COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
VALLEY REGIONAL OFFICE
4411 Early Road, P.O. Box 3000, Harrisonburg, Virginia 22801
(540) 574-7800 Fax (540) 574-7878
www.deq.virginia.gov

Douglas W. Domenech
Secretary of Natural Resources

David K. Paylor
Director

Amy Thatcher Owens
Regional Director

STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
High Up Dairy Mart, Incorporated
FOR
Gas Mart #6
Facility ID No. 6037618; PC No. 2011-6003
AND FOR
Gas Mart #8
Facility ID No. 6018185; PC No. 2011-6038

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 High Up Dairy Mart, Incorporated, 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. "Gas Mart #6" means the physical location where the USTs are installed and/or operated, located at 2118 North Frederick Pike in Frederick County, Virginia, further identified by DEQ as Facility ID #6037618. The USTs are owned by High Up Dairy Mart, Incorporated.

5. "Gas Mart #8" means the physical location where the USTs are installed and/or operated, located at 3540 North Main St., Toms Brook, Shenandoah County, Virginia, further identified by DEQ as Facility ID# 6018185. The USTs are owned by High Up Dairy Mart, Incorporated.

6. "High Up" means High Up Dairy Mart, Incorporated, a corporation authorized to do business in Virginia and its members, affiliates, partners, subsidiaries, and parents. High Up is a "person" within the meaning of Va. Code § 62.1-44.3.

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

8. "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.

9. "VRO" means the Valley Regional Office of DEQ, located in Harrisonburg, Virginia.

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. "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.

13. "UST" means underground storage tank as defined in Va. Code § 62.1-44.34:8 and 9 VAC 25-580-10.

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

15. "VAC" means the Virginia Administrative Code.

16. "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

GAS MART #6

1. High Up owns and operates Gas Mart #6 in Frederick County, Virginia. Gas Mart #6 stores gasoline, kerosene and diesel in USTs on site. High Up is an UST owner and/or operator within the meaning of Va. Code § 62.1-44.34:8 and 9 VAC 25-580-10.

2. The USTs contain gasoline, kerosene and diesel, all of which are Regulated Substances, and are therefore subject to the Regulations. The Regulations require that all USTs meet final, specific performance requirements for release detection and spill, overfill, and corrosion protection.

3. On July 1, 2010, DEQ staff inspected Gas Mart #6 for compliance with the requirements of the State Water Control Law and the Regulations. At that time, there were six USTs at the Facility: two 10,000 gallon gasoline (1M and 2M), one 8,000 gallon gasoline (3), one 20,000 gallon diesel (4), one 10,000 gallon diesel (5), and one 5,000 gallon kerosene (6) UST. DEQ staff observed the following:

    a. Failed tank tightness tests performed by the automatic tank gauging system from April 2009 to July 2010, for UST numbers 1M, 2M and 3, indicating a release may have occurred. A suspected release of Regulated Substances was not reported to the State Water Control Board or Department of Environmental Quality.

    b. Test results of the cathodic protection system for UST numbers 1M, 2M and 3, performed on June 21, 2010. The results indicated that the cathodic protection system for these three USTs had not been operated and maintained to provide continuous protection to the metal components of the USTs and piping.

4. 9 VAC 25-580-190 (3) states that "owners and operators of UST systems must report to the board within 24 hours… any of the following conditions: Monitoring results from a release detection method required under 9 VAC 25-91-140… that indicate a release may have occurred."

5. 9 VAC 25-580-90 (1) states "all corrosion protection systems must be operated and maintained to continuously provide corrosion protection to the metal components of that portion of the tank and piping that routinely contain regulated substances and are in contact with the ground." In addition, 9 VAC 25-580-90 paragraph 2 states "all UST systems equipped with cathodic protection systems must be inspected for proper operation by a qualified cathodic protection tester... (a) within six months of installation and at least every three years thereafter."

6. On July 6, 2010, DEQ staff sent Warning Letter No. 10-07-VRO-001 for the violations listed in paragraphs C(3) through C(5) above and assigned case number 2011-6003 to the

suspected release. The Warning Letter requested that High Up respond in writing by July 26, 2010, and included a copy of the inspection report.

7. On July 7, 2010, DEQ staff sent a letter to High Up requesting the performance and submittal of an Initial Abatement Report (IAR) and a Site Characterization Report (SCR) to confirm the existence and extent of the suspected release, 2011-6003, of a regulated substance.

8. On July 29, 2010, DEQ received copies of the IAR and SCR performed to investigate and characterize the suspected release. The reports confirmed that a release of regulated substances did not occur and that the failed tank tightness test results were the result of an automatic tank gauge equipment malfunction. It was also discovered that the failed tank tightness tests were only for Tanks 1M and 2M. Tank 3 was incorrectly listed in the original inspection report. Furthermore, High Up provided passing tank tightness test results for all three tanks. DEQ staff closed case number 2011-6003 on September 13, 2010 with no further action required by High Up.

9. On August 9, 2010, DEQ staff received copies of cathodic protection system tests showing that the USTs were adequately protected from corrosion. In addition, DEQ staff received a letter from the testing contractor explaining that the failing test results reviewed during the July 1, 2010, inspection were a result of faulty test equipment that had been replaced for the re-testing of the system on July 7, 2010. This resolved the violation noted in paragraph C(3)(b).

10. On August 31, 2010, the Department issued Notice of Violation No. 10-8-VRO-1 to High Up for violations listed in paragraphs C(3)(a) and C(4), above. The Notice of Violation requested that High Up respond in writing by September 10, 2010.

