COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
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Secretary of Natural Resources

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Director

Allen J. Newman, P.E.
Regional Director

STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
Rush Oil Co., Inc.
FOR
Dillow's Shop and Wash
Facility ID No. 1-018619
Pollution Complaint No. 2014-1008

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 Rush Oil Co., Inc., 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. "ATG" means automatic tank gauge.

2. "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.

3. "Cathodic protection" or "CP" 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.

4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

5. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

6. "Facility" means the physical location where the UST and/or UST system is installed and/or operated, known as Dillow's Shop and Wash, located at 14200 Cedar Creek Road in Meadowview, VA. The Facility's UST and/or UST system are owned and operated by Rush Oil Co., Inc., and the Facility is further identified by UST Facility ID No.1-018619.

7. "Free product" refers to a regulated substance that is present as a nonaqueous phase liquid (e.g., liquid not dissolved in water).

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

9. "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.

10. "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.

11. "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.

12. "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.

13. "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.

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

15. "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.

16. "Rush Oil" means Rush Oil Co., Inc., a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Rush Oil is a "person" who owns the underground storage tanks at the Facility.

17. "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.

18. "SWRO" means the Southwest Regional Office of DEQ, located in Abingdon, Virginia.

19. "Tank" is a stationary device designed to contain an accumulation of regulated substances and constructed of nonearthen materials (e.g., concrete, steel, plastic) that provide structural support.

20. "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.

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

22. "VAC" means the Virginia Administrative Code.

23. "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. Rush Oil is the owner and operator of the UST systems at the Facility. Rush Oil stores regulated substances in the form of gasoline and kerosene in USTs at the Facility.

2. On September 25, 2013, DEQ SWRO remediation staff conducted a site visit at the Facility. This site visit was conducted in response to a report of a gasoline odor and possible petroleum release. The report was made by Wingfield Environmental, Inc. on the morning of September 25, 2013, on behalf of Rush Oil. Based on the presence of petroleum seeps observed on an adjacent property, remediation staff concluded that there had been a release of a regulated substance from one or more of the five USTs at the facility.

3. On September 26, 2013, DEQ SWRO tank compliance staff visited the Facility. The results of release detection for the pressurized piping, in the form of a line tightness test and an automatic line leak detector test were provided during the visit. Pressure tests of all lines and line leak detectors had been conducted on June 17, 2013, with passing results.

4. Wingfield Environmental, Inc. reported to DEQ staff on September 27, 2013 that regular grade tank No. 4 had failed a tank tightness test conducted that day. Regular grade tank No. 1 had been pumped of product on September 25, 2013, but passed an ullage test conducted September 27, 2013. Tank Nos. 2, 3 and 5 had passing results for tank tightness tests conducted September 27, 2013. Gasoline was pumped from tank No. 4, the tank's fill cap was locked and valves were shut, isolating manifolded tank No. 4 from tank Nos. 1 and 2, and removing it from service.

5. Per a review of Facility records available and discussions with Rush Oil employees, it was noted that only tank No. 3 had a release detection report from the ATG performed within the last thirty days (September 26, 2013), with a passing result. Although all tanks had ATG release detection reports with a print date within the past thirty days, further review of the reports by DEQ staff revealed that the actual test dates did not coincide with the report print dates. Release detection records (ATG results) provided to DEQ staff during the site visits on September 25 and 26, 2013 revealed the following:

   tank No. 1 (regular; 4,000 gal.): last tested May 21, 2013; a failed result
   tank No. 2 (regular; 4,000 gal.): last tested April 4, 2013; passing results
   tank No. 3 (kerosene; 4,000 gal.): last tested September 26, 2013; passing results
   tank No. 4 (regular; 4,000 gal.): last tested April 4, 2013; passing results
   tank No. 5 (non-eth. super; 4,000 gal.): last tested June 8, 2013; passing results

6. 9 VAC 25-580-130 and 9 VAC 25-580-140.1 state that owners and operators of new and existing UST systems must provide a method, or combination of methods, of release detection that can detect a release from any portion of the tank and the connected underground piping that routinely contains product. 9 VAC 25-580-140 also sets forth requirements for release detection monitoring on a thirty-day basis. 9 VAC 25-580-180 sets forth requirements for release detection record keeping of monitoring results.

7. The ATG test result for tank No. 1 for May, 2013 was "failed". Although valid release detection had not been conducted on tank No. 1 since May, 2013, the "failed" result continued to be reported by the ATG each month. A check valve in the product delivery component was thought to be faulty. However, the system was not "immediately repaired, recalibrated or replaced", with additional monitoring changing or contradicting the initial "failed" result. The failed result was not reported to DEQ.

