



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

PIEDMONT Regional office

4949-A Cox Road, Glen Allen, Virginia 23060

(804) 527-5020 Fax (804) 527-5106

www.deq.virginia.gov

Matthew J. Strickler
Secretary of Natural Resources

David K. Paylor
Director

James J. Golden
Regional Director

**VIRGINIA WASTE MANAGEMENT BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
MAGELLAN TERMINALS HOLDINGS, L.P.
FOR
RICHMOND TERMINAL
EPA ID VAD058900036**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 10.1-1455, between the Virginia Waste Management Board and Magellan Terminals Holding, L.P. regarding Richmond Terminal, for the purpose of resolving certain violations of the Virginia Waste Management Act and the applicable regulations.

SECTION B: Definitions

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

1. "Board" means the Virginia Waste Management Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and - 1401.
2. "CESQG" means a conditionally exempt small quantity generator of hazardous waste, a generator of less than 100 kilograms of hazardous waste in a month and meeting the other restrictions of 40 CFR § 261.5 and 9 VAC 20-81-10.
3. "CFR" means the Code of Federal Regulations, as incorporated into the Regulations.

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. “Facility” means Richmond Terminal (EPA ID VAD058900036), located at 204 East 1st Street, Richmond, Virginia, which is owned and operated by Magellan Terminals Holdings, L.P.
7. “Hazardous Waste” means any solid waste meeting the definition and criteria provided in 40 CFR § 261.3.
8. “LQG” means large quantity generator, a hazardous waste generator that generates 1000 kilograms (2200 pounds) or greater of hazardous waste in a calendar month and meets other restrictions. *See* 40 CFR § 262.34(a)-(b) and (g)-(l).
9. “Magellan” means Magellan Terminals Holdings, L.P., a partnership and its affiliates, partners, and subsidiaries. Magellan means a “person” within the meaning of Va. Code (§ 10.1-1300/§ 10.1-1400/§ 62.1-44.3).
10. “Notice of Violation” or “NOV” means a type of Notice of Alleged Violation under Va. Code § 10.1-1455.
11. “Order” means this document, also known as a “Consent Order” or “Order by Consent.”
12. “PRO” means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
13. “Regulations” or “VHWMR” means the Virginia Hazardous Waste Management Regulations, 9 VAC 20-60-12 *et seq.* Sections 20-60-14, -124, -260 through -266, -268, -270, -273, and -279 of the VHWMR incorporate by reference corresponding parts and sections of the federal Code of Federal Regulations (CFR), with the effective date as stated in 9 VAC 20-60-18, and with independent requirements, changes, and exceptions as noted. In this Order, when reference is made to a part of section of the CFR, unless otherwise specified, it means that part or section of the CFR as incorporated by the corresponding section of the VHWMA. Citations to independent Virginia Requirements are made directly to the VHWMR.
14. “Solid Waste” means any discarded material meeting the definition provided in 40 CFR § 261.2.

15. “SQG” means a small quantity generator, a hazardous waste generator that generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month and meets other restrictions. *See* 40 CFR § 262.34(d)-(f).
16. “Va. Code” means the Code of Virginia (1950), as amended.
17. “VAC” means the Virginia Administrative Code.
18. “Virginia Waste Management Act” means Chapter 14 (§ 10.1-1400 *et seq.*) of Title 10.1 of the Va. Code. Article 4 (Va. Code §§ 10.1-1426 through – 10.1-1429) of the Virginia Waste Management Act addresses Hazardous Waste Management.

SECTION C: Findings of Fact and Conclusions of Law

1. Magellan owns and operates the Facility in Richmond, Virginia. The Facility is a bulk petroleum storage facility that consists of a series of tanks, piping and pumping equipment. As a part of the Facility’s operations, sampling of the gasoline and diesel is conducted. Operations at the Facility are subject to the Virginia Waste Management Act and the Regulations.
2. Magellan submitted a RCRA Subtitle C Site Identification Form, received on September 22, 2003 that gave notice of regulated waste activity at the Facility as a SQG of hazardous waste. Magellan was issued EPA ID No. VAD058900036 for the Facility.
3. At the Facility, most of the hazardous waste generated is from the maintenance operations including tank and rack cleaning, and samplings activities of the gasoline and diesel. Magellan generates solvents - methyl ethyl ketone (D035) and tetrachloroethylene (F001), petroleum & water from rack drains, gasoline sludge, used oil, pads & test sticks from diesel additives, (kerosene D001) and xylene (F003) from fuel additives, lead (D008), lamps and aerosols, spent carbon with benzene (D018) from an inactive air pollution tank system which are a solid waste, and are also a hazardous waste, characterized as D-listed and F-listed hazardous wastes, which means that they can exhibit ignitability, corrosivity, reactivity and/or toxicity.
4. On May 11, 2016, Department staff inspected the Facility for compliance with the requirements of the Virginia Hazardous Waste Management Regulations. Based on the inspection and follow-up information, Department staff made the following observations:
 - a. An air pollution control process tank system called Vapor Recovery Unit (VRU) that had been inactive for over 20 years was in the process of being

- cleaned of spent carbon that was still contained in the tank. Prior to cleaning the tank, Magellan had analyzed the contents of the VRU which showed benzene levels greater than 0.5 mg/L thereby characterizing the spent carbon as hazardous waste. Two of five 55-gallon drum containers containing spent carbon, observed in an Accumulation Area, on a back lot, had been stored since August 5, 2015 and accumulated on site for more than 90-days without a permit.
- b. A review of the RCRA Info database showed that Magellan first notified as a SQG of hazardous waste on September 22, 2003. Magellan reported that the cleaning of the VRU resulted in thirty five 55-gallon drum containers of spent carbon, and that all of the containers were still on-site pending analysis as of June 6, 2016. While cleaning out the VRU, Magellan became a LQG of hazardous waste generated in any calendar month and had not provided notification updating Facility information for EPA ID number VAD05890036.
 - c. DEQ does not have record of having received a LQG annual fee payment for the 2015 calendar year.
 - d. DEQ does not have record of having received notification of hazardous waste accumulation areas.
 - e. Thirty plus the initial five 55-gallon drum containers of hazardous and non-hazardous uncharacterized waste were reported to be stored at the Facility.
 - f. No accumulation start dates on any of the 55-gallon drum containers.
 - g. No hazardous waste labels on any of the hazardous waste containers.
 - h. The Employee Emergency & Evacuation Program does not physically describe and identify the location of all emergency equipment at the Facility.
 - i. Magellan was unable to provide documentation that the local emergency response teams had been familiarized with the layout of the Facility, the associated hazards, designated one police and fire department with primary emergency authority, or familiarized local hospitals with the properties of the waste handled at the Facility and the types of injuries of illness that could result.
 - j. Magellan was unable to demonstrate that Facility staff had performed weekly inspection of the accumulation area.
 - k. The name and telephone number of the emergency coordinator, number of the local fire department, and a facility map with the locations of fire extinguishers, spill control material and location of fire alarm(s) was not posted next to the telephone.
5. 40 CFR Part 262.34(b) states that a generator of 1,000 kilograms or greater of hazardous waste in a calendar month, or greater than 1 kg of acute hazardous waste listed in §§261.31 or 261.33(e) in a calendar month, who accumulates hazardous waste or acute hazardous waste for more than 90 days is an operator of a storage facility and is subject to the requirements of 40 CFR parts 264, 265, and

267 and the permit requirements of 40 CFR part 270 unless he has been granted an extension to the 90-day period.

