



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

VALLEY REGIONAL OFFICE

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STATE WATER CONTROL BOARD ENFORCEMENT ACTION

SPECIAL ORDER BY CONSENT

ISSUED TO

Smiley's Fuel City, LLC., Rockbridge County, Virginia

(VPDES Permit No. VA0058734)

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code § 62.1-44.15(8a) and (8d), between the State Water Control Board and Smiley's Fuel City, LLC for the purpose of resolving certain violations of environmental laws and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "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.
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.
5. "Order" means this document, also known as a Consent Special Order.
6. "Smiley's Fuel City" means Smiley's Fuel City, LLC, the owner and operator of the Facility.

7. "Facility" means the Smiley's Fuel City Waste Water Treatment Plant located in Rockbridge County, Virginia.
8. "VRO" means the Valley Regional Office of DEQ, located in Harrisonburg, Virginia.
9. "Permit" means Virginia Pollutant Discharge Elimination System Permit No. VA0058734, which expired June 26, 2005, and was reissued August 25, 2005.
10. "NOV" means Notice of Violation.
11. "Regulation" means the VPDES Permit Regulation 9 VAC 25-31-10 et seq.

SECTION C: Findings of Fact and Conclusions of Law

1. Smiley's Fuel City owns and operates the Facility. The Facility is located in Rockbridge County and is the subject of the Permit issued August 25, 2005. This Facility discharges to the unnamed tributary of Moores Creek, and Upper James River basin.
2. On March 21, 2005, Smiley's obtained responsibility for the Facility as indicated by a change of ownership on the Permit. This modification took place March 21, 2005 with the Permit set to expire June 26, 2005.
3. On May 10, 2005, DEQ issued NOV **W2005-05-V-0013** to Smiley's for:
 - A. According to the submitted DMR for March 2005, the discharge from outfall 001 exceeded the effluent limits set forth in the Permit:
 1. BOD5- 30 mg/l required concentration *average*, 88 mg/l reported.
 2. BOD5- 45 mg/l required concentration *maximum*, 88 mg/l reported.
 3. Ammonia - 4.2 mg/l required concentration *average*, 7.1 mg/l reported.
 4. Total Petroleum Hydrocarbons- 15 mg/l required concentration *maximum*, 27.3 mg/l reported

This is contrary to 9 VAC 25-31-50 and Part I.A. of the Permit.
 - B. Failure to submit VPDES permit application.
This is contrary to 9 VAC 25-31-50 and Part II.M. of the Permit.
4. On June 9, 2005, DEQ issued NOV **W2005-06-V-0010** to Smiley's for:
 - A. Failure to submit a complete DMR (less than 25% of data missing),
 - B. According to the information submitted in the DMR for April 2005, the discharge from outfall 001 exceeded the effluent limits set forth in the Permit:
 1. BOD5- 30 mg/l required concentration *average*, 66 mg/l reported.
 2. BOD5- 45 mg/l required concentration *maximum*, 66 mg/l reported.
 3. Ammonia-4.2 mg/l required concentration *average*, 4.9 mg/l reported.
 4. Ammonia -4.2 mg/l required concentration *average*, 4.9 mg/l reported.

This is contrary to 9 VAC 25-31-50 and Part I.A. of the Permit.
5. On June 13, 2005, DEQ received the completed Permit application from Smiley's.
6. On June 15, 2005, DEQ issued Warning Letter **W2005-06-V-1053** to Smiley's for:

- A. EnviroCompliance (contract laboratory) refusing to provide demonstrations of required laboratory procedures.
This is contrary to 9 VAC 25-31-50 and Part II.D. of the Permit.
7. On June 26, 2005, VPDES Permit No. VA0058734 expired.
8. On July 19, 2005, DEQ issued Warning Letter **W2005-07-V-0008** to Smiley's for:
- A. Failure to submit completed VPDES application for Permit reissuance and an incomplete application was received on April 28, 2005. A final completed application was received on June 13, 2005.
This is contrary to 9 VAC 25-31-50 and Part II.M. of the Permit.
- B. During a site inspection on July 8, 2005, outfall 001 of the Facility was observed discharging to state waters without an authorized effective permit.
This is contrary to 9 VAC 25-31-50.
- C. The discharge for May 2005, from outfall 001 exceeded the effluent limits set forth in the Permit:
1. BOD5- 30 mg/l required concentration *average*, 279 mg/l reported.
 2. BOD5- 45 mg/l required concentration *maximum*, 279 mg/l reported.
- This is contrary to 9 VAC 25-31-50 and Part I.A. of the Permit.
9. On August 15, 2005, DEQ issued **NOV-05-08-VRO-001** to Smiley's for:
- A. During a site inspection on July 8, 2005, outfall 001 of the Facility was observed discharging to state waters without an authorized effective permit.
This is contrary to 9 VAC 25-31-50.
10. On August 25, 2005, DEQ approved and reissued the **VPDES Permit No. VA0058734**.
11. On November 9, 2005, DEQ issued Warning Letter **W2005-11-V-1002** to Smiley's for:
- A. Failure to submit Discharge Monitoring Report for September 1-30, 2005.
This is contrary to 9 VAC 25-31-50 and Part II.C. of the Permit.
12. On December 21, 2005, DEQ issued Warning Letter **W2005-12-V-1020** to Smiley's for:
- A. Failure to submit Discharge Monitoring Report for October 1-31, 2005.
This is contrary to 9 VAC 25-31-50 and Part II.C. of the Permit.
13. On February 21, 2006, DEQ issued Notice of Violation **W2006-02-V-0013** to Smiley's for:
- A. Failure to submit Discharge Monitoring Report for September 1-30, 2005.*
 - B. Failure to submit Discharge Monitoring Report for October 1-31, 2005.*
 - C. Failure to submit Discharge Monitoring Report for November 1-30, 2005.
 - D. Failure to submit Discharge Monitoring Report for December 1-31, 2005.
- These are contrary to 9 VAC 25-31-50 and Part II.C. of the Permit.
- *Note: DMRs for monitoring periods of September 1-30, 2005, and October 1-31, 2005, were received on November 14, 2005
14. On March 17, 2006, DEQ issued Notice of Violation **W2006-02-V-0013** to Smiley's for:
- A. Failure to submit Discharge Monitoring Report for September 1-30, 2005.*
 - B. Failure to submit Discharge Monitoring Report for October 1-31, 2005.*
 - C. Failure to submit Discharge Monitoring Report for November 1-30, 2005. **

- D. Failure to submit Discharge Monitoring Report for December 1-31, 2005. **
 - E. Failure to submit Discharge Monitoring Report for January 1-31, 2006. **
- These are contrary to 9 VAC 25-31-50 and Part II.C. of the Permit.

*Note: DMRs for monitoring periods of September 1-30, 2005, and October 1-31, 2005, were received on November 14, 2005.

** Note: DMRs for monitoring periods of November 1-30, 2005, and December 1-31, 2005, and January 1-31, 2006, were received on March 1, 2006.

- F. Department records indicate that the submitted DMR for monitoring period of January 1-31, 2006, was deficient.

This is contrary to 9 VAC 25-31-50 and Part I.A.. of the Permit.

Smiley's Fuel City corrected all of the violations set forth above, except for 14.F. (submitting deficient DMR). All reports and required documents have been received and on August 25, 2005, DEQ reissued VPDES Permit No. VA0058734 to Smiley's Fuel City. The effluent limit violations have been addressed through training and the implementation of proper procedures to ensure that proper effluent limits are maintained.

Smiley's Fuel City agrees to enter into an Order, this document, and pay civil charges unpermitted discharge, effluent limit violations, submission of an incomplete DMR, and failure to submit DMRs in a timely manner.

SECTION D: Agreement and Order

1. Accordingly, the Board, by virtue of the authority granted it in Va. § 62.1-44.15(8a) and (8d), orders Smiley's Fuel City, and Smiley's Fuel City agrees, to perform the actions described in this Order.
2. Within 30 days of the effective date of this Order, Smiley's Fuel City shall pay a civil charge of \$4,720.00 in settlement of the violations cited in this Order. Payment shall be by check, certified check, money order, or cashier's check payable to "Treasurer of Virginia" and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

Smiley's Fuel City shall also include its federal identification number (FIN) with the check, certified check, money order, or cashier's check and shall include a note that payment is being made in pursuant to this order.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Smiley's Fuel City for good cause shown by Smiley's Fuel City or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein in Section C. 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 as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.

3. For purposes of this Order and subsequent actions with respect to this Order, Smiley's Fuel City admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Smiley's Fuel City 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. Smiley's Fuel City declares it has received fair and due process under the Administrative Process Act, Va. 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 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 enforce this Order.
6. Failure by Smiley's Fuel City 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. Smiley's Fuel City 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. Smiley's Fuel City shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Smiley's Fuel City shall notify the DEQ Regional Director in writing 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 Director of the Valley Regional Office within 24 hours of learning of any condition above, which Smiley's Fuel City intends to assert will result in the impossibility

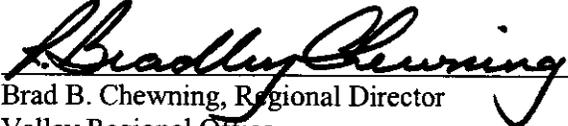
of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

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 Smiley's Fuel City. Notwithstanding the foregoing, Smiley's Fuel City 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. Smiley's Fuel City petitions the VRO Director to terminate the Order after it has completed all requirements of this Order, and the Regional Director determines that all requirements of the Order have been satisfactorily completed; or
 - b. The Director, his designee, or the Board may terminate this Order in his or its sole discretion upon 30 days written notice to Smiley's Fuel City.

Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve Smiley's Fuel City from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. The undersigned representative of Smiley's Fuel City 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 Smiley's Fuel City to this document. Any documents to be submitted pursuant to this Order shall be submitted by a responsible official of Smiley's Fuel City.
13. By its signature below, the Smiley's Fuel City voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of Dec 18, 2006.


Brad B. Chewning, Regional Director
Valley Regional Office
Department of Environmental Quality

Smiley's Fuel City agrees to the issuance of this Order.

By: 
Title: Managing Partner
Date: 6-16-06

Commonwealth of Virginia

City/County of Rockbridge

The foregoing document was signed and acknowledged before me this

16 day of June, 2006, by Jeffrey Nubny.
(name)

who is owner of Smiley's Fuel City on
(title)

behalf of said company.

Amy R Hayslett
Notary Public

My commission expires: _____

