COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
TIDEWATER REGIONAL OFFICE
5636 Southern Boulevard, Virginia Beach, Virginia 23462
(757) 518-2000 Fax (757) 518-2009
www.deq.virginia.gov

Doug Domenech
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
IMTT-VIRGINIA
FOR
IMTT-VIRGINIA CHESAPEAKE TERMINAL
AST FACILITY ID # 5026420

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code § 62.1-44.15(8a) and § 62.1-44.15(8d), between the State Water Control Board and IMTT-Virginia for the purpose of resolving certain violations of environmental law and/or regulations.

SECTION B: Definitions

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

1. "AST" or "aboveground storage tank means any one or combination of tanks, including pipes, used to contain an accumulation of oil at atmospheric pressure, and the volume of which, including the volume of the pipes, is more than 90% above the surface of the ground. This term does not include line pipe and breakout tanks of an interstate pipeline regulated under the federal Accountable Pipeline Safety and Partnership Act of 1996 (49 USC § 60101 et seq.).

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, as described in Va. Code § 10.1-1185.

5. "Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying, or dumping.

6. "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.

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

8. "Property" means the IMTT-Virginia Chesapeake Terminal, a 100 acre AST facility owned by IMTT-Virginia, located at 2801 S. Military Hwy., Chesapeake, VA.

9. "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. 9 VAC 25-91-10.

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

11. "VAC" means the Virginia Administrative Code.

12. "IMTT-Virginia" means IMTT-Virginia, a general partnership (ID# K000646-2) certified to do business in Virginia, and its affiliates, partners, subsidiaries, and parents.

SECTION C: Findings of Fact and Conclusions of Law

1. IMTT-Virginia, a person pursuant to 9 VAC 25-90-10, owns the Property and operates as a storage, packaging and distribution service for all bulk liquid petroleum products. The Property contains 24 AST's with 1 million barrels total capacity. The Property is located on the Southern Branch of the Elizabeth River, a state water.

2. On March 12, 2010, the DEQ Tidewater Regional Office Pollution Response Program (PREP) received notification of an overfill of heavy fuel oil (#6 fuel oil) from storage tank 503 at the Property. IMTT-Virginia reported that the overfill occurred at approximately 1:00 AM during a routine transfer of #6 fuel oil from tank 501 to tank 503resulting in a discharge of approximately 21,000 gallons of #6 fuel oil into a secondary containment area surrounding storage tank 503 and other nearby tanks. DEQ PREP staff confirmed from site visits on March 12, 2010, the day of the spill, and March 16, 2010 that there was not a discharge of the #6 fuel oil from the secondary containment area to state waters or the

environment but that a spill resulting from a tank overfill did occur during fuel transfer due to a failure to institute safe fill, shutdown and transfer procedures.

3. 9 VAC 25-91-130 (A)(5)(a) states that an AST operator shall institute safe fill, shutdown and transfer procedures or equivalent measures established by the board, that will ensure that spills resulting from tank overfills or other product transfer operations do not occur.

4. DEQ issued a Notice of Violation (NOV) to IMTT-Virginia on March 24, 2010 for failure to follow safe fill, shutdown and transfer procedures, which resulted in the discharge of approximately 21,000 gallons of #6 oil into a secondary containment area.

5. DEQ Staff met with IMTT-Virginia on April 5, 2010 to discuss the NOV. IMTT-Virginia acknowledged that tank 503 had overfilled due to failure to follow safe fill, shutdown, and transfer procedures and attributed it to an operator error. The operator error was described as an employee that had incorrectly calculated the stop gauge (the amount of fuel that could be placed in the receiving tank) while the transfer was in progress from tank 501 to tank 503 and tank 503 overflowed.

6. On April 12, 2010 IMTT-Virginia submitted documentation to show the March 12, 2010 actual discharge to the secondary containment area was 387.24 barrels, or 16,264.08 gallons of #6 oil. DEQ Staff reviewed the documentation and accepted the amount of the discharge IMTT-Virginia claimed to have occurred as accurate.

7. Based on the results of the March 12, 2010 and March 16, 2010 site inspections, the April 5, 2010 meeting, and documentation submitted on April 12, 2010, the State Water Control Board concludes that IMTT-Virginia has violated of 9 VAC 25-91-130 (A)(5)(a) for failure to follow safe fill shutdown and transfer procedures, as described in paragraphs C.2 through C.5, above.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15(8a) and (8d), the Board orders IMTT-Virginia, and IMTT-Virginia agrees to:

1. Pay a civil charge of $1,300.00 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

IMTT-Virginia shall include its Federal Employer Identification Number (FEIN) [72-1192372] 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).

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of IMTT-Virginia for good cause shown by IMTT-Virginia, or on its own motion 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, IMTT-Virginia admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.

4. IMTT-Virginia 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. IMTT-Virginia 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 enforce this Order.

6. Failure by IMTT-Virginia 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. IMTT-Virginia 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. IMTT-Virginia shall show that such circumstances were beyond their control and not due to a lack of good faith or diligence on their part. IMTT-Virginia shall notify the DEQ 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 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 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 IMTT-Virginia. Nevertheless, IMTT-Virginia agrees to be bound by any compliance date which precedes the effective date of this Order.

11. This Order shall continue in effect until in effect until:

    (a) IMTT-Virginia 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 IMTT-Virginia.

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

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, IMTT-Virginia voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 20___.

_____
Francis L. Daniel, Regional Director
Department of Environmental Quality

IMTT-Virginia voluntarily agrees to the issuance of this Order.

Date: 7-20-2010 By: Shanon Naquin, Terminal Manager
(Person) (Title)
IMTT-Virginia

Commonwealth of Virginia
City/County of Chesapeake

The foregoing document was signed and acknowledged before me this 20th day of July, 2010, by Shanon Naquin who is Terminal Manager of IMTT-Virginia on behalf of the company.

Benita C. Brower
Notary Public

7262311
Registration No.

My commission expires: 11-30-2013

Notary seal:

Notary Public
BENITA C. BROWER
Commonwealth of Virginia
My Commission Expires November 30, 2013
Registration: 7262311