COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
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STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
RAHIM CORP.
for Hi and Buy
Facility ID No. 4-007383

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 Rahim Corp., 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. "Facility" means the physical location where the USTs are installed and/or operated, aka "Hi and Buy", located at 4601 Anderson Highway in Powhatan, Virginia. The Facility's USTs are owned by Rahim Corp., and the Facility is further identified by UST Facility ID# 4-007383.

5. "Form 7530" means the UST notification form used by DEQ to register and track USTs for proper operation, closure and ownership, in accordance with 9 VAC 25-580-70.

6. "Rahim" means Rahim Corp., a corporation authorized to do business in Virginia and its affiliates, partners, subsidiaries, and parents. Rahim 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. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, 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

1. Rahim owns and operates the Facility in Powhatan, Virginia. Rahim stores gasoline in USTs at the Facility. Rahim 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, a Regulated Substance, 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 December 8, 2008, Department staff inspected the Facility for compliance with the requirements of the State Water Control Law and the Regulations. At that time, there were four USTs on-site: one 2,000 gallon gasoline UST, and three 4,000 gallon gasoline USTs all owned by Rahim. Subsequently, the Department conducted a review of the DEQ Facility file and registration documents. DEQ staff observed the following:

   a. The method of release detection was identified differently on the registered facility information than it was on the Form 7530 operational status. Department staff noted during the inspection that the four USTs described above were not registered under Rahim's ownership and that the Form 7530 needed to be updated to reflect the current release detection method. Rahim filled out the Form 7530 during the inspection to reflect its ownership of the four USTs.

      9 VAC 25-580-70 requires that an owner or operator of a UST system must submit an amended Form 7530 to DEQ within 30 days of any change in ownership, tank status, tank/piping systems, or substance stored, including correct identification of the type of release detection used.

   b. Rahim was unable to provide documentation that testing of the cathodic protection system for the USTs had been performed within three years.

      9 VAC 25-580-90 requires that all cathodic protection systems be tested by a qualified cathodic protection tester within six months of installation and at least every three years thereafter. Owners and operators must maintain results of the last two tests required for all cathodic protection systems and the last three inspections required for impressed current systems. 9 VAC 25-580-120(3) requires that these records be kept either at the UST site and be immediately available for inspection, or at a readily available alternative site and be provided for inspection upon request.

   c. Spill prevention buckets were filled with liquid and debris.

      9 VAC 25-580-60 requires that to prevent spilling associated with product transfer to the UST system, regulated UST systems must comply with spill prevention equipment requirements specified in subsection 3 of 9 VAC 25-580-50.

   d. Rahim was using inventory control as its method of release detection, which is an invalid method.

9 VAC 25-580-60(5) and 9 VAC 25-580-130, 140, 160, and 170 requires that owners and operators of new and existing UST systems 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. Pursuant to 9 VAC 25-580-130, owners and operators of UST systems must provide a method, or combination of methods, of release detection that meets the requirements of 9 VAC 25-580-130, including being installed, calibrated, operated, and maintained in accordance with the manufacturer's instructions and meeting the performance requirements in 9 VAC 25-580-160 or 9 VAC 25-580-170. Pursuant to 9 VAC 25-580-140, owners and operators of *petroleum* UST systems must provide release detection for tanks and piping in accordance with the requirements of that section. Pursuant to 9 VAC 25-580-140(1), most USTs must be monitored at least every 30 days using one of the methods listed in subsections 4 through 8 of 9 VAC 25-580-160.

e. Piping release detection records were not available for review.

   9 VAC 25-580-140(2) requires that underground suction piping that routinely contains regulated substances must either have a line tightness test performed every three years in accordance with 9 VAC 25-580-170(2), or use a monthly monitoring method conducted in accordance.

f. Tank records of recent compliance with tank release detection requirements were not available.

   9 VAC 25-580-180 requires that release detection records, including results of any sampling, testing, or monitoring be maintained for at least one year, either at the facility and be immediately available for inspection or at a readily available alternative site and be available for inspection upon request, in accordance with 9 VAC 25-580-120.

g. Financial responsibility documentation was not available.

   9 VAC 25-590-40 requires that owners or operators of UST systems demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases in the per-occurrence amounts stated in 9 VAC 25-590-40. Pursuant to 9 VAC 25-590-160, evidence of financial assurance mechanisms used to demonstrate financial responsibility must be maintained at the UST site or at the owner or operator's place of work in the Commonwealth and be made available upon request.

4. Department staff issued a Request for Corrective Action (RCA) at the end of the December 8, 2008 inspection for the violations listed in paragraph C.3, above. The RCA requested that Rahim respond to the Department by January 15, 2009. The Department did not receive a response from Rahim.

5. Department staff sent a Warning Letter on March 27, 2009 for the violations listed in paragraph C.3, above. The Warning Letter requested that Rahim respond to the Department in writing by April 16, 2009. A copy of the RCA was attached to the Warning Letter. The Department did not receive a response from Rahim.

6. On July 14, 2009, the Department issued Notice of Violation No. 09-06-PRO-596 to Rahim for violations listed in paragraph C.3, above.