8. 9 VAC 25-580-190 states that owners and operators of UST systems must report to the board within 24 hours and follow the procedures in 9VAC25-580-210 for any of the following conditions: 1. The discovery by owners and operators or others of released regulated substances at the UST site or in the surrounding area (such as the presence of free product or vapors in soils, basements, sewer and utility lines, and nearby surface water); 2. Unusual operating conditions observed by owners and operators (such as the erratic behavior of product dispensing equipment, the sudden loss of product from the UST system, or an unexplained presence of water in the tank), unless system equipment is found to be defective but not leaking, and is immediately repaired or replaced; 3.

Monitoring results from a release detection method required under 9VAC25-580-140 and 9VAC25-580-150 that indicate a release may have occurred unless: a. The monitoring device is found to be defective, and is immediately repaired, recalibrated or replaced, and additional monitoring does not confirm the initial result; or b. In the case of inventory control, a second month of data or in the case of manual tank gauging, a second week or month as prescribed in the chart under subdivision 2 d of 9VAC25-580-160 does not confirm the initial result.

9. The monthly CP report from the ATG showed that the module of the ATG monitoring the CP system was in alarm status between July 1, 2013 and September 1, 2013. The report printed "CPM failure" instead of printing current and voltage readings. This alarm reading is shown in the three consecutive reports during the above mentioned timeframe (spanning 62 consecutive days). However, no action was taken to address the issue until later in the month of September, 2013.

10. Regulation 9 VAC 25-580-90.3 states that UST systems with impressed current cathodic protection systems must be inspected every 60 days to ensure the equipment is running properly. Virginia UST regulation 9 VAC 25-580-90.4 states that (f)or UST systems using cathodic protection, records of the operation of the cathodic protection must be maintained (in accordance with 9VAC25-580-120) to demonstrate compliance with the performance standards in this section.

11. A record review of the CP system evaluation conducted December 12, 2013 and provided to DEQ staff on January 15, 2014, indicated that the CP system was not providing adequate corrosion protection to all the regulated USTs at the Facility.

12. Regulation 9 VAC 25-580-90.1 states that all corrosion protection systems must be operated and maintained to continuously provide corrosion protection to the metal components of that portion of the tank and piping that routinely contain regulated substances and are in contact with the ground.

13. On October 1, 2013, DEQ staff observed another area of petroleum seeps on the adjacent property, but further west than the area identified on September 25, 2013. This area involved a groundwater spring where free product was observed. On October 4, 2013, DEQ remediation staff issued a "confirmed release" letter to Rush Oil. During a site visit October 18, 2013, DEQ staff observed a sheen on the surface of Cedar Creek, a state water, below the seep area identified September 25, 2013 (in the area where iron staining had previously been noted).

14. On October 23, 2013, Rush Oil provided answers to questions regarding the petroleum release. A follow-up conference call between DEQ staff and Rush Oil personnel was conducted October 30, 2013.

15. On December 11, 2013, the Department issued Notice of Violation No. NOV-010-1213-GW to Rush Oil for violations listed in Section C, paragraphs 5, 7 and 9 above. Although not cited in the NOV, failure of the CP system to provide adequate corrosion protection, listed in Section C, paragraph 11 above, is also cited in this consent order.

16. On January 8, 2014, Wingfield Environmental, Inc. reported that, through early December, 2013, approximately 2,700 gallons of liquids had been collected by a portable oil/water separator unit and shipped from the Facility for disposal. The consultant estimated that approximately 1,700 gallons of this amount represented petroleum product (gasoline), with the balance being water. This activity was approved by DEQ remediation staff as an interim corrective action measure.

17. On January 15, 2014, Department staff met with representatives of Rush Oil to discuss the violations. Release detection records for November and December, 2013 and January, 2014 were provided. A copy of an invoice for work done on the ATG system in October, 2013 was also provided. Release detection records for October, 2013 had been submitted to DEQ on October 23, 2013.

18. On January 24, 2014, Rush Oil submitted a written response to the NOV to DEQ. This correspondence, and earlier correspondence and conversations with DEQ, summarize Rush Oil's position: a) Rush Oil personnel did not realize that the monthly ATG printouts were not the results of new tests and thought that they were meeting release detection requirements; b) both Rush Oil maintenance personnel and an outside service provider believed that there was a problem with a check valve. A check valve was ordered but had not been installed. It appeared that one tank might actually be gaining in liquid levels (receiving water). Therefore, Rush Oil personnel did not believe that there had been an actual, reportable release; and, c) the ATG system was not programmed to print out a report from the CP module. If Rush Oil's transport driver noted a "CPM Failure" alarm on the ATG during fuel delivery, movement of the wiring appeared to return the module readings to more normal values. The driver believed there was an electrical issue, not a true CP system issue. Rush Oil also pointed out that the tank that was reporting a failed ATG result for release detection (tank No. 1) was not the tank that failed a tank tightness test and appears to be the source of the release (tank No. 4).

