COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
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STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
GREENWOOD MOTOR LINES, INC.
FOR AN
Unpermitted Discharge

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and Greenwood Motor Lines, Inc., regarding an unpermitted discharge, for the purpose of resolving certain violations of the State Water Control Law and applicable regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "305(b) report" means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.

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

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 discharge of a pollutant. 9 VAC 25-31-10.

7. "Discharge of a pollutant" when used with reference to the requirements of the VPDES permit program means:

   (a) Any addition of any pollutant or combination of pollutants to surface waters from any point source; or

   (b) Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.

8. "Greenwood" means Greenwood Motor Lines, Inc. d/b/a R+L Carriers, a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Greenwood is a "person" within the meaning of Va. Code § 62.1-44.3.

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

10. "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.

11. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water… 9 VAC 25-31-10.

12. "Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are "pollution." Va. Code § 62.1-44.3.

13. "Regulation" means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*

14. "Site" means 118 South Main Street in Blacksburg, Virginia including the public roadways immediately adjacent to the parcel (Main Street, Roanoke Street, and Draper Road) that were traversed by the tractor trailer and stained from the spilled material.

15. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.

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. "VPDES" means Virginia Pollutant Discharge Elimination System.

SECTION C: Findings of Fact and Conclusions of Law

1. Greenwood owns and operates the tractor trailer for the purpose of delivering goods.

2. Stroubles Creek and its tributaries are located in the New River Basin. Stroubles Creek and its tributaries are listed in DEQ's *Final 2012 305(b)/303(d) Water Quality Assessment Integrated Report* as impaired for E. Coli and sediment. The sources of the impairment are listed as discharges from municipal separate storm sewer systems, livestock (grazing and feeding operations), municipal (urbanized high density area), wastes from pets, wildlife other than waterfowl, unspecified domestic waste, and sediment re-suspension (clean sediment).

3. On April 23, 2013, BRRO staff was notified of a transportation-related spill of "Copper Amine C9" ("wood preservative") at 118 S Main Street in Blacksburg, Virginia. The report specified that approximately 25 gallons had been spilled due to a damaged 275 gallon tote in a tractor trailer, owned and operated by Greenwood, and that the spill had impacted a storm drain.

4. The storm drain, discharging to an unnamed tributary of Stroubles Creek, was almost directly beneath the rear end of the trailer. The parking lot (where the trailer had parked for a delivery), the trailer, and parts of Main St., Roanoke St., and Draper Rd. in Blacksburg, Virginia, all of which were traversed by the trailer, were also stained from the spilled material.

5. During the emergency response, recoverable liquid was vacuumed from the storm drain inlet. Contaminated debris (soil, gravel, organic matter, and trash) was also removed

from a downstream manhole. After the contaminated debris was removed from the storm drain inlet, it was apparent that there was a slight but steady flow of water through the storm drain system. Historically, the parcel of land encompassing 118 Main Street was the site of a spring which fed into Stroubles Creek.

6. Virginia Department of Emergency Management staff and BRRO staff conducted a site investigation of Stroubles Creek, where the creek daylights below the Drill Field and above the Duck Pond on Virginia Tech's campus. This investigation occurred after the spill had been contained and cleaned up and a field test performed instream was negative for pesticide (the field test surrogate for the wood preservative). Staff did not observe any abnormal conditions (dead or distressed fish) at the time of the investigation.

7. On April 24, 2013, the Department received a report of dead fish in Stroubles Creek. BRRO staff was dispatched to the location (Stroubles Creek, where the creek daylights below the Drill Field and above the Duck Pond on Virginia Tech's campus) to conduct a fish kill investigation and observed seventeen dead fish.

8. The Material Safety Data Sheet for the wood preservative, obtained from the manufacturer states that the chemical is toxic to fish and other aquatic organisms at certain specified levels of exposure.

9. Va. Code § 62.1-44.5 states that: "[E]xcept in compliance with a certificate issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances, or otherwise alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health, or to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses."

10. The Regulation, at 9 VAC 25-31-50, also states that except in compliance with a VPDES permit, or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes, or any noxious or deleterious substances; or otherwise alter the physical, chemical, or biological properties of such state waters and make them detrimental to the public health, or to animal or aquatic life, or to the use of such waters for domestic or industrial consumption, or for recreation, or for other uses.

11. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a "certificate" under the statute.

12. The Department has issued no permits or certificates to Greenwood that would authorize the discharge of wood preservative into state waters.

13. Stroubles Creek is a surface water located wholly within the Commonwealth and is a "state water" under State Water Control Law.

14. On June 21, 2013, the Department issued Notice of Violation ("NOV") No. NOV-13-06-BRRO-003 to R+L Carriers for an unauthorized discharge to state waters.

15. Based on the results of the Site visit on April 23, 2013 and visits to Stroubles Creek on April 23, 2013 and April 24, 2013, the Board concludes that Greenwood has violated Va. Code § 62.1-44.5 and 9 VAC 25-31-50, by discharging wood preservative into state waters without authorization under a permit or certificate issued by the Board, which resulted in a fish kill, as described in paragraph C(3) through C(7), above.

16. Virginia Department of Emergency Management staff and BRRO staff remained at the Site until the emergency clean-up was completed and the Department did not receive any further notifications of dead fish in Stroubles Creek. The Department has determined that the violation as described in paragraphs C(3) through C(7), above, has been corrected.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Greenwood, and Greenwood agrees to:

1. Pay a civil charge of **$6,500** within 30 days of the effective date of the Order in settlement of the violations cited in this Order;

2. Reimburse DEQ **$1,268.36** for DEQ fish kill investigative costs within 30 days of the effective date of the Order;

3. Reimburse Department of Game and Inland Fisheries ("DGIF") **$54.32** for DGIF fish replacement costs within 30 days of the effective date of the Order.

Payment shall be made by separate checks, certified checks, money orders or cashier's checks payable to:

1. the "Treasurer of Virginia" for the civil charge and for the DEQ fish kill investigative costs (one check);

2. the "Department of Game and Inland Fisheries" for the DGIF fish replacement costs (one check);

and delivered to:

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

Greenwood shall include its Federal Employer Identification Number (FEIN) 54-6001215 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 Environmental Emergency Response Fund (VEERF); that payment of the DEQ fish kill investigative costs is for

reimbursement of DEQ expenditures; and that the payment of the DGIF fish replacement costs is for the Department of Game and Inland Fisheries. If the Department has to refer collection of moneys due under this Order to the Department of Law, Greenwood 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 Greenwood for good cause shown by Greenwood, 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. NOV-13-06-BRRO-003 dated June 21, 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, Greenwood admits to 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. Greenwood 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. Greenwood 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 Greenwood 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. Greenwood 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. Greenwood shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Greenwood 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 Greenwood. Nevertheless, Greenwood 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 Greenwood has completed all of the requirements of the Order;

b. Greenwood 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 Greenwood.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Greenwood from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. The undersigned representative of Greenwood 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 Greenwood to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Greenwood.

13. 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.

14. By its signature below, Greenwood voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2014

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

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Greenwood Motor Lines, Inc. voluntarily agrees to the issuance of this Order.

Date: 16 Jan 2014 By: _____, Vice President of Safety
Gerry Krisa
Greenwood Motor Lines, Inc.

State of Ohio
County of Clinton

The foregoing document was signed and acknowledged before me this 16th day of January, 2014, by Gerry Krisa who is Vice President of Safety for Greenwood Motor Lines, Inc., on behalf of the corporation.

_____
Notary Public

_____
Registration No.

My commission expires: N/A

Notary seal:

NOTARIAL SEAL
STATE OF OHIO

DANIEL J. BRAKE, ATTORNEY AT LAW
NOTARY PUBLIC, STATE OF OHIO
My commission has no expiration date.
Section 147.03 R.C.