



# COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

TIDEWATER REGIONAL OFFICE

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## STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO

**Master Fleet Services, Inc.**

**FOR**

AST Facility at 2106 Mingee Drive, Hampton, Virginia

### **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 Master Fleet Services, 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. "305(b) report" means the report required by Section 305(b) of the Clean Water Act [33 United States Code § 1315(b)] and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.
2. "Aboveground storage tank" or "AST" 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 ninety percent above the surface of the ground. This term does not include line pipe and breakout tanks of an interstate pipeline regulated under the Hazardous Liquid Pipeline Safety Act of 1979 or the Natural Gas Pipeline Safety Act of 1968, as amended.
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. "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.
5. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
6. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
7. "Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying or dumping.
8. "Facility" means the Master Fleet Services, Inc., facility at 2106 Minge Drive, Hampton, Virginia, at which it performs maintenance and repair of medium- and heavy-duty trucks, buses, and other large fleet vehicles. Master Fleet Services, Inc., leases the Facility from a third party.
9. "Master Fleet Services" means Master Fleet Services, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Master Fleet Services is a "person" within the meaning of Va. Code § 62.1-44.3.
10. "Newmarket Creek" is surface waters located wholly within the Commonwealth and is "state waters" under State Water Control Law. Newmarket Creek is located in the Chesapeake Bay Basin and is listed in DEQ's 305(b) report as impaired due to excess fecal coliform and low dissolved oxygen. The source of the impairments is unknown. Newmarket Creek provides beneficial uses including recreation and the support of aquatic life.
11. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
12. "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.
13. "Operator" means any person who owns, operates, charters, rents or otherwise exercises control over or responsibility for a facility or a vehicle or vessel.
14. "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.
15. "Person" means any firm, corporation, association or partnership, one or more individuals, or any governmental unit or agency thereof.

16. "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.
17. "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.
18. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
19. "Va. Code" means the Code of Virginia (1950), as amended.
20. "VAC" means the Virginia Administrative Code.

### **SECTION C: Findings of Fact and Conclusions of Law**

1. Master Fleet Services is the Operator of the Facility.
2. On Sunday, October 14, 2012, DEQ received notification of a discharge of Oil, in the form of used oil, in a storm water drainage ditch in the City of Hampton ("City"). The discharge was traced to a failed AST at the Facility that had discharged its entire contents into the storm water drainage ditch adjacent to the Facility. Representatives of the City fire department initiated containment and cleanup by placing absorbent booms and pads in the drainage ditch. A representative of Master Fleet Services was contacted who immediately contracted with an oil-response contractor to continue containment and cleanup.
3. DEQ pollution-response staff ("staff") initially visited the Facility on October 15, 2012, and confirmed that the failed AST at the Facility was the source of the discharge and observed the progress of the containment and cleanup efforts. Staff noted that the bottom of the AST was badly corroded at the point of failure and was not equipped with secondary containment. Staff determined that the drainage ditch had been dry at the time of the discharge, but had become periodically inundated by Newmarket Creek, which was downstream of the drainage ditch, due to tidal influence. This, together with a heavy rain event on October 16, 2012, resulted in the discharged Oil migrating farther along the drainage ditch each time the tide receded. Some of the Oil that had saturated the soil in the drainage ditch created a sheen on the surface of Newmarket Creek and a small amount of Oil had accumulated on the vegetation along its banks.
4. A subsequent record review disclosed that the AST that had failed at the Facility was not registered with DEQ.

5. 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.
6. Va. Code § 62.1-44.34:19.1 and 9 VAC 25-91-100 require that any operator of a facility located within the Commonwealth with an aggregate AST capacity of more than 1,320 gallons of Oil or an operator of an individual AST located within the Commonwealth with a storage capacity of more than 660 gallons register such facility or AST with the Board.
7. On November 16, 2012, the Department issued Notice of Violation No. 05-0937-TRO-2012 to Master Fleet Services for a discharge of Oil to the land and state waters and failure to register with the Department an AST with a storage capacity of more than 660 gallons.
8. On November 26 and 27, 2012, a representative of Master Fleet Services responded to the NOV stating that Master Fleet Services stored used oil in the AST and estimated that approximately 1,650 gallons of used oil had been discharged.
9. On December 5, 2012, Department enforcement staff met with representatives of Master Fleet Services to discuss the discharge, emergency response, and containment and clean-up. The Master Fleet Services representatives confirmed the information contained in their November 26, 2012, written response and asserted that Master Fleet Services had responded quickly to the reported discharge and had cooperated with the United States Coast Guard, DEQ, the City fire department, and private land owners in containing and cleaning up the discharge. The representatives stated further that the president of Master Fleet Services had spent some of his personal funds for the cleanup, which included reimbursing private landowners for damage caused by heavy equipment used for the cleanup.