11. High Up responded to the NOV on September 6, 2010 and agreed to meet with DEQ staff on September 15, 2010.

12. On September 15, 2010, Department staff met with representatives of High Up to discuss the violations and possible resolutions to the noted violations. During the meeting, they agreed to pursue compliance with the Regulations.

13. Based on the results of the July 1, 2010 inspection, the September 15, 2010 meeting, and the documentation submitted to the DEQ, the Board concludes that High Up has violated 9 VAC 25-580-190, as described in paragraphs C(3)(a) and C(4), above.

GAS MART #8

14. High Up owns and operates Gas Mart #8 in Shenandoah County, Virginia. Gas Mart #8 stores gasoline, kerosene and diesel in USTs on site. High Up is an UST owner and/or operator within the meaning of Va. Code § 62.1-44.34:8 and 9 VAC 25-580-10.

15. The USTs contain gasoline, kerosene and diesel, all of which are Regulated Substances, and are therefore subject to the Regulations. The Regulations require that all USTs meet final, specific performance requirements for release detection and spill, overfill, and corrosion protection.

16. On October 28, 2010, DEQ Valley Regional Office staff inspected Gas Mart #8 for compliance with the requirements of the State Water Control Law and the Regulations. At that time, there were **six** USTs at the Facility: three 6,000 gallon gasoline (1M, 2 and 3M), one 6,000 gallon diesel (4), one 4,000 gallon diesel (5), and one 2,000 gallon kerosene (6) UST. DEQ staff observed the following:

    a. File documentation indicates that water was removed from UST number 2 four times (between September 7, 2010 and September 17, 2010), all Regulated Substances and all ancillary equipment were removed, and UST number 2 was placed out of service on September 17, 2010. These activities suggest that a suspected release of regulated substances occurred. Additionally, UST number 2 failed a precision tightness test performed on September 13, 2010. DEQ staff received notification that a suspected release had occurred on October 20, 2010.

17. Legal Requirements: 9 VAC 25-580-190 states that "owners and operators of UST systems must report to the board within 24 hours… any of the following conditions: 2. Unusual operating conditions observed by owners and operators (such as the erratic behavior of product dispensing equipment, the sudden loss of product from the UST system, or an unexplained presence of water in the tank), unless system equipment is found to be defective but not leaking, and is immediately repaired or replaced."

18. Based on the results of the October 28, 2010 inspection and the documentation submitted to the DEQ, the Board concludes that High Up has violated 9 VAC 25-580-190, as described in paragraphs C(16) and C(17), above.

19. In order for High Up to maintain compliance with the Regulation, DEQ staff and representatives of High Up 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 High Up, and High Up agrees to:

1. Perform the actions described in Appendix A of this Order; and

2. Pay a civil charge of **$12,425.00**, in settlement of the violations cited in this Order. Four equal quarterly payments in the amount of **$3,106.25**, shall be made according to the following schedule:

   a. First payment due within 30 days of the effective date of the Order,
   b. Second payment due on or before August 1, 2012,
   c. Third payment due on or before November 1, 2012,
   d. Fourth and final payment due on or before February 1, 2013.

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

High Up shall include its Federal Employer Identification Number (FEIN), 54-1615102, 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 High Up for good cause shown by High Up 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 Gas Mart #6; or (3) taking subsequent action to enforce the Order.

3. For purposes of this Order and subsequent actions with respect to this Order only, High Up admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. High Up 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. High Up 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 High Up 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. High Up 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 occurrence. High Up shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. High Up 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 High Up intends 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, 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 High Up. Nevertheless, High Up 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. High Up 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

b. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to High Up.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve High Up 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 High Up 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 High Up 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 High Up to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of High Up

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, High Up voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 9th day of April, 2012.

Amy T Owens

Amy Thatcher Owens, Regional Director
Department of Environmental Quality

High Up Dairy Mart, Incorporated voluntarily agrees to the issuance of this Order.

Date: 01/26/12 By: _____, President

Gurcharan S. Lail CEO
High Up Dairy Mart, Incorporated

Commonwealth of Virginia
City/~~County~~ of Winchester

The foregoing document was signed and acknowledged before me this 26th day of January, 2012, by Gurcharan S. Lail who is President, CEO of High Up Dairy Mart, Incorporated, on behalf of the company.

Sanjuna Lama Pradhan
Notary Public

7055305
Registration No.

My commission expires: 12/31/2014

Notary seal:

SANJUNA LAMA PRADHAN
NOTARY PUBLIC
Commonwealth of Virginia
Reg. # 7055305
My Commission Expires 12/31/2014

APPENDIX A
SCHEDULE OF COMPLIANCE

For all of the following UST Facilities:

Facility ID	Facility Name	Street Address	City
6037618	Gas Mart #6	2118 North Frederick Pike	Winchester
6018185	Gas Mart #8	3540 North Main	Toms Brook

High Up shall submit release detection records for each UST and its associated piping at Gas Mart #6 and Gas Mart #8 according to the following schedule:

1. For the month of February 2012, by March 15, 2012.
2. For the month of March 2012, by April 15, 2012.
3. For the month of April 2012, by May 15, 2012.

By May 15, 2012, For UST number 2 at Gas Mart #8, High Up shall either 1) place it into temporary closure or, 2) close it, according to the regulatory requirements.

DEQ Contact: Unless otherwise specified in this Order, High Up shall submit all requirements of Appendix A of this Order to:

David Robinett, Enforcement Specialist
VA DEQ –Valley Regional Office
PO Box 3000 Harrisonburg, VA 22801
Office: 540-574-7862 Fax: 540-574-7878 Email: david.robinett@deq.virginia.com