



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

PIEDMONT REGIONAL OFFICE

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L. Preston Bryant, Jr.
Secretary of Natural Resources

David K. Paylor
Director

Gerard Seeley, Jr.
Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION SPECIAL ORDER BY CONSENT ISSUED TO MR. JESSE ALLEN WRIGHT

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §10.1-1185 and 62.1-44.15(8a) and (8d), between the State Water Control Board and Mr. Jesse Allen Wright, for the purpose of resolving certain violations of environmental 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. "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.
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. "Mr. Wright" means Mr. Jesse Allen Wright, owner of the property and the five underground storage tanks located at 3622 Nine Mile Rd, Richmond, Virginia.

7. "Property" means property that consists of a gas station and automobile service shop, formerly known as Brakefast Amoco, owned by Mr. Wright, and located at 3622 Nine Mile Rd., Richmond, Virginia.
8. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
9. "Regulation" means 9 VAC 25-580-10 *et seq.* (Underground Storage Tanks: Technical Standards and Corrective Action Requirements) relating to upgrading of existing USTs systems, registration of tanks, closure of non-compliant tanks and release detection requirements.
10. "UST" means underground storage tank as further defined in 9 VAC 25-580-10 and Va. Code § 62.1-44.34:8.
11. "UST Notification Form" means Form 7530-2, used by DEQ to register and track the USTs for proper operation, closure, and ownership purposes as further defined in 9 VAC 25-580-70.

SECTION C: Findings of Fact and Conclusions of Law

1. Mr. Wright is the owner of the Property called Brakefast Amoco, located at 3622 Nine Mile Rd., in Richmond, Virginia, and is an UST owner and/or operator within the meaning of Va. Code § 62.1-44.34:8.
2. When Mr. Wright bought the Property in 2005, there were five underground storage tanks (USTs) used to store petroleum for retail sale. The USTs are identified as follows:

Tank No.	Capacity	Content
1	6,000	Diesel
2	6,000	Gasoline
3	6,000	Gasoline
4	6,000	Gasoline
5	1,000	Kerosene

3. Because petroleum is a "regulated substance" as defined by Va. Code § 62.1-44.34:8 and 9 VAC 25-580-10, the USTs at the Property are regulated under 9 VAC 25-580-10, *et seq.*
4. On June 27, 2006, DEQ Piedmont Regional Office staff conducted a compliance inspection of the Property. Subsequently, the Department conducted a review of the Property's file and registration documents. The following violations were noted as a result:

- a. Failure to submit an amended UST Notification Form in violation of 9 VAC 25-580-70 and 9 VAC 25-580-320(1).
 - b. Failure to perform closure requirements of 9 VAC 25-580-320 and 9 VAC 25-580-330.
5. In order to resolve the violations, Mr. Wright entered in a Letter of Agreement (LOA) with DEQ on August 25, 2006, under which Mr. Wright agreed to meet the tank closure requirements of Part VII of the Regulations (9 VAC 25-580-310 through 9 VAC 25-580-350) and submit the closure report to DEQ by January 15, 2007.
 6. DEQ sent Mr. Wright a letter dated February 27, 2007, extending the deadline set in the August 25, 2006 LOA to April 17, 2007.
 7. Mr. Wright did not comply with the closure requirements by April 17, 2007.
 8. On November 15, 2007, DEQ issued Notice of Violation (NOV) Number 07-11-PRO-560 regarding the above-described violations.
 9. In December 2007, the Department spoke with Mr. Wright by telephone to discuss the resolution of the NOV.
 10. The Department has received notification from Mr. Wright that all of the tanks have been removed from the Property.
 11. On April 4, 2008, the Department received the Underground Storage Tank (UST) Closure Report was received. The Department reviewed the report and found that all of the tank closure requirements have been met.

SECTION D: Agreement and Order

1. Accordingly, the Board, by virtue of the authority granted it in Va. Code §§10.1-1184 and 62.1-44.7 orders Mr. Wright, and Mr. Wright voluntarily agrees, to pay a civil charge of **\$6,673** in settlement of the violations cited in this Order, to be paid as follows:
 - The first payment of **\$3,336.50** shall be made on or before **January 1, 2009; and**
 - The second payment of **\$3,336.50** shall be made on or before **April 1, 2009.**

Payment shall be made by check payable to the "Treasurer of Virginia", delivered to:

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

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Mr. Wright, for good cause shown by Mr. Wright, 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 Mr. Wright by DEQ on November 15, 2007. 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, Mr. Wright admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Mr. Wright 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. Mr. Wright declares he 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 he 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 Mr. Wright 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. Mr. Wright 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. Mr. Wright shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on his part. Mr. Wright shall notify the PRO Regional Director in writing when circumstances are anticipated to occur, are occurring, or

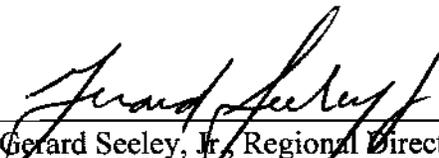
have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- 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 Mr. Wright. Notwithstanding the foregoing, Mr. Wright agrees 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 Mr. Wright. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Mr. Wright from his obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
12. By his signature below, Mr. Wright voluntarily agrees to the issuance of this Order.

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



Gerard Seeley, Jr., Regional Director
Department of Environmental Quality

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Mr. Jesse Allen Wright voluntarily agrees to the issuance of this Order.

By: Jesse Allen Wright
Jesse Allen Wright

Date: 10/15/08

Commonwealth of Virginia
City/County of Chesterfield

The foregoing document was signed and acknowledged before me this 15 day of
October, 2008, by Maria M. Uribe

Maria Uribe
Notary Public

My commission expires: MY COMMISSION EXPIRES DECEMBER 31, 2010

