COMMONWEALTH of VIRGINIA

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

David K. Paylor
Director

Francis L. Daniel
Regional Director

STATE WATER CONTROL BOARD
ENFORCEMENT ACTION – SPECIAL ORDER BY CONSENT
ISSUED TO
BAY BRIDGE ENTERPRISES, LLC

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code §62.1-44.34:20 between the State Water Control Board and Bay Bridge Enterprises, LLC, for the purpose of resolving certain violations of State Water Control Law 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. "Administrative Process Act" or "APA" means Chapter 40 (§ 2.2-4000 *et seq.*) of Title 2.2 of the Va. Code.

2. "Bay Bridge" means Bay Bridge Enterprises, LLC, a limited liability company authorized to do business in Virginia and its members, affiliates, partners, subsidiaries, and parents. Bay Bridge is a "person" within the meaning of Va. Code § 62.1-44.3.

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. "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. "Drag slip" means a space between two bulkheads into which a vessel to be dismantled is hauled or dragged shoreward by mechanical means such as a winch or pulley.

7. "Facility" means the Bay Bridge ship-dismantling facility located at 4300B Buell Street, Chesapeake, Virginia.

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 Special Order" or "Order by Consent," a type of Special Order under the State Water Control Law.

11. "*Saugatuck*" means a decommissioned United States Navy fleet oiler, formerly "*USS Saugatuck* (AO-75)"

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

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

15. "VAC" means the Virginia Administrative Code.

SECTION C: Finding of Facts and Conclusions of Law

1. Bay Bridge dismantles ships and other waterborne vessels at the Facility for the purpose of selling and recycling scrap metal.

2. On September 1, 2008, DEQ received notification of a discharge of fuel oil No. 6 at the Facility that had occurred on August 31, 2008. Fuel oil No. 6 is a petroleum product, and is included in the definition of "oil" under Va. Code § 62.1-44.34:14.

3. *Saugatuck*, which was being dismantled in the Facility's drag slip, took on water causing the discharge of fuel oil No. 6 into the water within the drag slip. There was a two-foot gap in the floating barrier (or "boom") intended to keep any spilled petroleum products confined to the drag slip; consequently some of the fuel oil discharged to the Southern Branch of the Elizabeth River ("Southern Branch"). The Southern Branch is considered State waters pursuant to § 62.1-44.3 of the Code of Virginia.

4. The Southern Branch is located in the James River Basin and is listed in DEQ's 305(b) report as impaired for estuarine bioassessments and elevated tributylin ("TBT"). The source of both impairments is believed to be contaminated sediments; shipbuilding, drydocking and other shipping-related releases are suspected additional sources of the TBT.

5. Emergency response personnel positioned a large additional boom across the opening of the drag slip; placed oil-absorbing booms and pads within the drag slip and in the river; and redeployed the existing boom to eliminate the two-foot gap.

6. In reporting the incident on September 1, 2008, Bay Bridge indicated that its cleanup efforts had been hampered by its inability to contact an oil-spill-response vendor during the Labor Day holiday (observed on September 1, 2008) and an insufficient number of permanent booms at the Facility, which were on backorder.

7. DEQ staff responded to the notification on September 2, 2008, and observed the ongoing remediation efforts. Staff noted that oil had been deposited on bridge supports and on the shoreline and vegetation along the river banks at several locations in the vicinity of the Facility.

8. Bay Bridge submitted an undated written response in which it summarized the cause of the discharge of oil to State waters, the initial activities conducted as part of spill abatement and site restoration, and the corrective action taken to prevent future discharges. Bay Bridge stated that part of its backorder of permanent booms had arrived on September 5, 2008. That letter added that, by the time the discharge of oil had been discovered by Bay Bridge personnel, oil had already accumulated on the opposite river bank.

9. An estimated 400-500 gallons of oil had been discharged to State waters.

10. Va. Code § 62.1-44.34:18 prohibits the discharge of oil into or upon state waters, lands, or storm drain systems. Bay Bridge is subject to the statutory prohibition.

11. On October 23, 2008, DEQ issued NOV No. 2009-T-0227 for a discharge of oil to the environment.

12. On December 5, 2008, DEQ enforcement staff met with representatives of Bay Bridge at the Facility. Bay Bridge representatives stated that *Saugatuck* had been dismantled under a contract with the United States Maritime Administration. In addition to the information contained in the undated written response noted in paragraph C.8 above, the Bay Bridge representative stated that (a) as-built drawings for *Saugatuck* were unavailable when the ship was delivered to Bay Bridge for dismantling so the locations of any small tanks that might have contained fuel were unknown; and (b) the vessel had taken on water because *Saugatuck* had become stuck in the mud at the bottom of the drag slip and an unusually high tide had caused water to breach the temporary containment intended to keep water out of the hull and then enter the metal tube containing the vessel's drive shaft (the "shaft alley," which is normally watertight) and associated machinery spaces. *Saugatuck* had been completely dismantled and was not available for inspection during the December 5, 2008, meeting.

13. Based on the foregoing information, the State Water Control Board concludes that Bay Bridge violated Va. Code § 62.1-44.34:18, which prohibits the discharge of oil into or upon State waters, lands, or storm drain systems.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.34:18(C) and 62.1-44.34:20, the Board orders Bay Bridge, and Bay Bridge agrees to:

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

2. Within 30 days of the effective date of the Order, pay a civil charge of $9,360 in settlement of the violations cited in this Order.

3. Within 30 days of the effective date of the Order, reimburse DEQ $1,726.14 for costs incurred in investigating the oil discharge.

Payments shall be made by two separate instruments (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

The instrument for $1,726.14 shall be annotated with the legend "Oil Spill Investigation Costs." Bay Bridge shall include its Federal Employer Identification Number with each instrument and shall indicate that payments are being made in accordance with the requirements of this Order.

SECTION E: Administrative Provisions

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

2. This Order addresses and resolves only those violations specifically identified in Section C of this Order, including those matters addressed in the above referenced Notice of Violation. 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 purposes of this Order and subsequent actions with respect to this Order, Bay Bridge admits to the jurisdictional allegations, factual findings, and conclusions of law contained herein.

4. Bay Bridge 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. Bay Bridge declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2 - 4000 *et seq.*, 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 Bay Bridge 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. Bay Bridge 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 act of God, war, strike, or such other occurrence. Bay Bridge shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Bay Bridge shall notify 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 Bay Bridge 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 Bay Bridge. Nevertheless, Bay Bridge 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. Bay Bridge 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 Bay Bridge.

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

14. By its signature below, Bay Bridge voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2009.

_____
Francis L. Daniel

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

Date: 6/26/09 By: _____, VICE PRESIDENT
(Person) (Title)
Bay Bridge Enterprises, LLC

Commonwealth of Virginia
City/County of Chesapeake

The foregoing document was signed and acknowledged before me this 26 day of June, 2009, by Rebecca Robinson, who is Vice President of Bay Bridge Enterprises, LLC, on behalf of the company.

Patricia D. Doyle
Notary Public

197880
Registration No.

My commission expires: 12/31/2011

Notary seal:

APPENDIX A

Bay Bridge shall:

1. By January 1, 2010, submit to DEQ Tidewater Regional Office for its review and approval, a corrective action plan ("plan") and schedule to prevent future discharges of petroleum products to State waters from the drag slip and to properly contain and clean up a discharge should one occur.

2. Mail all submittals required by this Appendix A to:

   Mr. Francis L. Daniel
   DEQ, Tidewater Regional Office
   5636 Southern Boulevard
   Virginia Beach, VA 23462