COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

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Director

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Regional Director

STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION
A SPECIAL ORDER BY CONSENT
ISSUED TO
SPARKY'S QUICK MART

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code § 10.1-1307.D, 10.1-1309, and 10.1-1184, and § 10.1-1316.C, between the State Air Pollution Control Board and Sparky's Quick Mart, for the purpose of resolving certain violations of State Air Pollution Control Laws 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.

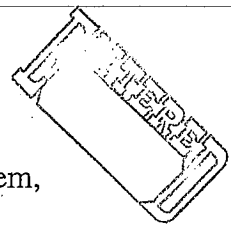
2. "Board" means the State Air Pollution Control Board, a permanent collegial body of the Commonwealth of Virginia as described in Code §§ 10.1-1301 and 10.1-1184

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 Order.

6. "Sparky's Quick Mart" means the company certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.



7. "Facility" means the structure at 1607 East Main Street located in Salem, Virginia.

8. "WCRO" means the West Central Regional Office of DEQ, located in Roanoke, Virginia.

9. "O&M" means operations and maintenance.

SECTION C: Findings of Fact and Conclusions of Law

1. Sparky's Quick Mart owns and operates a facility in Salem, Virginia. This facility is the subject of the Emission Standards for Petroleum Liquid Storage and Transfer Operations, which states that gasoline transfers into underground storage tanks, within the City of Salem, must utilize Stage I Vapor Recovery Systems.

2. DEQ has noted numerous apparent violations of the Air Pollution Control Law and Regulations. These problems, noted in a Notice of Violation issued by DEQ on December 2, 2002, include:

   A. On October 24, 2002, DEQ staff observed a Trimac DSI petroleum transport truck unloading gasoline at the Sparky's Quick Mart without utilizing Vapor Recovery Control equipment. Staff inspected the facility and observed that the Vapor Recovery Control equipment was installed, but that the driver of the truck had failed to utilize it. Staff informed both the driver and the store manager of the apparent violation and requested that the equipment be utilized for any further shipments received.

   B. On November 15, 2002, DEQ staff observed a Conny Oil, Inc. petroleum transport truck unloading gasoline at the Sparky's Quick Mart without utilizing Vapor Recovery Control equipment. Staff informed both the driver and the store manager of the apparent violation and stated that enforcement would ensue.

3. Sparky's Quick Mart has stated that the petroleum transport companies have been informed of the requirements for Vapor Recovery and that the control equipment will be used in the future.

SECTION D: Agreement and Order

Accordingly the State Air Pollution Control Board, by virtue of the authority granted it pursuant to Va. Code §§10.1-1309 and 10.1-1316, and after consideration of the factors set forth in Va. Code § 10.1-1186.2, orders Sparky's Quick Mart, and Sparky's Quick Mart agrees, to perform the actions described below and in Appendices A and B of this Order. In addition, the Board orders Sparky's Quick Mart, and Sparky's Quick Mart voluntarily agrees to pay a civil charge of **$1,960.00** in settlement of the violations cited in this Order.

$1,960.00 of this civil charge shall be paid within 30 days of the effective date of this Order. Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia", delivered to:

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

The payment shall include Sparky's Quick Mart's Federal ID number and shall state that it is being tendered in payment of the civil charges assessed under this Order.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Sparky's Quick Mart, for good cause shown by Sparky's Quick Mart, 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 Sparky's Quick Mart by DEQ on December 2, 2002. 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, Sparky's Quick Mart admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.

4. Sparky's Quick Mart 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. Sparky's Quick Mart declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 9-6.14:1 *et seq.*, and the Air Pollution 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 Sparky's Quick Mart 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. Sparky's Quick Mart 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. Sparky's Quick Mart shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Sparky's Quick Mart 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 Sparky's Quick Mart. Notwithstanding the foregoing, Sparky's Quick Mart 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 Sparky's Quick

Mart. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Sparky's Quick Mart 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, Sparky's Quick Mart voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 24th day of JANUARY, 2003.

Steven A. Dietrich for
Robert G. Burnley, Director
Department of Environmental Quality

Sparky's Quick Mart voluntarily agrees to the issuance of this Order.

By: [signature]

Date: 1/24/03

Commonwealth of Virginia
City/~~County~~ of Roanoke

The foregoing document was signed and acknowledged before me this 24 day of January, 2003, by Nilesh Patel (name), who is Manager (title) of Sparky's Quick Mart, on behalf of the Corporation.

Mary S. Monroe
Notary Public

My commission expires: June 30, 2003.

APPENDIX A

Sparky's Quick Mart shall:

1. From the effective date of the Order, ensure that all shipments of gasoline received shall be unloaded using the Vapor Recovery Control equipment at the facility.