



*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 FAX (804) 698-4178

[www.deq.virginia.gov](http://www.deq.virginia.gov)

Travis A. Voyles  
Secretary of Natural and Historic Resources

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

August 31, 2023

<b>Owner Address:</b>	<b>Other Address:</b>
Mr. Michael Shipway GBM Fuel, Inc. 4780 North Frederick Pike Winchester, VA 22603	
<b>Operator Address:</b>	<b>Other Address:</b>
Mr. Andy Gill Gill Bros, LLC 311 Breckinridge Ct. Berryville, VA 22611	

**PROPOSED CONSENT ORDER AND  
NOTICE OF INFORMAL FACT FINDING PROCEEDING**

<b>RE:</b>	<b>Responsible Party(ies)</b>	GBM Fuel, Inc. Gill Bros, LLC
	<b>Facility Name</b>	Gainesboro Market - GB 12
	<b>Facility No.</b>	6006400

Dear Sir/Madam:

The Virginia Department of Environmental Quality (“DEQ”) issued Notice(s) of Violation (the “NOV(s)”) on the following date(s) to the Responsible Party(ies) identified above for alleged violations observed at the facility identified above.

Proposed Consent Order and Notice of Informal Fact Finding Proceeding

<b>NOV Date(s)</b>	5/12/2023
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The Responsible Party(ies) may resolve this matter quickly by entering into the enclosed Consent Order with DEQ within forty-five days from the date of this letter. If DEQ does not receive the signed Consent Order by that date, DEQ will proceed with conducting an Informal Fact Finding Proceeding as explained in Section II below.

**I. PROPOSED CONSENT ORDER**

DEQ wishes to resolve the alleged violations in the NOV by entering into a Consent Order with the Responsible Party(ies). DEQ’s proposed Consent Order is enclosed for your review. The proposed Consent Order includes:

<input checked="" type="checkbox"/>	A civil charge in the amount of <u>12,208</u>
<input checked="" type="checkbox"/>	Injunctive relief (corrective actions) in Appendix A.

If you agree with the terms of the proposed Consent Order, please sign and date the Consent Order and send it within forty-five days from the date of this letter to:

<b>Enforcement Specialist</b>	Celeste Horton
<b>Address</b>	4411 Early Road Harrisonburg, VA 22801
<b>Email</b>	celeste.horton@deq.virginia.gov

The order is subject to public notice and comment before it becomes final. A copy of the fully executed order will be returned to you for implementation upon signature on behalf of DEQ.

**II. NOTICE OF INFORMAL FACT FINDING PROCEEDING**

You are hereby notified that if DEQ does not receive the signed Consent Order within forty-five days from the date of this letter, an Informal Fact Finding Proceeding will be held via conference call at the date and time listed below. At the scheduled time, dial the Call-In Number listed below, and enter the Access Code listed below when requested.

<b>Proceeding Date</b>	11/6/2023	<b>Proceeding Time</b>	10:00 AM EST
<b>Call-In No.</b>	(312)-757-3121	<b>Access Code</b>	253-160-749

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

Proposed Consent Order and Notice of Informal Fact Finding Proceeding

<b>Agency Advocate</b>	Carla Pool
<b>Phone No.</b>	(804)-664-3666

The Informal Fact Finding Proceeding will be conducted pursuant to Va. Code §§ 2.2-4019 and 10.1-1186 to determine whether the Responsible Party(ies) violated the Virginia Code and Regulations as listed in the Findings of Fact and Conclusions of Law in Section C of the enclosed Consent Order. The Informal Fact Finding Proceeding will also determine the appropriateness of a civil penalty, injunctive relief, and/or delivery prohibition.

DEQ staff will request:

<input checked="" type="checkbox"/>	A Special Order requiring the Responsible Party(ies) to:
<input checked="" type="checkbox"/>	Pay the maximum civil penalty authorized by law, and pay attorneys' fees of 30% of the amount outstanding should DEQ have to refer collection of the civil penalty to the Department of Law.
<input checked="" type="checkbox"/>	Comply with the Virginia Code and Regulations by completing the corrective actions listed in Appendix A of the enclosed proposed Consent Order.
<input checked="" type="checkbox"/>	A Delivery Prohibition Decision determining that Tanks <u>1M, 2M, 3 and 4</u> at the Facility are in violation of the Underground Storage Tanks: Technical Standards and Corrective Action Requirements Regulation and ineligible for delivery, deposit, or acceptance of a regulated substance based on 9 VAC 25-580-370. <sup>1</sup>

To ascertain the facts in this matter, DEQ staff may rely upon DEQ's inspection report(s) for the Facility, the NOV(s), 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.

