



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

1111 E. Main Street, Suite 1400, Richmond, Virginia 23219
P.O. Box 1105, Richmond, Virginia 23218
(800) 592-5482

www.deq.virginia.gov

Travis A. Voyles
Secretary of Natural and Historic Resources

Michael S. Rolband, PE, PWD, PWS Emeritus
Director
(804) 698-4020

December 14, 2023

Table with 2 columns: Owner Address, Other Address, Operator Address, Other Address. Contains contact information for Aqua Harmony, LLC.

NOTICE OF INFORMAL FACT FINDING PROCEEDING

Table with 2 columns: RE: (Named Party(ies), Facility, Facility ID No.) and corresponding values.

Dear Sir/Madam:

You are hereby notified that the Department of Environmental Quality will conduct an Informal Fact Finding Proceeding ("Proceeding") regarding the Facility identified above. The

Notice of Informal Fact Finding Proceeding

Proceeding will be held via conference call at the date and time listed below. At the scheduled time, dial the Call-In Number and enter the Access Code listed below.

<b>Proceeding Date</b>	January 11, 2024	<b>Proceeding Time</b>	11:00 AM
<b>Call-In No.</b>	+1 (872) 240-3412	<b>Access Code</b>	910-988-773

If you have any difficulty accessing the conference call, please call:

<b>Agency Advocate</b>	Kelsey Gump
<b>Phone No.</b>	+1 (804) 814-7889

**PURPOSE**

The purpose of the Proceeding is to determine whether the underground storage tank(s) (UST(s)) located at this Facility and listed in this Notice are ineligible for delivery, deposit, or acceptance of a regulated substance based on violation(s) of the Underground Storage Tanks: Technical Standards and Corrective Action Requirements Regulation (the Regulation), 9VAC25-580-10 *et seq.*, as described below.

**INFORMATION TO BE USED BY DEQ**

To ascertain the facts in this matter, DEQ staff may rely upon DEQ’s inspection report(s) for the Facility, any Notice(s) of Violation, the Form 7530-2 Notification for USTs for the Facility, other public documents in DEQ files, and the information presented by witnesses. DEQ staff will also rely on applicable statutes, regulations, and DEQ guidance. Full texts of statutes, regulations, and DEQ guidance can be obtained at <http://www.deq.virginia.gov/LawsRegulations.aspx> or <http://lis.virginia.gov/> (statutes and regulations) and <http://townhall.virginia.gov/L/GDocs.cfm> (DEQ guidance). Copies will be provided upon request.

**ALLEGED VIOLATIONS AND LEGAL REQUIREMENTS**

The following alleged violations are based on inspection(s) conducted on the date(s) listed below. These alleged violations remain unresolved and will be the subject of the Proceeding.

<b>Inspection Date(s)</b>	August 28, 2023 and May 27, 2021
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<b>Alleged Violation</b>	<b>Observations and Legal Requirements</b>	<b>UST No(s).</b>
<input checked="" type="checkbox"/>	Failed to keep required records at the Facility, readily available at an alternative site, or make them immediately available upon request. <b>9VAC25-580-120: Reporting and Recordkeeping</b>	1M, 2M, 3, 4, 5

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Alleged Violation	Observations and Legal Requirements	UST No(s).
<input type="checkbox"/>	Failed to properly perform, repair, replace, test, or provide a method, or combination of methods, of release detection for tanks, and/or operation of electronic and mechanical components for USTs at the Facility. <b>9VAC25-580-110: Repairs Allowed</b> <b>9VAC25-580-130: General Requirements for all UST Systems</b> <b>9VAC25-580-140: Requirements for Petroleum UST Systems</b> <b>9VAC25-580-160: Methods of Release Detection for Tanks</b>	
<input type="checkbox"/>	Failed to properly perform, repair, replace, test, or provide a method, or combination of methods, of release detection for piping, and/or operation of electronic and mechanical components for USTs at the Facility. <b>9VAC25-580-110: Repairs Allowed</b> <b>9VAC25-580-130: General Requirements for all UST Systems</b> <b>9VAC25-580-140: Requirements for Petroleum UST Systems</b> <b>9VAC25-580-170: Methods of Release Detection for Piping</b>	
<input checked="" type="checkbox"/>	Failed to provide, operate, repair, test and/or maintain corrosion protection of the UST system. <b>9VAC25-580-50: Performance Standards for New UST Systems</b> <b>9VAC25-580-60: Upgrading of Existing UST Systems</b> <b>9VAC25-580-90: Operation and Maintenance of Corrosion Protection</b> <b>9VAC25-580-110: Repairs Allowed</b>	1M, 2M, 3, 4, 5
<input type="checkbox"/>	Failed to provide overfill and/or spill prevention / equipment that will prevent a release into the environment. <b>9VAC25-580-50: Performance Standards for New UST Systems</b> <b>9VAC25-580-60: Upgrading of existing UST Systems</b>	
<input checked="" type="checkbox"/>	Failed to conduct or properly conduct walkthrough inspections. <b>9VAC25-580-85: Periodic operation and maintenance walkthrough inspections</b>	1M, 2M, 3, 4
<input type="checkbox"/>	Failed to submit a UST notification form or an amended notification form regarding a change in ownership, tank status, tank/piping systems, or substance stored within 30 days after such change or upgrade occurs or is brought into use. <b>9VAC25-580-70: Notification Requirements</b>	
<input type="checkbox"/>	Failed to complete the required training and/or designate Class A, Class B, and/or Class C operators and/or failed to provide written instructions or emergency procedures. <b>9VAC25-580-125: Operator Training</b>	
<input type="checkbox"/>	Failed to properly conduct testing and/or test spill prevention equipment, overfill equipment, and/or containment sumps. <b>9VAC25-580-82: Periodic Testing</b>	

