COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
Blue Ridge Regional Office
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STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
WATTS PETROLEUM CORPORATION

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 Watts Petroleum Corporation 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. "BRRO" means the Blue Ridge Regional Office of DEQ, located in Lynchburg, Virginia.

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. "Contaminated soil" means, for the purposes of this chapter, a soil that, as a result of a release or human usage, has absorbed or adsorbed physical, chemical, or radiological substances at concentrations above those consistent with nearby undisturbed soil or natural earth materials.

5. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

6. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

7. "Free product" means a reference to a regulated substance that is present as a nonaqueous phase liquid (e.g., liquid not dissolved in water).

8. "Location" means the facility, land, road, storm drain(s) or state water(s) where the oil discharge occurred on Route 460 East at Wilkerson Mill Road, Montvale, Virginia.

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

10. "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.

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

12. "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.

13. "SEP" means Supplemental Environmental Project.

14. "Site" means the facility, land, road, storm drain(s) and surface water(s) adversely affected by the oil discharge.

15. "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.

16. "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.

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

18. "VAC" means the Virginia Administrative Code.

19. "Watts" means Watts Petroleum Corporation, a corporation authorized to do business in Virginia and its affiliates, partners, subsidiaries, and parents. Watts is a "person" within the meaning of Va. Code § 62.1-44.3.

SECTION C: Findings of Fact and Conclusions of Law

1. Watts transports petroleum products to customers as an operator of tractor trailer tankers.

2. On May 28, 2012, DEQ received notification of a discharge of gasoline and diesel at the Location. Gasoline and diesel fuel are both petroleum products, and are included in the definition of "oil" under Va. Code § 62.1-44.34:14.

3. The notification indicated that on May 28, 2012, a Watts tanker truck laden with approximately 8,435 gallons of oil ran off the road and into the highway median. The impact breached the tanker, allowing approximately 7,185 gallons of Oil to drain onto state lands and into Goose Creek, a state water.

4. DEQ staff were dispatched to the Location to investigate on June 1, 2012. Based on observations by emergency response personnel and DEQ staff, it appears that approximately 7,185 gallons of the spilled Oil soaked into the soil on both sides of US 460 East, and a small quantity subsequently migrated through the soil and into Goose Creek.

5. Va. Code § 62.1-44.34:18 prohibits the discharge of oil into or upon state waters, lands, or storm drain systems.

6. On June 20, 2012, the Department issued Notice of Violation No. NOV-12-06-BRRO-R-001 to Watts for a discharge of Oil to the land and state water.

7. June 22, 2012, Watts submitted a written response, via e-mail, to the NOV. In t he response, Watts requested a meeting to discuss the issues.

8. On June 28, 2012, Department staff met with a representative of Watts to discuss the accident, discharge, emergency response, containment and clean-up, and future actions.

9. On June 28, 2012, Watts notified DEQ that 7,185 gallons of Oil were discharged at the Location. Approximately 5,000 tons of Contaminated Soil and materials were removed from the Location and disposed of off-site.

10. Based on the results of the June 1, 2012, DEQ staff investigation at the Location and the June 28, 2012 meeting, the State Water Control Board concludes that Watts 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(4), above.

11. In order for Watts to complete its return to compliance, DEQ staff and representatives of Watts 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 Watts, and Watts agrees:

1. To perform the actions described in Appendices A and B of this Order; and

2. To a civil charge of $43, 613.00 in settlement of the violations cited in this Order, to be paid as follows:

   a. Watts Petroleum Corporation shall pay $16,616.47 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," and delivered to:

   Receipts Control
   Department of Environmental Quality
   Post Office Box 1104
   Richmond, Virginia 23218

   Watts shall include its Federal Employer Identification Number (FEIN) [**(xx-xxxxxxx)**] with the payments and shall indicate that the payment of the civil charge is being made in accordance with the requirements of this Order for deposit into the Virginia Petroleum Storage Tank Fund (VPSTF).

   b. Watts Petroleum Corporation shall satisfy $26,996.53 of the civil charge by satisfactorily completing the Supplemental Environmental Project (SEP) described in Appendix B of this Order.

   c. The net project costs of the SEP to Watts Petroleum Corporation shall not be less than the amount set forth in Paragraph D.2.b. If it is, Watts shall pay the remaining amount in accordance with Paragraph D.2.a of this Order, unless otherwise agreed to by the Department. "Net project cost" 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.

   d. By signing this Order Watts Petroleum Corporation certifies that it has not commenced performance of the SEP.

   e. Watts Petroleum Corporation acknowledges that it is solely responsible for completing the SEP project. Any transfer of funds, tasks, or otherwise by

Watts to a third party, shall not relieve Watts of its responsibility to complete the SEP as described in this Order.

