



COMMONWEALTH of VIRGINIA

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Secretary of Natural Resources

DEPARTMENT OF ENVIRONMENTAL QUALITY
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David K. Paylor
Director

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Regional Director

**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
CONNY OIL INC.
FOR
GRANDIN ROAD BP
Facility ID No. 2004946**

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 Conny Oil 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. "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. "BRRO" means the Blue Ridge Regional Office of DEQ, located in Roanoke, Virginia.
3. "Conny Oil" means Conny Oil Inc. a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Conny Oil Inc. is a "person" who owns and operates the Facility.
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 Grandin Road BP located at 2402 Grandin Road in Roanoke, Virginia. The Facility’s UST and/or UST system are owned and operated by Conny Oil Inc. and the Facility is further identified by UST Facility ID# 2004946.
7. “Notice of Violation” or “NOV” means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
8. "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.
9. “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.
10. "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.
11. "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.
12. “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.
13. “Regulations” means the Underground Storage Tanks: Technical Standards and Corrective Action Requirements, 9 VAC 25-580-10 *et seq.*
14. "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.
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.

SECTION C: Findings of Fact and Conclusions of Law

1. Conny Oil is the owner and operator of the Facility. Conny Oil stores a regulated substance in the form of gasoline in the USTs at the Facility.
2. On October 8, 2016, the Department received a report from City of Roanoke (“the City”) staff that gasoline vapors had been detected in homes along Grandin Road and in the storm water sewer. The City’s fire department was on-site and the storm water sewer was flushed and vented; pads and booms were placed at the storm water sewer outfall.
 - a. A remote camera found a seam in the storm water sewer where free product (gasoline) was entering the storm water sewer.
 - b. The storm water sewer drains to Mud Lick Creek.
 - c. Department staff did not observe an impact to Mud Lick Creek.
 - d. An unknown volume of free product, estimated to be less than 100 gallons, was released.
 - e. The emergency response for this incident lasted approximately twenty-four hours and the residents that were affected were displaced from their homes for approximately twelve hours.
3. On October 10, 2016 Department staff inspected the Facility and conducted a file review of Facility records to evaluate Conny Oil’s compliance with the requirements of the State Water Control Law and the Regulations. At that time, there were three 10,000 gallon USTs at the Facility. DEQ staff observed the following:
 - a. Based on statements made by Conny Oil’s contact during the inspection and a review of the available records, automatic tank gauging was the method of release detection.
 - b. Automatic tank gauging records for UST #3 show a daily “FAIL” status during the period of May 25, 2016 through October 09, 2016.
 - c. The automatic tank gauging records for UST #1 and #2 (connected by a manifold) show a daily product volume increase during the period of June 21, 2016 through October 10, 2016. These product volume increases did not correspond directly with delivery of gasoline from the distributor/supplier.
 - d. The premium gasoline storage tank, UST #3, and the regular gasoline storage tanks, UST#1 and #2, were identified as part of the Facility’s mid-grade dispenser

pump blending system and multiple “WARN” notifications were identified from the Facility’s automatic tank gauging system records.

- e. Conny Oil had not notified DEQ or taken measures to investigate a potential release of regulated substance (gasoline).
 - f. Conny Oil could not provide documentation of Class C operator training and the Facility’s emergency procedures
4. 9 VAC 25-580-130 requires that owners and operators UST systems must report to the board within 24 hours...2. Unusual operating conditions observed by owners and operators.
 5. 9 VAC 25-580-210 requires that owners and operators must immediately investigate and confirm all suspected releases of regulated substances within seven days.
 6. 9 VAC 25-580-125 requires that owners and operators designate and/or maintain training of a Class C operator.
 7. 9 VAC 25-580-120(2)(e) requires that owners and operators provide Class C operator training and maintain documentation of that training.
 8. 9 VAC 25-580-125(F) requires that owners and operators provide emergency procedures to their operators and maintain documentation of these procedures.
 9. On December 8, 2016, the Department issued Notice of Violation No. NOV-16-11-BRRO-006 to Conny Oil for violations listed in paragraphs C(3), above.
 10. Based on the results of the October 10, 2016 inspection, the Board concludes that Conny Oil has violated 9 VAC 25-580-130, 9 VAC 25-580-210, 9 VAC 25-580-125, 9 VAC 25-580-120(2)(e), and 9 VAC 25-580-125(F), as described in paragraphs C(3), above.
 11. Conny Oil has decided, after much investigation and cost, to close UST #3. Conny Oil is working with the Department in the remediation of the spill (characterize and recover subsurface petroleum contamination to ensure vapor impacts and risks are abated).
 12. In order for Conny Oil to complete its return to compliance, DEQ staff and representatives of Conny Oil 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 Conny Oil, and Conny Oil agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of **\$19,425** 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

Conny Oil shall include its Federal Employer Identification Number (FEIN) **54-0895427** 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, Conny Oil 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 Conny Oil for good cause shown by Conny 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. 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, Conny Oil admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Conny 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. Conny 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 Conny 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. Conny 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. Conny Oil shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Conny 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 Conny Oil. Nevertheless, Conny 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 Conny Oil has completed all of the requirements of the Order;

- b. Conny 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 Conny Oil.

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

And it is so ORDERED this _____ day of _____, 2017.

Robert J. Weld, Regional Director
Department of Environmental Quality

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Conny Oil Inc. voluntarily agrees to the issuance of this Order.

Date: 7/12/17 By: Tim Bowling, President
Tim Bowling
Conny Oil Inc.

Commonwealth of Virginia
City/County of Roanoke

The foregoing document was signed and acknowledged before me this 12th day of July, 2017, by Tim Bowling who is President of Conny Oil Inc., on behalf of the corporation.

Melissa B Henninger
Notary Public

350025
Registration No.

My commission expires: 5-31-2020

Notary seal:



**APPENDIX A
SCHEDULE OF COMPLIANCE**

Conny Oil shall:

1. No later than 60 days from the effective date of this Order, permanently close UST #3 and provide the Department proper documentation that the action has been completed no later than 75 days from the effective date of this Order.
2. Unless otherwise specified in this Order, Conny Oil shall submit all requirements of Appendix A of this Order to:

Jerry Ford, Jr.
VA DEQ - Blue Ridge Regional Office
3019 Peters Creek Road
Roanoke, VA 24019
Phone: (540) 562-6817
e-mail: Jerry.Ford@deq.virginia.gov

