COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
NORTHERN REGIONAL OFFICE
13901 Crown Court, Woodbridge, Virginia 22193
(703) 583-3800 Fax (703) 583-3821
www.deq.virginia.gov

Douglas W. Domenech
Secretary of Natural Resources

David K. Paylor
Director

STATE WATER CONTROL BOARD
ENFORCEMENT ACTION
ORDER BY CONSENT
ISSUED TO
SHINE TRANSPORTATION, INC.

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 Shine Transportation, 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. "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.

2. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.

3. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

4. "Location" means the storm drain in the median of the Dulles Greenway near Shreve Mill Road which leads directly into an unnamed tributary of Sycolin Creek, located in Loudoun County, where the oil discharge occurred.

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

6. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.

7. "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. Va. Code § 62.1-44.34:14.

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

9. "Shine Transportation" means Shine Transportation, Inc., located at 33271 Old Valley Pike, Strasburg, Virginia, a corporation authorized to do business in Virginia and its affiliates, partners, subsidiaries, and parents. Shine Transportation is a "person" within the meaning of Va. Code § 62.1-44.3.

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

11. "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.

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

13. "VAC" means the Virginia Administrative Code.

SECTION C: Findings of Fact and Conclusions of Law

1. Shine Transportation transports petroleum products to customers via tractor trailer tankers.

2. On January 26, 2009, DEQ received notification of a discharge of diesel/fuel oil into a storm drain in the median of the Dulles Greenway near Shreve Mill Road which led directly to an unnamed tributary of Sycolin Creek. The diesel fuel is a petroleum product, and is included in the definition of "oil" under Va. Code § 62.1-44.34:14.

3. The notification indicated that on January 26, 2009, a Shine Transportation tanker truck laden with 7,501 gallons of diesel fuel was in an accident when the driver fell asleep at the wheel. The truck rolled and came to rest in the median. The impact caused approximately 5,500 gallons of fuel to drain onto the ground, into a storm drain and into an unnamed tributary of Sycolin Creek, impacting approximately 3,400 linear-feet of stream.

4. DEQ staff was called to the Location. Emergency response personnel pumped 2,000 gallons of the fuel load from the wrecked tanker truck into another truck.

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

6. On February 23, 2009, the Department issued Notice of Violation No. 2009-02-N-002 to Shine Transportation for discharge of oil into the environment.

7. On March 26, 2009, Shine Transportation submitted an Initial Abatement Report (IAR) to the Department. This report provided documentation of the efforts of the consultant, GEC Environmental Contracting Corporation, to contain the spill and conduct the clean up of the site, including the excavation of the median and a swale going from the storm drain pipe to the tributary waters.

8. On April 9, 2009, Department staff met with representatives of Shine Transportation to discuss the accident, discharge, emergency response, spill control, clean-up, and future required actions.

9. On August 11, 2009, the cleanup of the site had been completed in compliance with the requirements of Va. Code § 62.1-44.34:18, and by October 1, 2009, the ground water monitoring wells had been installed and sampling had begun. Therefore no further corrective action is required.

10. Based on the foregoing information, the State Water Control Board concludes that Shine Transportation 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.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code § 62.1-44.34:20, the Board orders Shine Transportation, Inc. and Shine Transportation, Inc. agrees to:

1. Pay a civil charge of $17,000.00 in settlement of the violations cited in this Order. The payments will be made on the following dates:

    a. 1st payment of $5,667.00 will be paid on or before December 31, 2010.
    b. 2nd payment of $5,667.00 will be paid on or before December 31, 2011.
    c. 3rd payment of $5,666.00 will be paid on or before December 31, 2012

2. Reimburse DEQ for investigative costs of $2,784.09 within 30 days of the effective date of the Order.

Payment 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 $2,784.09 shall be annotated with the legend "Oil Spill Investigation Costs" and the instrument for $17,000.00 shall be annotated with the legend "Virginia Petroleum Storage Tank Fund". Shine Transportation, Inc. shall include its Federal Employer Identification Number with each instrument and shall indicate that the payments are being made in accordance with the requirements of this Order.

SECTION E: Administrative Provisions

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

4. Shine Transportation, Inc. 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. Shine Transportation, Inc. declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the Virginia Water Pollution 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 Shine Transportation, Inc. 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. Shine Transportation, Inc. 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. Shine Transportation, Inc. shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Shine Transportation, Inc. 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 the Shine Transportation, Inc. 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 Shine Transportation, Inc. Nevertheless, Shine Transportation, Inc. 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) Shine Transportation, Inc. 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 Shine Transportation, Inc.

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

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, Shine Transportation, Inc. voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2010.

_____

Thomas A. Faha, NRO Regional Director
Department of Environmental Quality

Shine Transportation, Inc. voluntarily agrees to the issuance of this Order.

Date: 03/16/10 By: Bradley M. Haught, PRESIDENT
(Person) (Title)
Shine Transportation, Inc.

Commonwealth of Virginia
City/County of Frederick

The foregoing document was signed and acknowledged before me this 16 day of March, 2010, by Bradley M. Haught who is President of Shine Transportation, Inc., on behalf of the corporation.

Karen S. Hinkle
Notary Public

364485
Registration No.

My commission expires: Aug. 31, 2013

Notary seal:

KAREN S. HINKLE COMMONWEALTH OF VIRGINIA NOTARY PUBLIC

Karen S. Hinkle
NOTARY PUBLIC
Commonwealth of Virginia
Reg. # 364485
My Commission Expires
August 31, 2013