



*Commonwealth of Virginia*

***VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY***

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

Stefanie K. Taillon  
Secretary of Natural and Historic Resources

Michael S. Rolband, PE, PWD, PWS Emeritus  
Director

<b>Owner Address:</b>	<b>Other Address:</b>
<b>Operator Address:</b>	<b>Other Address:</b>

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

**RE: Responsible Party:**

**Facility Name:**

**Facility Address:**

**Facility City:**

**Virginia, 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:**

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:**

**Email:**

**Address:**

The Consent Order is subject to public notice and comment before it becomes final. A copy of the fully executed Consent 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>		<b>Proceeding Time</b>	
<b>Call-In No.</b>		<b>Access Code</b>	

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 Tank(s) \_\_\_\_\_ 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 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.

Sincerely,

Enclosure

<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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**DEPARTMENT OF ENVIRONMENTAL QUALITY  
ENFORCEMENT ACTION – CONSENT ORDER  
ISSUED to**

**as the Choose an item. 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**

<b>UST Owner</b>					<b>Facility ID</b>	
<b>UST Operator</b>						
<b>Facility Address</b>	<b>Street</b>					
	<b>City</b>		<b>VA</b>	<b>Zip Code</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>		
<b>Observations and Legal Requirements</b>		<b>Civil Charge</b>		<b>Subtotal</b>
<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.</p> <p><b>9VAC25-590-40: Amount and Scope of Financial Responsibility Requirement.</b></p> <p><b>9VAC25-590-50: Allowable Mechanisms</b></p>		<b>Occurrence</b>		
		<b>Potential for Harm</b>		
		<b>Serious:</b> High petroleum throughput with an annual aggregate obligation of \$200,000 is greater than 2.4 million gallons per year.		
		<b>Moderate:</b> 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.		
		<b>Marginal:</b> Petroleum throughput with an annual aggregate obligation of \$20,000 is equal to 600,000 gallons or less per year.		
<b>Factors that may warrant a deviation from the potential for harm determination.</b> <input type="checkbox"/> No factors. <input type="checkbox"/> Describe factors.				
<b>Violation Civil Charge Subtotal</b>				
<b>Aggravating Factors</b>				
<b>Degree of Culpability</b>				
	Awareness of the legal requirements violated.		The responsible party previously demonstrated financial assurance.	The responsible party was provided written explanation of the requirement.
	The responsible party is a sophisticated UST owner/operator.		Unjustified delay in the prevention, mitigation, or remedy of the violation.	The responsible party had control over the events constituting the violation.
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				
Ability to Pay was evaluated and 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:

- ☐ Submit documentation demonstrating financial responsibility in accordance with 9VAC25-590-10 *et seq* within 30 days of the effective date of the Consent 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

If the Department fails to receive a civil charge payment pursuant to the schedule described above, the payment shall be deemed late. If any payment is late by 30 days or more, the entire remaining balance of the civil charge shall become immediately due and owing under this Consent Order, and the Department may demand in writing full payment by the Permittee. Within 15 days of receipt of such letter, Permittee shall pay the remaining balance of the civil charge. Any acceptance by the Department of a late payment or of any payment of less than the remaining balance shall not act as a waiver of the acceleration of the remaining balance under this Consent Order.

Payment shall be made by either credit card at [www.deq.virginia.gov](http://www.deq.virginia.gov), or 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 Consent Order for deposit into the Virginia Petroleum Storage Tank Fund (VPSTF). If the Department must 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 Consent 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 Consent Order addresses and resolves only those violations specifically identified in Section C of this Consent Order. This Consent 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 Consent Order.
3. For purposes of this Consent Order and subsequent actions with respect to this Consent 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 Consent 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 Consent 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 Consent Order.
6. Failure by the Responsible Party to comply with any of the terms of this Consent 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 Consent Order is found to be unenforceable for any reason, the remainder of the Consent 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 Consent 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 Consent 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.
  - e. 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 Consent Order.
9. This Consent Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Consent 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 Consent Order.
11. This Consent Order shall continue in effect until:
  - a. The Director or his designee terminates the Consent Order after the Responsible Party has completed all of the requirements of the Consent Order;
  - b. The Responsible Party petitions the Director or his designee to terminate the Consent Order after it has completed all of the requirements of the Consent Order and the Director or his designee approves the termination of the Consent Order; or

- c. The Director or Department terminates the Consent Order in his or its sole discretion upon 30 days' written notice to the Responsible Party.
  - d. Termination of this Consent Order, or any obligation imposed in this Consent 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 Consent Order are incorporated into this Consent Order. Any noncompliance with such approved documents shall be considered a violation of this Consent 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 Consent Order and to execute and legally bind the Responsible Party to this document. Any documents to be submitted pursuant to this Consent Order shall also be submitted by a responsible official of the Responsible Party.
  - 14. This Consent Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Consent Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Consent Order.
  - 15. By its signature below, the Responsible Party voluntarily agrees to the issuance of this Consent Order.

And it is so **ORDERED**.

DEQ Signee Signature

Date

DEQ Signee Name

Title

I hereby certify that I am the Responsible Party or duly appointed representative/officer of the Responsible Party.

Responsible Party Signature

Date

Responsible Party Name Printed

Title