



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY VALLEY REGIONAL OFFICE

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STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO SIRRAH, LLC FOR HUNTER HILL FOOD MART Facility ID No.: 6011456 P.C. No.: 2015-6132

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and Sirrah, LLC, for the purpose of resolving certain violations of the State Water Control Law and the applicable regulations.

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 citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
2. "Cathodic protection" is a technique to prevent corrosion of a metal surface by making that surface the cathode of an electrochemical cell. For example, a tank system can be cathodically protected through the application of either galvanic anodes or impressed current.

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, as described in Va. Code § 10.1-1185.
5. “Facility” means the physical location where the UST system is installed and operated, known as Hunter Hill Food Mart, owned and operated by Sirrah, LLC, and located at 889 N. Lee Highway in Lexington, Virginia. The Facility’s is further identified by UST Facility ID# 6011456.
6. “Notice of Violation” or “NOV” means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
7. “Operator” means any person in control of, or having responsibility for, the daily operation of the UST system as defined in Va. Code § 62.1-44.34:8 and 9 VAC 25-580-10.
8. “Order” means this document, also known as a “Consent Order” or “Order by Consent,” a type of Special Order under the State Water Control Law.
9. “Owner” means any person who owns an UST system used for storage, use, or dispensing of regulated substances as defined in Va. Code § 62.1-44.34:8 and 9 VAC 25-580-10.
10. “Person” means an individual, trust, firm, joint stock company, corporation, including a government corporation, partnership, association, any state or agency thereof, municipality, county, town, commission, political subdivision of a state, any interstate body, consortium, joint venture, commercial entity, the government of the United States or any unit or agency thereof.
11. “Regulated Substance” means an element, compound, mixture, solution or substance that, when released into the environment, may present substantial danger to the public health or welfare, or the environment, as defined in Va. Code § 62.1-44.34:8 and 9 VAC 25-580-10.
12. “Regulations” means the Underground Storage Tanks: Technical Standards and Corrective Action Requirements, 9 VAC 25-580-10 *et seq.*
13. “Release detection” means determining whether a release of a regulated substance has occurred from the UST system into the environment or into the interstitial space between the UST system and its secondary barrier or secondary containment around it.
14. “Sirrah” means Sirrah, LLC, a limited liability company authorized to do business in Virginia, and its members, affiliates, partners, and subsidiaries. Sirrah is a “person” within the meaning of Va. Code § 62.1-44.3.

15. “State Water Control Law” means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code. Article 9 (Va. Code §§ 62.1-44.34:8 through 62.1-44.34:9) of the State Water Control Law addresses Storage Tanks.
16. “Underground Storage Tank” or “UST” means any 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 as defined in Va. Code § 62.1-44.34:8 and 9 VAC 25-580-10.
17. “Va. Code” means the Code of Virginia (1950), as amended.
18. “VAC” means the Virginia Administrative Code.
19. “VRO” means the Valley Regional Office of DEQ, located in Harrisonburg, Virginia.

SECTION C: Findings of Fact and Conclusions of Law

1. Sirrah is the owner and operator of the Facility. Sirrah stores a regulated substance in the form of gasoline and diesel fuel in USTs at the Facility.
2. On March 19, 2015, Department staff inspected the Facility and conducted a file review of Facility records to evaluate Sirrah’s compliance with the requirements of the State Water Control Law and the Regulations. At that time, there were three USTs at the Facility: one 10,000 gallon regular gasoline UST, one 10,000 gallon premium gasoline UST and one 6,000 gallon diesel UST. DEQ staff observed the following:
 - a. There was no evidence that release detection had been conducted on the UST systems.
 - b. Release detection records for tank numbers 1, 2, and 3 were not immediately available for inspection or at a readily available alternative site, and were not made available upon request.
3. On May 12, 2015, DEQ staff received information from Sirrah that water intrusion had been observed in UST #2 (Premium) more than a week earlier.
4. 9 VAC 25-580-150 requires that all UST system owners and operators must maintain records in accordance with 9 VAC 25-580-120.
5. 9 VAC 25-580-180 requires that all UST owners and operators must report all releases or suspected releases to the Board within 24 hours of the discovery.
6. On May 27, 2015, the Department issued Notice of Violation No. 15-05-VRO-003 to Sirrah for violations listed in paragraphs C(2) through C(5), above.

7. On May 29, 2015, Sirrah submitted a written response to the NOV, including potential UST replacement at the Facility.
8. On June 24, 2015, DEQ staff sent Sirrah a Return to Compliance letter for the submission of requested leak detection records.
9. On July 13, 2015, Sirrah's consultant submitted a Site Characterization Report (SCR). In summary, the report recommends additional monitoring wells due to the presence of a Regulated Substance in Monitor Well 1 (MW-1).
10. On July 17, 2015, DEQ staff requested Sirrah to submit a SCR Addendum (SCRA) in an effort to complete a characterization of the Facility.
11. On September 8, 2015, DEQ received the SCRA and after review, DEQ requested a second addendum be submitted by December 23, 2015.
12. On November 24, 2015, DEQ received email correspondence from Sirrah's consultant indicating that the damaged UST was to be removed beginning December 7, 2015.
13. On January 19, 2016 and January 20, 2016, Sirrah completed removal of the existing three USTs at the Facility. Sirrah installed two new USTs at the Facility.
14. Sirrah submitted documentation on June 24, 2015 to DEQ staff, and DEQ staff verified that the record violations as described in paragraph C(2) were corrected.
15. Based on the results of the March 19, 2015 inspection, and the documentation submitted on July 13, 2015, September 8, 2015, and November 24, 2015, the Board concludes that Sirrah has violated 9 VAC 25-580-180 as described in paragraphs C(2), C(3), and C(6), above.
16. In order for Sirrah to complete its return to compliance, DEQ staff and representatives of Sirrah have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Sirrah, and Sirrah agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$6,183.50 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Sirrah shall include its Federal Employer Identification Number (FEIN) 65-1284043 with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Petroleum Storage Tank Fund (VPSTF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Sirrah shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Sirrah for good cause shown by Sirrah, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV No. 15-05-VRO-003 dated May 27, 2015. 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; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Sirrah admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Sirrah 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. Sirrah declares it has received fair and due process under the Administrative Process Act 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 modify, rewrite, amend, or enforce this Order.
6. Failure by Sirrah 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. Sirrah 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 unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Sirrah shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Sirrah shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days 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 verbally within 24 hours and in writing within three business days, 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 and any 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 Sirrah. Nevertheless, Sirrah 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. The Director or his designee terminates the Order after Sirrah has completed all of the requirements of the Order;
 - b. Sirrah 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

- c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Sirrah.

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

- 12. Any plans, reports, schedules or specifications attached hereto or submitted by Sirrah and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
- 13. The undersigned representative of Sirrah certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Sirrah to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Sirrah.
- 14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
- 15. By its signature below, Sirrah voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2016.

Amy T. Owens, Regional Director
Department of Environmental Quality

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Sirrah, LLC voluntarily agrees to the issuance of this Order.

Date: 2/10/16 By: [Signature], Managing Partner
(Person) (Title)
Sirrah, LLC

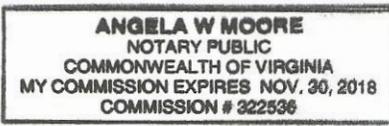
Commonwealth of Virginia
City/County of Rockbridge

The foregoing document was signed and acknowledged before me this 10th day of Feb., 2016, by JASON F. HARRIS who is MANAGING PARTNER of Sirrah, LLC, on behalf of the company.

[Signature]
Notary Public
322536
Registration No.

My commission expires: 11/30/2018

Notary seal:



APPENDIX A SCHEDULE OF COMPLIANCE

1. Tank Removal and Replacement

- a. By March 30, 2016, Sirrah shall submit the amended SCR, to include a Corrective Action Plan (CAP) and schedule for continued remediation and site cleanup. Upon DEQ approval of the CAP, Sirrah shall begin implementation of the CAP in accordance with the schedule contained therein. Any changes to the approved CAP or schedule shall not be initiated without advance notice to and approval by DEQ. Sirrah shall complete the CAP in accordance with its terms.

2. DEQ Contact

Unless otherwise specified in this Order, Sirrah shall submit all requirements of Appendix A of this Order to:

Tiffany R. Severs
Enforcement Specialist Senior
VA DEQ –Valley Regional Office
PO Box 3000, Harrisonburg, VA 22801
540-574-7859
540-574-7878
tiffany.severs@deq.virginia.gov