7. On July 17, 2009, the Department received tank tightness test results and inventory control documentation from Rahim for the USTs at the Facility. Department staff reviewed the results and found them to be inconclusive; therefore compliance could not be verified.

8. On August 11, 2009, Department staff met with representatives of Rahim to discuss the violations. During the meeting the representative of Rahim filled out and submitted an updated Form 7530 for the method of release detection used at the Facility. A copy of the test results from the cathodic protection system for the USTs as well as monthly monitoring (April through June 2009) results from the release detection system on the USTs were submitted during the meeting. The cathodic protection system testing was conducted on December 10, 2008. Since the test from the cathodic protection system for the USTs had some inconclusive results Department staff suggested Rahim contact a corrosion specialist to review the test results and report those findings to the Department. Department staff also requested Rahim submit another copy of the cathodic protection system test results since the copy that was submitted during the meeting was difficult to read. The Rahim representative explained that the spill prevention buckets were full at the time of inspection due to a rain event. Department staff offered a remedy to Rahim that would eliminate this issue in the future. The Rahim representative further informed the Department that this issue was addressed and corrected. The Department has not received any additional information from Rahim since the date of this meeting.

9. Based on the results of the December 8, 2008 inspection, the Board concludes that Rahim has violated 9 VAC 25-580-70, 9 VAC 25-580-90 and 9 VAC 25-580-120(3), 9 VAC 25-580-60 and subsection 3 of 9 VAC 25-580-50, 9 VAC 25-580-60(5) and 9 VAC 25-580-130, 140, 160, and 170, 9 VAC 25-580-140(2), 9 VAC 25-580-180, 9 VAC 25-590-40 and 9 VAC 25-590-160, as described in paragraph C.3, above.

10. The documentation and verbal statement that were provided by Rahim during the meeting on August 11, 2009, verified that the violations described in paragraphs C.3.a and C.3.c, have been corrected.

11. In order for Rahim to complete its return to compliance, DEQ staff and representatives of Rahim 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 Rahim, and Rahim agrees to:

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

2. Pay a civil charge of **$13,900** 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

Rahim 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 Rahim for good cause shown by Rahim, 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, Rahim admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

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

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

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, Rahim Corp. voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 29th day of September, 2010.

Michael P. Murphy, Regional Director
Department of Environmental Quality

Rahim Corp. voluntarily agrees to the issuance of this Order.

Date: 8-2-10 By: Abbas Hassan, V-President
(Person) (Title)
Rahim Corp.

Commonwealth of Virginia
City/County of Henrico

The foregoing document was signed and acknowledged before me this 2 day of August, 2010, by Abbas Hassan, who is V. President of Rahim, on behalf of the corporation.

Notary Public

7039385
Registration No.

My commission expires: 1/31/2014

Notary seal:

APPENDIX A
SCHEDULE OF COMPLIANCE

1. By December 31, 2010, Rahim shall submit documentation of financial responsibility to DEQ, in accordance with 9 VAC 25-590-10 *et seq.*

2. By October 31, 2010, Rahim shall contact a corrosion expert to review the cathodic protection tests.

3. By December 15, 2010, Rahim shall submit the certified plans from the corrosion expert that outline the required necessary actions to provide adequate corrosion protection on the UST systems in accordance with 9 VAC 25-580-90. The actions may include installation and/or repair of the necessary equipment.

4. By February 15, 2011, Rahim shall complete the actions described by the plans required by item "3", above.

5. By February 30, 2011, Rahim shall complete cathodic protection system testing in accordance with 9 VAC 25-580-90 and submit copies of these cathodic protection system test results to DEQ in accordance with 9 VAC 25-580-120.

6. Rahim shall submit to DEQ bi-monthly records of the rectifier log documenting that the impressed current cathodic protection system is inspected every 60 days in accordance with 9 VAC 25-580-90(3) for the next **13** consecutive months, beginning with **October 2010** and ending with the **October 2011** records. Rahim shall **submit the bi-monthly records by December 15, 2010, February 15, 2011, April 15, 2011, June 15, 2011, August 15, 2011, October 15, 2011, and November 15, 2011.**

7. Submit to the Department, copies of the monthly tank release detection testing and monitoring records in accordance with 9 VAC 25-580-140 for the next **13** consecutive months, beginning with **October 2010** and ending with the **October 2011** records. Rahim shall **submit the monthly release detection testing and monitoring records by November 15, 2010, December 15, 2010, January 15, 2011, February 15, 2011, March 15, 2011, April 15, 2011, May 15, 2011, June 15, 2011, July 15, 2011, August 15, 2011, September 15, 2011, October 15, 2011, and November 15, 2011.**

Unless otherwise specified in this Order, Rahim shall submit all requirements of Appendix A of this Order to: Jennifer Hoeffner, Enforcement Specialist, Sr.
Department of Environmental Quality
Piedmont Regional Office
4949-A Cox Road
Glen Allen, Virginia 23060
(804) 527-5123 phone
(804) 527-5106 fax
jennifer.hoeffner@deq.virginia.gov