



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

VALLEY REGIONAL OFFICE

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L. Preston Bryant, Jr.
Secretary of Natural Resources

David K. Paylor
Director

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Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION A SPECIAL ORDER ISSUED BY CONSENT TO SNOW FAMILY, LLC

UST Facility at 8609 Dyke Road, Dyke, VA
Facility Identification No. 6015553

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 Snow Family, LLC, to resolve certain violations of the State Water Control Law and regulations at Snow Family's Underground Storage Tank Facility located at 8609 Dyke Road, Dyke, Greene 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 Va. Code §§ 10.1-1184 and 62.1-44.7.
2. "Va. 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 Va. Code § 62.1-44.34:8.
4. "BGST" means B. G. Snow Trust, the previous UST owner within the meaning of Va. Code § 62.1-44.34:8.
5. "SFL" means Snow Family, LLC, the current UST owner within the meaning of Va. Code § 62.1-44.34:8.

6. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
7. "Director" means the Director of the Department of Environmental Quality.
8. "Facility" means the retail gasoline station and USTs owned by SFL located at 8609 Dyke Road, Dyke, Greene County, Virginia, which is also known as The Trading Post. The USTs are further identified as gasoline tanks number 1 (10,000 gallons) and number 2 (6,000 gallons), both installed during March 1993.
9. "Order" means this document, also known as a Consent Special Order.
10. "Regional Office" means the Valley Regional Office of the Department.
11. "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.
12. "Form 7530" means the UST notification form to be submitted to the DEQ by UST owners to register and document UST operation, closure and ownership. See 9 VAC 25-580-70.

SECTION C: Findings of Fact and Conclusions of Law

1. Gasoline is a petroleum product. Petroleum is a "regulated substance" as defined by Va. Code § 62.1-44.34:8 and 9 VAC 25-580-10; therefore, the USTs at the Facility are regulated under 9 VAC 25-580-10 *et seq.* The Regulation 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. SFL is the current owner of the USTs at this Facility within the meaning of Va. Code § 62.1-44.34:8.
3. On November 7, 2006, DEQ staff conducted a formal inspection of the Facility. At this time, the USTs were owned by BGST. The following deficiencies were noted for the USTs:
 - a. Release detection was not being performed on UST numbers 1 and 2 in apparent violation of 9 VAC 25-580-140.
 - b. UST number 1 was not protected from corrosion in apparent violation of 9 VAC 25-580-50.

- c. Acceptable Financial Responsibility documentation had not been submitted to the DEQ in apparent violation of 9 VAC 25-590-10 *et seq.*

DEQ staff issued a Request for Corrective Action (RCA) to BGST on November 7, 2006, for these apparent violations of the Regulation. The RCA detailed the violations noted during the inspection and requested that BGST respond to the DEQ in writing by January 7, 2007, with a plan to resolve the violations and advise DEQ of any corrective actions performed.

4. Receiving no response to the RCA, DEQ staff sent a Warning Letter (No. 07-01-VRO-12) on January 22, 2007, for these apparent violations of the Regulation. The letter requested that BGST respond in writing by February 2, 2007, and included a copy of the formal inspection report, detailing the apparent violations noted in paragraph 3.
5. On March 16, 2007, DEQ staff received a completed Form 7530, providing new ownership information for the UST facility. The new owner of the USTs is SFL.
6. Due to the ownership change noted in paragraph 5, DEQ re-issued the Warning Letter (now No. 07-04-VRO-6) to the new owner, SFL, on May 11, 2007.
7. This resulted in two site visits performed by DEQ staff June 13 and 20, 2007. SFL met with DEQ staff at the facility for the June 20, 2007, site visit. During this site visit, DEQ staff received copies of SFL's 2006 federal tax returns, submitted in response to DEQ's request for financial responsibility documentation, and observed that cathodic protection had been installed on the metallic portions of product piping.
8. On July 9, 2007, DEQ staff received copies of cathodic protection system test results, dated October 16, 2004, which indicated failing results for UST number 1 and passing results for UST number 2. DEQ also received copies of cathodic protection system test results, dated October 23, 2001, which indicated failing results for both UST numbers 1 and 2.
9. On October 22, 2007, DEQ staff issued a Notice of Violation (NOV) No. 07-10-VRO-1 to SFL, for these apparent violations of the Regulation. The NOV requested that SFL respond to the Department by November 1, 2007. The inspection report was included with the NOV and it detailed the violations noted during the inspection.
10. On October 25, 2007, DEQ received a copy of cathodic protection system test results, dated August 31, 2007, which indicated failing results for UST number 1 and passing results for UST number 2. No release detection results were received.
11. DEQ staff met with SFL on December 17, 2007, to discuss possible remedies to the situation including a corrective action plan and the settlement of these apparent violations. During this meeting DEQ staff received copies of cathodic protection test results performed on October 13, 2007. The test results indicated that tank number one failed and that tank number two