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10. DEQ pollution-response staff observed containment and cleanup activities on eight occasions during the period October 15, 2012, to October 26, 2012, and confirmed that activities were completed by October 26, 2012. Reports indicated that most if not all 1,650 gallons of the discharged Oil has been recovered.
11. There is no evidence that the discharge described herein has contributed to the impairment of Newmarket Creek.
12. Based on the results of the site visits by DEQ pollution-response staff, the December 5, 2012, meeting, and the documentation submitted on November 26 and 27, 2012, the State Water Control Board concludes that Master Fleet Services 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, and Va. Code § 62.1-44.34:19.1 and 9 VAC 25-91-100, which require the registration of ASTs larger than 660 gallons, as described in paragraphs C(2) through C(10), above.

**SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.34:20 and 62.1-44.34:18(C)(1), the Board orders Master Fleet Services, and Master Fleet Services agrees to:

1. Pay a civil charge of \$12,065 within 30 days of the effective date of the Order in settlement of the violations cited in this Order;
2. Reimburse DEQ \$896.18 for oil discharge investigative costs within 30 days of the effective date of the Order;
3. Payment shall be made in accordance with the following schedule:

*Corrected*

Due Date	Amount
July 15, 2013	\$3,913.18 (\$3,017.00 civil charge + \$896.18 investigative costs)
October 15, 2013	\$3,016.00 civil charge
January 15, 2014	\$3,016.00 civil charge
April 15, 2014	\$3,016.00 civil charge

4. If the Department fails to receive a payment pursuant to the schedule described above, the payment shall be deemed late. If any payment is late by 30 days or more, the entire remaining balance of the civil charge shall become immediately due and owing under this Order, and the Department may demand in writing full payment by Master Fleet Services. Within 15 days of receipt of such letter, Master Fleet Services shall pay the remaining balance of the civil charge. Any acceptance by the Department of a late payment or of any payment of less than the remaining balance shall not act as a waiver of the acceleration of the remaining balance under this Order.
5. All payments 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

6. Master Fleet Services shall include its Federal Employer Identification Number (FEIN) (51-0606295) with the 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) and that payment of the DEQ oil discharge investigative costs is for reimbursement of DEQ expenditures. If the Department has to refer collection of moneys due under this Order to the Department of Law, Master Fleet Services shall be liable for attorney's 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 Master Fleet Services for good cause shown by Master Fleet Services, 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. 05-0937-TRO-2012 dated November 16, 2012. 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, Master Fleet Services admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Master Fleet Services 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. Master Fleet Services 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 Master Fleet Services 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. Master Fleet Services 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. Master Fleet Services shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Master Fleet Services 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 Master Fleet Services.
11. This Order shall continue in effect until:
  - a. The Director or his designee terminates the Order after Master Fleet Services has completed all of the requirements of the Order;
  - b. Master Fleet Services 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 Master Fleet Services.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Master Fleet Services 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 Master Fleet Services 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 Master Fleet Services 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 Master Fleet Services to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Master Fleet Services.
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, Master Fleet Services voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 17 day of June, 2013.

  
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Regional Director  
Department of Environmental Quality

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Master Fleet Services, Inc. voluntarily agrees to the issuance of this Order.

Date: 3-4-2013 By: *[Signature]* President  
(Person) (Title)  
Master Fleet Services, Inc.

Commonwealth of Virginia  
City/County of Hampton

The foregoing document was signed and acknowledged before me this 4th day of  
March, 2013, by *[Signature]* who is  
President of Master Fleet Services, Inc., on behalf of the corporation.

*[Signature]*  
Notary Public

359981

Registration No.

My commission expires: August 31st, 2013

Notary seal:

