COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
NORTHERN REGIONAL OFFICE
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Molly Joseph Ward
Secretary of Natural Resources

David K. Paylor
Director

Thomas A. Faha
Regional Director

STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
NOVA PETROLEUM SUPPLIERS, LLC
AND
DOGWOOD PETROLEUM REALTY, LLC
FOR
SHELL # 6117
Facility ID No. 3019162
&
SHELL #6136
Facility ID No. 3014321
&
SHELL # 8500
Facility ID No. 3014273

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 NOVA Petroleum Suppliers, LLC and Dogwood Petroleum Realty, 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. "CSLD" means Continuous Statistical Leak Detection (CSLD) a certified leak-testing technology used by with Veeder-Root equipment to monitor fuel, height and temperatures automatically.

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. "Dogwood Petroleum" means Dogwood Petroleum Realty, LLC, a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Dogwood Petroleum Realty, LLC, is a "person" who owns Facilities #1 and #2.

6. "Facility #1" means the physical location where the UST and/or UST system is installed and/or operated, known as Shell # 6117 located at 6117 Franconia Road, Alexandria, Virginia. The Facility's USTs and UST system are owned by Dogwood Petroleum Realty, LLC, and the Facility is further identified by UST Facility ID#3019162.

7. "Facility #2" means the physical location where the UST and/or UST system is installed and/or operated, known as Shell # 6136 located at 6136 Franconia Road, Alexandria, Virginia. The Facility's USTs and UST system are owned by Dogwood Petroleum Realty, LLC, and the Facility is further identified by UST Facility ID#3014321.

8. "Facility #3" means the physical location where the UST and/or UST system is installed and/or operated, known as Shell # 8500 located at 8500 Richmond Highway, Alexandria, Virginia. The Facility's USTs and UST system are owned by NOVA Petroleum Suppliers, LLC, and the Facility is further identified by UST Facility ID#3014273.

9. "Form 7530-2" means the Notification for Underground Storage Tanks form used by DEQ to register and track USTs for proper operation, closure and ownership, in accordance with 9 VAC 25-580-70.

10. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

11. "NOVA" means NOVA Petroleum Suppliers, LLC, a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. NOVA Petroleum Suppliers, LLC is a "person" who owns Facility #3.

12. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.

13. "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.

14. "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.

15. "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.

16. "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.

17. "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.

18. "Regulations" means the Underground Storage Tanks: Technical Standards and Corrective Action Requirements, 9 VAC 25-580-10 *et seq.*

19. "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.

20. "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.

21. "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.

22. "Va. Code" means the Code of Virginia (1950), as amended.

23. "VAC" means the Virginia Administrative Code.

24. "Warning Letter" or "WL" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

SECTION C: Findings of Fact and Conclusions of Law

1. Dogwood Petroleum is the current owner of Facilities #1and #2, formally owned by NOVA. NOVA is the owner of Facility #3. Dogwood Petroleum and NOVA store regulated substances in the forms of gasoline, diesel and used oil in USTs at the Facilities.

Facility #1:

2. On June 20, 2012, DEQ staff conducted a formal inspection of the USTs at Facility #1 and conducted a file review of Facility records to evaluate the NOVA's compliance with the requirements of the State Water Control Law and the Regulations. At that time of the inspection, there were four 10,000 gallon gasoline USTs and one 550 gallon used oil UST at the Facility. In response to the inspection, DEQ issued a Deficiency Letter to NOVA on June 22, 2012. The issues remained uncorrected and therefore DEQ issued a Warning Letter to NOVA on April 26, 2013. During the inspections and the file review, DEQ made the following observations:

    a. NOVA failed to provide documentation to demonstrate that release detection was being performed for the four 10,000 gallon gasoline USTs. Further, the documents were not made available upon DEQ's request.

    b. NOVA failed to provide all the documentation requested to demonstrate compliance with the UST regulations.

3. 9 VAC 25-580-180 requires that UST system owners and operators must maintain records in accordance with 9 VAC 25-580-120, including results of any sampling, testing, or monitoring, for at least one year, either at the facility and immediately available for inspection or at a readily available alternative site and available for inspection upon request.

4. 9 VAC 25-580-120 states that owners and operators of UST systems must cooperate fully with inspections, as well as requests for document submission.

Facility #2:

5. On July 6, 2011, Department staff performed a formal inspection of Facility #2 and conducted a file review of Facility #2 records to evaluate the NOVA's compliance with the requirements of the State Water Control Law and the Regulations. At the time of the inspection, there were three 12,000 gallon gasoline USTs and one 1,000 gallon used oil UST at the Facility. In response to the inspection, DEQ issued a Deficiency Letter to NOVA on July 14, 2011. DEQ conducted a site inspection on May 7, 2013. The issues remained uncorrected and therefore DEQ issued a Warning Letter to NOVA on May 31, 2012. During the inspections and the file review, DEQ made the following observations:

a. NOVA failed to provide documentation during the inspection to demonstrate that release detection records for the used oil UST were maintained. In addition, the documents were not provided upon DEQ's request.

b. NOVA failed to provide all the documentation requested to demonstrate compliance with the UST regulations.

