



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
ALL AMERICAN PLAZAS, INC.
For DOSWELL ALL-AMERICAN TRAVEL PLAZA
Permit No. VA0052906**

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code §§ 10.1-1185 , 62.1-44.15(8a) and (8d), and §62.1-44.34:20 between the State Water Control Board and All American Plazas, Inc., 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. "Va. Code" means the Code of Virginia (1950), as amended.
2. "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.
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. "AAP" means All American Plazas, Inc., a corporation certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.
7. "Facility" means the Doswell All-American Travel Plaza, located in the northeast quadrant of the intersection of Interstate 95 and U.S. Route 30, at 10222 Kings Dominion Boulevard, in Hanover County, Virginia.
8. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
9. "Permit" means VPDES Permit No. VA0052906, issued to All American Plazas, Inc., which became effective February 19, 2001, and expires on February 19, 2006.
10. "NOV" means Notice of Violation.

SECTION C: Findings of Fact and Conclusions of Law

- 1) Doswell All-American Travel Plaza ("Facility") is located at 10222 Kings Dominion Boulevard in Hanover County, in the northeast quadrant of the intersection of Interstate 95 and U.S. Route 30. The Facility contains a truck fueling facility, truck service bays, truck wash, truck scales, a motel, a restaurant, and a truck parking area.
- 2) The Facility's fueling operations include 2 aboveground storage tanks ("ASTs") that together store up to 600,000 gallons of petroleum. These ASTs are subject to §9 VAC 25-91-10 *et seq.* of the Facility and Aboveground Storage Tank Regulations.
- 3) Stormwater from the fueling and AST areas discharges to an oil-water separator that then discharges to a constructed wetland stormwater management facility ("SWMF"). The stormwater from the SWMF is discharged to an Unnamed Tributary, which flows approximately 2 miles until it reaches the North Anna River. Stormwater discharges from the Facility to the Unnamed Tributary are permitted by Virginia Pollutant Discharge Elimination System ("VPDES") Permit No. VA0052906.
- 4) On September 3, 2004, DEQ staff conducted an inspection of the ASTs on the site and a records review. The following violations were noted and reported to the facility in a letter dated March 22, 2005:
 - a. AAP failed to maintain the inventory of the two ASTs by tank rather than by product, as required by 9 VAC 25-91-130.B.1(c) of the AST Regulation;
 - b. The Oil Discharge Contingency Plan was not updated by the due date of October 7, 2004, as required by Va. Code §62.1-44.34:15.B and 9 VAC 25-91-170.F of the AST Regulation;

- c. AAP did not have the secondary containment certified by a professional engineer by June 30, 1998, as required by 9 VAC 25-91-130.B.2 of the AST Regulation;
 - d. Annual calibration of the AST gauges was not performed, as required by 9 VAC 25-91-130.B.3(d) of the AST Regulation;
 - e. Records that AST piping was pressure tested every 5 years at minimum were not maintained at the facility, as required by 9 VAC 25-91-150.A.2 of the AST Regulation;
 - f. Records of weekly inspections were not maintained at the facility, as required by 9 VAC 25-91-130.B5 of the AST Regulation;
 - g. Records of personnel training were not maintained at the facility, as required by 9 VAC 25-91-150.A.6 of the AST Regulation;
 - h. The facility did not provide documentation of financial responsibility to DEQ, as required by Va. Code 62.1-44.34:16.D. and 9 VAC 25-640-20.
- 5) On June 15, 2004, DEQ conducted an inspection of the Facility and confirmed a report of petroleum product observed within the constructed wetland SWMF. Staff revisited the site on August 10, 2004 and April 6, 2005 and again observed petroleum product within the SWMF. On May 13, 2005, July 7, 2005, and September 1 and 2, 2005, Staff observed petroleum product discharging from the SWMF into the Unknown Tributary to the North Anna River. Va. Code § 62.1-44:34.18.A prohibits the discharge of oil into or upon State waters, lands, or storm drain systems within the Commonwealth.
- 6) AAP did not implement all of the initial abatement measures, submit the Initial Abatement Measures Report, or submit a Site Characterization Report in a timely manner, as requested by DEQ. AAP has not conclusively identified or eliminated the source of the petroleum product to date. Va. Code § 62.1-44:34:18.B. requires facilities to take actions deemed necessary in the judgment of the Board to contain and clean up a petroleum discharge or the threat of such a discharge.
- 7) On September 13, 2005, DEQ staff conducted an inspection to determine AAP's compliance with the VPDES Permit. DEQ noted the following violations during the inspection and subsequent records review:
- a. The "Fox Diverter" valve of the oil/water separator was stuck in a position that caused wastewater to continuously bypass the oil/water separator. The Operation and Maintenance Manual, which is incorporated by reference into Part I.C.2 of the VPDES Permit, requires that the operator is able to switch the valve on and off as conditions require.
 - b. The application for reissuance of the VPDES Permit was not received before the August 23, 2005 due date, as required by Part II.M of the VPDES Permit and 9 VAC 25-31-100.D of the VPDES Permit Regulation.
- 8) DEQ issued a Notice of Violation (NOV No. 05-11-PRO-201) to AAP on November 1, 2005 for the violations described in Paragraphs 4 through 7, above.
- 9) A meeting was held between AAP representatives and DEQ staff on November 17, 2005. AAP provided the documents necessary to fulfill the requirements described in

paragraphs 4a, 4b, 4c, 4e, 4f, 4g, and 4h, above. AAP provided a compliance schedule for the outstanding requirements described in paragraph 4d, which have since been completed. AAP indicated that the entire oil/water separator would be replaced during the first week of December 2005, and indicated that it believed that the faulty oil/water separator was the source of the petroleum contamination. The oil/water separator was replaced on-schedule after the meeting. AAP and DEQ also discussed the facility's incorrect installation of a float switch that was installed to automatically drain stormwater from the diked AST area and discharge it to the oil/water separator. AAP agreed to replace the float switch with an alternative acceptable to DEQ.

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) and §62.1-44.34:20, orders AAP, and AAP agrees, to perform the actions described in Appendix A of this Order. In addition, the Board orders AAP, and AAP voluntarily agrees, to pay a civil charge of \$15,000 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 AAP. Payment shall be by check, certified check, money order, or cashier's check payable to "Treasurer of Virginia" and sent to:

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

SECTION E: Administrative Provisions

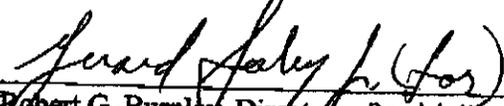
1. The Board may modify, rewrite, or amend the Order with the consent of AAP, for good cause shown by the AAP, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the Notice of Violation issued to AAP by DEQ on November 1, 2005. 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, AAP admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.

4. AAP 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. AAP declares it 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 it 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 AAP 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. AAP 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. AAP shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. AAP 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.

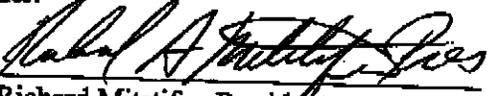
Failure to so notify the Regional Director within 24 hours of learning of any condition above, which AAP intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

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 the AAP. Notwithstanding the foregoing, AAP 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. AAP petitions the Director or his designee to terminate the Order after it 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 notice to the AAP.Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve AAP 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, AAP voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 16th day of March, 2006.


~~Robert G. Burnley, Director~~ David K. Paylor, Director
Department of Environmental Quality

AAP voluntarily agrees to the issuance of this Order.

By: 
Richard Mitstifer, President

Date: Jan 12, 2006

Commonwealth/State of Pennsylvania
City/County of Berks

The foregoing document was signed and acknowledged before me this 12 day of January, 2006, by Richard A. Mitstifer, who is
(name)

President of All American Plazas, Inc., on behalf of All American Plazas, Inc.
(title)

Catherine M. Galena
Notary Public

My commission expires: 11-22-2008

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Catherine M. Galena, Notary Public
Bethel Twp., Berks County
My Commission Expires Nov. 22, 2008
Member, Pennsylvania Association Of Notaries

APPENDIX A

1. **No later than 15 days after the effective date of this Order**, AAP shall ensure that booms and all other protection necessary to prevent petroleum products from reaching State waters ("Protections") are present. AAP shall inspect the Protections weekly and replace or otherwise maintain them in good working order. This requirement shall remain in effect for a period of 180 consecutive days after replacement of the oil water separator, or until the source of any petroleum product observed in the SWMF or State Waters during this 180-day period is eliminated, whichever timeframe is longer. Nothing in this paragraph shall be construed to relieve AAP of any requirement of its VPDES permit, the VPDES Permit Regulations or AST Regulations.
2. **No later than February 1, 2006**, AAP shall submit a report regarding the replacement of the oil/water separator. The report shall include discussions of excavation and installation processes, observations during excavation, a discussion of the progress of the petroleum source identification, photographs taken during excavation, and analytical results of any soil tests.
3. If petroleum product is observed in the SWMF or State waters at any time within 180 days after the date of replacement of the oil water separator, AAP shall notify DEQ by phone and follow-up facsimile **within 24 hours** of the observation and shall immediately identify and eliminate the petroleum product source. If identification or elimination takes longer than 15 days after the observation, AAP shall submit an approvable detailed plan and schedule to identify and eliminate the source of the petroleum. The plan and schedule shall be submitted **no later than 30 days after the observation of petroleum**. The plan and schedule shall be implemented immediately upon written approval by DEQ.
 - a) If an approved plan and schedule are required, monthly progress reports shall be submitted to DEQ **by the 10th of each month** for the preceding month. The reports shall detail all action (or inaction) taken during that month to determine the petroleum source. The report shall also include a comparison of actual progress to date versus scheduled progress called for in the approved plan.
5. **No later than February 1, 2006**, AAP shall submit to DEQ a written description of procedures that will be followed to ensure that the diked AST area is drained properly and will not overload the oil/water separator. All necessary equipment shall be installed no later than **March 1, 2006**.

6. All requirements of Appendix A of this Order shall be submitted to:

Allison C. Dunaway
Enforcement Specialist, Sr.
VA DEQ – Piedmont Regional Office
4949-A Cox Road
Glen Allen, Virginia 23060
Phone: (804) 527-5015
Fax: (804) 527-5106