



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

VALLEY REGIONAL OFFICE

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Regional Director

**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
RIO HOLDINGS L.L.C.
FOR
BP Gas Station & C Store
Facility ID No. 6006217**

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 Rio Holdings 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. "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 UST and/or UST system is installed and/or operated, known as BP Gas Station & C Store located at 1061 Rio Road in

Charlottesville, Virginia. The Facility's UST and/or UST system are owned and operated by Rio Holdings L.L.C., and the Facility is further identified by UST Facility ID# 6006217.

5. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
6. "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.
7. "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.
8. "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.
9. "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.
10. "Regulations" means the Underground Storage Tanks: Technical Standards and Corrective Action Requirements, 9 VAC 25-580-10 *et seq.*
11. "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.
12. "Rio" means Rio Holdings L.L.C., a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Rio is a "person" who owns the Facility.
13. "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.
14. "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.
15. "Va. Code" means the Code of Virginia (1950), as amended.

16. "VAC" means the Virginia Administrative Code.
17. "VRO" means the Valley Regional Office of DEQ, located in Harrisonburg, Virginia.
18. "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. Rio owns the Facility in Charlottesville, Virginia. The Facility stores regulated substances in the form of gasoline, diesel and kerosene in USTs.
2. On April 28, 2011, DEQ Valley Regional Office staff conducted an inspection of the USTs at the Facility. File and UST registration documents were also reviewed. At that time, there were three USTs at the Facility: 12,000 gallon UST #1, containing gasoline, 12,000 gallon UST #2, containing gasoline, 6,000 gallon UST #3C, containing diesel, 6,000 gallon UST #4C, containing diesel, and 1,000 gallon UST#5, containing kerosene. The following describe the staff's factual observations and identify the applicable legal requirements:
 - a. UST numbers 1, 2, 3C, 4C and 5 contain more than one inch of product and the owner is not performing release detection on the USTs every 30 days.
 - b. Release Detection records for UST numbers 1, 2, 3C, 4C and 5 have not been maintained for at least one year.
3. 9 VAC 25-580-140 states that owners and operators of petroleum UST systems not required to have secondary containment under subdivision 7 of 9 VAC 25-580-50 must provide release detection for tanks and piping.
4. 9 VAC 25-580-120(2)(c) requires Owners and operators to maintain records demonstrating recent compliance with release detection requirements.
5. 9 VAC 25-580-180(2) requires Owners and operators to maintain the results of any sampling, testing, or monitoring for at least one year.
6. On January 9, 2012, the Department issued Warning Letter No. 12-01-VRO-01 to Rio for the violations listed in paragraphs 2 through 5 above. The Warning Letter requested that Rio respond in writing by January 29, 2012.
7. On January 23, 2012, after further review of the facility's file, it was discovered that a failure of the automatic tank gauging system resulted in the permanent loss of release detection records, so the Department issued Notice of Violation No. 12-1-VRO-4 to Rio for violations listed in paragraphs 2 through 5 above to account for the gravity of the situation. The Notice of Violation requested that Rio respond to DEQ within ten days.

8. On January 30, 2012, Rio responded to the Notice of Violation by telephone and stated that the facility was leased and that they believed that release detection was now being performed.
9. On February 16, 2012, a meeting was held with Rio to discuss the Notice of Violation. Rio reported that the automatic tank gauging system had been repaired and that release detection was being performed and documented. Rio also provided records of release detection for the past month.
10. Based on the results of the April 28, 2011 inspection and the February 16, 2012 meeting, the Board concludes that Rio has violated 9 VAC 25-580-140(C)(1) and 9 VAC 25-580-120 and 180 as described in paragraphs C(2) through C(8), above.
11. In order for Rio to return to compliance, DEQ staff and representatives of Rio 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 Rio, and Rio agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$4,410.00 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

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

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

Rio Holdings L.L.C. voluntarily agrees to the issuance of this Order.

Date: 4/24/12 By: Mearah, Managing member
(Person) (Title)
Rio Holdings L.L.C.

Commonwealth of Virginia
City/County of Fairfax

The foregoing document was signed and acknowledged before me this 24th day of April, 2012, by Mandeep Kandola who is Managing member of Rio Holdings L.L.C., on behalf of the corporation.

[Signature]
Notary Public

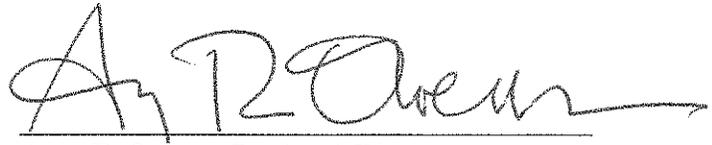
7389053
Registration No.

My commission expires: 1/30/2015

Notary seal:



And it is so ORDERED this 27th day of September, 2012.

A handwritten signature in black ink, appearing to read "Amy T. Owens", written over a horizontal line.

Amy T. Owens, Regional Director
Department of Environmental Quality

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APPENDIX A SCHEDULE OF COMPLIANCE

Rio shall:

1. Perform release detection for all tanks and piping in accordance with 9 VAC 25-580 -140 and 9 VAC 25-580-160.
2. Maintain records in accordance with 9 VAC 25-580-120 demonstrating compliance with all applicable requirements.
3. By the 15th of each month, submit records demonstrating compliance with release detection requirements for the previous month. Submit records to DEQ for the six months following the effective date of the Order.

DEQ Contact

Rio shall submit all requirements of Appendix A of this Order to:

**Karen Hensley
Enforcement Specialist
VA DEQ – Valley Regional Office
4411 Early Road
P.O. Box 3000
Harrisonburg, VA 22801
(540) 574-7821
(540) 574-7878
karen.hensley@deq.virginia.gov**