COMMONWEALTH of VIRGINIA

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Secretary of Natural Resources

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STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
W. HENRY HARDY INC.
FOR
W. HENRY HARDY INC. – DANVILLE
VPDES Storm Water General Permit
For Storm Water Discharges Associated with Industrial Activity
Registration No. VAR050979

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 W. Henry Hardy Inc., regarding the W. Henry Hardy Inc. – Danville facility, for the purpose of resolving certain violations of the State Water Control Law and the applicable general permit and regulation.

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. "DMR" means Discharge Monitoring Report.

9. "Effluent" means wastewater – treated or untreated – that flows out of a treatment plant, sewer, or industrial outfall.

10. "Facility" or "Plant" means the W. Henry Hardy Inc. petroleum bulk station and terminal facility in Danville, Virginia.

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

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

13. "O&M" means operations and maintenance.

14. "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.

15. "Permit" means the VPDES Storm Water General Permit for Stormwater Discharges Associated with Industrial Activity, which the corporation received coverage under on July 1, 2014 and which will expire on June 30, 2019. Hardy was assigned Registration No. VAR050979.

16. "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.

17. "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.

18. "Regulation" means the VPDES Industrial Stormwater General Permit Regulation, 9 VAC 25-151 *et seq.*

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

20. "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.

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

22. "VAC" means the Virginia Administrative Code.

23. "VPDES" means Virginia Pollutant Discharge Elimination System.

24. "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. Hardy owns and operates the Facility. The Permit allows Hardy to discharge storm water from the Facility, to an unnamed tributary ("UT") of the Sandy River, in strict compliance with the terms and conditions of the Permit.

2. The Sandy River and its tributaries are located in the Roanoke and Yadkin River Basins. The Sandy River and its tributaries are listed in DEQ's 305(b)/303(d) report as impaired for Escherichia coli and the sources of the impairment are listed as livestock (grazing and feeding operations, unspecified domestic waste, wastes from pets and wildlife other than waterfowl.

3. On August 8, 2013, DEQ staff conducted an inspection of the Facility and observed the following violations:

    a. The Annual Comprehensive Site Compliance Evaluation had not been documented for 2012 as required by 9 VAC 25-151-80.E.

    b. The Quarterly Visual Monitoring of storm water quality had not been documented as required by 9 VAC 25-151-70.A.1a(a).

    c. The permittee had failed to document employee training on implementing the Storm Water Pollution Prevention Plan ("SWPPP") as required by 9 VAC 25-151-80.B.4.b(6).

    d. The site specific SWPPP was absent from the Facility as required by 9 VAC 25-151-60.

    e. The quarterly site inspections had not been documented as required by 9 VAC 25-151-80.A and 80.B.6.b(5).

    f. Good housekeeping practices were not being followed as evidenced by petroleum staining on the ground and dead vegetation in the area adjacent to 2 oil/water separators and improper storage of containers with petroleum/waste petroleum product exposed to stormwater as required by 9 VAC 25-151-80.B.4.b(1).

4. On November 6, 2013, the Department issued Notice of Violation NOV No. W2013-11-L-004 to Hardy for the violations listed in paragraph C3, above. The Department did not receive a response to the NOV as requested.

5. On December 17, 2013, DEQ staff conducted an inspection of the Facility and observed the same violations observed on the August 8, 2013 inspection with the exception of the absence of the site specific SWPP. DEQ staff noted that a SWPPP was available but was incomplete.

6. On February 13, 2014, the Department issued NOV No. W2014-02-L-0004 to Hardy for the violations listed in paragraph C3, above. The Department did not receive a response to the NOV as requested.

7. On August 13, 2015, the Department issued WL No. W2015-08-L-1013 to Hardy for failing to submit its DMR on or before 07/10/2015 for the monitoring period of January 1, 2015 – June 30, 2015.

8. On February 19, 2016, the Department issued WL No. W2016-02-L-1022 to Hardy for failing to submit its DMR on or before 01/10/2016 for the monitoring period of July 1, 2015 – December 31, 2015.

9. A review of Department files indicates that Hardy failed to submit its 2010 Annual DMR (due 01/10/2011), 2011 Annual DMR (due 01/10/2012), 2013 Annual DMR (due 01/10/2014), 2014 Annual DMR (due 01/10/2015), 2015 Semiannual DMR (due 07/10/2015), and 2015 Semiannual DMR (due 01/10/2016).

10. 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."

11. The Regulation, at 9 VAC 25-151-70, 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.

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

13. The Department has issued no permits or certificates to Hardy other than coverage under the VPDES Storm Water General Permit.

14. Sandy River and its tributaries are surface waters located within the Commonwealth and are "state waters" under State Water Control Law.

15. Based on the results of the August 8, 2013 and December 17, 2013 inspections and a review of Department files, the Board concludes that Hardy has violated the Permit, Va. Code § 62.1-44.5 and 9 VAC 25-151-70, by discharging stormwater associated with industrial activity from the Facility while concurrently failing to comply with the conditions of the Permit, as described in paragraphs C(3) and C(9), above.

16. In order for Hardy to return to compliance, DEQ staff and representatives of Hardy 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 §§ 62.1-44.15, the Board orders Hardy, and Hardy agrees to:

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

2. Pay a civil charge of **$8,795**, 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

54-0715859

Hardy shall include its Federal Employer Identification Number (FEIN) **[(xx-xxxxxxx)]** 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, Hardy 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 Hardy for good cause shown by Hardy, 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, Hardy admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

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

    b. Hardy 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 Hardy.

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

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, Hardy voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2017.

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

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W. Henry Hardy, Inc. voluntarily agrees to the issuance of this Order.

Date: 1-13-17 By: William O. Hardy, Jr., President.
William O. Hardy, Jr.
W. Henry Hardy, Inc.

Commonwealth of Virginia
City/County of Danville

The foregoing document was signed and acknowledged before me this 13TH day of JANUARY, 2017, by William O. Hardy, Jr. who is President of W. Henry Hardy, Inc., on behalf of the corporation.

Wendy Gillie Abbott
Notary Public

7253730
Registration No.

My commission expires: 5-31-17

Notary seal: WENDY GILLIE ABBOTT
Notary Public
Commonwealth of Virginia
Reg. #7253730
My Commission Expires 5/31/17

APPENDIX A
SCHEDULE OF COMPLIANCE

Hardy shall:

1. Comply with all provisions of the Permit and shall, within 10 days of completion of required quarterly visual monitoring, quarterly Facility inspection, annual comprehensive Facility inspection and employee training submit to the Department, as applicable, a copy of the inspection report, documentation of the findings or confirmation of the required training event (together with an attendance list).

2. No later than 30 days from the effective date of the Order, provide the Department a complete, approvable Storm Water Pollution Prevention Plan ("SWPPP") for the Facility.

3. No later than 30 days from the effective date of the Order, submit to the Department documentation that good housekeeping practices are being followed and that the petroleum staining on the ground and dead vegetation in the area adjacent to the two oil/water separators and improper storage of containers with petroleum/waste petroleum product exposed to stormwater have been corrected.

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

Jerry Ford, Jr.
VA DEQ - Blue Ridge Regional Office
3019 Peters Creek Road
Roanoke, VA 24019
Phone: (540) 562-6817
e-mail: Jerry.Ford@deq.virginia.gov