



# *COMMONWEALTH of VIRGINIA*

*DEPARTMENT OF ENVIRONMENTAL QUALITY*

VALLEY REGIONAL OFFICE

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W. Tayloe Murphy, Jr.  
Secretary of Natural Resources

Robert G. Burnley  
Director

R. Bradley Chewning  
Regional Director

## **STATE WATER CONTROL BOARD ENFORCEMENT ACTION A SPECIAL ORDER BY CONSENT ISSUED TO:**

**Three B's, Inc.  
(Gainesboro Market BP Station)**

UST Facility at 4780 N. Frederick Pike,  
Winchester, Virginia  
Facility Identification No. 6-006400

### **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 Three B's, Inc. to resolve certain violations of the State Water Control Law and regulations at Three B's, Inc.'s Underground Storage Tank Facility located at the Gainesboro Market BP Station, 4780 N. Frederick Pike, Winchester, 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: "[A]ny one or combination of tanks (including underground pipes connected thereto) that is used to contain an accumulation of regulated substances, and the volume of which (including the volume of underground pipes connected thereto) is 10% or more beneath the surface of the ground."
4. "Three B's" means Three B's, Inc., a Virginia corporation and the UST owner and operator 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 UST fueling station and market owned and operated by Three B's and located at 4780 N. Frederick Pike, Winchester, Va., also known as the Gainesboro Market BP Station. The facility consists of four 10,000-gallon steel-coated underground storage tanks.
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.

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

1. Three B's is the owner and operator of the USTs at the Gainesville Market facility within the meaning of Virginia Code § 62.1-44.34:8.
2. An inspection of the facility on May 5, 2003 revealed several compliance deficiencies, resulting in a Warning Letter being issued on May 16, 2003.
3. Subsequently, a Letter of Agreement (LOA), dated October 30, 2003, was executed between Three B's and DEQ, requiring Three B's to submit all outstanding documentation and forms indicating full compliance, as set out in the LOA, by February 2, 2004. Most, but not all, terms in the LOA were completed.
4. Thereafter, a Notice of Violation (NOV) was issued to Three B's by DEQ on April 27, 2004 noting several outstanding deficiencies at the facility:
  - a. DEQ was not in receipt of an amended notification form (Form 7530-2) to correct errors on information previously submitted and registered with DEQ, in violation of 9 VAC 25-580-70.

- b. Proper testing of the cathodic protection systems installed on the USTs had not been performed, in violation of 9 VAC 25-580-90.
  - c. Piping associated with the USTs was not shown to be protected from corrosion, in violation of 9 VAC 25-580-50.
  - d. Acceptable Financial Responsibility documentation had not been submitted to DEQ, in violation of 9 VAC 25-590-10 et seq.; and
  - e. Complete documentation demonstrating compliance with the UST regulations had not been submitted to DEQ, in violation of 9 VAC 25-580-120.
5. Three B's submitted on May 6, 2004 to DEQ a contractor's report detailing that the contractor had installed an impressed current cathodic protection system at the facility on April 25, 2004.
  6. Three B's executive representative, Mr. Coy Bowling, met with DEQ officials on May 25, 2004 to discuss the NOV and the alleged outstanding violations listed above. Mr. Bowling presented DEQ with documentation that the appropriate financial responsibility forms had been timely provided to DEQ. DEQ deemed Three B's to be in substantial compliance with this requirement.
  7. At this enforcement meeting, Mr. Bowling was informed that DEQ would propose to settle the violations contained in paragraph 4 above through this Order for the violations not completed by February 2, 2004, in accordance with the terms of the LOA dated October 30, 2003. Mr. Bowling was also informed that this Order would include a civil penalty in addition to the completion of corrective actions detailed in **Appendix A** of this Order, with such corrective actions to be completed by July 26, 2004.

#### **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 Three B's and Three B's agrees that:

1. To remedy the alleged violations described above and bring the Facility into compliance with the Regulation, Three B's shall perform the actions described in **Appendix A** of this Order.
2. Three B's shall pay a civil charge of \$1,300.00, within 30 days of the effective date of the Order. The effective date of this Order shall be the date that it is signed by the Director of DEQ, after public notice and approval by the Board. 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. Three B's shall also include its Federal Identification 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 Three B's, for good cause shown by Three B's, 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, Three B's admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Three B's 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. Three B's declares it 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 it 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 Three B's 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. Three B's 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. Three B's must show that such circumstances resulting in noncompliance were beyond its control and not due to a lack of good faith or diligence on its part. Three B's 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.

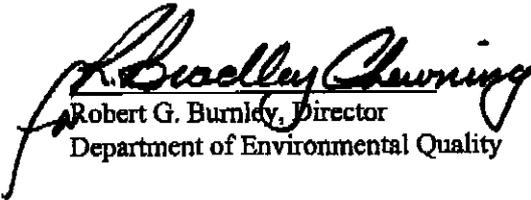
Failure to so notify the Director of the Regional Office in writing within 10 days of learning of any condition listed above, which Three B's intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim of inability to comply with a requirement of this Order.

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 Three B's. Notwithstanding the foregoing, Three B's 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. Three B's petitions the Director or his designee to terminate the Order after it has completed all requirements of the Order and the Director or his designee approves the termination of the Order; or the Director has determined that Three B's has satisfied all the requirements of the Order is a "case decision" within the meaning of the Virginia Administrative Process Act; or
  - b. The Director or the Board may terminate this Order in his or its whole discretion upon 30 days' written notice to Three B's.

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

12. By its signature below, Three B's voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of Dec 6, 2004.

  
Robert G. Burnley, Director  
Department of Environmental Quality

The terms and conditions of the Order are voluntarily accepted by Three B's:

Date: 7/29/04 By: Coy Bowling  
Title: Pres.

Commonwealth of Virginia, City/County of Roanoke

The foregoing instrument was acknowledged before me this 29 day of July, 2004, by

Coy Bowling, who is PRESIDENT of Three B's, on behalf of the Corporation.

April 30, 2005  
Date my commission expires

  
Notary Public

**Appendix A**  
**Three B's, Inc. (Gainesboro Market BP Station)**  
**UST Facility at 4780 North Frederick Pike, Winchester, VA**

**Corrective Action.** Three B's shall complete a piping closure assessment for the metallic piping runs associated with USTs #s 1 through 4, and in accordance with 9 VAC 25-580-320 and 9 VAC 25-580-330, by July 26, 2004. Three B's shall submit the following outstanding documents to DEQ no later than August 26, 2004:

1. Completed closure notification form, Form 7530-2;
2. Documentation of completed soil sample analysis; and
3. A site map of the facility.