COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
NORTHERN REGIONAL OFFICE
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Douglas W. Domenech
Secretary of Natural Resources

David K. Paylor
Director

Thomas A. Faha
Regional Director

STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
SV5 ONE VINTAGE PARK, LLC

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 SV5 One Vintage Park, LLC, 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. The facility is located at 45335 Vintage Park Plaza in Sterling, 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.

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

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

12. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.

13. "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.

14. "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.

15. "SV5" means SV5 One Vintage Park, LLC, a limited liability company authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries. SV5 One Vintage Park, LLC is a "person" within the meaning of Va. Code § 62.1-44.3.

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

17. "VAC" means the Virginia Administrative Code.

SECTION C: Findings of Fact and Conclusions of Law

1. The Location consists of commercial office space and an asphalt parking lot.

2. SV5 informed DEQ that on September 2, 2011, SV5 hired a contractor to complete renovations of the back-up generator at the Location, a 1,500 gallon diesel fuel storage tank, a 75 gallon day tank, and the installation of a concrete spill containment area which was to include two petro plug boxes.

3. NRO received notification on September 8, 2012, from the Loudoun County Fire Department that approximately 650 gallons of diesel fuel from a day tank for a generator located at the Location had discharged from a spill containment area, across an asphalt parking lot, into a storm drain drop inlet, through an outfall pipe, and into a dry stormwater pond area. The stormwater pond discharges to an unnamed tributary of Indian Creek.

4. SV5 asserts that upon discovering the discharge, it immediately took the steps to address it, including: (i) calling the Loudoun County Fire Department; (ii) contracting with GEC Environmental Contracting Corporation (GEC) to conduct the cleanup and containment work; (iii) conducting an investigation to determine the cause of the spill. SV5 believes that the spill was caused by the failure of its contractor to install two petro plug boxes and replace the tank control board.

5. GEC Environmental Contracting Corporation conducted containment and cleanup between September 8, 2012 and September 20, 2012. A vacuum truck was used to remove the product that remained in the spill containment area of the generator fueling system and the surrounding area. Absorbent materials were also placed at various locations throughout the parking lot, the outlet of the stormwater conveyance piping, and the open drainage swale. The area was flushed of residual product, and was collected with the vacuum truck.

6. In an Initial Abatement Measures report dated October 1, 2012, and submitted by GEC to DEQ, GEC stated that the results of the samples indicated a nominal presence of petroleum which should attenuate naturally from the application of dredging microbes.

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 November 19, 2012, the Department issued Notice of Violation No. 2012-11-N-001 to SV5 for the intentional discharge of waste oil to the land and state waters.

9. Based on the results of the October 2, 2012, inspection, and the documentation received by Loudoun County and GEC, the State Water Control Board concludes that SV5 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(1) through C(3) above.

10. Based on information contained in the Initial Abatement Measures report dated October 1, 2012, and DEQ staff's best professional judgment DEQ has determined that no further containment and cleanup is necessary at this time.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code § 62.1-44.34:20, the Board orders SV5, and SV5 agrees to pay a civil charge of $3,711.50 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

SV5 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, SV5 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 SV5 for good cause shown by SV5, 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, SV5 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. SV5 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. SV5 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 SV5 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. SV5 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. SV5 shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. SV5 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 SV5. Nevertheless, SV5 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 SV5 has completed all of the requirements of the Order;

    b. SV5 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 SV5.

    Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve SV5 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 SV5 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 SV5 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 SV5 to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of SV5.

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, SV5 voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2013.

_____

Thomas A. Faha, Regional Director
Department of Environmental Quality

SV5 One Vintage Park, LLC voluntarily agrees to the issuance of this Order.

Date: 9/25/2013 By: _____, MANAGING MEMBER
(Person) (Title)
SV5 One Vintage Park, LLC

Commonwealth of Virginia
City/County of Loudoun

The foregoing document was signed and acknowledged before me this 25 day of September, 2012, by Veer Bhartiya who is Managing Member of SV5 One Vintage Park, LLC on behalf of the company.

Estelle Esi Sena Kanda-Osai
Notary Public

7285211
Registration No.

My commission expires: 4/30/2017

Notary seal:

ESTELLE ESI SENA KANDA-OSAI
NOTARY PUBLIC
REG # 7285211
MY COMMISSION EXPIRES 4/30/2017
COMMONWEALTH OF VIRGINIA