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Alleged Violation	Observations and Legal Requirements	UST No(s).
<input type="checkbox"/>	<p>Failed to report a suspected release or unusual operating condition within 24 hours.  <b>9VAC25-580-190: Reporting of Suspected Releases</b>  <b>9VAC25-580-220: Reporting and Cleanup of Spills and Overfills</b></p>	
<input type="checkbox"/>	<p>Failed to immediately investigate and confirm all suspected releases of regulated substances requiring system test/site check and reporting within seven days.  <b>9VAC25-580-210: Release Investigation and Confirmation Steps</b></p>	
<input type="checkbox"/>	<p>Failed to contain and immediately clean up a spill or overflow that results in a release to the environment that exceeds 25 gallons or that causes a sheen on nearby surface water; and/or take immediate action to prevent further release or migration of a regulated substance; and/or failed to identify and mitigate fire, explosion and vapor hazards; and/or failed to remedy hazards posed by contaminated soils; and/or measure for a release where contamination is most likely; and/or failed to submit an initial abatement report; and/or failed to investigate and remove free product.  <b>9VAC25-580-220: Reporting and Cleanup of Spills and Overfills</b>  <b>9VAC25-580-240: Initial Response</b>  <b>9VAC25-580-250: Initial Abatement Measure and Site Check</b>  <b>9VAC25-580-270: Free Product Removal</b></p>	
<input type="checkbox"/>	<p>Failed to assemble information about the site and the nature of the release, including information gained while confirming the release or completing the initial abatement measures.  <b>9VAC25-580-260: Site Characterization</b></p>	
<input type="checkbox"/>	<p>Failed to notify 30 days before switching to a specified regulated substance and/or failed to demonstrate proper compatibility.  <b>9VAC25-580-100: Compatibility</b></p>	
<input type="checkbox"/>	<p>Failed to investigate off-site impacts to determine if the UST system is the source.  <b>9VAC25-580-200: Investigation Due to Off-Site Impacts</b></p>	
<input type="checkbox"/>	<p>Failed to submit a corrective action plan, with all necessary information, according to the required schedule, or perform corrective action to address contaminated soils and groundwater.  <b>9VAC25-580-270: Free Product Removal</b>  <b>9VAC25-580-280: Corrective Action Plan</b></p>	
<input type="checkbox"/>	<p>Failed to demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs.  <b>9VAC25-590-40: Amount and Scope of Financial Responsibility Requirement</b>  <b>9VAC25-590-50: Allowable Mechanisms</b></p>	

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Alleged Violation	Observations and Legal Requirements	UST No(s).
<input type="checkbox"/>	Failed to maintain evidence of all financial assurance mechanisms used to demonstrate financial responsibility. <b>9VAC25-590-160: Recordkeeping</b>	
<input type="checkbox"/>	Failed to return a tank to compliance that has been classified as ineligible for delivery for more than 90 days, and the tank has not been closed in accordance with 9VAC25-580-310 or 9VAC25-580-320. <b>9VAC25-580-370.F: Requirements for Delivery Prohibition</b>	

**PROCEDURES**

You may participate in the conference call yourself or by counsel or other qualified representative pursuant to Va. Code § 2.2-4019. At this proceeding, the Responsible Party(ies) will be able to present factual data, argument, or proof in connection with this case. A presiding officer will hear the evidence in this case and prepare a case decision to resolve any issues presented with respect to delivery prohibition.

Based upon DEQ’s file and the record of this Proceeding, DEQ will be requesting that the Presiding Officer find that the referenced UST(s) at the Facility identified above are in violation of the Regulation and ineligible for delivery, deposit or acceptance of a regulated substance based on 9VAC25-580-370 of the Regulation.<sup>1</sup>

Be advised that if you fail to attend or appear without good cause to an informal fact-finding proceeding conducted pursuant to Va. Code § 2.2-4019, the presiding officer may issue a default order regarding the subject of this notice. If a default order is issued, the presiding officer may conduct all further proceedings necessary to complete the adjudication and shall determine all issues in the adjudication, including those affecting you. Further, an order may be issued against you based on any admissions or other evidence without notice to you.

