



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY

VALLEY REGIONAL OFFICE

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L. Preston Bryant, Jr.  
Secretary of Natural Resources

David K. Paylor  
Director

Amy Thatcher Owens  
Regional Director

### STATE WATER CONTROL BOARD ENFORCEMENT ACTION A SPECIAL ORDER ISSUED BY CONSENT TO GROTTOES GANESH, INC.

UST Facility at 309 3<sup>rd</sup> Street, Grottoes, VA  
Facility Identification No. 6013984

#### **SECTION A: Purpose**

This is a Special Order by consent issued under the authority of Va. Code §§ 62.1-44.15 (8a) and (8d) between the State Water Control Board and Grottoes Ganesh, Inc., to resolve certain violations of the State Water Control Law and regulations at Grottoes Ganesh, Inc. Underground Storage Tank Facility located at 309 3<sup>rd</sup> Street, Grottoes, Rockingham County Virginia.

#### **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 citizen's board of the Commonwealth of Virginia as described in Code §§ 10.1-1184 and 62.1-44.7.
2. "Code" means the Code of Virginia (1950), as amended.
3. "UST" means underground storage tank as further defined in 9 VAC 25-580 10 and Virginia Code §62.1-44.34:8.
4. "GGI" means Grottoes Ganesh, Inc., the current UST owner within the meaning of Virginia Code §62.1-44.34:8.
5. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Code §10.1-1183.
6. "Director" means the Director of the Department of Environmental Quality.

7. "Facility" means the retail gasoline station and USTs owned by GGI located at 309 3<sup>rd</sup> Street, Grottoes, Rockingham County, Virginia. The USTs are further identified as tank numbers 1C, 2C and 3C, a compartmentalized (6,000, 3,000 and 3,000 gallon, respectively) gasoline tank installed on May 1, 1995, and tank number 4, a 2,000 gallon diesel tank also installed on May 1, 1995.
8. "Order" means this document, also known as a Consent Special Order.
9. "Regional Office" means the Valley Regional Office of the Department.
10. "Regulation" means 9 VAC 25-580-10 *et seq.* (Underground Storage Tanks: Technical Standards and Corrective Action Requirements) relating to upgrading of existing UST systems, registration of tanks, closure of non-compliant tanks, and release detection requirements.
11. "Form 7530" means the UST notification form to be submitted to the DEQ by UST owners to register and document UST operation, closure and ownership. See 9 VAC 25-580-70.

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

1. The Regulation, at 9 VAC 25-580-10 *et seq.*, requires that the USTs at the Facility meet final, specific performance requirements for leak detection, spill and overfill protection, and corrosion protection by December 22, 1998.
2. GGI is the current owner of the USTs at this Facility within the meaning of Virginia Code § 62.1-44.34:8.
3. GGI failed to comply with the requirements for Financial Responsibility in apparent violation of 9 VAC 25-590-10 *et seq.* by allowing its pollution liability insurance policy to lapse on October 23, 2006.
4. On April 5, 2007, DEQ staff conducted a formal inspection of the Facility. The following deficiencies were identified for the USTs:
  - a. Release detection was not being performed on UST numbers 1C and 2C in apparent violation of 9 VAC 25-580-140.
  - b. Current Financial Responsibility documentation was not available for review in apparent violation of 9 VAC 25-590-10 *et seq.*

These same violations were noted by DEQ staff during a July 27, 2004 inspection of the Facility. DEQ staff issued a Deficiency Letter to GGI on April 6, 2007, for these apparent

violations of the Regulation. The letter detailed the violations noted during the inspection and requested that GGI respond to the DEQ in writing by June 6, 2007, with a plan to resolve the violations and any corrective actions performed.