6. 9 VAC 25-580-180 requires that UST system owners and operators must maintain records in accordance with 9 VAC 25-580-120, including results of any sampling, testing, or monitoring, for at least one year, either at the facility and immediately available for inspection or at a readily available alternative site and available for inspection upon request.

7. 9 VAC 25-580-120 requires that owners and operators of UST systems must cooperate fully with inspections, as well as requests for document submission.

Facility #3:

8. On July 3, 2012, Department staff inspected the Facility #3 and conducted a file review of Facility records. At the time of the inspection, there were three 12,000 gallon gasoline USTs and one 1,000 used oil UST at the Facility. In response to the inspection, DEQ issued a Deficiency Letter to NOVA on July 10, 2012. The issues remained uncorrected and therefore DEQ issued a Warning Letter to NOVA on April 12, 2013. On July 3, 2012, Department staff performed a formal inspection of Facility#3 and conducted a file review of Facility records to evaluate the NOVA's compliance with the requirements of the State Water Control Law and the Regulations. The following issues were noted during the July 3, 2012 inspection:

   a. NOVA failed to provide documentation during the inspection demonstrating that release detection was conducted for the used oil UST. In addition, the documents were not provided upon DEQ's request.

   b. NOVA failed to provide all the documentation requested to demonstrate compliance with the UST regulations.

9. 9 VAC 25-580-180 requires that UST system owners and operators must maintain records in accordance with 9 VAC 25-580-120, including results of any sampling, testing, or monitoring, for at least one year, either at the facility and immediately available for inspection or at a readily available alternative site and available for inspection upon request.

10. 9 VAC 25-580-120 requires that owners and operators of UST systems must cooperate fully with inspections, as well as requests for document submission.

11. On September 6, 2013, the Department issued Notice of Violation No. NOV-UST-13-9-NRO-001, to NOVA for violations at Facility #1 listed in paragraphs C(2) through C(4), above.

12. On September 6, 2013, the Department issued Notice of Violation No. NOV-UST-13-09-NRO-003 to the NOVA for violations at Facility #2 listed in paragraphs C(5) through C(7), above.

13. On September 6, 2013, the Department issued Notice of Violation No. NOV-UST-13-09-NRO-002 to the NOVA for violations at Facility #3 listed in paragraphs C(8) through C(10), above.

14. On September 20, 2013 NOVA submitted a written response to the NOV summarizing the actions taken at Facilities #1, #2, and #3.

15. On September 25, 2013, Department staff met with representatives of NOVA to discuss the violations, including NOVA Petroleum's response dated September 20, 2013. At the meeting DEQ and representatives of NOVA discussed the violations listed in the NOVs for Facilities #1, #2, and #3.

16. On September 30, 2013, NOVA submitted passing manual tank gauging records for the used oil UST located at Facility #3 for September 2012 - August 2013.

17. On September 30, 2013, NOVA submitted the manual tank gauging records for the used oil UST located at Facility #2 for September 2012 - August 2013. The monthly average of the weekly test results for September 2012, January 2013, and July 2013, exceeded the monthly average. These failing results indicate a potential leak. NOVA has not submitted a site assessment detailing if an investigation, if any, was made.

18. 9 VAC 25-580-190 requires Owners and operators of UST systems must report to the board within 24 hours a release or a suspected release of regulated substances at the UST site or in the surrounding area.

19. 9 VAC 25-580-210 requires "owners and operators must immediately investigate and confirm all suspected releases of regulated substances requiring reporting under 9 VAC 25-580-190 within seven days, or another reasonable time period specified by the board upon written request made and approved within seven days after reporting of the suspected release."

20. On April 23, 2014, DEQ received two 7530-2 forms, dated April 18, 2014, stating that Dogwood Petroleum was the new registered owner of Facilities #1 and #2.

21. Based on the results of July 6, 2011, June 20, 2012, and July 03, 2012, July 10, 2012, July 3, 2013 formal inspections, May 7, 2013 site visit, the September 25, 2013 meeting, and subsequent documentation submitted to DEQ by NOVA and Dogwood Petroleum,

the Board concludes that NOVA and Dogwood Petroleum have violated, 9 VAC 25-580-120, 9 VAC 25-580-130, 9 VAC 25-580-180, 9 VAC 25-580-190, 9 VAC 25-580-210, and as described in paragraphs C(2) through C(10), and C(17) through C(19), above.

