COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
SOUTHWEST REGIONAL OFFICE
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Douglas W. Domenech
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STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
Ammar's, Inc.
Incident Report No. IR 2011-S-0044/Pollution Complaint No. PC 2011-1001

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 Ammar's, Inc., 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. "Ammar's" means Ammar's, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, subsidiaries, and parents. Ammar's, Inc. is a "person" and an "operator" within the meaning of Va. Code § 62.1-44.34:14.

2. "AST" means aboveground storage tank, as defined in Va. Code § 62.1-44.34:14 and 9 VAC 25-91-10.

3. "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.

4. "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.

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. "Facility" means the Ammar's, Inc. corporate offices and headquarters, located at 710 South College Avenue, in Bluefield, Virginia a development or installation within the Commonwealth that deals in, stores or handles oil, and includes a pipeline. The discharge occurred at the Facility.

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

9. "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.

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. "Site" means the facility, land, road, storm drain(s) and surface water(s) adversely affected by the oil discharge.

12. "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.

13. "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.

14. "SWRO" means the Southwest Regional Office of DEQ, located in Abingdon, Virginia.

15. "UST" means underground storage tank, as defined in Va. Code § 62.1-44.34:8 and 9 VAC 25-580-10.

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. Ammar's operates a number of discount department stores, known as Magic Marts, with offices and warehouses in Bluefield, Virginia.

2. At approximately 8:30 p.m. on Sunday, July 4, 2010, staff from DEQ's SWRO received a report from the Virginia Department of Emergency Management's ("VDEM"'s) Emergency Operations Center ("EOC") of a possible discharge of oil into state waters in Bluefield, Virginia. A resident had reported a sheen on Beaverpond Creek, a state water, and the odor of diesel fuel. DEQ staff contacted the Bluefield, Virginia Fire Chief, who confirmed the discharge to Beaverpond Creek of an estimated 50 to 75 gallons of oil, in the form of diesel fuel, due to overfill of an AST at the facility. The National Response Center ("NRC") was notified of the discharge by Ammar's Maintenance Director at approximately 12:43 p.m. on Monday, July 5, 2010, only after being asked by DEQ staff if the discharge had been reported, then directed by DEQ staff to report to the NRC.

3. Containment and Cleanup was initiated by the Fire Department and Ammar's. Ammar's also called Marshall Miller and Associates ("MM&A"), a local environmental contractor, to assist with containment and cleanup.

4. After receiving another call from the EOC the following morning (July 5, 2010) regarding a report of a sheen and distressed wildlife, DEQ staff went to the facility and met with representatives of Ammar's Inc. Ammar's determined that the discharge was caused by a hole in the product piping for a 4,000 gallon diesel AST, not from a tank overfill as originally reported to DEQ by the Bluefield Fire Chief. DEQ staff investigated the report as Incident Report ("IR") No. IR 2011-S-0044, and assigned Pollution Complaint No. PC 2011-1001 to the discharge.

5. While MM&A had been at the facility on July 4, 2010 and had pumped the tank sump, they had not been contracted by Ammar's to perform any other containment and cleanup. The general purpose booms and pads installed initially by the Fire Department and Ammar's had not been maintained and were saturated. On Monday, July 5, 2010, MM&A replaced the general purpose boom and pads with absorbent booms and pads at the facility and along Beaverpond Creek and the Bluestone River. A harbor boom was placed at the Mud Fork Road bridge, approximately four miles from the site. An underflow dam was constructed in the ditchline on Ammar's property. Booms and pads were then maintained, replaced and ultimately removed for disposal by MM&A. Disposal manifests for these items were submitted to DEQ.

6. Oil entered Beaverpond Creek, flowed to its confluence with the Bluestone River (approximately one mile), then flowed down the Bluestone River for approximately 5.5 miles. The last containment booms were installed at the Dolph-Nemours Road location in Nemours, West Virginia. Per later conversations with Virginia Department of Game and Inland Fisheries personnel who were on site at the time of the investigation, there were no fish, crayfish or waterfowl deaths attributable to the discharge.

7. Ammar's reported that a total of approximately 1,143 gallons of oil were discharged during the incident.

8. Va. Code § 62.1-44.34:18 prohibits the discharge of oil into or upon state waters, lands, or storm drain systems.

9. Va. Code § 62.1-44.34:19 requires the reporting of a discharge of oil that enters, or may reasonably be expected to enter, state waters, lands or storm drain systems within the Commonwealth.

10. On August 5, 2010, the DEQ issued a confirmed release letter to Ammar's. A Site Characterization Report was received December 20, 2010.

11. On August 6, 2010, the Department issued NOV No. NOV-015-0810-WA to Ammar's for a discharge of oil to state waters, failure to report the discharge, and tank registration issues.

