or a permit or certificate of the Board or (ii) cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

7. "JP-8" or "Jet Propellant 8" is a Jet Fuel derived from kerosene, a combustible hydrocarbon liquid.

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

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. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.

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. "Tank vessel" means any vessel used in the transportation of oil as cargo.

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

17. "VAC" means the Virginia Administrative Code.

18. "Vane Line" means Vane Line Bunkering, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, subsidiaries, and parents. Vane Line is a "person" within the meaning of Va. Code § 62.1-44.3 and an operator of the tank vessel named the Endeavor.

19. "Vessel" includes every description of watercraft or other contrivance used as a means of transporting on water, whether self-propelled or otherwise, and shall include barges and tugs.

SECTION C: Findings of Fact and Conclusions of Law

1. Vane Line transports oil by way of tank vessels.

2. On December 20, 2011, a tugboat named the "Endeavor" and Vane Line's tank vessel "VB-38" was docked at the United States Coast Guard pier at Yorktown, VA and VB-38 was loaded with approximately 25,000 barrels (1,050,000 Gallons) of oil destined for Baltimore, Maryland. During transportation, an oil sheen was observed by a Coast Guard helicopter in the mouth of the York River at New Point Comfort, Mathews County, Virginia.

3. On December 20, 2011 at 5:15 p.m. Vane Line became aware of a discharge from the tank vessel and immediately activated their incident response plan. Vane Line reported the discharge, as soon as they became aware, to the National Response Center and the Virginia Department of Emergency Management; however the incident was already under investigation based on the Coast Guard helicopter sighting.

4. The Coast Guard initially boarded the tank vessel and did not observe an oil sheen around the vessel. Convinced that Vane Line's tank vessel was not the source of the oil sheen, they cleared the tank vessel to proceed to Baltimore, but Vane Line decided to stop the tank vessel and check the integrity of the compartments. Vane Line determined that there was 2 inches of water at the bottom of one of the tank vessel compartments and initiated their incident response plan, turning the tank vessel back to port in Yorktown, Virginia. The tank vessel was emptied and sent to dry dock for an investigation of the leak source and to ultimately decommission the tank vessel. DEQ emergency responders were not called to the Bay, but were informed by the United States Coast Guard that the amount of petroleum product discharged was 769 gallons based on the before and after tank vessel weights. The Coast Guard stated that the oil sheen that formed had already dissipated and further remediation at the discharge location was not required.

5. 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.

6. On May 7, 2012, the Department issued Notice of Violation No. 2012-05-PRO-201 to Vane Line for a discharge of oil to state waters.

7. On May 10, 2012, Vane Line submitted a written response to the NOV which provided details about the discharge of oil to the Bay and confirmed that the discharge came from their tank vessel "VB-38" towed by the "Endeavor."

8. On May 31, 2012, and August 30, 2012, Department staff met and discussed the discharge to the Bay with Vane Line. Vane Line provided documentation that the tank vessel "VB-38" had a thin crack in its single hull skin. The tank vessel has been decommissioned as it is one of the last single hulled vessels in their fleet. The slow leak over a large area of the Bay prevented an effective containment and cleanup of the discharged oil.

9. Based on the results of the United States Coast Guard report, and the documentation submitted by Vane Line on May 10 and 31, 2012, the State Water Control Board concludes that Vane Line 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

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code § 62.1-44.34:20, the Board orders Vane Line, and Vane Line agrees to pay a civil charge of $6,780 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

Vane Line 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).

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Vane Line for good cause shown by Vane Line, 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, Vane Line admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. Vane Line 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. Vane Line 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 Vane Line 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. Vane Line 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. Vane Line shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Vane Line 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 Vane Line 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 Vane Line. Nevertheless, Vane Line 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. Vane Line 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 Vane Line.

    Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Vane Line 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 Vane Line 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 Vane Line 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 Vane Line to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Vane Line.

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, Vane Line voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 13th day of DECEMBER, 2012

Michael P. Murphy, Regional Director
Department of Environmental Quality

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Vane Line Bunkering, Inc. voluntarily agrees to the issuance of this Order.

Vane Line Signature: F. W. Neubrand

Date: 3 October 2012 By: F. William Neubrand (Person), Insurance Manager (Title)

Vane Line Bunkering, Inc.
2100 Frankfurst Avenue
Baltimore, MD 21226

City of Baltimore

The foregoing document was signed and acknowledged before me this 3RD day of October, 2012, by F. W. Neubrand who is Insurance Manager of Vane Line Bunkering, Inc., on behalf of the corporation.

Judith L. Robbins
Notary Public

My commission expires: July 19th, 2014

Notary seal: