



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

PIEDMONT REGIONAL OFFICE

4949-A Cox Road, Glen Allen, Virginia 23060

(804) 527-5020 Fax (804) 527-5106

www.deq.virginia.gov

L. Preston Bryant, Jr.
Secretary of Natural Resources

David K. Paylor
Director

Gerard Seeley, Jr.
Regional Director

**AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION
ORDER BY CONSENT
ISSUED TO
UPHOFF INVESTMENTS, LLC &
UPPY'S CONVENIENCE STORES, INC.
Registration Numbers 51740 & 51849**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §10.1-1309 and §10.1-1316, between the State Air Pollution Control Board and Uphoff Investments, LLC and Uppy's Convenience Stores, Inc., for the purpose of resolving certain alleged violations of the Air Pollution Control Law and/or 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. "Air Pollution Control Law" means Va. Code § 10.1-1300 *et seq.*
3. "Board" means the State Air Pollution Control Board, a permanent collegial body of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1301 and 10.1-1184.

4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
5. "Director" means the Director of the Department of Environmental Quality.
6. "Order" means this document, also known as a Consent Order.
7. "Uphoff Investments" means Uphoff Investments, LLC, owner of Uppy's 25, certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.
8. "Uppy's" means Uppy's Convenience Stores, Inc., owner of Uppy's 19, a corporation certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.
9. "Uppy's 25" means a combination convenience store and gas station, Registration Number 51740 located at 5024 Brook Road, Richmond, Virginia.
10. "Uppy's 19" means a combination convenience store and gas station, Registration Number 51849, located at 113 Brown's Way Road, Midlothian, Virginia.
11. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
12. "Regulations" means the Commonwealth of Virginia State Air Control Board Regulations for the Control and Abatement of Air Pollution, located in the Virginia Administrative Code ("VAC"), 9 VAC 5-10-10 *et seq.*
13. "AQP-9" means the DEQ air quality program policies and procedures number 9. It is a document that prescribes the procedures for training, systems approval, maintenance, operation, testing, inspection, recordkeeping, and reporting for facilities required to be equipped with Stage II vapor recovery systems.
14. "Stage I vapor recovery system" means equipment designed and used with a vapor control system that will remove, destroy or prevent the discharge of volatile organic compound emissions into the atmosphere during the transfer of gasoline from any tank truck into any stationary storage tank as described in 9 VAC 5-40-5220 E 1.
15. "Stage II vapor recovery system" means any equipment designed and used to collect, recover, or destroy, or any combination of those, gasoline vapors displaced during the transfer of gasoline from any gasoline dispensing facility into a motor vehicle fuel tank as described in 9 VAC 5-40-5220 F 1.
16. "VOC" means volatile organic compound, which is a regulated air pollutant under the Clean Air Act and the Regulations of Virginia.

SECTION C: Findings of Fact and Conclusions of Law

1. Uphoff Investments and Uppy's own and operate the Uppy's 25 and Uppy's 19 respectively, which are combination convenience stores and gasoline service stations. The Uppy's 25 Facility is located in the City of Richmond and the Uppy's 19 Facility is located in Midlothian, Virginia. Uppy's 19 and Uppy's 25 are true minor stationary sources and are subject to the Emission Standards for Petroleum Liquid Storage and Transfer Operations (Rule 4-37) (9VAC 5-40-522).
2. Pursuant to 9 VAC 5-40-5220 E.1 ("Stage I") no owner or other person shall transfer or permit the transfer of gasoline from any tank truck into any stationary storage tank unless such tank is equipped with a vapor control system that will remove, destroy or prevent the discharge into the atmosphere of at least 90% by weight of volatile organic compound emissions.
3. Pursuant to 9 VAC 5-40-5220 F.1 ("Stage II"), no owner or other person shall transfer or permit the transfer of gasoline into the fuel tank of any motor vehicle at any affected gasoline dispensing facility unless the transfer is made using a certified Stage II vapor recovery system that is designed, operated, and maintained such that the vapor recovery system removes, destroys or prevents the discharge into the atmosphere of at least 95% by weight of volatile organic compound emissions.
4. On October 30, 2006, Department staff inspected Uppy's 25 to determine compliance with Stage I and Stage II vapor recovery requirements. Vapor recovery hardware equipment and record-keeping deficiencies were noted during the inspection. A Request for Corrective Action ("RCA") was issued and provided to an Uppy's 25 representative on the date of inspection.
5. On November 29, 2006 the Department received a letter from Uphoff Investments responding to the RCA, which stated that all hardware deficiencies had been repaired, the maintenance log was maintained up-to-date, along with a copy of an updated Uppy's 25 Registration and Compliance ("FRC") form. In order to verify that the hardware had been repaired, the Department made several attempts to have Uppy's 25 perform testing on the repaired Stage II vapor recovery equipment and submit the test results to the Department without success.
6. On February 28, 2007, a Warning Letter ("WL") was issued citing the failure to perform the required testing of the Stage II vapor recovery equipment.
7. On April 23, 2007, the Department received a fax from Uphoff Investments which stated that the equipment had been tested and numerous repairs made on March 1, 2007. The faxed information also indicated that two fueling dispensers had not passed testing and still needed to be repaired.

8. On April 28, 2007, Department staff performed a follow-up site inspection and observed the following: (1) Records and logs were not maintained as required; and (2) There was no indication that the two dispensers that failed the Stage II testing had been repaired although in use at the time of the site inspection.

