COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
PIEDMONT REGIONAL OFFICE
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Matthew J. Strickler
Secretary of Natural Resources

David K. Paylor
Director

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STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
BROWNS BLUFF, LLC.
FOR
PC No. 2018-4127

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and Browns Bluff, LLC for the purpose of resolving certain violations of the State Water Control Law 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 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. "Browns Bluff" means Browns Bluff, LLC, a limited liability company authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries, Browns Bluff is a "person" within the meaning of Va. Code § 62.1-44.3

3. "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.

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, at 10300 Sandy Ridge Drive in the Colony Pointe Subdivision in Chesterfield County, 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.

10. "Operator" means any person who owns, operates, charters by demise, rents, or otherwise exercises control over or responsibility for a facility or a vehicle or a vessel.

11. "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.

12. "Person" means any firm, corporation, association or partnership, one or more individuals, or any governmental unit or agency thereof.

13. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.

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

15. "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-f44.34:23) of the State Water Control Law addresses discharge of oil into waters.

16. "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.

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

18. "VAC" means the Virginia Administrative Code.

SECTION C: Findings of Fact and Conclusions of Law

1. Browns Bluff LLC (Browns Bluff), is a company that was formed in Virginia on September 9, 2015. Browns Bluff develops property to build and sell homes. Browns Bluff contracted with Benchmark Construction LLC (Benchmark Construction) to build roads in the new subdivision called Colony Pointe, located in Chesterfield County, Virginia.

2. On September 17, 2017, the Virginia Department of Emergency Management (VDEM) notified the Department of a report of a discharge of oil at 10300 Sandy Ridge Drive in the Colony Pointe subdivision. While constructing a road in the new subdivision, employees working for Benchmark Construction unearthed four underground storage tanks (tanks) from a tank pit

located at 10300 Sandy Ridge Drive. A private citizen observed four tanks pulled from the ground and observed that one of the four tanks ruptured and discharged fuel to the ground. The private citizen reported that the tank(s) were left on the ground to continue leaking.

3. Browns Bluff did not report the discharge of oil to the ground or storm drain systems.

4. On September 18, 2017, DEQ staff inspected the site and observed diesel fuel on the ground in the area of the ruptured tank removal and collecting in a nearby sedimentation basin. DEQ staff reported that the water in the basin was very low with little possibility of petroleum discharging to surface waters. The tanks were reported to range in size from 1000 to 2000 gallons and contained an unknown amount of petroleum product.

5. Chesterfield County worked with the Benchmark Construction superintendent managing the excavation project to have booms placed at the outfall area of the sedimentation basin, pumping of the basin of the water-petroleum mixture, transport of the water-fuel mixture and contaminated soil from the tank pit and sedimentation basin to Reco Biotechnology (RECO) for disposal.

6. On September 26, 2017, DEQ re-inspected the site and found the sediment basin had been pumped of the water-petroleum mixture, the contaminated soil scraped out of the basin, and soil samples collected from the excavated tank pit and sent for testing.

7. On October 31, 2017, the metal tanks were removed from the site and delivered to Sims Metal for disposal.

8. On November 10, 2017, Koontz Bryant Johnson Williams (KBJW), consultants for Browns Bluff, submitted an "Initial Abatement Report/Site Characterization Report" (Report) for the oil discharge at Colony Pointe Subdivision. The Report summarized the initial abatement measures taken, subsequent investigation of the incident, remediation activities and restoration of the site. The report included the analytical results of the water and soil samples collected from the tank pit and sedimentation basin, chain of custody receipts, manifests for the contaminated soil disposal, and the recycling and treatment of the petroleum-water mixture collected by vacuum truck for disposal at RECO. The Report stated that the tanks were removed from the site and delivered to SIMs Metal for disposal. Analysis of the soil samples collected on November 3, 2017 and November 6, 2017 reported petroleum hydrocarbon levels below detection limits or below risk based action level. Upon receiving the results of the analysis of the soil samples, the tank pit was backfilled with clean crushed rock.

9. Va. Code § 62.1-44.34:18 prohibits the discharge of oil into or upon state waters, lands, or storm drain systems that (i) violate applicable water quality standards or a permit or certificate of the Board or (ii) cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

10. Va. Code § 62.1-44.34:19 states that any person discharging or causing a discharge of oil into or upon waters, lands, or storm drain systems shall immediately upon learning of the discharge, notify the Board of such discharge.

11. On January 10, 2018, the Department issued Notice of Violation No. 18/01/PRO-500 to Browns Bluff for a discharge of oil to the ground and to the nearby sedimentation basin.

12. On February 12, 2018, DEQ staff met with representatives of Browns Bluff and their consultants to discuss the petroleum discharge, spill control and clean-up activities, and the current status of the site. Browns Bluff reported that the remediation activities had been completed

13. By letter dated February 26, 2018, DEQ notified Browns Bluff that no further assessment or corrective action were required at the discharge site.

14. By letter dated March 12, 2018, Benchmark Construction provided the estimates of fuel released, recovered and discharged to the environment. The company estimated that 2,872 gallons of stormwater was in the sedimentation basin at the time the petroleum was discharged to the ground and subsequently drained into the sedimentation basin. The vacuum truck pumped 3,575 gallon of water/fuel mixture from the basin and disposed of the fuel/water mixture at RECO. The company calculated that 703 gallons of petroleum was released to the ground at the time of the discharge.

15. Based on the results of the September 18, 2017, September 26, 2017 petroleum discharge investigations, the November 10, 2017 Initial Abatement Report/Site Characterization Report, and the February 12, 2018 meeting, the Board concludes that Browns Bluff violated the Va. Code § 62.1-44.34:18 and § 62.1.-44.34:19, prohibiting the discharge of oil into or upon state waters, lands, or storm drain systems, and for failing to report the discharge as described in paragraphs C(2) through C(6), above.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.34:20 and upon consideration of Va. Code § 10.1-1186.2, the Board orders Browns Bluff, and Browns Bluff agrees:

1. To pay a civil charge of $10,665 within 30 days of the effective date of the Order in settlement of the violations cited in this Order;

Payment shall be made by one 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

Browns Bluff 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, Browns Bluff 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 Browns Bluff for good cause shown by Browns Bluff, 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, Browns Bluff admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. Browns Bluff 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. Browns Bluff 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 Browns Bluff 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. Browns Bluff 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. Browns Bluff shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Browns Bluff 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 Browns Bluff 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 Browns Bluff. Nevertheless, Browns Bluff 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. Browns Bluff 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 Browns Bluff.

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

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, Browns Bluff, LLC voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, **2020**.

_____

James J. Golden, Regional Director
Department of Environmental Quality

Browns Bluff, LLC voluntarily agrees to the issuance of this Order.

Date: Nov 8, 2019 By: _____ . Manager
(Person) (Title)
Browns Bluff, LLC
FRANCIS R BEERS

Commonwealth of Virginia
City/County of Harrisonburg

The foregoing document was signed and acknowledged before me this 8th day of

November 2019, by Francis R. Beers who is

Manager of Browns Bluff, LLC on behalf of the corporation.

Morgan D Offenbacker
Notary Public

7832019
Registration No.

My commission expires: 1/31/2023

Notary seal:

MORGAN OFFENBACKER
NOTARY PUBLIC
REGISTRATION # 7832019
COMMONWEALTH OF VIRGINIA
MY COMMISSION EXPIRES
1/31/2023