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. The Presiding Officer will prepare an independent Findings of Fact and Conclusions of Law and a draft Special Order for the Director's review. Then the Director may issue a Special Order under Va. Code § 10.1-1186, which may include both injunctive relief and a civil penalty.

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

<sup>1</sup> You may request to be heard on the Emergency, Rural or Remote Exemption. 9 VAC 25-580-370(I) provides that if the Presiding Officer determines that a delivery prohibition violation 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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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.

If you have any questions or require assistance, please contact the following DEQ staff who will represent DEQ at this proceeding:

<b>Agency Advocate</b>	Carla Pool
<b>Phone No.</b>	(804)-664-3666
<b>Email</b>	Carla.Pool@deq.virginia.gov

Sincerely,

<b>Severs Tiffany</b> nwz89929	<small>Digitally signed by: Severs Tiffany nwz89929 DN: CN = Severs Tiffany nwz89929 OU = GOV-Users, End-Users, DEQ Date: 2023.08.31 08:28:42 -0400</small>
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Enclosure

**VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY  
ENFORCEMENT ACTION - ORDER by CONSENT  
ISSUED to**

**as the OWNER/OPERATOR of a UST FACILITY  
and the RESPONSIBLE PARTY**

**SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15 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 terms used in this Consent Order have the meanings assigned to them in Va. Code §62.1-44.2 *et seq.*, 10.1-1182 *et seq.*, and 9VAC25-580-10 *et seq.*

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

<b>UST Owner</b>		<b>UST Operator</b>	
<b>Facility ID</b>			
<b>Facility Address</b>	<b>Street Address</b>		
	<b>City</b>		<b>VA</b> <b>Zip Code</b>
<b>Inspection</b>		<b>Request for Corrective Action</b>	
<b>Warning Letter</b>		<b>Notice of Violation</b>	
	<b>UST #</b>	<b>Regulated Substance</b>	<b>Volume of UST (Gallons)</b>
<b>Total # of UST</b>		<b>Total UST capacity at the Facility (Gallons)</b>	

Violation	Observations and Legal Requirements	Civil Charge		Subtotal
	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>	# of Violations		
	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>	# of Violations		
	Failed to properly perform, repair, replace, test, or provide 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>	# of Violations		
	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>	# of Violations		
	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>	# of Violations		
	Failed to conduct or properly conduct walkthrough inspections. <b>9VAC25-580-85: Periodic operation and maintenance walkthrough inspections</b>	# of Violations		
	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>	# of Violations		

Violation	Observations and Legal Requirements	Civil Charge		Subtotal
	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>	# of Violations		
	Failed to properly conduct testing and/or test spill prevention equipment, overfill equipment, and/or containment sumps. <b>9VAC25-580-82: Periodic Testing</b>	# of Violations		
	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>	# of Violations		
	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>	# of Violations		
	Failed to contain and immediately clean up a spill or overfill 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>	# of Violations		
	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>	# of Violations		

Violation	Observations and Legal Requirements	Civil Charge		Subtotal
	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>	# of Violations		
	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>	# of Violations		
	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>	# of Violations		
	Failed to follow the requirements to temporarily close a UST system and/or failed to keep temporarily closed UST system in compliance with requirements. <b>9VAC25-580-310: Temporary Closure</b>	# of Violations		
	Delivered or accepted a regulated substance into an ineligible UST. <b>9VAC25-580-370: Requirements for Delivery Prohibition</b>	# of Violations		
	Failed to permanently close a UST system that does not meet the new UST or UST upgrade requirements. <b>9VAC25-580-50: Performance Standards for New UST systems</b> <b>9VAC25-580-60: Upgrading of existing UST systems</b> <b>9VAC25-580-310: Temporary Closure</b>	# of Violations		
	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>	# of Violations		
	Failed to maintain evidence of all financial assurance mechanisms used to demonstrate financial responsibility. <b>9VAC25-590-160: Recordkeeping</b>	# of Violations		
<b>Civil Charge Subtotal</b>				