19. On January 30, 2014, DEQ SWRO received an Initial Abatement Report from Rush Oil's consultant for the release at the Facility.

20. On March 6, 2014, DEQ SWRO received a copy of cathodic protection system test results, indicating that the system is now providing adequate corrosion protection to the UST systems at the Facility in accordance with 9 VAC 25-580-90. The tests were conducted February 20, 2014.

21. On May 13, 2014, Department staff met with representatives of Rush Oil to discuss the draft Order sent to Rush Oil by U.S. mail April 30, 2014. During that meeting, Rush Oil personnel indicated their belief that the ATG system had lost programming as of April 14, 2014, and was apparently working only sporadically at best.

22. Per e-mail received May 21, 2014, Rush Oil notified DEQ staff of its decision to permanently close all USTs and no longer operate any UST system at the Facility.

23. Based on site inspections on September 25 and 26, 2013, the January 15, 2014 meeting, and documentation submitted on September 26, 2013, October 23, 2013, January 15, 2014, January 24, 2014 and January 30, 2014, the Board concludes that Rush Oil has violated 9 VAC 25-580-130, 9 VAC 25-580-140, 9 VAC 25-580-190, 9 VAC 25-580-90.3 and 9 VAC 25-580-90.1 as described in Section C, paragraphs 5, 7, 9 and 11, above.

24. Rush Oil has submitted documentation that verified that the violations described in paragraphs C(5), C(9) and C(11) were corrected. However, per e-mail dated February 19, 2014, Rush Oil notified DEQ that there appears to be a problem again with the CP module of the ATG [Item C(9)].

25. In order for Rush Oil to complete its return to compliance, DEQ staff and representatives of Rush Oil have agreed to the Schedules of Compliance, which are incorporated as Appendices A and B 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 Rush Oil Co., Inc., and Rush Oil Co., Inc. agrees to:

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

2. Pay a civil charge of $11,625.00 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

Rush Oil Co., Inc. shall include its Federal Employer Identification Number (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, Rush Oil Co., Inc. 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 Rush Oil for good cause shown by Rush Oil, 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-010-1213-GW, dated December 11, 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, Rush Oil admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. Rush Oil 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. Rush Oil 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 Rush Oil 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. Rush Oil 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. Rush Oil shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Rush Oil 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 Rush Oil. Nevertheless, Rush Oil 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 Rush Oil has completed all of the requirements of the Order;

b. Rush Oil 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 Rush Oil.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Rush Oil 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 Rush Oil 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 Rush Oil 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 Rush Oil to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Rush Oil.

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, Rush Oil voluntarily agrees to the issuance of this Order.

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

_____
Allen J. Newman, P.E., Regional Director
Department of Environmental Quality

Rush Oil Co., Inc. voluntarily agrees to the issuance of this Order.

Date: 6-20-14 By: Tommy Jack Shoun, President
(Person) (Title)
Rush Oil Co., Inc.

Commonwealth of ~~Virginia~~ TENNESSEE

City/County of JOHNSON

The foregoing document was signed and acknowledged before me this 20th day of June, 2014, by Tommy Jack Shoun who is President of Rush Oil Co., Inc., on behalf of the corporation.

Tammy M. Kinser
Notary Public

Registration No.

My commission expires: 11-26-17

Notary seal:

TAMMY M. KINSER
STATE OF TENNESSEE NOTARY PUBLIC
JOHNSON COUNTY

APPENDIX A
SCHEDULE OF COMPLIANCE

Closure

a. By July 15, 2014, Rush Oil shall permanently close and remove all USTs at the Facility in accordance with 9 VAC 25-580-320 and 9 VAC 25-580-330. Rush Oil shall abate any saturated or impacted soils encountered during removal;

b. By August 29, 2014, Rush Oil shall provide an UST Closure Report in accordance with 9 VAC 25-580-330.B to DEQ's Southwest Regional Office; and

c. Rush Oil shall maintain all records regarding closure activities in accordance with 9 VAC 25-580-350.

APPENDIX B
SCHEDULE OF COMPLIANCE

Remediation

a. By September 1, 2014, Rush Oil shall submit a Corrective Action Plan in accordance with 9 VAC 25-580-280.

b. Rush Oil shall continue all remedial activities associated with the petroleum contamination as agreed to or directed by DEQ staff.