



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
TIDEWATER REGIONAL OFFICE
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Molly Joseph Ward
Secretary of Natural Resources

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Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO CSX Transportation, Inc. Incident Report No. IR 2014-T-0981

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 CSX 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. "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.
3. "CSX" means CSX Transportation, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. CSX is a 'person' within the meaning of Va. Code § 62.1-44.3.
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, as described in Va. Code § 10.1-1185.

6. "Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying or dumping.
7. "Location" means the facility, land, road, storm drain(s) or state water(s) where the oil discharge occurred: Train tracks along Route 671, at or near the crossing of Delaware Road two miles south of Franklin, 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. Diesel fuel is a petroleum product, and is included in the definition of "oil" under 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. "Person" means any firm, corporation, association or partnership, one or more individuals, or any governmental unit or agency thereof.
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 state 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. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia
15. "Va. Code" means the Code of Virginia (1950), as amended.
16. "VAC" means the Virginia Administrative Code.
17. "VPDES" means Virginia Pollutant Discharge Elimination System.
18. "Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. 9 VAC 25-210-10.

SECTION C: Findings of Fact and Conclusions of Law

1. CSX is an international transportation supplier that provides rail-based transportation including traditional rail service and the transport of intermodal containers and trailers.
2. On September 19, 2013, DEQ received notification of a discharge of Oil, in the form of diesel fuel and lubricating oil at the Location.
3. The notification indicated that at 2:28 AM on September 19, 2013, CSX train #F78119 derailed at the Location discharging approximately 3,000 gallons of diesel fuel and 400 gallons of lubricating oil to the track bed and the wetlands north of the track bed. There was also a fire associated with the discharge.
4. Emergency response personnel responded to the diesel fuel and lubricating oil discharge on September 19, 2013 and conducted Containment and Cleanup at the Location. Emergency response personnel installed absorbent boom and pads to contain and recover released petroleum, dug small collection sumps and used a vacuum truck to recover released petroleum.
5. On September 19, 2013 CSX removed approximately 80 tons of petroleum contaminated soil from the Location.
6. From September 26, 2013 to December 27, 2013, CSX conducted Containment and Cleanup at the Location including multiple excavations and removal of additional contaminated soils, removal of burned trees, completion of a wetland delineation, application of bioremediation products, monitoring and recovery of diesel fuel and lubricating oil via sorbents, and installation of a monitoring sump system.
7. Following the Containment and Cleanup at the Location, CSX continued to monitor for and recover diesel fuel and lubricating oil through March 24, 2014, and conducted restoration efforts including the backfilling of excavated areas with clean soil and the replanting of trees.
8. According to CSX, an investigation conducted by CSX Police and the U.S. Federal Bureau of Investigation concluded that a trespassing vandal broke open a lock and repositioned a switch which caused the derailment and subsequent release of oil.
9. Va. Code § 62.1-44.34:18 prohibits the discharge of oil into or upon state waters, lands, or storm drain systems that violate applicable water quality standards or cause a film or sheen upon or discoloration of the surface of the water..
10. On December 5, 2013, 2013, the Department issued Notice of Violation No. 05-0981-TRO-20134 to CSX for a discharge of oil to the land and state waters.

11. On February 14, 2014, as response to the NOV, CSX submitted a Spill Cleanup Report of the diesel fuel and lubricating oil spill to DEQ that indicated approximately 2,775 gallons of the 3,400 gallons of Oil that spilled into the environment at the Location were recovered during Containment and Cleanup. The Spill Cleanup Report summarized the Containment and Cleanup actions taken by emergency response personnel including the removal of 756 tons of contaminated soils, 261,340 gallons of recovered fluids (mixture of water, diesel fuel and lubricating oil), including 178,970 gallons that were disposed of off-site and 82,370 gallons which were treated and discharged on-site, and 2.2 tons of spent absorbent material. Petroleum contaminated materials were removed from the Location and disposed of at a facility approved by DEQ to accept petroleum contaminated wastes, except for the portion of fluids which were treated and discharged on-site per 9 VAC 25-120-80 which authorizes short term discharges from petroleum contaminated sites under VPDES General Permit VAG83. CSX reported it has spent over \$1.1 million to remediate the environment in cooperation with the DEQ.
12. Based on the results of the September 19, 2013 notification and documentation submitted on February 14, 2014, the State Water Control Board concludes that CSX 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, as described in paragraphs C(2) through C(7), above.
13. CSX has submitted documentation that verifies that violations in paragraphs C(2) through C(7), above, have been corrected.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it pursuant to Va. Code § 62.1-44.34:20, the Board orders CSX, and CSX agrees to pay a civil charge of \$20,634.60 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

CSX shall include its Federal Employer Identification Number (FEIN) 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 Petroleum Storage Tank Fund (VPSTF). If the Department has to refer collection of moneys due under this Order to the Department of Law, CSX shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of CSX for good cause shown by CSX, 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 and in NOV No. 05-0981-TRO-2014 dated December 5, 2013. 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, CSX admits to the jurisdictional allegations, and agrees not to contest, but does not admit, the findings of fact and conclusions of law in this Order.
4. CSX 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. CSX 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 CSX 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. CSX 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 unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. CSX shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. CSX 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 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 and any 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 CSX. Nevertheless, CSX 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. The Director or his designee terminates the Order after CSX has completed all of the requirements of the Order;
 - b. CSX 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
 - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to CSX.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve CSX from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

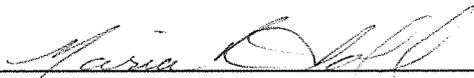
12. Any plans, reports, schedules or specifications attached hereto or submitted by CSX and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of CSX 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

CSX to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of CSX.

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, CSX voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 19 day of December, 2014.



Maria R. Nold, Regional Director
Department of Environmental Quality

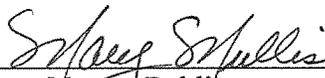
CSX Transportation, Inc. voluntarily agrees to the issuance of this Order.

Date: 10/27/2014 By: How R. Elliott

Howard R. Elliott
VP, Public Safety, Health & Environment
CSX Transportation, Inc.

State of Florida :
County of Duval :

The foregoing document was signed and acknowledged before me this 27 day of October, 2014, by Howard R. Elliott who is Vice President, Public Safety, Health & Environment of CSX Transportation, Inc., on behalf of the corporation.



Notary Public
EE 221754

Registration No.

My commission expires: 8-2-16

Notary seal:

