



DEQ-VALLEY

FEB 02 2005

COMMONWEALTH of VIRGINIA  
DEPARTMENT OF ENVIRONMENTAL QUALITY

TO: \_\_\_\_\_  
FILE: \_\_\_\_\_

W. Tayloe Murphy, Jr.  
Secretary of Natural Resources

Valley Regional Office

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Robert G. Burnley  
Director

R. Bradley Chewning, P.E.  
Valley Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION  
A SPECIAL ORDER ISSUED BY CONSENT TO  
CURTIS HANSEN

UST Facility at 601 North Royal Avenue, Front Royal, Warren County, VA  
Facility Identification No. 6002933

**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 Curtis Hansen to resolve certain violations of the State Water Control Law and regulations at Mr. Hansen's Underground Storage Tank Facility located at 601 North Royal Avenue, Front Royal, Warren County, 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. "Mr. Hansen" means Curtis Hansen, 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" means the retail gasoline station and USTs owned by Mr. Hansen located at 601 North Royal Avenue, Front Royal, Warren County, Virginia. The USTs are further identified as:

<b>Tank number</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>
<b>Capacity</b>	6000	6000	6000	550	700
<b>Contents</b>	gasoline	gasoline	gasoline	used oil	used oil

8. "Order" means this document, also known as a Consent Special Order.
9. "Regional Office" means the Valley Regional Office of the Department.
10. "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.
11. "Form 7530" 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.
12. "Facility Operator" means Mr. Hansen's tenant, Mr. William Leonard. Mr. Leonard leased the Facility from Mr. Hansen from November 1988 through 2003.

**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 Facility meet final, specific performance requirements for leak detection, spill and overflow protection, and corrosion protection by December 22, 1998. The Regulation also includes requirements that UST owners notify the Department of the number and type of USTs they have.
2. Mr. Hansen is the owner of the USTs removed from this Facility on February 19, 2004, within the meaning of Virginia Code § 62.1-44.34:8.
3. The Regulations at 9 VAC 25-580-50 and 9 VAC 25-580-60 require UST systems to be constructed of a non-corrosive material, such as fiberglass, or to be equipped with corrosion protection. All UST systems constructed of steel are required to have corrosion protection. UST systems installed before December 22, 1998 are required to be upgraded to meet certain performance standards, including corrosion protection.
4. The Regulations at 9 VAC 25-580-90, require owners and operators to conduct tests on the corrosion protection systems installed on UST systems to demonstrate that they are

adequately and continually protected from corrosion.

5. On the following dates: a) March 21, 1994; b) September 10, 1997; c) September 1, 1999 and November 29, 2001, the Facility Operator submitted Form 7530s to the Department reflecting that UST numbers 1, 2, and 3 were constructed of fiberglass. With regard to the associated piping for UST numbers 1, 2, and 3, the registration forms dated March 21, 1994, September 10, 1997, and September 1, 1999, all showed that the piping was constructed of fiberglass. However, the registration form dated November 29, 2001, showed that the associated piping for UST numbers 1, 2, and 3 were constructed of galvanized steel.
6. With regard to UST number 4, the registration forms dated March 21, 1994, September 10, 1997, September 1, 1999, and November 29, 2001, each show different construction materials for UST number 4 and its associated piping. Specifically, the Form 7530 for UST number 4 dated March 21, 1994, reflect that both the UST number 4 and its associated piping were constructed of cathodically protected steel. A subsequent Form 7530 submitted on September 10, 1997, again shows that UST number 4 was constructed of cathodically protected steel. However, this registration form does not show what materials were used to construct UST number 4's associated piping. Another Form 7530, submitted in September 1, 1999, indicates that UST number 4 was constructed of bare steel, in apparent violation of 9 VAC 25-580-50 and 9 VAC 25-580-60. However, in this Form 7530, the piping associated with UST number 4 was constructed of cathodically protected steel.
7. On August 14, 2001, the Department inspected the Facility. During this inspection, the Department obtained information from the Facility Operator that was inconsistent with the information contained in the previous registration forms. The Facility Operator informed the Department that UST numbers 1, 2, and 3 and their associated piping were constructed of fiberglass. Similarly, he informed the Department that UST number 4 and its associated piping were constructed of cathodically protected steel.
8. On November 28, 2001, a test was performed on the corrosion protection system for UST number 4 and its associated piping. The test results indicated that the UST and its associated piping were not continuously protected from corrosion in violation of 9 VAC 25-580-90.
9. On January 9, 2002, another test was performed on the corrosion protection system for UST number 4 and its associated piping after repairs were made to the system. The test results indicated that both the UST and its associated piping were adequately protected from corrosion. Receipt of this test report confirmed both the material of construction for UST number 4 and its associated piping and compliance with 9 VAC 25-580-90 relating to corrosion protection.
10. On February 19, 2004, contractors hired by Mr. Hanson removed the USTs at the Facility. Although the Department had previously only been notified of the existence of four USTs

at the Facility, another UST, identified as UST number 5, was discovered during the removal process. UST number 5, a 700-gallon tank storing used oil, was constructed of bare steel and lacked corrosion protection in apparent violation of 9 VAC 25-580-50 and 9 VAC 25-580-60.

