



# COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY  
VALLEY REGIONAL OFFICE

Douglas W. Domenech  
Secretary of Natural Resources

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David K. Paylor  
Director

Amy Thatcher Owens  
Regional Director

**STATE WATER CONTROL BOARD  
ENFORCEMENT ACTION - ORDER BY CONSENT  
ISSUED TO  
EMPIRE PETROLEUM HOLDINGS, L.L.C.  
FOR  
FAST FUELS 0406 9266  
Facility ID No. 6013579**

## **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 Empire Petroleum Holdings, L.L.C., 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 meanings 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. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
3. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

4. "Empire" means Empire Petroleum Holdings, L.L.C., a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Empire is a "person" who owns the Facility.
5. "Facility" means the physical location where the UST and/or UST system is installed and/or operated, known as Fast Fuels 0406 9266 located at 420 North Poplar Avenue in Waynesboro, Virginia. The Facility's UST and/or UST system are owned and operated by Empire Petroleum Holdings, L.L.C., and the Facility is further identified by UST Facility ID# 6013579.
6. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
7. "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.
8. "Owner" means any person who owns an UST system used for storage, use, or dispensing of regulated substances as defined in Va. Code § 62.1-44.34:8 and 9 VAC 25-580-10.
9. "Person" means an individual, trust, firm, joint stock company, corporation, including a government corporation, partnership, association, any state or agency thereof, municipality, county, town, commission, political subdivision of a state, any interstate body, consortium, joint venture, commercial entity, the government of the United States or any unit or agency thereof.
10. "Regulated Substance" means an element, compound, mixture, solution or substance that, when released into the environment, may present substantial danger to the public health or welfare, or the environment, as defined in Va. Code § 62.1-44.34:8 and 9 VAC 25-580-10.
11. "Regulations" means the Underground Storage Tanks: Technical Standards and Corrective Action Requirements, 9 VAC 25-580-10 *et seq.*
12. "Release detection" means determining whether a release of a regulated substance has occurred from the UST system into the environment or into the interstitial space between the UST system and its secondary barrier or secondary containment around it.
13. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code. Article 9 (Va. Code §§ 62.1-44.34:8 through 62.1-44.34:9) of the State Water Control Law addresses Storage Tanks.
14. "Underground Storage Tank" or "UST" means any one or combination of tanks (including underground pipes connected thereto) that is used to contain an accumulation of regulated substances, and the volume of which (including the volume of underground pipes connected thereto) is 10% or more beneath the surface of the ground as defined in Va. Code § 62.1-44.34:8 and 9 VAC 25-580-10.

15. "Va. Code" means the Code of Virginia (1950), as amended.
16. "VAC" means the Virginia Administrative Code.
17. "VRO" means the Valley Regional Office of DEQ, located in Harrisonburg, Virginia.
18. "Warning Letter" or "WL" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

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

1. Empire Petroleum Holdings, LLC (Empire) owns the Facility in Waynesboro, Virginia. The Facility stores a regulated substance in the form of gasoline in USTs.
2. On April 28, 2011, DEQ Valley Regional Office staff conducted an inspection of the USTs at the Facility. File and UST registration documents were also reviewed. At that time, there were three USTs at the Facility: 10,000 gallon UST #1, containing regular gasoline, 8,000 gallon UST #2, containing plus gasoline and 6,000 gallon UST#3, containing premium gasoline. The following describe the staff's factual observations and identify the applicable legal requirements:
  - a. Records showing recent compliance with release detection requirements were not available at the Facility or at a readily available alternative site.
3. 9 VAC 25-580-120(2)(c) requires Owners and operators to maintain records demonstrating recent compliance with release detection requirements.
4. 9 VAC 25-580-180(2) requires Owners and operators to maintain the results of any sampling, testing, or monitoring for at least one year.
5. On August 24, 2011, the Department issued Warning Letter No. 11-8-VRO-01 to Empire for the violations listed in paragraphs 2 through 4, above. The Warning Letter requested that Empire respond in writing by September 13, 2011.
6. On November 22, 2011, the Department issued Notice of Violation No. 11-11-VRO-1 to Empire for violations listed in paragraphs 2 through 4, above. The Notice of Violation requested that Empire respond to DEQ within ten days.
7. On December 20, 2011, due to Empire's continued unresponsiveness, DEQ contacted Empire again requesting that they respond to the Notice of Violation. On December 23, 2011, Empire submitted a Statistical Inventory Reconciliation report for the Facility. This report included three months of data for UST #1 only and Empire was unable to demonstrate that release detection for USTs and piping was being provided.

8. 9 VAC 25-580-140 states that owners and operators of petroleum UST systems not required to have secondary containment under subdivision 7 of 9 VAC 25-580-50 must provide release detection for tanks and piping.
9. On February 13, 2012, Department staff met with representatives of Empire to discuss the Notice of Violation. Empire's representative stated that the Facility operator that allowed the non-compliance is no longer employed with Empire.
10. Based on the results of April 28, 2011 inspection and the February 13, 2012 meeting, the Board concludes that Empire has violated 9 VAC 25-580-140(C)(1) and 9 VAC 25-580-120 and 180 as described in paragraphs C(2) through C(8), above.
11. In order for Empire to return to compliance, DEQ staff and representatives of Empire have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

**SECTION D: Agreement and Order**

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

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$3,510.00 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

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, Virginia 23218

Empire 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).

**SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of Empire for good cause shown by Empire, 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, Empire admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Empire 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. Empire 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 Empire 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. Empire 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. Empire shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Empire 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.

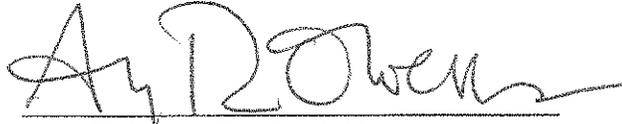
9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Empire. Nevertheless, Empire agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
  - a. The Director or his designee terminates the Order after Empire has completed all of the requirements of the Order;
  - b. Empire 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 Board terminates the Order in his or its sole discretion upon 30 days' written notice to Empire.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Empire 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 Empire 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 Empire 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 Empire to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Empire.
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, Empire voluntarily agrees to the issuance of this Order.

Consent Order  
Empire Holdings, L.L.C.; Facility ID. No. 6013579  
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And it is so ORDERED this 27<sup>th</sup> day of September, 2012.



Amy T. Owens, Regional Director  
Department of Environmental Quality

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Empire Petroleum Holdings, L.L.C. voluntarily agrees to the issuance of this Order.

Date: April 30, 2012 By: Mike Diebus, Chief Operating Officer  
(Person) (Title)  
Empire Petroleum Holdings, L.L.C.

State of Georgia, Woodstock  
Commonwealth of Virginia  
City/County of Cherokee

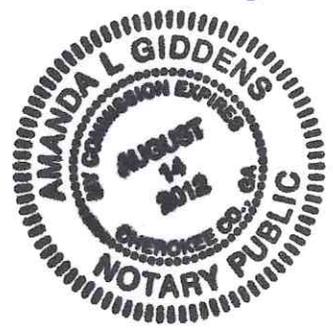
The foregoing document was signed and acknowledged before me this 30th day of April, 2012 by Mike Diebus who is Chief operating Officer of Empire Petroleum Holdings, L.L.C., on behalf of the corporation.

Amanda L Giddens  
Notary Public

Registration No. \_\_\_\_\_

My commission expires: Aug. 14, 2012

Notary seal:



**APPENDIX A  
SCHEDULE OF COMPLIANCE**

Empire shall:

1. Perform release detection for all tanks and piping in accordance with 9 VAC 25-580 -140 and 9 VAC 25-580-160.
2. Maintain records in accordance with 9 VAC 25-580-120 demonstrating compliance with all applicable requirements.
3. By the 15<sup>th</sup> of each month, submit records demonstrating compliance with release detection requirements for the previous month. Submit these records for the six months following the effective date of this Order.

**DEQ Contact**

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

**Karen Hensley  
Enforcement Specialist  
VA DEQ – Valley Regional Office  
4411 Early Road  
P.O. Box 3000  
Harrisonburg, VA 22801  
(540) 574-7821  
(540) 574-7878  
karen.hensley@deq.virginia.gov**

**DEQ-VALLEY**

MAY 14 2012

TO: KGH  
FILE: \_\_\_\_\_