12. On August 20, 2010, DEQ received an Initial Abatement Report ("IAR"), submitted by MM&A on behalf of Ammar's. This report provided details regarding the discharge, site information, initial abatement measures and remediation activities. Per the IAR, several hundred gallons of diesel fuel have been recovered, either directly from the piping sump, or from three product recovery sumps, from excavated soils and from capture by absorbent booms and pads. Per results of direct push soil borings, an estimated total of approximately 163 cubic yards of impacted soils have been removed for proper disposal.

13. On August 27, 2010, Department staff met with representatives of Ammar's to discuss the incident, discharge, emergency response, discharge control and clean-up, and future actions. Per documentation submitted and later discussions, tank registration issues were resolved and are not considered in this action.

14. Per letters dated September 8, 2010 and September 13, 2010, Ammar's submitted a written account of the incident and supporting documentation.

15. Based on the results of inspections on July 5, July 6, and July 8, 2010, documentation submitted dated August 17, September 8 and September 13, 2010, and the meeting held on August 27, 2010, the State Water Control Board concludes that Ammar's 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, and Va. Code § 62.1-44.34:19, which requires the reporting of a discharge of oil that enters, or may reasonably be expected to enter, state waters, lands or storm drain systems within the Commonwealth. These violations are as described in paragraphs C(1) through C(8), above.

16. In order for Ammar's to complete its return to compliance, DEQ staff and representatives of Ammar's 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 §§ 62.1-44.34:20 and 62.1-44.34:18(C)(1), the Board orders Ammar's, and Ammar's agrees to:

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

2. Pay a civil charge of $14,276.18 within 30 days of the effective date of the Order in settlement of the violations cited in this Order; and

3. Reimburse DEQ $2,479.69 within 30 days of the effective date of the Order for costs incurred in investigating the oil discharge.

Payment for the total amount of $16,755.87 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

Ammar's shall include its Federal Employer Identification Number (FEIN) with the 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).

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Ammar's for good cause shown by Ammar's, 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, Ammar's admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. Ammar's 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. Ammar's 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 Ammar's 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. Ammar's 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. Ammar's shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Ammar's 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 Ammar's 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 Ammar's. Nevertheless, Ammar's 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. Ammar's 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

    b. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Ammar's.

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

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, Ammar's voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2011.

_____

Dallas R. Sizemore, Regional Director
Department of Environmental Quality

Ammar's voluntarily agrees to the issuance of this Order.

Date: 12/22/2010 By: K. A. Ammar, President
K. A. Ammar III (Title)
Ammar's, Inc.

Commonwealth of Virginia
City/County of Tazewell

The foregoing document was signed and acknowledged before me this 22nd day of December, 2010, by K A Ammar III who is President of Ammar's, Inc., on behalf of the corporation.

Ardena R. Neal
Notary Public

172817
Registration No.

My commission expires: May 31, 2014

Notary seal:

ARDENA R. NEAL
NOTARY PUBLIC
MY COMMISSION NUMBER 172817
COMMONWEALTH OF VIRGINIA

APPENDIX A
SCHEDULE OF COMPLIANCE

1. **Creek Sampling**

Ammar's, Inc. is required to conduct groundwater monitoring as specified in Item 2 below. The on-site drainage ditch and Beaverpond Creek shall also be sampled, during the first quarterly monitoring event, for Total Petroleum Hydrocarbons – Diesel Range Organics ("TPH-DRO") by EPA method 8015 and Semi-Volatile Organic Compounds ("SVOCs") by EPA method 8270. Data from the first quarterly monitoring event will be used to determine the necessity of additional creek sampling.

2. **Groundwater Monitoring**

Ammar's shall begin quarterly monitoring, for a period of not less than one year, of groundwater monitoring wells. All results of the quarterly sampling shall be submitted to the Department for review and validation. Letter reports documenting monitoring activities and sampling results shall be submitted on a quarterly basis. For each quarterly report, monitoring wells should be gauged for the presence of Light Non-Aqueous Phase Liquid ("LNAPL"). The first quarterly report should also include groundwater sampling for TPH-DRO by EPA method 8015 and SVOCs by EPA method 8270. The first quarterly monitoring report is due on or before **March 31, 2011.** Data from the first quarterly monitoring event will be used to determine the necessity of additional groundwater sampling/assessment. If LNAPL accumulations remain in the monitoring wells, dual-phase extraction or aggressive fluid/vapor recovery events may be necessary. The second quarterly report is due on or before **June 30, 2011.** The third quarterly report is due on or before **September 30, 2011**. The fourth quarterly report is due on or before **December 31, 2011**.

3. **Notification**

Within 14 days of completion, Ammar's shall submit written notification to the DEQ of the completion of all action items required by this Order. If completion of an item does not occur in accordance with this schedule, Ammar's shall submit written notification within three (3) business days after the due date advising the DEQ when it plans to complete the item.

4. **Contact**

Unless otherwise specified in this Order, Ammar's shall submit all requirements of Appendix A of this Order to:

Ms. Ruby Scott
Compliance Auditor
VA DEQ – Southwest Regional Office
P. O. Box 1688
Abingdon, Virginia 24212