



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

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

RE: Responsible Party:

Facility Name:

Facility Address:

Facility City:

Zip:

Facility No.:

EA ID.:

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.

Warning Letter Date:

NOV Date(s):

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:

A civil charge in the amount of _____

Injunctive relief (corrective actions).

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:

Enforcement Specialist:

Address:

Email:

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.

Proceeding Date		Proceeding Time	
Call-In No.		Access Code	

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

Agency Advocate:

Phone No.:

Email:

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:

A Special Order requiring the Responsible Party(ies) to:

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.

Comply with the Virginia Code and Regulations by completing the corrective actions listed in the enclosed proposed Consent Order.

A Delivery Prohibition Decision determining that Tanks _____ 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 25-580-370.¹

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 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 Agency Advocate identified above who will represent DEQ at this proceeding.

¹ 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.

Sincerely,

Enclosure

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

ISSUED to

**as the OWNER/OPERATOR of an 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

UST Owner					
UST Operator					
Facility Address	Street Address				
	City		VA	Zip Code	
Facility ID			EA ID		
Warning Letter			Notice of Violation		
Total # of UST	UST#	Regulated Substance	Volume of UST (Gallons)		
Total # of UST		Total UST capacity at the Facility (Gallons)			

Observations and Legal Requirements		Civil Charge	Subtotal
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. 9VAC25-590-40: Amount and Scope of Financial Responsibility Requirement. 9VAC25-590-50: Allowable Mechanisms			
		# of Violations	
Civil Charge Subtotal			
Aggravating Factors			
	Additional Civil Charge Assessment	Subtotal	
Degree of Culpability			
Consent Order in another media program within 36 months			
Consent Order in the same media program within 36 months			
Aggravating Factors Subtotal			
Civil Charge Subtotal and Aggravating Factor Subtotal			
Civil Charge Reduction			
Economic Benefit of Noncompliance <i>(This calculation is based on the least expensive way to obtain financial assurance - a Dun & Bradstreet rating to self-insure. The ratings must be updated yearly. Estimated cost is \$500 per year. For delayed compliance, 6% per year of the delayed one-time capital costs for the period from the date the violation began until the date compliance was or is expected to be achieved.)</i>			
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.			
Total Civil Charge			
Based on the results of staff observations, the Department concludes that the Responsible Party has violated Va. Code and Regulations as identified herein.			

Penalty Explanation

Potential for Harm- The violation is assessed as having the following potential for harm:

Serious Classification: A violation is classified as Serious if (1) the severity of the violation presents a substantial deviation from the regulatory requirement or actual harm to the integrity of the regulatory program and/or (2) has or may have a substantial adverse effect to human health or the environment.

Moderate Classification: A violation is classified moderate if (1) the severity of the violation presents some deviation from the regulatory requirement or actual harm to the integrity of the regulatory program and/or (2) has or may have some adverse effect to human health or the environment.

Marginal Classification: A violation is classified as Marginal if (1) the severity of the violation presents little or no deviation from the regulatory requirement or actual harm to the integrity of the regulatory program and/or (2) has or may have little to no adverse effect to human health or the environment.

This potential for harm severity was based on the following factors.

High petroleum throughput with an annual aggregate obligation of \$200,00 is greater than 2.4 million gallons per year.

Moderate petroleum throughput with an annual aggregate obligation greater than \$20,000 but less than \$200,000 is between 600,000 gallons and 2.4 million gallons per year.

Low petroleum throughput with an annual aggregate obligation of \$20,000 is equal to 600,000 gallons or less per year.

UST located in residential area.

UST located in industrial/commercial area.

UST located in rural area.

Groundwater in the local area is used as a drinking water source.

UST is located adjacent to surface water.

Additional consideration:

Degree of Culpability Explanation (*DEQ staff assesses a Responsible Party's culpability based on the facts and circumstances of the enforcement action and may add an aggravating factor to the amounts for one, a subset, or all violations, depending on the culpability assessment. EPA also includes an evaluation of culpability and/or willfulness in the assessment of a civil charge. As part of Virginia's delegation of authority to implement federal programs, this factor is also included as part of the civil charge analysis.*)

The responsible party knew or should have known of the legal requirement that was violated for the following reasons:

Previously demonstrated financial assurance.

The Agency provided written explanation of the requirement to the responsible party.

The responsible party had control over the events constituting the violation and did not take reasonable precautions against the events constituting the violation.

There is evidence of unjustified delay in preventing, mitigating, or remedying the violation.

The responsible party is a sophisticated UST owner/operator.

Additional Consideration:

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:

Submit documentation demonstrating financial responsibility in accordance with 9VAC25-590-10 *et seq* within 30 days of the effective date of the Order, if this box is checked.

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.

By: _____ Date _____

Responsible Party

Title _____