COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
SOUTHWEST REGIONAL OFFICE
355 Deadmore Street, P.O. Box 1688, Abingdon, Virginia 24212
(276) 676-4800 Fax (276) 676-4899
www.deq.virginia.gov

L. Preston Bryant, Jr.
Secretary of Natural Resources

David K. Paylor
Director

Dallas R. Sizemore
Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION
SPECIAL ORDER BY CONSENT
ISSUED TO
HIGHLANDS PETROLEUM OIL CORP.
INCIDENT REPORT ("IR") No. IR 2009-S-0201

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code §§ 62.1-44.15(8a) and (8d) and § 62.1-44.34:20, between the State Water Control Board and Highlands Petroleum Oil Corp. for the purpose of resolving certain violations of the State Water Control Law and the applicable regulations.

SECTION B: Definitions

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

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

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. "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.

5. "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.

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

7. "Highlands" means Highlands Petroleum Oil Corp., certified to do business in Virginia, and its affiliates, partners, subsidiaries and parents.

8. "Location" means the Hagy Oil, Inc. bulk plant, located at 1202 Upper Poor Valley Road, Saltville, VA where the discharge of red dyed kerosene occurred.

9. "Site" means the facility, lands, storm drain(s) and state waters adversely affected by the discharge of red dyed kerosene.

10. "SWRO" means the DEQ Southwest Regional Office, located in Abingdon, VA.

SECTION C: Findings of Facts and Conclusions of Law

1. Highlands operates an oil distribution business located at 603 Colonial Road in Abingdon, Virginia.

2. At 9:10 a.m. on December 15, 2008, DEQ staff received a report of a petroleum discharge in the North Holston area, east of Saltville, from the Emergency Services Coordinator for Smyth County, who had been contacted by a dispatcher with the Smyth County Sheriff's Department.

3. A field investigation was conducted on December 15, 2008 and staff determined that a discharge of red dyed kerosene occurred at approximately 3:30 a.m. that morning. The kerosene was apparently discharged from a Highlands' tanker during offloading, under pumping pressure, to an aboveground storage tank ("AST") at the Location. The cause of the discharge was stated to be the failure of a delivery line coupling on the tanker. Kerosene meets the definition of and is included in the term "oil".

4. Red dyed kerosene was discharged onto the ground and flowed directly into the adjacent Watson Gap Branch. Product flowed down Watson Gap Branch for approximately 0.7 mile to its confluence with the North Fork Holston River. Product and sheen were noted for approximately five miles downstream on the North Fork Holston River.

5. A total of four containment booms were placed across the River at different sites by Highlands' consultant and local fire department personnel. Absorbent booms and pads were also placed and maintained in Watson Gap Branch. More than 13 tons of red dyed kerosene impacted soils were removed from the Location by the consultant.

6. Per letter dated December 17, 2008, and documentation enclosed with that letter, Highlands estimated that 1,506 gallons of red dyed kerosene were discharged at the Location on the morning of December 15, 2008. Calculations submitted later by Highlands' consultant estimated that approximately 858 gallons of kerosene were captured and removed in the grossly saturated soils, and approximately 210 gallons of kerosene were captured in booms and pads. Cleanup of the discharge was satisfactory to DEQ, with no additional actions outstanding.

7. Kerosene causes alteration of water quality and meets the definition of a waste discharge. No permit had been issued for such a discharge.

8. DEQ's costs of investigation of the oil spill totaled $1,884.24.

9. Va. Code § 62.1-44.34:18(A) states that "[T]he discharge of oil into or upon state waters, lands, or storm drain systems within the Commonwealth is prohibited...discharges of oil into or upon state waters include discharges of oil that (i) violate applicable water quality standards or a permit or certificate of the Board or (ii) cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines". Va. Code § 62.1-44.5 prohibits waste discharges or other quality alterations of state waters except as authorized by permit. The Virginia Pollutant Discharge Elimination System (VPDES) Regulation at 9 VAC 25-31-50 provides that except in compliance with a VPDES permit, or another permit, 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". Va. Code § 62.1-44.34:18(C)(1) allows the Commonwealth to recover oil spill investigation costs.

10. The discharge of red dyed kerosene was reported to DEQ after a time lapse of approximately six hours from the time the discharge occurred. According to DEQ files, a Highlands official went to the location of the discharge at approximately 4:00 a.m. and assessed the nature and extent of impacts from the discharge. The National Response Center ("NRC") was notified of the discharge at 9:20 a.m., when Hagy Oil, Inc. personnel notified the NRC on behalf of Highlands. Highlands officials were apparently aware of the discharge, but failed to report it "immediately upon learning of the discharge", as required.

11. Va. Code § 62.1-44.34:19(A) states that "[A]ny person discharging or causing or permitting a discharge of oil into or upon state waters, lands, or storm drain systems within the Commonwealth or discharging or causing or permitting a discharge of oil which may reasonably be expected to enter state waters, lands, or storm drain systems within the Commonwealth, and any operator of any facility, vehicle or vessel from which there is a discharge of oil into state waters, lands, or storm drain systems, or from which there is a discharge of oil which may reasonably be expected to enter state waters, lands, or storm drain systems, shall, immediately upon learning of the discharge, notify the Board, the director or coordinator of emergency services appointed pursuant to § 44-146.19 for the political subdivision in which the discharge occurs and any other political subdivision reasonably expected to be affected by the discharge, and appropriate federal authorities of such discharge".

12. Notice of Violation No. NOV-003-0109-WA was issued to Highlands January 29, 2009 for violating the statutory and regulatory provisions cited in paragraphs C 9 and 11 above.

13. A final report on the incident, which included analytical data and disposal information, was received by DEQ on February 2, 2009. DEQ staff and Highlands officials then met on February 6, 2009.

14. Based on the foregoing information, the State Water Control Board finds that Highlands has violated Va. Code §§ 62.1-44.34:18, 62.1-44.34:19 and 62.1-44.5.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it pursuant to Va. Code § 62.1-44.15 (8a) and (8d) and § 62.1-44.34:20, the Board orders Highlands, and Highlands agrees to pay investigative costs of $1,884.24 and a civil charge of $20,264.52, remitting one check for the total amount of $22,148.76, 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

Either on a transmittal letter or as a notation on the check or money order, Highlands shall indicate that each payment is submitted pursuant to this Order and shall include Highlands' Federal Identification Number.

SECTION E: Administrative Provisions

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

2. This Order addresses 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, Highlands admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.

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

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

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, Highlands voluntarily agrees to the issuance of this Order.

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

_____
Dallas R. Sizemore, Regional Director
Department of Environmental Quality

Highlands Petroleum Oil Corp. voluntarily agrees to the issuance of this Order.

VIRGINIA E. HUMPHREY NOTARY PUBLIC REG. # 112101 COMMONWEALTH OF VIRGINIA

Name: Jimmy Silcox

Title: Sec / Treas

Date: 6-19-09

State of Virginia

City/County of Washington

The foregoing instrument was signed and acknowledged before me this 19th day of June, 2009, by Jimmy Silcox (name), who is Secretary/Treas (title) of Highlands Petroleum Oil Corp. on behalf of Highlands Petroleum Oil Corp.

Virginia E. Humphrey
Notary Public

My commission expires: 06-30-2012