



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

Amy Thatcher Owens
Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION A SPECIAL ORDER ISSUED BY CONSENT TO SUNOCO, INC.

UST Facilities at 2468 Raphine Road, Raphine, VA
and 2141 South Main Street, Harrisonburg, VA
Facility Identification Nos. 6025103 and 6013593

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 Sunoco, Inc. to resolve certain violations of the State Water Control Law and regulations at Sunoco's Underground Storage Tank Facilities located at 2468 Raphine Road, Raphine, Rockbridge County, and 2141 South Main Street, Harrisonburg City, 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. "Sunoco" means Sunoco, 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 6025103" means the retail petroleum refueling station known as Sunoco #800-5274, along with the USTs owned and operated by Sunoco, located at 2468 Raphine Road, Raphine, Virginia. The USTs are further identified as gasoline tanks #5, 6, 7 and diesel tanks #8M and 9M, all installed on January 15, 1988, with capacities of 10,000-gallons.
8. "Facility 6013593" means the retail petroleum refueling station known as Fast Fuels #0983 3138 890, along with the USTs owned and operated by Sunoco, located at 2141 South Main Street, Harrisonburg, Virginia. The USTs are further identified as gasoline tanks #1, 2, 3M, all upgraded during October, 1991, with capacities of 6,000-gallons and #4M, installed on October 1, 1991, with a capacity of 10,000-gallons.
9. "Facilities" means both Facility 6025103 and Facility 6013593.
10. "Order" means this document, also known as a Consent Special Order.
11. "Regional Office" means the Valley Regional Office of the Department.
12. "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.
13. "Form 7530-2" 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 Facilities meet final, specific performance requirements for leak detection, spill and overfill protection, and corrosion protection by December 22, 1998.
2. Sunoco is the owner of the USTs at these Facilities within the meaning of Virginia Code § 62.1-44.34:8.

Facility 6025103 : PC#2007-6035

3. On April 21, 2006, DEQ staff conducted a formal inspection of Facility 6025103. The following deficiencies were noted for the USTs:
 - a. The spill prevention equipment was damaged on all five USTs in violation of 9 VAC 25-580-60.
 - b. Overfill prevention equipment was not installed on UST numbers 5, 6 and 7, in violation of 9 VAC 25-580-60.
 - c. The internal linings installed in tank numbers 8M and 9M had not been internally inspected to determine if they are structurally sound with the linings still performing in accordance with original design specifications in violation of 9 VAC 25-580-60.
 - d. Metallic components of the piping associated with all five USTs were in contact with the ground and were not protected from corrosion, in violation of 9 VAC 25-580-60 and 9 VAC 25-580-90.
 - e. Release Detection was not being performed on the USTs and their associated piping in violation of 9 VAC 25-580-140.
4. DEQ staff issued a Request for Corrective Action (RCA) to Sunoco on April 24, 2006. The RCA itemized the alleged violations noted in paragraph 3 and requested that Sunoco respond to these allegations by June 24, 2006. Sunoco responded by submitting current release detection records for both tanks and piping on June 10, 2006, effectively resolving the violation noted in paragraph 3.e.
5. DEQ staff then sent a Warning Letter (No. 06-06-VRO-13) to Sunoco on June 23, 2006, for the unresolved violations of the Regulation noted in paragraph 3.a. through 3.d. The letter requested that Sunoco respond in writing by July 7, 2006, and included a summary of the formal inspection results, detailing the violations identified during the April 21, 2006 inspection.
6. Sunoco responded to the Warning Letter on September 27, 2006, by submitting: a) failing internal inspection results for UST numbers 8M and 9M, b) passing cathodic protection test results for all metallic portions of the piping associated with the USTs, c) photographs documenting the replacement of damaged spill containment buckets on all five USTs and verification of overfill prevention equipment installed in UST numbers 5, 6 & 7. This documentation effectively resolved the violations noted in paragraphs 3.a., 3.b. and 3.d. The documentation also confirmed that UST numbers 8M and 9M were in use without corrosion protection in violation of 9 VAC 25-580-60. Sunoco's contractor confirmed this fact on July

18, 2006. Sunoco did not remove the product from UST numbers 8M and 9M until September 14, 2006.

7. On October 4, 2006, Sunoco reported a release of petroleum at this facility. The DEQ issued Pollution Complaint number 2007-6035 for the release. In agreement with DEQ, Sunoco has not yet submitted investigation and characterization reports for the release to DEQ. These will be performed and submitted in conjunction with the UST closure procedures for UST numbers 8M and 9M as detailed in Appendix A of the Order. The pollution complaint case remains open.
8. On November 9, 2006, DEQ staff issued Notice of Violation (NOV) No. 06-11-VRO-1 to Sunoco, citing alleged violations of the Regulation. In the NOV, the Department requested that Sunoco respond by November 20, 2006. The alleged violation for UST numbers 8M and 9M cited in the NOV was for failure to maintain a corrosion protection system to continuously provide corrosion protection to the metal components of that portion of the tank and piping that routinely contain regulated substances and are in contact with the ground. The Regulation at 9 VAC 25-580-90 states "All corrosion protection systems must be operated and maintained to continuously provide corrosion protection to the metal components of that portion of the tank and piping that routinely contain regulated substances and are in contact with the ground."