<b>Aggravating Factors</b>		
	<b>Additional Civil Charge Assessment</b>	<b>Subtotal</b>
Degree of Culpability		
Consent Order in another media Program within 36 months		
Consent Order in the same media program within 36 months		
<b>Aggravating Factors Subtotal</b>		
<b>Civil Charge Subtotal and Aggravating Factor Subtotal</b>		
Civil Charge Reduction		
Economic Benefit of Noncompliance		
In accordance with 62.1-44.15(8e), the Responsible Party's Ability to Pay was evaluated and it was determined that there is an ability to pay.		
<b>Total Civil Charge</b>		
Based on the results of staff observations, the Department concludes that the Responsible Party has violated Va. Code and Regulations as identified herein.		

**SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Department orders the Responsible Party, and the Responsible Party agrees to:

Perform the actions described in Appendix A of this Order if this box is checked and

Pay the total civil charge of  in settlement of the violations cited in this Order in accordance with the following:

Within 30 days of the effective date of the Order, or

In accordance with the following payment schedule:

Due Date	Amount


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, VA 23218

The Responsible Party shall include its Federal Employer Identification Number (FEIN), if applicable, 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, Responsible Party shall be liable for attorneys’ fees of 30% of the amount outstanding.

**SECTION E: Administrative Provisions**

1. The Department may modify, rewrite, or amend this Order with the consent of the Responsible Party for good cause shown by the Responsible Party, 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 Department 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, the Responsible Party admits the jurisdictional allegations, and agrees not to contest, but neither admits nor denies, the findings of fact and conclusions of law in this Order.
4. The Responsible Party 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. The Responsible Party 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 Department to modify, rewrite, amend, or enforce this Order.
6. Failure by the Responsible Party to comply with any of the terms of this Order shall constitute a violation of an order of the Department. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Department 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. The Responsible Party 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. The Responsible Party shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. The Responsible Party 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 The Responsible Party. Nevertheless, the Responsible Party 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 the Responsible Party has completed all of the requirements of the Order;
  - b. The Responsible Party 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 Department terminates the Order in his or its sole discretion upon 30 days' written notice to the Responsible Party.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve the Responsible Party 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 the Responsible Party 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 the Responsible Party certifies that he or she is a responsible official [or officer] authorized to enter into the terms and conditions of this Order and to execute and legally bind the Responsible Party to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of the Responsible Party.

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, the Responsible Party voluntarily agrees to the issuance of this Order.

And it is so ORDERED.

DEQ Signee Signature

Date

DEQ Signee Name

Title

As the owner/operator of the UST system identified herein, I hereby certify that I am the Responsible Party and acknowledge that there are no material facts in dispute with respect to the violations as identified in this consent order.

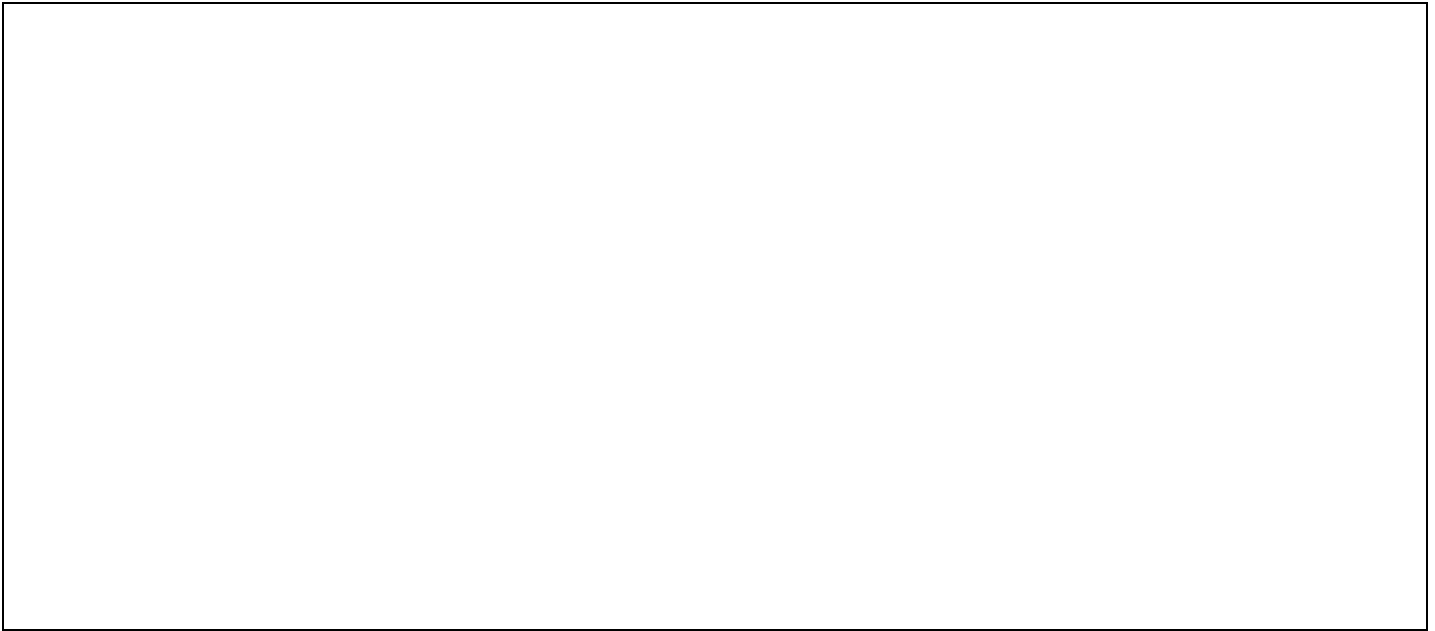
Date:  By: ,

Responsible Party Name

Title

**DEQ Contact**

Unless otherwise specified in this Order, the Responsible Party shall submit all requirements of Appendix A of this Order to:



## APPENDIX A SCHEDULE OF COMPLIANCE

The Responsible Party shall take the following actions:

	<b>Correction to be Performed</b>	<b>Due Date</b>
	Provide release detection for the UST system as required in 9VAC25-580-140.	
	Provide records for ___ months in accordance with 9VAC25-580-120 demonstrating compliance with all release detection requirements as required in 9VAC25-580-180.	
	Provide records demonstrating the automatic line leak detector has been tested within the past 12 months, presenting passing results in accordance with the performance requirements set forth in 9VAC25-580-130 and 170.	
	Provide records demonstrating line tightness testing has been completed within the past 12 months, presenting passing results in accordance with the performance requirements set forth in 9VAC25-580-130 and 170.	
	Provide records demonstrating the proper repair and/or replacement of electronic and mechanical components of a UST system upon failed testing results, is in accordance with 9VAC25-580-110.	
	Provide records demonstrating that the install and/or repair of the necessary equipment to provide adequate corrosion protection on the UST system is in accordance with 9VAC25-580-90 and 9VAC25-580-110.	
	Complete cathodic protection system testing in accordance with 9VAC25-580-90 and submit copies of these cathodic protection system test results in accordance with 9VAC25-580-120.	
	Submit documentation that the impressed current cathodic protection system is inspected every 60 days in accordance with 9VAC25-580-90(3).	
	Provide records demonstrating periodic testing and inspections of spill/overflow prevention equipment and containment sumps has been performed within the past 12 months in accordance with 9VAC25-580-82.	
	Submit an updated Notification for the UST system in accordance with 9VAC25-580-70.	
	Submit documentation demonstrating financial responsibility in accordance with 9VAC25-590-10 <i>et seq.</i>	
	Submit training documentation for all the Class A, B, and C operators, including a current list of operators and written instructions or procedures for Class C operators. All training documentation shall verify training has been conducted in accordance with 9VAC25-580-120, and - 125.	
	Submit results of ___ months of walkthrough inspections results in accordance with 9VAC25-580-85.	
	Submit annual walkthrough inspections results in accordance with 9VAC25-580-85.	

**APPENDIX A  
SCHEDULE OF COMPLIANCE**

The Responsible Party shall take the following actions:

	<b>Correction to be Performed</b>	<b>Due Date</b>