11. On July 12, 2004, Mr. Hanson submitted a Form 7530, dated July 1, 2004, along with a report of the activities performed during the removal of the USTs at the Facility ("Closure Report"). The Closure Report, identifies a release of petroleum from at least one of the USTs at the Facility. The Department assigned this reported release a Pollution Complaint case number, PC04-6097. The closure report identified UST numbers 1, 2, 3 & 5 as being constructed of bare steel without corrosion protection.
12. Mr. Hanson is currently remediating the petroleum release under a Corrective Action Plan approved by the Department.
13. Among other things, the May 5, 2004, Site Characterization Report submitted by Mr. Hansen's contractor, confirmed that all the USTs and their associated piping were constructed of bare steel and lacked corrosion protection in apparent violation of 9 VAC 25-580-50 and 9 VAC 25-580-60.
14. On July 29, 2004, the Department inspected the Facility and verified that the piping associated with USTs Number 1 through 5 were constructed of bare steel and lacked cathodic protection in apparent violation of 9 VAC 25-580-50 and 9 VAC 25-580-60.
15. Based on information received in the Closure Report, the most recent Form 7530, facility inspections and the Site Characterization Report, DEQ staff issued a Notice of Violation (NOV) No. 04-08-VRO-3 to Mr. Hansen on August 16, 2004, for these apparent violations of the Regulation. The NOV requested that Mr. Hansen respond to the Department by August 26, 2004. The apparent violations noted in the NOV are as follows:

<b>Apparent Violation</b>	<b>UST 1 6000</b>	<b>UST 2 6000</b>	<b>UST 3 6000</b>	<b>UST 4 550</b>
9 VAC 25-580-50 and -60 Failure to protect the UST from corrosion	X	X	X	
9 VAC 25-580-70 Failure to properly notify the Department regarding the installation/construction of the tanks and associated piping	X	X	X	X
9 VAC 25-580-90 Failure to ensure that all steel UST systems are continually protected from corrosion				X

16. On September 15, 2004, DEQ staff met with Mr. Hansen to discuss possible remedies to the situation including a corrective action plan and the settlement of past violations.
17. As a result of that meeting, Mr. Hansen agreed to resolve the apparent violations set forth in Paragraph 15, above, through this Consent Order. Among other things, Mr. Hansen has agreed to implement measures to cleanup the petroleum release through a Corrective Action Plan ("CAP") that has been approved by the Department.

**18. 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. Hansen and Mr. Hansen agrees that:

1. To remedy the violations described above and bring the Facility into compliance with the Regulation, Mr. Hansen shall perform the actions described in Appendix A to the Order.
2. Mr. Hansen shall pay a civil charge of \$6,000.00, within 30 days of 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  
Post Office Box 10150  
Richmond, Virginia 23240

3. Mr. Hansen shall also include his Social Security 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 Mr. Hansen, for good cause shown by Mr. Hansen, 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 Facility 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. Hansen admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Mr. Hansen consents to venue in the Circuit Court of Warren County for any civil action taken to enforce the terms of this Order.
5. Mr. Hansen declares he 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 he 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 Mr. Hansen 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. Mr. Hansen 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. Mr. Hansen must show that such circumstances resulting in noncompliance were beyond his control and not due to a lack of good faith or diligence on his part. Mr. Hansen 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.

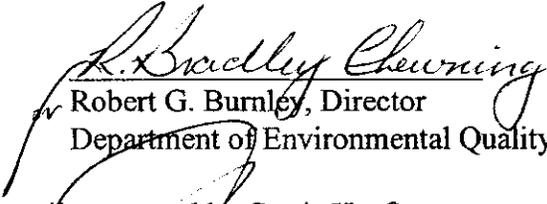
Failure to so notify the Director of the Regional Office in writing within 10 days of learning of any condition listed above, which Mr. Hansen intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim of inability to comply with a requirement of this Order.

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 Mr. Hansen. Notwithstanding the foregoing, Mr. Hansen 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. Hansen petitions the Regional Director to terminate the Order after he 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 Mr. Hansen

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

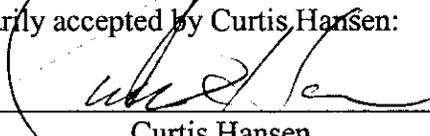
12. By his signature below, Mr. Hansen voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 12 day of July, 2005.

  
Robert G. Burnley, Director  
Department of Environmental Quality

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

Date: Jan 30 05

By:   
Curtis Hansen

Commonwealth of Virginia, City/County of Fauquier

The foregoing instrument was acknowledged before me this 30<sup>th</sup> day of January 2005, by

Curtis R. Hansen  
(name)

103107  
Date

  
Notary Public

My commission expires:

**Appendix A**  
**Curtis Hansen**  
**UST Facility at 601 North Royal Avenue, Front Royal, Warren County, VA**

For PC04-6097, Mr. Hansen shall implement the approved CAP to address remediation and monitoring of the confirmed release of petroleum on site and provide CAP monitoring reports as specified by DEQ.