



# *COMMONWEALTH of VIRGINIA*

## *DEPARTMENT OF ENVIRONMENTAL QUALITY*

NORTHERN REGIONAL OFFICE

13901 Crown Court, Woodbridge, Virginia 22193

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Douglas W. Domenech  
Secretary of Natural Resources

David K. Paylor  
Director

Thomas A. Faha  
Regional Director

### **STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO POTOMAC ELECTRIC POWER COMPANY**

#### **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 Potomac Electric Power Company, 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. "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. "Location" means the facility, land, road, storm drain(s) or state water(s) where the oil discharge occurred located at 1300 K N. Royal Street, in Alexandria, Virginia.
6. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
7. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
8. "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.
9. "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.
10. "Pepco" means Potomac Electric Power Company a corporation authorized to do business in Virginia. Pepco is a "person" within the meaning of Va. Code § 62.1-44.3.
11. "Site" means the facility, land, road, storm drain(s) and surface water(s) adversely affected by the oil discharge.
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 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. "Va. Code" means the Code of Virginia (1950), as amended.
15. "VAC" means the Virginia Administrative Code.

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

1. On January 23, 2011, DEQ-NRO was notified of a discharge of non-PCB mineral oil from Pepco substation transformer number 9, located at the Location. Mineral Oil is included in the definition of "oil" under Va. Code § 62.1-44.34:14.
2. On January 24, 2011, DEQ staff conducted an inspection of the Site and observed that mineral oil had been discharged to land adjacent to the secondary containment wall of the transformer. DEQ staff also observed that a storm drain system, was affected with the

- discharged mineral oil. DEQ staff also noted that mineral oil had discharged to the Potomac River.
7. Va. Code § 62.1-44.34:18 prohibits the discharge of oil into or upon state waters, lands, or storm drain systems.
  8. On March 15, 2011 the Department issued Notice of Violation No. W2011-03-N-001 to Pepco for a discharge of oil to state lands and storm drain systems.
  9. On March 21, 2011 and April 20, 2011 Pepco submitted incident reports for the mineral oil discharge to DEQ. Pepco informed DEQ that approximately 4,500 gallons of mineral oil was discharged to the environment. Pepco identified that the cause of this oil discharge was due to the failure of a press-fitted flange located between the cooler pump and transformer tank.
  11. On April 25, 2011, Department staff met with representatives of Pepco to discuss the incident, discharge, emergency response, containment and clean-up, and future actions.
  12. Based on the results of the January 24, 2011 inspections, the incident reports submitted to DEQ on March 21, 2011, and April 20, 2011, and the April 25, 2011 meeting, the State Water Control Board concludes that Pepco has violated Va. Code § 62.1-44.34:18, which prohibits the discharge of mineral oil into or upon state waters, lands, or storm drain systems, as described in paragraphs C1 through C9 above.
  13. Based on information contained in incident reports submitted to DEQ on March 21, 2011, and April 20, 2011, information received by DEQ at the April 25, 2011 meeting, and measures that have already been implemented to prevent a future discharge, DEQ has determined that no further action is necessary to remediate the mineral oil discharge.

#### **SECTION D: Agreement and Order**

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

1. Pay a civil charge of \$38,565.00 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.
2. Reimburse DEQ for investigative cost of \$771.80 within 30 days of the effective date of the 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

Pepco 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).

**SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of Pepco for good cause shown by Pepco, 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. 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, Pepco admits the jurisdictional allegations, and agrees not to contest, but does not admit, the findings of fact and conclusions of law contained in this Order.
4. Pepco 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. Pepco 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 Pepco 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. Pepco 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. Pepco shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Pepco 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 Pepco 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 Pepco. Nevertheless, Pepco 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. Pepco 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 Pepco.

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

And it is so ORDERED this 14<sup>th</sup> day of December, 2011.



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

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Potomac Electric Power Company voluntarily agrees to the issuance of this Order.

Date: 8/11/11 By: *Susan H. Power*, Deputy General Counsel  
(Person) (Title)

District of Columbia  
Commonwealth of Virginia

City/County of \_\_\_\_\_

The foregoing document was signed and acknowledged before me this 11<sup>th</sup> day of August, 2011, by Susan H. Power who is Deputy General Counsel of Potomac Electric Power Company on behalf of the corporation.

*[Signature]*  
Notary Public

Registration No. \_\_\_\_\_

My commission expires: 8/14/14

Notary seal:

**Lisa M. Brannock**  
**Notary Public, District of Columbia**  
**My Commission Expires 8/14/2014**