5. DEQ staff received no communication from GGI by the letter due date. As a result, DEQ staff performed a site visit at the Facility on July 3, 2007, to assess its current compliance status with the Regulation. Neither violation noted in paragraph 3. of Section C had been resolved.
6. On July 6, 2007, DEQ staff issued a Warning Letter (No. 07-07-VRO-2) for these apparent violations of the Regulation. The letter requested that GGI respond in writing by July 26, 2007, and included a copy of the formal inspection report, detailing the apparent violations noted in paragraph 3. of Section C.
7. DEQ staff performed a site visit on November 28, 2007 to confirm the current compliance status of the facility. Neither violation noted in paragraph 3. of Section C had been resolved.
8. On January 23, 2008, DEQ staff issued a Notice of Violation (NOV) No. 08-01-VRO-1 to GGI for these apparent violations of the Regulation. The NOV requested that GGI respond to the Department by February 1, 2008. The inspection report was included with the NOV and detailed the violations noted during the inspection.
9. DEQ staff met with the president of GGI on February 8, 2008, to discuss possible remedies to the situation including a corrective action plan and the settlement of past violations. GGI agreed to resolve the violations as soon as possible.
10. On February 20, 2008, DEQ staff received copy of a repair invoice for the release detection system in use. On February 22, 2008, staff received copies of passing release detection reports dated February 15, 16 and 17, 2008, for all for four USTs.
11. GGI alleges that it sold the USTs to another owner on April 3, 2008. Staff have been contacted by the new owner, but a Form 7530 has not been submitted confirming the ownership change.
12. On April 29, 2008, DEQ staff received documentation confirming that GGI had secured the required amount of financial assurance for the USTs.

#### **SECTION D: Agreement and Order**

Accordingly, the Board, by virtue of the authority granted it in Va. Code §§ 62.1-44.15 (8a) and (8d), orders GGI and GGI agrees that:

1. To remedy the violations described above and to reduce the chances of this violation

occurring again, GGI shall perform the actions described in Appendix A to the Order.

2. GGI shall pay a civil charge of \$2,333.00, within 30 days of the effective date of the Order. Payment shall be by check, certified check, money order, or cashier's check payable to "Treasurer of the Commonwealth of Virginia" and delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23240

3. GGI shall also include its Federal Tax Identification Number with the civil charge payment and shall note on the payment that it is being made pursuant to this Order.

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of GGI, for good cause shown by GGI, or on its own motion after notice and opportunity to be heard.
2. This Order addresses only those violations specifically identified herein. This Order shall not preclude the Board or Director from taking any action authorized by law, including, but not limited to: (1) taking any action regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the Facility as may be authorized by law; and/or (3) taking subsequent action to enforce the terms of this Order. Nothing herein shall affect appropriate enforcement actions by other federal, state, or local regulatory authority, whether or not arising out of the same or similar facts.
3. For purposes of this Order and subsequent actions with respect to this Order, GGI admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. GGI 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. GGI declares it has received fair and due process under the Virginia Administrative Process Act, Code §§ 2.2-4000 *et seq.*, 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 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 enforce this Order.

6. Failure by GGI to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall act to waive or bar 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. GGI shall be responsible for failing to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other act of God, war, strike, or such other occurrence. GGI must show that such circumstances resulting in noncompliance were beyond its control and not due to a lack of good faith or diligence on its part. GGI shall notify the Director of the Regional Office in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this Order. Such notice shall set forth:
  - a. The reasons for the delay or noncompliance;
  - b. The projected duration of 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 Director of the Regional Office in writing within 10 days of learning of any condition listed above, which GGI intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim of inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their 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 GGI. Notwithstanding the foregoing, GGI 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. GGI petitions the Regional Director to terminate the Order after he has completed all requirements of the Order and the Director or his designee approves the termination of the Order; or
  - b. The Director or the Board terminates this Order in his or its whole discretion upon 30 days written notice to GGI.

Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve GGI from his obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. By its signature below, GGI voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 30<sup>th</sup> day of July, 2008.

  
 Amy T. Owens, Regional Director  
 Department of Environmental Quality

The terms and conditions of the Order are voluntarily accepted by Grottoes Ganesh, Inc.:

Date: 5/22/08 By:   
 Bhupen Ray  
 President

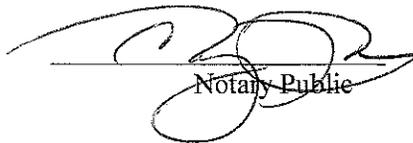
State of Maryland  
 Commonwealth of Virginia, City/County of Montgomery

The foregoing instrument was acknowledged before me this 28<sup>th</sup> day of May, 2008, by

Bhupen Ray  
 (name)

July 1, 2009  
 Date

My commission expires:

  
 Notary Public

**Appendix A**  
**Grottoes Ganesh, Inc.**

For all USTs at the Facility, GGI shall:

- A. By July 1, 2008, submit a completed UST ownership change notification form 7530-2A to the DEQ.