COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
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STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
CSX TRANSPORTATION, 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 CSX Transportation, 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 area adjacent to and on the shoreline of the James River near 4 Ninth Street, Lynchburg, Virginia where the oil discharge occurred.

7. "CSX" means CSX Transportation, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. CSX is a "person" within the meaning of Va. Code § 62.1-44.3.

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

13. "BRRO-R" means the Blue Ridge Regional Office of DEQ, located in Roanoke, Virginia.

14. "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.

15. "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.

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

17. "VAC" means the Virginia Administrative Code.

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

19. "Warning Letter" or "WL" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

SECTION C: Findings of Fact and Conclusions of Law

1. CSX is a person and operator of a vehicle, a tanker railcar, which transports Oil to customers.

2. On April 30, 2014, DEQ received notification of a discharge of Oil, in the form of crude oil, near 4 Ninth Street, Lynchburg, Virginia.

3. The notification indicated that on April 30, 2014 a CSX tanker railcar, laden with approximately 29,926 gallons of Oil, derailed near 4 Ninth Street in Lynchburg, Virginia adjacent to railway milepost CAB 145.7. This tanker railcar, identified by CSX as railcar CBTX741712, was breached and leaked as a consequence of the derailment, allowing 29,730 gallons of Oil to be discharged onto the ground and into the James River, a state water, causing a film or sheen upon or discoloration of the surface of the water. DEQ assigned PC No. 2014-2395 and IR No. 2014-L-2591 to this incident.

4. DEQ staff were called to the Location. Based on observations by emergency response personnel and DEQ staff, it appears that a large proportion of the discharged Oil was consumed in a fire that occurred immediately after the derailment.

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 22, 2014, the Department issued Notice of Violation No. 14-05-BRRO-003 to CSX for a discharge of oil to the land and state waters.

7. On June 19, 2014, Department staff met with representatives of CSX to discuss the accident, discharge, emergency response, containment and clean-up, and future actions. Department staff requested additional information regarding the method used to calculate the Oil recovered during the containment and clean-up.

8. On July 2, 2014, CSX submitted an Initial Abatement Report ("IAB") dated July 1, 2014. In the IAB, CSX estimated that of the 29,926 gallons of Oil carried by the tanker railcar, approximately 27,245 gallons was consumed in the fire, 390 gallons formed a sheen on the James River, 186 gallons was recovered from the tanker railcar, and 245 gallons entered the embankment soils. Subsequent remedial work by CSX on the embankment removed a large quantity of soil and ballast. All or substantially all of the 245 gallons of Oil that entered the embankment was thus presumably recovered. Approximately 390 gallons, the quantity that formed a sheen on the James River, remains in the environment.

9. On August 4, 2014, CSX submitted a Site Characterization Report ("SCR"). The SCR indicates that "all planned boom inspections and maintenance, surface water monitoring and sampling, and supplemental soil/sediment sampling have been completed . . . [present] human health and ecological risks at the Site are negligible based upon the results of abatement and monitoring activities."

10. Based on the results of the DEQ on-site response, the June 19, 2014 meeting, and the documentation submitted on July 2 and August 4, 2014, the State Water Control Board concludes that CSX 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(9), above.

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

1. Perform the actions described in Appendix A of this Order; and

2. Pay a civil charge of $361,000.00 within 45 days of the effective date of the Order in settlement of the violations cited in this Order.

3. Reimburse DEQ $18,574.85 for oil discharge investigative costs within 45 days of the effective date of the Order;

Payment shall be made by check, certified check, money order or cashier's check payable to the "Department of Environmental Quality," for the civil charge and for DEQ oil discharge investigative costs (one check) and delivered to:

Accounts Receipt Manager
Department of Environmental Quality
629 E. Main Street
Richmond, Virginia 23219

CSX shall include its Federal Employer Identification Number (FEIN) (54-6000720) 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, CSX 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 CSX for good cause shown by CSX, 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. 14-05-BRRO-003 dated May 22, 2014. 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, CSX admits the jurisdictional allegations, and agrees not to contest, but neither admits nor denies, the findings of fact, and conclusions of law in this Order.

4. CSX 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. CSX 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 CSX 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. CSX 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. CSX shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. CSX 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 CSX.

11. This Order shall continue in effect until:

    a. The Director or his designee terminates the Order after CSX has completed all of the requirements of the Order;

    b. CSX 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 CSX.

    Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve CSX 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 CSX 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 CSX certifies that he or she is a responsible officer authorized to enter into the terms and conditions of this Order and to execute and legally bind CSX to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of CSX.

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, CSX voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 20____.

_____
Robert J. Weld, Regional Director
Department of Environmental Quality

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CSX Transportation, Inc. voluntarily agrees to the issuance of this Order.

Date: 2/2/2015 By: CARL D. GERHARDSTEIN ASST. VP, PUBLIC SAFETY HEALTH ENV.
(Person) (Title)
CSX Transportation, Inc.

Commonwealth/State of Florida

City/County of Duval

The foregoing document was signed and acknowledged before me this 2nd day of February, 2015, by Carl A. Gerhardstein who is AVP, Public Safety; Health of CSX Transportation, Inc., on behalf of the corporation.

Rose M. Nobles
Notary Public

FF 061243
Registration No.

My commission expires: 11/15/2017

Notary seal:

ROSE M. NOBLES
MY COMMISSION # FF 061243
EXPIRES: November 15, 2017
Bonded Thru Notary Public Underwriters

APPENDIX A
SCHEDULE OF COMPLIANCE

CSX shall:

1. Restoration

   Complete all activities specified in the River Bank Restoration Plan ("Plan") dated August 26, 2014 which was prepared for CSX by EnviroScience. CSX shall complete these activities within the time frames specified in the Plan.

2. Monitoring

   Complete all post site characterization monitoring activities specified in the letter dated September 29, 2014 from Arcadis to DEQ. CSX shall complete these activities within the time frames specified in that letter.

3. Notification

   Within 14 days of completion, CSX 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, CSX 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, but in no instance shall the delay in completion extend beyond 60 days from the original due date.

4. Contact

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

   Robert Steele
   Enforcement Specialist Sr.
   VA DEQ – Blue Ridge Regional Office
   3019 Peters Creek Road
   Roanoke, VA 24019
   (540) 562-6777
   Fax (540) 562-6725
   Robert.Steele@deq.virginia.gov