You will be notified of the results of the proceeding in accordance with Va. Code § 2.2-4019 and have the right to appeal any adverse decision in accordance with Va. Code § 2.2-4026.

**RESOLUTION**

Please contact the DEQ staff listed below if you wish to resolve the alleged violations prior to the Informal Fact Finding Proceeding.

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<sup>1</sup> You may request to be heard on the Emergency, Rural or Remote Exception. 9VAC25-580-370(I) provides that if the Presiding Officer, acting on behalf of DEQ, determines that a delivery prohibition exists he or she can consider whether the threat posed by the violation is outweighed by the need for fuel from the UST(s) to meet an emergency situation or to meet the needs of a rural and remote area. If it is determined that such a condition outweighs the immediate risk of the violation, the Presiding Officer may defer imposition of delivery prohibition for up to 180 days. In every such case the director shall consider (i) issuing a special order under the authority of subdivision 10 of § 10.1-1186 of the Code of Virginia prescribing a prompt schedule for abating the violation and (ii) imposing a civil penalty.

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<b>DEQ Staff</b>	Kelsey Gump
<b>Phone No.</b>	+1 (804) 814-7889
<b>Email</b>	kelsey.gump@deq.virginia.gov

If you complete the necessary work to resolve the potential violations prior to the date of the Proceeding, contact the above DEQ staff immediately so that compliance can be verified. You must provide a written report and appropriate documentation demonstrating that compliance has been achieved 3 business days prior to the Proceeding. If compliance is verified, the Proceeding will be cancelled and the UST(s) will be eligible for receipt of a regulated substance. If compliance is not verified, the Proceeding will go forward as scheduled.

You may waive your right to an Informal Fact Finding Proceeding by submitting a request for waiver prior to the date of the Proceeding. The request shall be in writing and signed by the owner of the UST and include a statement that no material facts are in dispute and that the owner waives his right to an Informal Fact Finding Proceeding and to any other administrative proceeding regarding the potential violations described herein.

**FUTURE ACTIONS**

If you waive your right to an Informal Fact Finding Proceeding or if these tanks are determined to be in violation of 9VAC25-580-10 *et seq.* and ineligible for delivery, a delivery prohibition notice (“red tag”) will be placed on the fill port of the ineligible UST(s) and delivery, deposit or acceptance of a regulated substance into the UST(s) will be prohibited until such time as the UST(s) are returned to compliance. Please be advised that removal of the red tag is prohibited by 9VAC25-580-370 unless authorized, in writing, by DEQ. In addition, for each alleged violation, DEQ is authorized to pursue enforcement actions, seek civil penalties and seek compliance with its rules and regulations in any manner allowed by law.

Please contact the following DEQ staff within 5 business days of the date of this letter to confirm whether you and/or a representative will attend the Proceeding or with any questions related to this Proceeding.

<b>Agency Advocate</b>	Kelsey Gump
<b>Phone No.</b>	+1 (804) 814-7889
<b>Email</b>	kelsey.gump@deq.virginia.gov

Sincerely,

<b>Hooper Renee</b> <b>lio67069</b>	<small>Digitally signed by: Hooper Renee lio67069 DN: CN = Hooper Renee lio67069 OU = COV-Users, End-Users, DEQ Date: 2023.12.14 14:30:18 -05'00'</small>
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Renee T. Hooper

Tank Regulatory Programs Manager

**Virginia Department of Environmental Quality**

**In re: Aqua Harmony, LLC; Duck In Market, LLC**

**DEQ Exhibit List**

1. State Corporation Commission - Aqua Harmony, LLC
2. State Corporation Commission - Duck In Market, LLC
3. Most Recent Registration (Nov 2020)
4. Property Card (Retrieved 12-7-2023)
5. Operator Identification 10-16-2023
6. Formal UST Inspection Report 5-27-2021
7. RCA Letter 2021
8. Warning Letter 2021
9. Compliance Follow-up Events 2021-2022
10. Cathodic Protection System Test 2016 - Including Tank 5
11. Cathodic Protection System Test 2021 - Missing Tank 5
12. Rectifier Log & Monthly Walkthrough Inspections - April 2022
13. DEQ Email - Remaining Issues 4-21-2022
14. Formal UST Inspection Report 8-28-2023
15. Warning Letter 2023
16. Compliance Follow-up Events 2023
17. Warning Letter Follow-up Email 11-17-2023
18. Operator Training Submittal - Incomplete Records 12-6-2023
19. Operator Training Submittal (Complete) 12-11-2023
20. Release Detection Equipment Testing - Received 12-7-2023
21. Correspondence Log - Rectifier Removed, Inactive CP 12-4-2023
22. DEQ Email - Missing Rectifier Follow-up 12-14-2023