Facility 6013593 : PC#2007-6030

9. On July 21, 2006, DEQ staff conducted a formal inspection of Facility 6013593. The following deficiencies were noted for the USTs:
 - a. Overfill prevention equipment was not installed on UST numbers 1, 2 and 3M, in violation of 9 VAC 25-580-60.
 - b. The internal linings installed on UST numbers 1, 2 and 3M had not been internally inspected to determine if they are structurally sound with the linings still performing in accordance with original design specifications in violation of 9 VAC 25-580-60.
 - c. Release Detection was not being performed on the USTs and their associated piping in violation of 9 VAC 25-580-140.
 - d. Observation wells were not secured in violation of 9 VAC 25-580-160.
 - e. Compliance records were not available for inspection in violation of 9 VAC 25-580-120.
10. DEQ staff sent a Warning Letter (No. 06-08-VRO-04) to Sunoco on August 7, 2006, citing the violations of the Regulation noted in paragraph 9. The letter requested that Sunoco respond in writing by August 21, 2006, and included a summary of the formal inspection

results, detailing the violations identified during the July 21, 2006 inspection.

11. Sunoco responded to the Warning Letter on August 21, 2006, by submitting copies of tank tightness tests performed on June 26, 2006 and August 2, 2006. Both sets of the test results confirmed that each tank contained greater than one inch of product and that each tank passed the tightness test parameters. These test results did not resolve the release detection violation noted in paragraph 9.c. Sunoco also submitted copies of internal lining inspections, repair records and lining re-inspections, resolving this violation as noted in paragraph 9.
12. On August 31, 2006, Sunoco submitted documentation confirming the presence of overflow prevention equipment for each UST, and on October 10, 2006, it submitted documentation confirming that the facility observation wells had been secured, effectively resolving these violations as noted in paragraph 9.a. and 9.d.
13. On September 15, 2006, Sunoco reported a release of petroleum at this facility. The DEQ issued Pollution Complaint number 2007-6030 for the release. Sunoco submitted site investigation and characterization reports for the release to the DEQ on December 15, 2006. After review of the reports, DEQ staff closed pollution complaint case 2007-6030 on February 22, 2007. No further action is required by the owner for this issue.
14. On October 16, 2006, Sunoco submitted passing release detection records for all four USTs for the months of August and September 2006. During an October 23, 2006 conference call with DEQ, Sunoco confirmed that release detection was not performed on the USTs from August 2005 through July 2006. The tanks were registered as "temporarily closed" during this time and file documentation confirms that the tanks contained more than one inch of product. Owners of USTs are required to perform release detection on tanks that are placed into "temporary closure" if they contain more than one inch of product (9 VAC 25-580-310).
15. On November 19, 2006, DEQ staff issued Notice of Violation (NOV) No. 06-11-VRO-2 to Sunoco, citing alleged violations of the Regulation. In the NOV, the Department requested that Sunoco respond by December 1, 2006. The alleged violation for all USTs is failure to perform release detection on the tanks every 30 days. The Regulation at 9 VAC 25-580-140 states "owners and operators of petroleum UST systems must provide release detection for tanks as follows: 1. Tanks must be monitored at least every 30 days for releases..."
16. DEQ staff met with Sunoco on November 29, 2006, to discuss possible remedies to the situation including a corrective action plan and the settlement of past violations. Other than settlement of civil charges for the past violations of the Regulation for the USTs located at Facility 6013593 and PC#2007-6030, there are no additional actions for the owner to perform. For Facility 6025103 and PC#2007-6035, the owner agreed to perform the corrective actions as detailed in Appendix A.

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 Sunoco and Sunoco agrees that:

1. To remedy the violations described above and bring the Facilities into compliance with the Regulation, Sunoco shall perform the actions described in Appendix A to the Order.
2. Sunoco shall pay a civil charge of \$10,400.00, within 30 days after 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
P.O. BOX 1105
Richmond, Virginia 23218

3. Sunoco shall also include its Federal 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 Sunoco, for good cause shown by Sunoco, 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 Facilities 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, Sunoco admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Sunoco 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. Sunoco 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 Sunoco 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. Sunoco 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. Sunoco 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. Sunoco 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 Sunoco 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 Sunoco. Notwithstanding the foregoing, Sunoco 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. Sunoco 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 Sunoco

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

And it is so ORDERED this 20 day of June, 2007.


Amy T. Owens, Regional Director
Department of Environmental Quality

The terms and conditions of the Order are voluntarily accepted by Sunoco:

Date: April 13, 2007

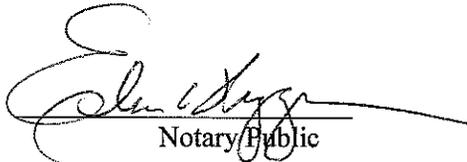
By: 
Edward C. Rhodes

Senior Environmental Engineer
Sunoco REM

~~PENNSYLVANIA~~
Commonwealth of ~~Virginia~~, City/County of PHILADELPHIA

The foregoing instrument was acknowledged before me this 16th day of April, 2007, by


COMMONWEALTH OF PENNSYLVANIA
(Frame)
Notarial Seal
Elaine A. Wiggins, Notary Public
City Of Philadelphia, Philadelphia County
My Commission Expires Nov. 14, 2010
Date
Member, Pennsylvania Association of Notaries
My commission expires:


Notary Public

Appendix A
Sunoco, Inc.
UST Facility at 2468 Raphine Road, Raphine, Rockbridge County, VA
Facility 6025103 : PC#2007-6035

For USTs #8M and 9M, Sunoco shall:

- A. By April 30, 2007, submit a complete closure report for the removal of the USTs and have completed the installation of the new USTs to replace 8M and 9M. Also have submitted a new Form 7530-2 notifying the DEQ of the newly installed USTs.
- B. By May 31, 2007, have performed and submitted a complete Site Characterization Report pursuant to 9 VAC 25-580-250, 9 VAC 25-580-260 and 9 VAC 25-580-280 for PC 2007-6035.