COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
TIDEWATER REGIONAL OFFICE
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L. Preston Bryant, Jr.
Secretary of Natural Resources

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Director

Francis L. Daniel
Regional Director

STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION ORDER BY CONSENT ISSUED TO APEX OIL COMPANY, INC.

Registration No. 60179

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §10.1-1307, §10.1-1316, and §10.1-1319 between the State Air Pollution Control Board and Apex Oil Company, Inc. for the purpose of resolving certain violations of environmental law and regulations.

SECTION B: Definitions

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

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

2. "Board" means the State Air Pollution Control Board, a permanent collegial body of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1301 and 10.1-1184.

3. "Apex" means the Apex Oil Company, Inc., a company registered and authorized to do business in 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.

6. "Distillate oil" means liquid fuel which meets the American Society for Testing Materials (ASTM) specification for numbers 1 and 2 fuel oil.

7. "Residual Oil" means liquid fuel which meets the American Society for Testing Materials (ASTM) specifications for number 4 fuel oil.

8. "Facility" means the Apex Oil Company bulk petroleum product terminal located at 428 Barnes Road in Chesapeake, Virginia.

9. "Order" means this document, also known as a Consent Order.

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

11. "Regulations" means Virginia Regulations for the Control and Abatement of Air Pollution (9 VAC 5-60-10 *et seq.*).

12. "CFR" means the Code of Federal Regulations.

SECTION C: Findings of Fact and Conclusions of Law

1. Apex owns and operates the Facility, a bulk petroleum product terminal located at 428 Barnes Road in Chesapeake, Virginia.

2. Apex receives, stores, and distributes bulk petroleum products including gasoline, naptha, distillates, ethanol, and liquid asphalt at the Facility. The Facility operated under a May 30, 2006 State Operating Permit ("SOP") that included four existing boilers: two 6.4 million British Thermal Units per hour ("MMBtu/hr") boilers fueled by #2 distillate oil and two existing 19.9 MMBtu/hr boilers fueled by #2 distillate and #4 residual oil.

3. Apex was required by the May 30, 2006, SOP and the Regulations to submit to DEQ an annual emission statement for the Facility that includes fuel throughputs. A review of the Facility 2006 annual emission statement submitted by Apex revealed that the fuel throughput of combined #2 distillate and #4 residual oil for the existing 19.9 MMBtu/hr boilers was 440,000 gallons for 2006.

4. Permit condition 16 of Apex's SOP dated May 30, 2006, limits the annual fuel throughput to 260,000 gallons, calculated monthly, of combined #2 distillate and #4 residual oil for the two existing 19.9 MMBtu/hr boilers in the boiler house. DEQ alleges that Apex violated the permitted monthly fuel throughput limits, exceeding its annual fuel throughput limit by 180,000 gallons (or 69%) in 2006.

5. On April 13, 2007, DEQ issued a Notice of Violation for the fuel throughput exceedance. However, based upon records provided by Apex on July 12, 2007, Apex continued to exceed the permitted monthly fuel throughput limits during 2007.

6. On August 24, 2007, Apex submitted to DEQ a permit amendment application requesting an increase in the SOP total fuel throughput limit for the two boiler house

boilers combined to 800,000 gallons per year. The permit was issued on January 4, 2008.

7. Apex also operated under a March 22, 2007, New Source Review ("NSR") permit to reflect the replacement of the two existing 19.9 MMBtu/hr boilers with the construction of two new boilers, 10.1 MMBtu/hr and 12.1 MMBtu/hr, both subject to 40 CFR Part 60 Subpart Dc, New Source Performance Standards ("NSPS") and both fueled by #2 distillate oil. Apex later was issued a new SOP on July 24, 2007, for the facility that combined the requirements of the SOP dated May 30, 2006, and the requirements of the NSR permit dated March 27, 2007. Among other things, the SOP dated July 24, 2007, contained distillate oil and residual oil throughput limits and recordkeeping requirements for compliance with fuel oil sulfur limits, same as in the previous SOP dated May 30, 2006, for the two existing 19.9 MMBtu/hr boilers, and the NSR permit dated March 22, 2007, for the two new NSPS boilers.

8. On August 20, 2007, DEQ compliance staff conducted an inspection at the Facility. During the inspection, a review of Apex's records revealed several recordkeeping deficiencies.

9. Permit condition 16 of Apex's SOP dated July 24, 2007, requires fuel certifications from the fuel supplier with each shipment of fuel burned for all boilers and heaters to contain fuel supplier, date, quantity, sulfur content, sampling location, sulfur determination, and an ASTM D396 compliance certification statement. A similar condition (Condition 21) was in the SOP dated May 30, 2006. DEQ alleges that Apex violated the SOP dated July 24, 2007, by failing to provide delivery receipts of #4 residual oil, from December 2006 to March 2007, with the required information.