9. On May 22, 2007, a Notice of Violation ("NOV") was issued due to continued deficiencies with Uppy's 25 records, for operating an un-certified system, and for failure to notify the Department of the March 1, 2007 testing of the Stage II vapor recovery equipment. The NOV cited Uphoff Investments for:
 - a. Failure to maintain or perform maintenance and inspection logs, test results, and valid training certificate(s) as required by 9 VAC 5-40-5220 F.6.j;
 - b. Failure to properly notify or document testing of Stage II equipment as required by 9 VAC 5-40-5220, Sections F. 6.c. and F.6.e; and
 - c. Failure to post an "Out of Order" sign on gasoline dispensing equipment with defective vapor motor controls (vapor motors were not operating properly per the March 1, 2007 failed test report) and failure to take any defective nozzle out of service until it is repaired or replaced, as required by 9 VAC 5-40-5220 F.6.g and AQP-9, Section III.E.

10. On June 20, 2007, Department staff met with Uphoff Investment representatives to discuss the violations cited in the NOV. The company representative stated that he would submit an invoice of vapor motor repairs for the two fueling points, re-schedule the re-testing of the vapor motors, and give prior notification to the Department in order to be present for the re-test. The Department was notified of the retest date and received the repair invoice.

11. On June 14, 2007, an Uppy's facility, Uppy's 19, was inspected by Department staff to determine compliance with the Stage I and Stage II vapor recovery requirements. The following deficiencies were observed: (1) The vapor control system for the storage tank was not operating properly. No test results have been submitted to show compliance with Stage I; (2) Due to the amount of repairs needed on the fueling dispensers, testing was required to verify compliance. No test results have been submitted to verify compliance with Stage II; (3) No records indicating that routine maintenance inspections of the Stage II vapor recovery system were performed on a daily or monthly basis. The inspection records were not maintained onsite or up-to-date; and (4) No Facility Registration and Compliance ("FRC") Form was maintained on site. A RCA was issued and then followed by a WL issued on August 2, 2007 addressing the above described deficiencies.

12. The following deficiencies observed at the Uppy's 19 facility during the June 2007 inspection have not been addressed:
 - a. Failure to perform and maintain onsite the maintenance and inspection logs and test results as required by 9 VAC 5-40-5220 F.6.j.

- b. Failure to perform and or submit test results to verify compliance with the Stage I and Stage II vapor recovery system as required by 9 VAC 5-40-5220, Sections E.1 and F.1.

13. In order to settle these violations, Uphoff Investments, LLC and Uppy's Convenience Stores, Inc. have agreed to pay a civil charge, as required in Section D of this Order. Uphoff Investments, LLC and Uppy's Convenience Stores, Inc. have completed the required testing, made repairs, and provided required documentation to DEQ addressing the violations requiring corrective action as cited in the Order.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. Code §10.1-1316(C), orders Uphoff Investments and Uppy's, and Uphoff Investments and Uppy's voluntarily agree, to perform the actions described in Appendix A of this Order. In addition, the Board orders Uphoff Investments and Uppy's, and Uphoff Investments and Uppy's voluntarily agree, to pay a civil charge of **\$18,035** 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" sent to:

**Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218**

Payment shall include the Federal Tax Identification Number for the Facilities.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Uphoff Investments and Uppy's, for good cause shown by Uphoff Investments and Uppy's, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves the violations specifically identified herein, including those matters addressed in the Notice of Violation issued to Uphoff Investments by DEQ on May 22, 2007 and the WL issued by DEQ on August 2, 2007 to Uppy's Convenience Stores, Inc. 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, Uphoff Investments and Uppy's admit the jurisdictional allegations, but neither admits nor denies the factual findings, and conclusions of law contained herein.
4. Uphoff Investments and Uppy's consent to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Uphoff Investments and Uppy's declare they have received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the State Air Pollution Control Law and they 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 Uphoff Investments and Uppy's 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. Uphoff Investments and Uppy's 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. Uphoff Investments and Uppy's shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Uphoff Investments and Uppy's 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 Regional Director within 24 hours 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.

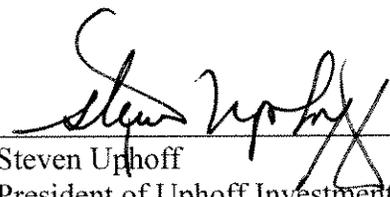
9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Uphoff Investments and Uppy's. Notwithstanding the foregoing, Uphoff Investments and Uppy's agree to be bound by any compliance date, which precedes the effective date of this Order.
11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Uphoff Investments and Uppy's. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Uphoff Investments and Uppy's from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
12. By the signature below, Uphoff Investments, LLC and Uppy's Convenience Stores, Inc. voluntarily agree to the issuance of this Order.

And it is so ORDERED this 11th day of December, 2008.



Gerard Seeley, Regional Director
Department of Environmental Quality

Uphoff Investments, LLC and Uppy's Convenience Stores, Inc. voluntarily agree to the issuance of this Order.

By: 

Steven Uphoff
President of Uphoff Investments, LLC &
Uppy's Convenience Stores, Inc.

Date: 12-8-2008

Commonwealth of Virginia
City/County of Chesterfield

the foregoing document was signed and acknowledged before me this 8th day of
December, 2008, by Steven Uphoff, who is
(name)
President of Uphoff Investments, LLC and Uppy's Convenience Stores, Inc.
(title)

Mackelle Willis Burley
Notary Public

My commission expires: 10-31-2011

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