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

g. The Department has the sole discretion to:

i. Authorize any alternate, equivalent SEP proposed by Watts; and

ii. Determine whether the SEP, or alternate SEP, has been completed in a satisfactory manner.

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

SECTION E: Administrative Provisions

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

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

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

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, Watts Petroleum Corporation voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 7th day of December, 2012.

Robert J. Weld, Regional Director
Department of Environmental Quality

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Watts Petroleum Corporation voluntarily agrees to the issuance of this Order.

Date: 10/2/12 By: _____, President
John A. Watts, Jr.
Watts Petroleum Corporation

Commonwealth of Virginia
City/County of Lynchburg

The foregoing document was signed and acknowledged before me this 2nd day of October, 2012 by John A. Watts, Jr. who is President of Watts Petroleum Corporation, on behalf of the corporation.

_____
Notary Public

360507
Registration No.

My commission expires: 5-31-13

Notary seal:

SUSAN R. JANOFSKY
NOTARY PUBLIC
REGISTRATION # 360507
COMMONWEALTH OF VIRGINIA
MY COMMISSION EXPIRES
5-31-13

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APPENDIX A
SCHEDULE OF COMPLIANCE

Watts Petroleum Corporation shall:

1. **Initial Reporting**

   Within 30 days of the execution of this Order, Watts shall submit an Initial Abatement Measures Report (IAMR) which contains the results of soil analysis for Total Petroleum Hydrocarbons – Gasoline and Diesel Range Organics (TPH – GRO & DRO) in order to evaluate the effectiveness of the soil excavation program. In addition, the analytical results of surface water sampling for benzene, toluene, ethyl benzene and xylenes (BTEX), ethanol and naphthalene in the vicinity of the Location and the potable water wells located on the McMillian and Ratcliff properties and other sampled supply wells are to be included for staff review.

2. **Well Sampling**

   Within 30 days of the execution of this Order, Watts shall begin quarterly sampling of supply wells selected by DEQ within 500 feet of the Location, to continue for a period not less than six (6) months or as determined by DEQ. Samples shall be analyzed at a laboratory certified by the Virginia Department of Health for drinking water analyses, using EPA Method 524.2 for Volatile Organics and EPA Method 525.2 for Semi-Volatile Organics. All results of the quarterly sampling shall be submitted to the Department for review and validation by the 10th of the month following the end of a three (3) month period.

3. **Surface Water Monitoring**

   Within 30 days of the execution of this Order, Watts shall begin a monthly surface water sampling program of Goose Creek at locations upstream, downstream, and at the Location, as approved by DEQ. Surface water samples are to be analyzed for BTEX and naphthalene by Method 8021B and ethanol by an applicable analytical method as approved by USEPA and DEQ. Sampling shall continue for a period of at least six (6) months or according to a schedule as defined by DEQ. Quarterly reports presenting the sampling results shall be submitted by the 10th of the month following a three (3) month period.

4. **Spill/Product Containment and Recovery**

   For a period of not less than six (6) months following the accident, or according to a period as defined by DEQ, continue to maintain the free product spill Containment and Cleanup efforts along the left (east) bank of Goose Creek and any groundwater seeps/springs between the Location and Goose Creek. Results of said Containment and Cleanup efforts shall be included with the quarterly reports defined

in sections 2 and 3 , above. All Solid Waste products generated by the Containment and Cleanup efforts shall be properly disposed of according to applicable State Laws and Regulations.

5. **Notification**

Within 14 days of completion, Watts shall submit written notification to the Department of the completion of all action items required by this Order. If completion of an item does not occur in accordance with this schedule, Watts shall submit written notification within three (3) business days after the due date advising the Department as to when it plans to complete the item.