- passed. DEQ staff also received copies of a signed contract with a Statistical Inventory Reconciliation vendor, and a copy of a check made out to the same, for the performance of release detection at the Facility.
12. On January 11, 2008, SFL hired a contractor to perform precision tightness tests on both USTs. Both tanks passed the test.
 13. On February 28, 2008, DEQ staff received a complete corrosion assessment and current cathodic protection system test results for UST number 1. The tank now complies with the requirements for corrosion protection in accordance with the Regulation. Release detection results for the USTs were not submitted to the DEQ.
 14. DEQ staff met with SFL on May 27, 2008, to discuss possible remedies to the situation including a corrective action plan and the settlement of the apparent past violations. Passing release detection records were submitted for both USTs during this meeting. Financial responsibility documentation was submitted on June 24, 2008.

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 SFL and SFL agrees that:

1. To remedy the violations described above and to reduce the chances of these violations occurring again, SFL shall perform the actions described in Appendix A to the Order.
2. SFL shall pay a civil charge of \$8,673.00, 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. SFL shall also include its Federal Tax Identification Number (59-3793164) 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 SFL, for good cause shown by SFL, or on its own motion after notice and opportunity to be

heard.

2. This Order addresses and resolves only those violations specifically identified herein, including the violations mentioned in the October 22, 2007 NOV. 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 authorized by law 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, SFL admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. SFL 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. SFL declares it has received fair and due process under the Virginia 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 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 SFL 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. SFL 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 act of God, war, strike, or such other occurrence. SFL 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. SFL 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 SFL 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 SFL. Notwithstanding the foregoing, SFL 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. SFL petitions the 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 sole discretion upon 30 days written notice to SFL.

Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve SFL 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, SFL voluntarily agrees to the issuance of this Order.

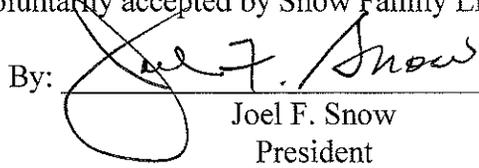
And it is so ORDERED this 21st day of October, 2008.



Amy T. Owens, Regional Director
Department of Environmental Quality

The terms and conditions of the Order are voluntarily accepted by Snow Family LLC.:

Date: 8/12/08

By: 
Joel F. Snow
President

Commonwealth of Virginia, ~~City~~ County of Albemarle

The foregoing instrument was acknowledged before me this 12th day of August, 2008 by

Joel F. Snow, who is President / Manager of Snow Family, LLC,
(Name) (Title)

on behalf of Snow Family, LLC



, Notary Public
My Commission expires 2/28/2011
Va. Reg. # 188118

Appendix A
Snow Family, LLC

For UST numbers 1 and 2, SFL shall:

- A. By August 15, 2008, submit copies of release detection results for the month of May, June and July 2008.
- B. By September 15, 2008, submit copies of release detection results for the month of August 2008.
- C. By October 15, 2008, submit copies of release detection results for the month of September 2008.