6. Va. Code 9 VAC 20-60-315 states in part that any person who initiates hazardous waste activity shall notify the department by the use of EPA Form 8700-12. If that person becomes a large quantity generator that person shall notify the department in writing immediately of this change in status and document the change in the operating record; and any large quantity generator who ceases to be a large quantity generator shall notify the department in writing immediately of this change in status and document the change in the operating record.
7. Va. Code 9 VAC 20-60-1283 states that each operator of a hazardous waste treatment, storage, or disposal facility shall be assessed an annual fee as shown in 9 VAC 20-60-1285.E to be paid in accordance with 9 VAC 20-60-1284; and each large quantity generator of hazardous waste shall be assessed an annual fee as shown in 9 VAC 20-60-1285.F to be paid in accordance with 9 VAC 20-60-1284.
8. Va. Code 9 VAC 20-60-262(B)(4) states in part that a large quantity generator shall notify the department of the location(s) of all hazardous waste accumulation areas.
9. 40 CFR Part 262.11 states in part that a person who generates a solid waste, as defined in 40 CFR 261.2, must determine if that waste is a hazardous waste.
10. 40 CFR 262.34 states in part (a) that a generator may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status, provided that (2) the date upon which each period of accumulation begins is clearly marked and visible for inspection on each container.
11. 40 CFR 262.34 states in part (a) that a generator may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status, provided (3) while being accumulated on-site, each container and tank is labeled or marked clearly with the words, "Hazardous Waste".
12. 40 CFR 265.52(e) states in part that the (contingency) plan must include a list of all emergency equipment at the facility (such as fire extinguishing systems, spill control equipment, communications and alarm systems (internal and external), and decontamination equipment), where this equipment is required. This list must be kept up to date. In addition, the plan must include the location and a physical description of each item on the list, and a brief outline of its capabilities.
13. 40 CFR 265.37 states in part (a) The owner or operator must attempt to make the following arrangements, as appropriate for the type of waste handled at his facility and the potential need for the services of these organizations: (1) Arrangements to familiarize police, fire departments, and emergency response teams with the layout of the facility, properties of hazardous waste handled at the

facility and associated hazards, places where facility personnel would normally be working, entrances to and roads inside the facility, and possible evacuation routes; (2) Where more than one police and fire department might respond to an emergency, agreements designating primary emergency authority; (3) Agreements with State emergency response teams, emergency response contractors, and equipment suppliers; and (4) Arrangements to familiarize local hospitals with the properties of hazardous waste handled at the facility and the types of injuries or illnesses which could result from fires, explosions, or releases at the facility. (b) Where State or local authorities decline to enter into such arrangements, the owner of operator must document the refusal in the operating record.

14. 40 CFR 265.174 states that at least weekly, the owner or operator must inspect areas where containers are stored, except for Performance Track member facilities that must conduct inspections at least once each month, upon approval by the Director. To apply for reduced inspection frequency, the Performance Track member facility must follow procedures described in § 265.15(b)(5) of this part. The owner or operator must look for leaking containers and for deterioration of containers caused by corrosion or other factors.
15. 40 CFR 262.34(d)(5)(ii)(A-C) states that a generator who generates greater than 100 kg but less than 1000 kg of hazardous waste in a calendar month may accumulate hazardous waste on-site for 180 days or less without a permit or having interim status provided: the generator post the name and telephone number of the emergency coordinator; location of fire extinguishers and spill control material; and, if present, fire alarm; and the telephone number of the fire department, unless the facility has a direct alarm.
16. On October 21, 2016, DEQ issued Notice of Violation (NOV) No. 2016-10-PRO-601 to Magellan for the violations described in paragraph C(4), above.
17. On December 6, 2016, DEQ staff met with representatives of Magellan to discuss the violations described in paragraph C(4) above, including Magellan's written response dated November 16, 2016. During the meeting, Magellan provided six weeks of weekly container inspection logs.
18. On December 12, 2016, Magellan provided documentation requested at the December 6, 2016 meeting. Magellan provided the following:
 - a) Letter dated February 24, 2016, from Calgon Carbon showing agreement to send carbon from the Richmond Terminal for reclamation;
 - b) Copy of EPA 8700-12 generator status notification as a CESQG, dated February 24, 2016;
 - c) Email from environmental consultant that confirms that no carbon was removed from the VRU vessel, except the sample amounts, until April 2016;
 - d) Map of Accumulation Areas of Carbon;

