# COMMONWEALTH of VIRGINIA

*DEPARTMENT OF ENVIRONMENTAL QUALITY*
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# VIRGINIA WASTE MANAGEMENT BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO MOTIVA ENTERPRISES, LLC EPA ID No. VAD988172391

## SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 10.1-1455, between the Virginia Waste Management Board and Motiva Enterprises, LLC for the purpose of resolving certain violations of the Virginia Waste Management Act and the applicable regulations.

## SECTION B: Definitions

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

1. "Board" means the Virginia Waste Management Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and -1401.

2. "CFR" means the Code of Federal Regulations, as incorporated into the Regulations.

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. "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

8. "EPA" means the U.S. Environmental Protection Agency.

9. "Facility" or "Site" means the service station located at 7340 Richmond Road in Williamsburg, Virginia. The Facility was formerly owned by Motiva Enterprises, LLC yet is handling the actions listed in this Order.

10. "Generator" means person who is a hazardous waste generator, as defined by 40 CFR § 260.10.

11. "Hazardous Waste" means any solid waste meeting the definition and criteria provided in 40 CFR § 261.3.

12. "LQG" means large quantity generator, a hazardous waste generator that generates 1000 kilograms (2200 pounds) or greater of hazardous waste in a calendar month and meets other restrictions. *See* 40 CFR § 262.34(a)-(b) and (g)-(l).

13. "Motiva" means Motiva Enterprises, LLC, a limited liability company authorized to do business in Virginia and its members, affiliates, partners, subsidiaries. Motiva Enterprises, LLC is a "person" within the meaning of Va. Code § 10.1-1400.

14. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1455.

13. "Order" means this document, also known as a "Consent Order" or "Order by Consent."

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

15. "RCRA Subtitle C" means Resource Conservation and Recovery Act Subtitle C, a federal program to manager hazardous waste from cradle to grave as described in 40 CFR Subtitle C,

16. "Regulations" or "VHWMR" means the Virginia Hazardous Waste Management Regulations, 9 VAC 20-60-12 *et seq.* Sections 20-60-14, -124, -260 through -266, -268, -270, -273, and -279 of the VHWMR incorporate by reference corresponding parts and sections of the federal Code of Federal Regulations (CFR), with the effected date as stated in 9 VAC 20-60-18, and with independent requirements, changes, and exceptions as noted. In this Order, when reference is made to a part or section of the CFR, unless otherwise specified, it means that part or section of the CFR as incorporated by the corresponding section of the VHWMR. Citations to independent Virginia requirements are made directly to the VHWMR.

17. "Solid Waste" means any discarded material meeting the definition provided in 40 CFR § 261.2.

18. "SQG" means a small quantity generator, a hazardous waste generator that generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month and meets other restrictions. *See* 40 CFR § 262.34(d)-(f).

19. "Storage" means the holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere as defined in CFR 260.10 and 9 VAC 20-60-260.

20. "Treatment" means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste, or so as to recover energy or material resources from the waste, or so as to render such waste non-hazardous, or less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for storage, or reduced in volume as defined in CFR 260.10 and 9 VAC 20-60-260.

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

22. "VAC" means the Virginia Administrative Code.

23. "Virginia Waste Management Act" means Chapter 14 (§ 10.1-1400 *et seq.*) of Title 10.1 of the Va. Code. Article 4 (Va. Code §§ 10.1-1426 through 10.1-1429) of the Virginia Waste Management Act addresses Hazardous Waste Management.

## SECTION C: Findings of Fact and Conclusions of Law

1. Motiva is a refining and marketing joint venture between Shell Oil Company and Saudis Aramco that owned the Facility located at 7340 Richmond Road in Williamsburg, Virginia. The Facility is currently owned by Southern Maryland Oil Company.

2. Motiva submitted a RCRA Subtitle C Site Identification Form on July 5, 1990, that provided notice of regulated waste activity at the Facility as a SQG of hazardous waste. A follow-up notification for the Facility had been submitted by Motiva on January 24, 2012 that provided notice of regulated waste activity at the Facility as a LQG of hazardous waste. Motiva had previously been issued EPA ID No. VAD988172391 for the Facility.

3. On January 21, 2003, Motiva notified DEQ of a petroleum release at the Facility. Following a Site Characterization Report submitted on May 2, 2003, Motiva conducted various cleanup activities that included the removal of Underground Storage Tanks and product lines, the treatment of contaminated groundwater and enhanced fluid recovery to recover liquid phase hydrocarbons. The 4th Quarter 2009 Post Site Characterization Report submitted by Motiva indicated remaining petroleum contamination at the Facility and on June 22, 2010 DEQ approved a Corrective Action Plan ("CAP") submitted by Motiva that included the excavation of petroleum

contaminated soil and the treatment of the soil with an Oxygen Release Compound® ("ORC").

4. On January 19, 2012, Motiva conducted a soil characterization to determine appropriate disposal of the petroleum contaminated soil to be excavated per the approved CAP.

5. Results from samples taken from 118.55 tons of soil at the Facility indicated the petroleum contaminated soil contained 10.1 mg/l Lead, considered a hazardous waste since it was greater than the RCRA Subtitle C toxicity characteristic for hazardous Lead greater than 5.0 mg/l (EPA waste code D008) as set forth in 40 CFR part 261.

6. On February 20, 2013, Department staff inspected the Facility for compliance with the requirements of the Virginia Waste Management Act and the Regulations. Based on the inspection and follow-up information, Department staff made the following observations:

    a. On May 16, 2012 Motiva excavated the petroleum and Lead contaminated soil from the Facility excavation site as described in the CAP, loaded it onto five trucks and transported it from the Facility to Republic Environmental Systems ("Republic"), a permitted (EPA ID No. PAD085690592) hazardous waste Treatment, Storage and Disposal Facility located in Hatfield, Pennsylvania.
    b. Four of the five truck loads of contaminated soil (96.8 tons of soil) were rejected due to high levels of volatile organic compounds by Republic and transported back to the Facility on May 18, 2012.
    c. Upon arriving at the Facility, the petroleum and lead contaminated soil was stockpiled on site onto and covered with plastic sheeting. The lead contaminated soil was not stored in a containment building. Motiva had not been issued a permit by DEQ or EPA to store hazardous waste at the Facility.
    d. The petroleum and lead contaminated soil was treated with ORC, fertilizer and clean soil. Motiva had not been issued a permit by DEQ or EPA to treat hazardous waste at the Facility.
    e. The treated soils were land disposed into the excavation area of the Facility, compacted and asphalt was placed over the excavation site. Motiva had not been issued a permit by DEQ or EPA to dispose of hazardous waste by land disposal at the Facility.
    f. Motiva did not provide samples or analysis of the concentration of Lead in the treated soils prior to placement onto the land to ensure compliance with Land Disposal Restrictions.

7. 40 CFR 270.1(c), 9 VAC 20-60-270 and Va. Code §10.1-1426(A) require a permit for the storage, treatment or disposal of hazardous waste.

8. 40 CFR 268.9(c), 9 VAC 20-60-268 and 40 CFR 268.49(a) require a generator of hazardous waste to comply with Land Disposal Restrictions prior to placing soil that exhibits a characteristic of hazardous waste into a land disposal unit.

9. On April 15, 2013, based on the February 20, 2013 inspection and follow-up information, the Department issued a Notice of Violation to Motiva for the violations described in paragraphs C(6) through C(8), above.

10. On May 30, 2013, Department staff met with Motiva representatives to discuss the violations noted in the NOV.

11. On June 21, 2013, Motiva submitted a Site Characterization Plan ("SCP") to characterize the soils and groundwater at the Facility. The SCP included distinct site investigation requirements to 1) define conditions and provide technical basis for resolution of activities listed in C(5) and C(6) RCRA Subtitle C related activities at the site, and 2) provide an understanding of current site conditions related to the pre-existing petroleum UST release. The SCP was approved by DEQ on July 11, 2013.

12. On October 11, 2013, Department staff met with Motiva representatives to discuss the SCP.

13. On January 14, 2013, Motiva submitted the SCP Results Report.

14. A review of the SCP Results Report by Department staff indicated that the activities outlined in C(6) did not result in a release of hazardous waste constituents to the environment.

15. Based on the observations of the February 20, 2013 inspection, the May 30, 2013 and October 11, 2013 meetings, and other information listed above, the Board concludes that Motiva has violated 40 CFR 270.1(c), 9 VAC 20-60-270, Va. Code §10.1-1426(A), 40 CFR 268.9(c), 9 VAC 20-60-268 and 40 CFR 268.49(a), as described in paragraphs C(6) through C(8), above.

16. Motiva has submitted documentation that verifies that the violations in paragraphs C(6) through C(9), above, have been corrected.

## SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it pursuant to Va. Code § 10.1-1455, the Board orders Motiva and Motiva agrees to pay a civil charge of $134,446.00 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

Motiva 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 Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Motiva shall be liable for attorneys' fees of 30% of the amount outstanding.

**SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of Motiva for good cause shown by Motiva, 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 the purposes of this Order and subsequent actions with respect to this Order only, Motiva admits the jurisdictional allegations, and agrees not to contest, but does not admit, the findings of fact and conclusions of law in this Order.

4. Motiva 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. Motiva declares it has received fair and due process under the Administrative Process Act and the Virginia Waste Management Act 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 Motiva 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. Motiva does not waive any rights or objections it may have in any enforcement actions by federal, other state or local authorities arising out of the same facts or facts similar to those recited in this Order.

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. Motiva 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. Motiva shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Motiva 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 TRO Regional Director within 24 hours and in writing within three business days, of learning of any condition above, which Motiva 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 Motiva. Nevertheless, Motiva 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 Motiva has completed all of the requirements of the Order;

    b. Motiva 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 Motiva.

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

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 parties other than those expressed in this Order.

15. By its signature below, Motiva voluntarily agrees to the issuance of this Order.

And it is so ORDERED this_____ day of _____, 2014.

_____
Regional Director
Department of Environmental Quality

Motiva Enterprises, LLC voluntarily agrees to the issuance of this Order.

Date: 3/10/2014 By: Sabrina R. Cox, HSSE DIR. + COMPLIANCE OFFICER
(Person) (Title)

SABRINA R. COX

State of Texas
~~Commonwealth of Virginia~~
City/County of Harris

The foregoing document was signed and acknowledged before me this 10 day of March, 2014, by Sabrina R. Cox who is HSSE DIR + COMPLIANCE OFFICER of Motiva Enterprises, LLC on behalf of the company.

Veronica Fowler
Notary Public

5730621
Registration No.

My commission expires: 3-23-2018

Notary seal: NOTARY PUBLIC STATE OF TEXAS VERONICA H FOWLER My Commission Expires March 23, 2018