



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

TIDEWATER REGIONAL OFFICE

5636 Southern Boulevard, Virginia Beach, Virginia 23462

(757) 518-2000 Fax (757) 518-2009

www.deq.virginia.gov

Doug Domenech
Secretary of Natural Resources

David K. Paylor
Director

Maria R. Nold
Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO MRK, L.L.C. Facility ID No. 5042042

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 MRK, 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. "Cathodic protection" is a technique to prevent corrosion of a metal surface by making another metal surface the cathode, receptor of corrosion-producing electrochemicals, instead of the metal surface to be protected.
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. "Facility" means the physical location where the UST and/or UST system is installed and/or operated, known as Vickie's Convenience and Citgo Gas Station located at 1420-1428 Effingham Street in Portsmouth, Virginia. The Facility's UST and/or UST system are owned and operated by MRK Associates, Inc., and the Facility is further identified by DEQ UST Facility ID# 5042042.

6. "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 of a regulated substance from an UST or UST system.
7. "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.
8. "MRK" means MRK, L.L.C., a limited liability company authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries. MRK is a "person" within the meaning of Va. Code § 62.1-44.3 and operates the Facility.
9. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
10. "Operator" means any person in control of or having responsibility for, the daily operation of the UST system as defined in Va. Code § 62.1-44.34:8 and 9 VAC 25-580-10.
11. "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.
12. "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.
13. "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.
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. "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.

18. "TRO" means the Tidewater Office of DEQ, located in Virginia Beach, Virginia.
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.

SECTION C: Findings of Fact and Conclusions of Law

1. MRK is the owner and operator of the Facility. MRK stores a regulated substance in the form of gasoline/diesel in USTs at the Facility.
2. On November 11, 2011, Department staff inspected the Facility to evaluate MRK's compliance with the requirements of the State Water Control Law and the Regulations. At that time, there were three USTs at the Facility: one 10,000-gallon diesel UST, one 8,000-gallon gasoline UST and one 12,000-gallon gasoline UST. DEQ staff observed the following:
 - a. The UST system in use at the Facility was not registered with DEQ. Information provided to DEQ indicated that the USTs had been in use at the Facility for longer than 30 days.
 - b. There was no evidence that release detection has been conducted on the UST systems.
 - c. Cathodic protection testing records for the metallic components of the piping associated with the USTs were not available.
 - d. Annual automatic line leak detector check records were not available.
 - e. Financial responsibility had not been demonstrated based on review of the current documentation.
3. 9 VAC 25-580-70(A) requires the owner of a UST system to submit a notice to DEQ within 30 days of bringing a UST system into use, if there is any change in ownership, tank status, tank/piping systems or substance stored.
4. 9 VAC 25-580-130 requires that owners and operators must provide a method, or combination of methods, of release detection that can detect a release from any portion of the tank and the connected underground piping that routinely contains product.

5. 9 VAC 25-580-50(6) and (130) require owners and operators to conduct an annual test of the operation of the leak detector that can detect a release from any portion of the tank and the connected underground piping that routinely contains product.
6. 9 VAC 25-580-90(1) requires that 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 25-580-90.2 requires that all UST systems equipped with cathodic protection systems must be inspected for proper operation by a qualified cathodic protection tester within six months of installation and at least every three years thereafter in accordance with a code of practice developed by a nationally recognized association.
7. 9 VAC 25-590-40(A) requires that owners or operators of petroleum underground storage tanks shall 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 underground storage tanks.
8. On November 28, 2011, the Department issued a Notice of Violation to MRK for violations listed in paragraphs C(2) through C(7), above.
9. On December 20, 2011, Department staff met with representatives of MRK to discuss the violations.
10. Based on the results of the November 11, 2011 inspection, documentation submitted on December 19, 2011 and the December 20, 2011 meeting, the Board concludes that MRK has violated the Regulations, as described in paragraphs C(2) through C(7), above.
11. MRK has submitted documentation that verifies that the violations described in paragraphs C(2)(a), (d), C(3) and C(6), have been corrected.
12. In order for MRK to complete its return to compliance, DEQ staff and representatives of MRK 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 MRK, and MRK agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$13,425.00 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

MRK 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 MRK for good cause shown by MRK, 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, MRK admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. MRK 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. MRK 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 MRK 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. MRK 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. MRK shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. MRK 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 MRK. Nevertheless, MRK 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 MRK has completed all of the requirements of the Order;
 - b. MRK 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 MRK.

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

And it is so ORDERED this 14 day of April, 2012.13



Maria R. Nold, Regional Director
Department of Environmental Quality

MRK, L.L.C. voluntarily agrees to the issuance of this Order.

Date: 12/12/12 By: [Signature], Manager
(Person) (Title)

Commonwealth of Virginia
City/County of Chesapeake

The foregoing document was signed and acknowledged before me this 12th day of December, 2012, by Bhasat Patel who is Manager of MRK, L.L.C., on behalf of the corporation.

[Signature]
Notary Public

7507118
Registration No.

My commission expires: 6/30/15

Notary seal:



APPENDIX A
SCHEDULE OF COMPLIANCE

1. MRK shall maintain records in accordance with 9VAC25-580-120.
 1. MRK Shall submit monthly release detection records to DEQ Tidewater Regional Office for six (6) months, beginning within 30 days of the effective date of this Order.
 - i) In the event that monitoring results from a release detection method required under 9VAC25-580-140(C) indicate a release may have occurred, the suspected release shall be reported to the board within 24 hours and follow the procedures in 9VAC25-580-210.
 2. MRK shall operate, maintain, and inspect the cathodic protection system testing in accordance with 9 VAC 25-580-90 and submit copies of the cathodic protection system test results to DEQ within 30 days of the effective date of this Order.
 3. MRK shall demonstrate financial responsibility in accordance with 9 VAC 25-590-160 within 30 days of the effective date of this Order.
 4. Unless otherwise specified in this Order, MRK shall submit all requirements of Appendix A of this Order to:

Regional Director
VA DEQ - Tidewater Regional Office
5636 Southern Boulevard
Virginia Beach, VA 23462