6. **Contact**

Unless otherwise specified in this Order, Watts Petroleum Corporation shall submit all requirements of Appendix A of this Order to:

G. Marvin Booth, III
Regional Enforcement Representative
Virginia DEQ – Blue Ridge Regional Office
7705 Timberlake Road
Lynchburg, VA 24502
Phone (434) 582-6237
Fax (434) 582-6725
marvin.booth@deq.virginia.gov

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APPENDIX B
WATTS PETROLEUM CORPORATION
SUPPLEMENTAL ENVIRONMENTAL PROJECT (SEP)

In accordance with Va. Code § 10.1-1186.2, Watts Petroleum Corporation shall perform the Supplemental Environmental Project (SEP) identified below in the manner specified in this Appendix. As used in this Order and Appendix, SEP means an environmentally beneficial project undertaken as partial settlement of a civil enforcement action and not otherwise required by law.

1. The SEP to be performed by Watts Petroleum Corporation is the purchase of emergency response equipment and supplies for the Bedford County Department of Fire and Rescue. The list of requested equipment shall be submitted, reviewed and approved by the Department prior to purchase by Watts. The equipment and supplies to be purchased for the County shall consist of the following:

Quantity	Item		Estimated Cost
(1 ea.)	LTN6L Wacker Light Tower		$7,228.00
(8 ea.)	ToxiRAE II HCN Sensor	$304.14	$2,443.12
(1 ea.)	ZUM 7600 Decon Shelter		$6,025.00
(1 cs.)	DPP SL122T Tychem Suit		$193.96
(1 cs.)	DPP Sl122T Tychem Coverall		$205.60
(1 ea.)	Calibration Gas 34L-413-18		$120.00
(2 ft.)	RAE 411-0008-000 Tubing	$2.40	$4.80
(3 bl.)	SPC ENV100 Oil Pads	$38.10	$114.30
(2 bl.)	SPC ENV810 Oil Sorbent Boom	$84.69	$169.38
(2 ea.)	QRAE II LEL, O_2, H_2S, CO Meter	$611.60	$1,223.20
(1 ea.)	ZUM Surround Rinse Hose		$135.00
(1 ea.)	ZUM 9920 Sump Pump		$430.00
(2 cs.)	SPC ENV510 Boom w/ Liner	$72.65	$145.30
(2 ea.)	SFW HZR-100 100gal. Spill Res.	$125.00	$250.00
(12 ea.)	SFW HZR-30 Spill Reservoir	$97.50	$1,170.00
(1 ea.)	DQE RP4521 15' Light Tower		$4,990.00
(2 ea.)	DQE HM1042 Containment Pool	$107.35	$214.70
(2 ea.)	DQE HM1023 Elevation Grid	$104.30	$208.60
		Subtotal	$25,260.96
		Tax	$1,285.57
		Freight	$450.00
		Total	$26, 996.53

2. The SEP shall be completed by **March 31, 2013**.

3. Watts Petroleum Corporation shall submit invoices and payment documentation for the equipment purchased and training presented to the Department for verification within 30 days of payment.

4. Watts Petroleum Corporation 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 within **30 days** of the project completion date. For the purposes of this submittal, net project costs can be either the actual, final net project costs or the projected net project costs if such projected net project costs statement is accompanied by a CPA certification or certification from Watts Chief Financial Officer concerning the projected tax savings, grants or first-year operation cost reductions or other efficiencies.

5. If the SEP has not or cannot be completed as described in the Order, Watts Petroleum Corporation shall notify DEQ in writing no later than 30 days of the determination. Such notification shall include:

    a. an alternate SEP proposal, or
    b. payment of the amount specified in Paragraph D.2.b as described in Paragraph D.2.a.

6. Watts Petroleum Corporation hereby consents to reasonable access by DEQ or its staff to property or documents under the party's control, for verifying progress or completion of the SEP.

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

G. Marvin Booth, III
Regional Enforcement Representative
Virginia DEQ – Blue Ridge Regional Office
7705 Timberlake Road
Lynchburg, VA 24502
Phone (434) 582-6237
Fax (434) 582-6725
marvin.booth@deq.virginia.gov

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