22. On June 25, 2014, NOVA and Dogwood Petroleum submitted release detection documentation for the used oil tanks located Facilities #2 and #3.

23. NOVA and Dogwood Petroleum have submitted documentation that verifies that the violations described in paragraphs C(5) and C(8), have been corrected.

24. In order for NOVA and Dogwood Petroleum to complete their return to compliance, DEQ staff and representatives of NOVA and Dogwood Petroleum 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 NOVA and Dogwood Petroleum, jointly and severally, and NOVA and Dogwood Petroleum jointly and severally agree to:

1. Perform the actions described in Appendix A of this Order; and

2. Pay a civil charge of $5,875.00 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

NOVA and Dogwood Petroleum shall include their Federal Employer Identification Numbers (FEIN) 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, NOVA and Dogwood Petroleum 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 NOVA and Dogwood Petroleum for good cause shown by NOVA and Dogwood Petroleum, 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. NOV-UST-13-09-NRO-001, dated September 6, 2013, NOV No. NOV-UST-13-09-NRO-002, dated September 6, 2013, NOV No. NOV-UST-13-09-NRO-003, dated September 6, 2013. 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, NOVA and Dogwood Petroleum admit the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. NOVA and Dogwood Petroleum consent to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.

5. NOVA and Dogwood Petroleum declare they have 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 NOVA and Dogwood Petroleum 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. NOVA and Dogwood Petroleum 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. NOVA and Dogwood Petroleum shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. NOVA and Dogwood Petroleum 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 NOVA and Dogwood Petroleum. Nevertheless, NOVA and Dogwood Petroleum agree 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 NOVA and Dogwood Petroleum have completed all of the requirements of the Order;

b. NOVA and Dogwood Petroleum petition the Director or his designee to terminate the Order after they have 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 Burke Petroleum.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve NOVA and Dogwood Petroleum from their 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 NOVA and Dogwood Petroleum 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 NOVA and Dogwood Petroleum 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 NOVA to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of NOVA.

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, NOVA and Dogwood Petroleum voluntarily agree to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2014.

_____
Thomas A. Faha, NRO Regional Director
Department of Environmental Quality

NOVA Petroleum Suppliers, LLC voluntarily agrees to the issuance of this Order.

Date: 09/02/2014 By: EYOB MAMO, MANAGING MEMBER
(Person) (Title)
NOVA Petroleum Suppliers, LLC

Commonwealth of Virginia

City/County of FAIRFAX

The foregoing document was signed and acknowledged before me this 2ND day of September, 2014, by Eyob Mamo who is Managing Member of NOVA Petroleum Suppliers, LLC, on behalf of the company.

Erika Dogan
Notary Public

367803
Registration No.

My commission expires: 10/31/2018

Notary seal: ERIKA LASHAY DOGAN COMMONWEALTH OF VIRGINIA REGISTRATION NO. 367803 MY COMM. EXPIRES 10/31/2018 NOTARY PUBLIC

Dogwood Petroleum Realty, LLC voluntarily agrees to the issuance of this Order.

Date: 09/02/2014 By: EYOB MAMO, PRESIDENT OF DOGWOOD SPE, INC; THE MANAGING MEMBER OF DOGWOOD PETROLEUM REALTY, LLC
(Person) (Title)
Dogwood Petroleum Realty, LLC

Commonwealth of Virginia

City/County of FAIRFAX

The foregoing document was signed and acknowledged before me this 2ND day of September, 2014, by Eyob Mamo who is President of Dogwood SPE, Inc Managing Member of Dogwood Petroleum Realty, LLC, on behalf of the company.

Notary Public

367803
Registration No.

My commission expires: 10/31/2018

Notary seal: ERIKA ASHLEY HOGAN COMMONWEALTH OF VIRGINIA REGISTRATION NO. 367803 MY COMM. EXPIRES 10/31/2018 NOTARY PUBLIC

APPENDIX A
SCHEDULE OF COMPLIANCE

Dogwood Petroleum Shall:

1. **Submissions:**

   a. No later than 30 days from the effective date of this Order, Dogwood Petroleum shall submit to DEQ a minimum of two months of passing release detection records for the 10,000 gallon UST at Facility #1.

   b. If the 10,000 gallon UST at Facility #1 is not in use, then no later than 30 days from the effective date of this Order, Dogwood Petroleum shall submit to DEQ proof that the 10,000 gallon UST at Facility #1 has been properly closed in compliance with the regulations. Closure shall include the submission of an amended 7530-2 registration form.

2. **DEQ Contact**

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

   Enforcement
   Virginia Department of Environmental Quality
   Northern Regional Office
   13901 Crown Court
   Woodbridge, VA 22193