- e) Clean Harbors Manifest for 22 drums of Spent Carbon DO18 dated June 29, 2016;
 - f) A&D Environmental Services Bill of Lading for 23 drums of Spent Carbon Non-Regulated, dated June 29, 2016;
 - g) Photos of the Emergency Information located inside the office at Richmond Terminal, dated December 6, 2016;
 - h) Two maps showing locations of the fire extinguishers;
 - i) Weekly waste inspections from May 2, 2016 to June 27, 2016 and pictures from emails of labels at various stages of the material;
 - j) Stakeholder meeting forms; 10-Form-1100 LEPC/ERA/STAKEHOLDER Meeting Forms documenting Fire Department and LEPC visits to the Richmond Terminal;
 - k) Annual Acknowledgement of Master Emergency Spill Response Agreement (MESRA) with the Oil Spill Response Organization (OSRO) Hepaco Environmental Contractors.
 - l) E-Mail confirmations from Richmond Fire, LEPC, VDEM, and VCU Medical Center of receipt of the Hazardous Waste Contingency Plans (HWCP). An email sending the HWCP to the police department.
19. Based on information Magellan provided on December 12, 2016, violations (h) through (k) are not applicable. Although the information was not provided at the time of the inspection, Magellan had this information stored at the corporate level. Since Magellan was operating as a SQG and not a LQG, Magellan believed this information was not required to be maintained on-site.
20. Based on the results of the May 11, 2016 inspection, the December 6, 2016 meeting, the Board concludes that Magellan has violated 40 CFR Part 262.34(b), Va. Code 9 VAC 20-60-315 and 1283; 40 CFR 262.34(a), 9 VAC 20-60-262(B)(4), 40 CFR 262.11, as described in paragraph C(4), above.
21. The information Magellan presented to DEQ during the December 6, 2016 meeting, the information and documentation provide on December 12, 2016, demonstrates that Magellan has implemented sufficient corrective action and achieved compliance with the violations cited in the NOV. The violations are now resolved and no further action is required at this time to complete its return to compliance.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §10.1-1455, the Board orders Magellan and Magellan agrees to:

1. Pay a civil charge of **\$ 29,500** 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 cashiers check payable to the "Treasurer of Virginia" and shall be delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Magellan 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 Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Magellan shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Magellan for good cause shown by Magellan, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-400 *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. 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, Magellan admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Magellan 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. Magellan declares it has received fair and due process under the Administrative Process Act and Virginia Waste Management Act 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 Magellan 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. Magellan 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 other such occurrences. Magellan shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Magellan 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 Magellan 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 Magellan. Nevertheless, Magellan 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 Magellan has completed all of the requirements of the Order.

- b. Magellan 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 Magellan.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Magellan 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 Magellan 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 the Order.
- 13. The undersigned representative of Magellan 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 Magellan to this document. Any documents to be submitted pursuant to this Order shall also be submitted by Magellan or an authorized representative of Magellan.
- 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, covenant, terms or conditions agreed upon between the parties other than those expressed in this Order.
- 15. By its signature below, Magellan voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 3rd day of June, 2019.

 (FOR)

James J. Golden, Regional Director
Department of Environmental Quality

Magellan Terminal Holdings, L.P. voluntarily agrees to the issuance of this Order.

Date: 4/22/19 By: Melanie A. Little, SVP, operations - EHS+S
(Person) (Title)
Magellan Terminal Holdings, L.P.

~~Commonwealth of Virginia~~ STATE OF OKLAHOMA
City/County of TULSA



The foregoing document was signed and acknowledged before me this 22 day of

APRIL, 2019, by MELANIE A. LITTLE who is
SVP, OPERATIONS - EHS+S of Magellan Terminal Holdings, L.P. on behalf of the
(Name)
of the company.

Sharon E. Crutchfield
Notary Public

14004764
Registration No.

My commission expires: 5.28.22

Notary seal:

