



DEQ-VALLEY

FEB 04 2008

COMMONWEALTH of VIRGINIA: DCR

DEPARTMENT OF ENVIRONMENTAL QUALITY

FILE: \_\_\_\_\_

Preston Bryant  
Secretary of Natural Resources

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

David K. Paylor  
Director

R. Bradley Chewning, P.E.  
Regional Director

**STATE WATER CONTROL BOARD ENFORCEMENT ACTION  
A SPECIAL ORDER ISSUED BY CONSENT TO  
MOWERY OIL COMPANY, INC.**

UST Facility at 354 Front Royal Road, Strasburg, Shenandoah County, VA  
Facility Identification No. 6003459

**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 Mowery Oil Company, Inc. to resolve certain violations of the State Water Control Law and regulations at Mowery Oil Company's Underground Storage Tank Facility located at 354 Front Royal Road, Strasburg, Shenandoah 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. "Mowery Oil" means Mowery Oil Company, Inc., the 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, bulk petroleum plant and USTs owned and operated by Mowery Oil located at 354 Front Royal Road, Strasburg, Shenandoah County, Virginia. The USTs are further identified as tank #1 (kerosene), #2 (premium gasoline), #3 (regular gasoline) and #4 (mid-grade gasoline) all 12,000-gallon USTs installed on August 1, 1987, #5M and 6M, both 20,000-gallon heating oil tanks installed on August 1, 1987, and diesel tanks #7 (3,000 gallons) and #8 (12,000-gallons) both installed on August 1, 1997.
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 used by the DEQ to register and track USTs for proper operation, closure and ownership purposes. 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. Mowery Oil is the owner of the USTs at this Facility within the meaning of Virginia Code § 62.1-44.34:8.
3. On August 29, 2007, DEQ staff conducted a formal inspection of the Facility. The following deficiencies remain unresolved:
  - a. Metal portions of the product piping for UST numbers 1, 2, 3, 4 and 5M are not protected from corrosion in apparent violation of 9 VAC 25-580-60.
  - b. Release Detection was not performed on UST numbers 5M and 6M prior to the inspection, in apparent violation of 9 VAC 25-580-140.
  - c. Portions of the pressurized piping associated with UST numbers 1, 2, 3, 4 and 5M are not equipped with an automatic line leak detector, in apparent violation of 9 VAC 25-580-170.

4. On September 21, 2007, DEQ staff issued a Notice of Violation (NOV) No. 07-09-VRO-1 to Mowery Oil, for the apparent continuing violations of the Regulation. The NOV requested that Mowery Oil respond to the Department by October 2, 2007. The relevant violations noted in the NOV are failure to: a) protect the product piping on UST numbers 1, 2, 3, 4 and 5M from corrosion (9 VAC 25-580-60), b) perform release detection on UST numbers 5M and 6M (9 VAC 25-580-140) and c) equip the product piping on UST numbers 1, 2, 3, 4 and 5M with automatic line leak detectors (9 VAC 25-580-170).
5. On September 27, 2007, DEQ staff met with a contractor representing Mowery Oil at the VRO office to discuss remedies to the outstanding violations. The contractor submitted documentation and photographs confirming the noted violations and proposing remedial action to resolve them.
6. DEQ staff met with representatives of Mowery Oil on October 2 and 18 of 2007, to discuss possible remedies to the situation including a corrective action plan and the settlement of past violations.
7. On November 11, 2007, DEQ staff received a copy of a signed contract between Mowery Oil and Lenny Campbell Service Company to close UST numbers 1, 2, 3, 4, 5M and 6M at the facility. Closure activities are scheduled to be completed by May 1, 2008.
8. Civil penalties will not be assessed for the violation noted above in paragraph 3.c. and 4.c.

**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 Mowery Oil and Mowery Oil agrees that:

1. To remedy the violations described above and bring the Facility into compliance with the Regulation, Mowery Oil shall perform the actions described in Appendix A to the Order.
2. Mowery Oil shall pay a civil charge of \$10,585.00, 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. Mowery Oil 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 Mowery Oil, for good cause shown by Mowery Oil, 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, Mowery Oil admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Mowery Oil consents to venue in the Circuit Court of the County of Shenandoah for any civil action taken to enforce the terms of this Order.
5. Mowery Oil 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 Mowery Oil 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. Mowery Oil 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. Mowery Oil 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. Mowery Oil 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 Mowery Oil 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.

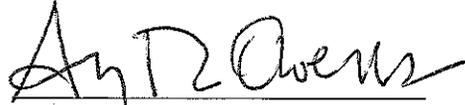
9. This Order is binding on the parties hereto, their successors in interest, designees, and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Mowery Oil. Notwithstanding the foregoing, Mowery Oil agrees to be bound by any compliance date, which precedes the effective date of this Order.
11. This Order shall continue in effect until:
  - a. Mowery Oil petitions the Regional Director to terminate the Order after it 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 Mowery Oil.

Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve Mowery Oil from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or

requirement otherwise applicable.

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

And it is so ORDERED this 21<sup>st</sup> day of April, 2008.



Amy T. Owens, Regional Director  
Department of Environmental Quality

The terms and conditions of the Order are voluntarily accepted by Mowery Oil Company, Inc.:

Date: 1/31/08



P. Douglas Mowery, Jr.  
President

Commonwealth of Virginia, City/County of Shenandoan

The foregoing instrument was acknowledged before me this 31 day of Jan, 2008, by

Kacey L. Clegg  
(name)

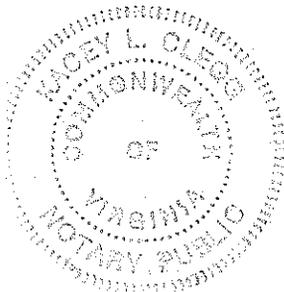
~~1/31/08~~ 1/31/08

Date

  
Notary Public

My commission expires: 10/31/09

Reg. # 302858



**Appendix A**  
**Mowery Oil Company, Inc.**  
**UST Facility at 354 Front Royal Road, Strasburg, Shenandoah County, VA.**

For the USTs, Mowery Oil shall:

- A. By February 15, 2008, submit copies of release detection results for all the USTs for the month of January 2008.
- B. By March 15, 2008, submit copies of release detection results for all the USTs for the month of February 2008.
- C. By April 15, 2008, submit copies of release detection results for all the USTs for the month of March 2008.
- D. By May 1, 2008, have completed all closure activities for UST numbers 1, 2, 3, 4, 5M and 6M to bring the Facility into compliance with the Regulation and submitted all required closure documentation for the same.