



# 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. YAZAN AHMAD

#### **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 Mr. Yazan Ahmad for the purpose of resolving certain violations of environmental law and regulations.

#### **SECTION B: Definitions**

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

1. "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.
2. "VA Code" means the Code of Virginia (1950), as amended.
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. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
6. "Order" means this document, also known as a Consent Special Order.

7. "Property" means property located at 2301 North Avenue, in Richmond, Virginia which consists of a retail store, the North Avenue Food Market & Deli.
8. "Mr. Ahmad" means Mr. Yazan Ahmad, owner of the Property located at 2301 North Avenue, Richmond, 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. "SCR" means a Site Characterization Report.
11. "UST" means underground storage tank as defined in 9 VAC 25-580-10 and Virginia Code § 62.1-44.34:8.

**SECTION C: Findings of Fact and Conclusions of Law**

1. Mr. Ahmad is the owner of the Property, called North Avenue Food Market & Deli, located at 2301 North Avenue, in Richmond, Virginia and was an UST owner and/or operator within the meaning of VA Code § 62.1-44.34:8.
2. In 2004, Mr. Ahmad as owner of the Property and on-site USTs, contracted Battle Oil Company, Inc. to remove four (4) USTs that had been used to store petroleum for retail sale. The USTs are identified as follows:

Tank No.	Capacity	Content
1	4,000	petroleum
2	4,000	petroleum
3	4,000	petroleum
4	3,000	petroleum

3. Upon excavation of the USTs, contaminated soils were observed and pitting and holes were noted in the USTs. Battle Oil Company contacted Bennett and Williams, Inc., an environmental consulting firm, for assistance regarding the petroleum contaminated soils and USTs removal.
4. On April 8, 2004, Bennett and Williams, Inc. reported to DEQ that a petroleum release had occurred at the North Avenue Food Market and Deli.
5. 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.*
6. The consultants took preliminary soil tests from the excavated tank pit and found that the soil was contaminated with petroleum.

7. In April 2004, DEQ sent a letter to Mr. Ahmad requesting the submittal of an Initial Abatement Measures Report by June 28, 2004 and the submittal of a SCR by July 23, 2004.
8. On July 14, 2004, DEQ received a combination Initial Abatement Measures Report and SCR.
9. Upon evaluation of the report, DEQ requested additional measures be taken and an Addendum to the SCR be submitted by February 15, 2005.
10. On April 12, 2005, DEQ mailed a Warning Letter (WL) to Mr. Ahmad for failure to conduct the required corrective activities and for failure to provide the information in the SCR Addendum.
11. On June 29, 2005, DEQ issued a Notice of Violation (NOV) to Mr. Ahmad for the above violations.
12. On January 17, 2006, DEQ was provided a copy of the SCR Addendum.

#### **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 Mr. Ahmad, and Mr. Ahmad voluntarily agrees, to pay a civil charge of **\$1,400** within 30 days of the effective date of the Order in settlement of the violations cited in this Order. The payment shall note that it is being made pursuant to this order and shall note the Federal Identification Number for Mr. Ahmad. Payment shall be by check, certified check, money order, or cashiers check payable to "Treasurer of Virginia" and delivered to:

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

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of Mr. Ahmad, for good cause shown by Mr. Ahmad, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the NOV issued on June 29, 2005 as listed above 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 property 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, Mr. Ahmad admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Mr. Ahmad 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. Ahmad 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. Ahmad 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. Ahmad 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. Ahmad shall show that such circumstances were beyond his control and not due to a lack of good faith or diligence on his part. Mr. Ahmad 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.

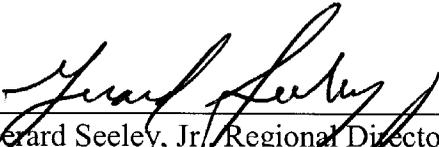
Failure to so notify the Regional Director within 24 hours of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

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 Mr. Ahmad. Notwithstanding the foregoing, Mr. Ahmad 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. Mr. Ahmad petitions the Director or his designee to terminate the Order after he has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
- b. The Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Mr. Ahmad.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Mr. Ahmad from his obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. By the signature below, Mr. Ahmad voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of September 1, 2006.

  
Gerard Seeley, Jr. Regional Director  
Department of Environmental Quality

Mr. Ahmad voluntarily agrees to the issuance of this Order.

By: Abdallah Ahmad  
Date: 6-26-06

Commonwealth of Virginia  
City/County of Richmond

The foregoing document was signed and acknowledged before me this 26<sup>th</sup> day of  
June, 2006, by Abdallah Ahmad, who is  
(name)

owner of the North Avenue Food Market & Deli and Property.

W. O. Hall  
Notary Public

My commission expires: May 31, 2008