10. Permit condition 14 of Apex's NSR permit dated March 22, 2007, and condition 35 of the SOP dated July 24, 2007, required the notification of construction of the newly installed boiler within 30 days and the notification of anticipated start-up date of the new boiler not more than 60 days nor less than 30 days before such date. DEQ alleges that Apex violated its permit by failing to provide notification of the construction and anticipated start-up date within the required time.

11. Permit condition 12 of Apex's NSR permit dated March 22, 2007, and condition 33 of the SOP dated July 24, 2007, required the submittal of a semi-annual fuel quality report for the new 10.1 MMBtu/hr boiler within 30 days of the end of the submittal period. DEQ alleges that Apex violated its permit by providing the fuel quality report for the January 2007 through June 2007 period on November 2, 2007 (due July 31, 2007).

12. Permit condition 32 of Apex's SOP dated July 24, 2007, requires on-site records for fuel usage and total amount of fuel oil throughput (#2 distillate oil and #4 residual oil) to be kept on-site for five years. A similar condition (Condition 22) was in the SOP dated May 30, 2006. DEQ alleges that Apex violated the July 24, 2007, SOP by failing to provide records of fuel throughput for the new 10.1 MMBtu/hr boiler and failing to provide records of the total amount of fuel oil throughput for the two 19.9 MMBtu/hr boilers.

13. Permit condition 32 of Apex's SOP dated July 24, 2007, requires records of 12-month totals for fuel oil throughput in the boilers to be kept on-site for five years. A similar condition (Condition 22) was in the SOP dated May 30, 2006. DEQ alleges that Apex violated the July 24, 2007, SOP by providing records for only the most recent 12-month fuel oil throughput totals.

14. Permit condition 32 of Apex's SOP dated July 24, 2007, requires throughput and types of liquids stored, average monthly product temperature, and true vapor pressure as stored to be available on-site. A similar condition (Condition 22) was in the May 30, 2006, SOP. DEQ alleges that Apex violated the July 24, 2007, SOP by failing to provide those records for Tank 13.

15. DEQ issued a Notice of Violation on April 3, 2007, to Apex, advising of the facts and applicable regulatory and statutory citations given in sections C.4 through C.5, above.

16. DEQ issued a Notice of Violation on September 11, 2007, to Apex, advising of the facts and applicable regulatory and statutory citations given in sections C.7 through C.13, above.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. Code §10.1-1455, orders Apex, and Apex voluntarily agrees, to pay a civil charge of $4,500.00 within 30 days of the effective date of this Order in complete and sole settlement of the violations cited in this Order. Payment shall be made by check payable to the "Treasurer of Virginia," and shall be sent to:

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

Either on a transmittal letter or as a notation on the check, Apex shall indicate that this Payment is submitted pursuant to this Order and shall include the Federal Identification Number for Apex.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Apex for good cause shown by Apex, or on its own motion after notice and opportunity to be heard.

2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the Notices of Violation issued to Apex for the Facility on April 3, 2007, and September 11, 2007. 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 as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.

3. For the purposes of this Order only, Apex admits the jurisdictional allegations but does not admit the factual findings or conclusions of law contained herein.

4. Apex 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. Apex declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the Virginia Air Pollution Control 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 enforce this Order.

6. Failure by Apex 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. Apex 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. Apex shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Apex shall notify the TRO Regional Director in writing 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 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 of 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 Apex. Notwithstanding the foregoing, Apex agrees to be bound by any compliance date which precedes the effective date of this Order.

11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Apex. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Apex from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. By its signature below, Apex voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of May 13, 2008.

Francis L. Daniel

Francis L. Daniel

Apex voluntarily agrees to the issuance of this Order.

By: Douglas D. Hommert

Date: May 6, 2008

State of Missouri
~~Commonwealth of Virginia~~
~~City~~ County of St. Louis

The foregoing document was signed and acknowledged before me this 6 day of May (month), 2008, by Douglas D. Hommert (name), who is Executive Vice President (title) of Apex Oil Company, Inc., on behalf of Apex Oil Company, Inc.

Mary B. Hockle

Notary Public
Mary B. Hockle, Notary Public

My commission expires: 12-30-2010

"NOTARY SEAL"
Mary B. Hockle, Notary Public
St. Louis County, State of Missouri
My Commission Expires 12/30/2010
Commission Number 06392069