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Tidewater Regional Office

COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
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STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
Werner Enterprises, Inc.
Incident Report No. IR 2014-T-0219

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 Werner Enterprises, 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. "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. "Location" means the facility, land, road, storm drain(s) or state water(s) where the oil discharge occurred: Family Dollar Parking Lot, 3102 Airline Boulevard, Portsmouth, Virginia.

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

8. "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.

9. "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.

10. "Person" means any firm, corporation, association or partnership, one or more individuals, or any governmental unit or agency thereof.

11. "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.

12. "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.

13. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia

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

15. "VAC" means the Virginia Administrative Code.

16. "Werner" means Werner Enterprises, Inc., a fictitious name, of a foreign corporation (Werner Enterprises, Inc. of Nebraska) authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Werner is a 'person' within the meaning of Va. Code § 62.1-44.3.

17. "Vehicle" means any motor vehicle, rolling stock or other artificial contrivance for transport whether self-propelled or otherwise, except vessels.

SECTION C: Findings of Fact and Conclusions of Law

1. Werner is a global transportation and logistics company that operates truckload carriers including medium to long haul, regional and local van, expedited, temperature-controlled and flatbed services.

2. On July 17, 2013, DEQ received notification of a discharge of Oil, in the form of diesel fuel at the Location.

3. The notification indicated that on July 16, 2013, a Werner vehicle was moving forward and struck a fixed object, puncturing a diesel fuel 'saddle' tank allowing the diesel fuel to be discharged onto the ground at the Location and into a storm drain that discharges to Lake Collins, a state water.

4. Emergency response personnel responded to the diesel fuel spill on July 16, 2013 and conducted Containment and Cleanup at the Location. Emergency response personnel applied six bags of petroleum absorbent material and removed all petroleum contaminated materials from the Location.

5. On July 18, 2013, emergency response personnel returned to the Location in response to a report from the City of Portsmouth Fire Department of a petroleum sheen that was observed on Lake Collins.

6. From July 19, 2013 to July 25, 2013, emergency response personnel conducted Containment and Cleanup of the petroleum sheen on Lake Collins. Emergency response personnel used booms and petroleum absorbing pads to remove petroleum products from Lake Collins. All petroleum contaminated materials were removed from the Location and disposed of at a facility approved by DEQ to accept petroleum contaminated wastes.

7. 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.

8. On September 11, 2013, the Department issued Notice of Violation No. 05-0219-TRO-2013 to Werner for a discharge of oil to the land and state waters.

9. On October 7, 2013, Werner submitted an Emergency Response Report (dated September 26, 2013) of the diesel fuel spill to DEQ that indicated that approximately 100 gallons of diesel fuel spilled into the environment. The Emergency Response Report summarized the containment and cleanup actions taken by emergency response personnel including the removal of eighteen (18) 55-gallon drum of petroleum contaminated granular sorbents and 242 gallons of oily waters from Lake Collins.

10. Based on the results of the July 17, 2013 notification and documentation submitted on October 7, 2013, the State Water Control Board concludes that Werner 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(7), above.

11. Werner has submitted documentation that verifies that the violations in paragraphs C(2) through C(7), above, have been corrected.

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 Werner, and Werner agrees to pay a civil charge of $1,714.00 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

Werner 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, Werner 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 Werner for good cause shown by Werner, 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. 05-0219-TRO-2013 dated September 11, 2013. 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, Werner admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

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

    b. Werner 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 Werner.

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

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, Werner voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 24 day of April, 2014.

Maria R. Nold, Regional Director
Department of Environmental Quality

Werner Enterprises, Inc. voluntarily agrees to the issuance of this Order.

Date: 02·28·2014 By: _____, DIRECTOR OF CLAIMS
(Person) (Title)
Werner Enterprises, Inc.

State of Nebraska
Commonwealth of ~~Virginia~~
~~City~~/County of Sarpy

The foregoing document was signed and acknowledged before me this 28 day of February, 2014, by Dawn Smejkal who is Director of Claims of Werner Enterprises, Inc., on behalf of the corporation.

GENERAL NOTARY - State of Nebraska
BELLE M. GONZALES
My Comm. Exp. November 5, 2016

Belle M. Gonzales
Notary Public

NA
Registration No.

My commission expires: 11/5/16

Notary seal: