COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
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STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
EMPIRE PETROLEUM PARTNERS, LLC
FOR
CREWE SUNOCO
Facility ID No. 7-013581,
ROCKY MOUNT SUNOCO
Facility ID No. 2-018127, AND
VICTORIA SUNOCO
Facility ID No. 7-013596,

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 Partners, LLC, 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. "Crewe Facility" means the physical location where the UST and/or UST system is installed and/or operated, known as Crewe Sunoco located at 213 Virginia Avenue in Crewe, Virginia (Nottaway County). The Facility's UST and/or UST system are owned and operated by Empire Petroleum Partners, LLC, and the Facility is further identified by UST Facility ID# 7-013581.

3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

5. "Financial Responsibility" means the ability to demonstrate that one has the financial resources available to pay for the costs of containment and cleanup and third party lawsuits in the event of a release from an UST or UST system.

6. "Form 7530-2" means the Notification for Underground Storage Tanks form used by DEQ to register and track USTs for proper operation, closure and ownership, in accordance with 9 VAC 25-580-70.

7. "Empire" means Empire Petroleum Partners, LLC, a limited liability company authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries. Empire is a "person" within the meaning of Va. Code § 62.1-44.3.

8. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

9. "Operator" means any person in control of, or having responsibility for, the daily operation of the UST systemas defined in Va. Code § 62.1-44.34:8 and 9 VAC 25-580-10.

10. "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.

11. "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.

12. "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.

13. "BRRO-R" means the Blue Ridge Regional Office of DEQ, located in Roanoke, Virginia.

14. "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.

15. "Regulations" means the Underground Storage Tanks: Technical Standards and Corrective Action Requirements, 9 VAC 25-580-10 *et seq.*

16. "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.

17. "Rocky Mount Facility" means the physical location where the UST and/or UST system is installed and/or operated, known as Rocky Mount Sunoco located at 875 Tanyard Road in Rocky Mount, Virginia. The Facility's UST and/or UST system are owned and operated by Empire Petroleum Partners, LLC, and the Facility is further identified by UST Facility ID# 2-018127.

18. "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.

19. "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.

20. "Va. Code" means the Code of Virginia (1950), as amended.

21. "VAC" means the Virginia Administrative Code.

22. "Victoria Facility" means the physical location where the UST and/or UST system is installed and/or operated, known as Victoria Sunoco located at 1401 Main Street in Victoria, Virginia. The Facility's UST and/or UST system are owned and operated by Empire Petroleum Partners, LLC, and the Facility is further identified by UST Facility ID# 7-013596.

23. "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 is operator of the Crewe, Rocky Mount, and Victoria Facilities. Empire stores a regulated substance in the form of gasoline in USTs at each of these facilities.

Crewe Facility

2. On June 27, 2011, Department staff inspected the Crewe Facility to evaluate Empire's compliance with the requirements of the State Water Control Law and the Regulations. At that time, there were two active 8,000-gallon USTs at the Crewe Facility. The USTs contain petroleum in the form of gasoline. DEQ staff observed the following:

    a. Documentation was unavailable to demonstrate recent compliance with release detection requirements for the active USTs.

    b. Financial responsibility had not been demonstrated based on review of the current documentation.

3. On November 29, 2011, DEQ issued Warning Letter No. WL-11-11-BRRO-L-007 to Empire for the violations at the Crewe Facility listed in paragraph C(2) above.

4. On June 6, 2012, the Department issued Notice of Violation No. NOV-12-03-BRRO-L-002 to Empire for violations at the Crewe Facility listed in paragraph C(2), above.

Rocky Mount Facility

5. On March 26, 2012, Department staff inspected the Rocky Mount Facility to evaluate Empire's compliance with the requirements of the State Water Control Law and the Regulations. At that time, there were three active USTs at the Rocky Mount Facility: one 8,000-gallon UST and two 6,000-gallon USTs. The active USTs contain petroleum in the form of gasoline. DEQ staff observed the following:

    a. Documentation was unavailable to demonstrate recent compliance with release detection requirements for the active USTs. The Automatic Tank Gage ("ATG") system used at the Rocky Mount Facility was not providing consistent passing leak tests.

    b. Financial responsibility had not been demonstrated based on review of the current documentation.

6. On June 6, 2012, the Department issued Notice of Violation No. NOV-12-04-BRRO-L-003 to Empire for violations at the Rocky Mount Facility listed in paragraph C(5), above.

Victoria Facility

7. On June 27, 2011, Department staff inspected the Victoria Facility to evaluate Empire's compliance with the requirements of the State Water Control Law and the Regulations. At that time, there were three USTs at the Victoria Facility: one 10,000-gallon gasoline UST and two 5,000-gallon gasoline USTs. DEQ staff observed the following:

a. Documentation was unavailable to demonstrate recent compliance with release detection requirements.

b. Financial responsibility had not been demonstrated based on review of the current documentation.

8. On November 29, 2011, DEQ issued Warning Letter No. WL-11-11-BRRO-L-008 to Empire for the violations at the Victoria Facility listed in paragraph C(7) above.

9. On June 6, 2012, the Department issued Notice of Violation No. NOV-12-03-BRRO-L-001 to Empire for violations at the Victoria Facility listed in paragraph C(7), above.

10. 9 VAC 25-580-120(2) and (3) requires owners and operators of UST systems to maintain documentation of corrosion protection equipment, documentation of UST system repairs, documentation of recent compliance with release detection requirements, results of the site investigation conducted as permanent closure, and make these records immediately available for inspection or readily available at an alternative site and be provided for inspection upon request.

11. 9 VAC 25-580-180(2) requires that the results of any sampling, testing or monitoring required under the Regulations be maintained for at least one year.

12. 9 VAC 25-590-40(A) requires an owner or operator to demonstrate financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks.

13. 9 VAC 25-590-150(E) requires an owner or operator to submit evidence of financial assurance as described in 9 VAC 25-590-160.

14. 9 VAC 25-590-160 requires an owner or operator to maintain evidence of all financial assurance mechanisms used to demonstrate financial responsibility.

15. On June 1, 2012 DEQ's Office of Financial Assurance issued a letter to Empire Petroleum Partners, LLC approving the Financial Responsibility mechanisms for each of its Virginia facilities, including the Victoria, Crewe, and Rocky Mount Facilities.

16. In a phone conversation on June 13, 2012, Department staff discussed the NOVs for each facility with a representative of Empire. During this conversation, the Empire representative agreed to submit a written response to the NOVs.

17. On June 18, 2012, Empire submitted a written response to the NOVs. The response included documents to demonstrate recent compliance with release detection requirements in the form of Statistical Inventory Reconciliation ("SIR") reports for the Victoria Facility from May 2011 through April 2012 and SIR reports for the Crewe Facility from September 2011 through April 2012. Results were inconclusive at the

Crewe Facility for the regular unleaded gasoline tank from January through April 2012. The response indicated that Empire had commenced performing release detection at the Rocky Mount Facility with the SIR method instead of the ATG method as of June 1, 2012. For the Rocky Mount Facility, the response also included documentation of tank and line testing and a copy of a SIR agreement with a contractor.

18. Based on the results of June 27, 2011 inspection at the Crewe Facility, the June 27, 2011 inspection at the Victoria Facility, the March 26, 2012 inspection at the Rocky Mount Facility, and the documentation submitted on June 18, 2012, the Board concludes that Empire has violated 9 VAC 25-580-120(2) and (3), 9 VAC 25-580-180(2), 9 VAC 25-590-40(A) , 9 VAC 25-590-150(E), and 9 VAC 25-590-160, as described in paragraphs C(10) through C(14), above.

19. In order for Empire to complete its 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 $4,052.00 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) (45-2540159) 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, Empire shall be liable for attorneys' fees of 30% of the amount outstanding.

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.

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.

And it is so ORDERED this _____ day of _____, 2012.

_____
Robert J. Weld, Regional Director
Department of Environmental Quality

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Empire Petroleum Partners, LLC voluntarily agrees to the issuance of this Order.

Date: 7-24-2012 By: M. A. Diebus, Chief Operating Officer
(Person) (Title)
Empire Petroleum Partners, LLC

Commonwealth of ~~Virginia~~ Georgia

City/County of Woodstock/Cherokee

The foregoing document was signed and acknowledged before me this 24th day of July, 2012, by Mike Diebus who is Chief Operating Officer of Empire Petroleum Partners, LLC on behalf of the company.

Amanda L Giddens
Notary Public

_____
Registration No.

My commission expires: August 14, 2012

Notary seal:

APPENDIX A
SCHEDULE OF COMPLIANCE

1. **Release Detection**

Empire shall perform release detection at the Crewe and Rocky Mount Facilities in accordance with 9 VAC 25-580-130 and shall maintain release detection records in accordance with 9 VAC 25-580-120 and 9 VAC 25-580-180. By thirty days after the effective date of this Order, Empire shall submit copies of release detection records and results for the Crewe and Rocky Mount Facilities for the three consecutive months preceding the effective date of this Order to DEQ. In the event of an "inconclusive" or "failed" result, Empire shall: (1) immediately consult with a third party vendor to assess the possible causes for the inconclusive and/or failed test result; (2) make the necessary changes to reduce the possibility of having future inconclusive and/or failed results; (3) by thirty days after the effective date of this Order submit the written results of the investigation detailing the cause of the inconclusive and/or failed results and what Empire has done to correct the situation at the relevant Facility; and (4) submit three consecutive months of passing release detection records and results within thirty days of the availability of the third month of results.

2. **DEQ Contact**

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

Robert Steele
VA DEQ –Blue Ridge Regional Office
3019 Peters Creek Road
Roanoke, VA 24019

Phone: (540) 562-6777
Fax: (540) 562-6725
Email: Robert.Steele@deq.virginia.gov