COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

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STATE WATER CONTROL BOARD ENFORCEMENT ACTION
A SPECIAL ORDER ISSUED BY CONSENT TO
ALVIN R. MOOMAU

UST Facilities at 4201 and 4544 Lee Jackson Highway,
Greenville, Augusta County, VA
Facility Identification Nos. 6017790 & 6017791

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 Alvin R. Moomau to resolve certain violations of the State Water Control Law and regulations at Mr. Moomau's Underground Storage Tank Facilities located at 4201 and 4544 Lee Jackson Highway, Greenville, Augusta County, 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 and Virginia Code § 62.1-44.34:8.

4. "Mr. Moomau" means Alvin R. Moomau, the UST owner 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. "Facilities" means the retail gasoline stations and USTs owned and operated by Mr. Moomau located at 4201 and 4544 Lee Jackson Highway, Greenville, Augusta County, Virginia. The Facilities identification numbers are 6017790 and 6017791, respectively. The USTs are further identified as:

For 6017790:

Tank number	**6**	**7**	**8**
Capacity	10000	10000	8000
Contents	heating oil	kerosene-dyed	kerosene
Installed	5/7/74	4/23/98	4/23/98

For 6017791:

Tank number	**1**	**2**	**3**	**4**
Capacity	10000	10000	10000	12000
Contents	gasoline	gasoline	gasoline	diesel
Installed	5/7/72	5/7/72	5/7/72	5/7/72

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) relating to upgrading of existing UST systems, registration of tanks, closure of non-compliant tanks, and release detection requirements.

11. "Form 7530" means the UST notification form used by the DEQ to register and track USTs for proper operation, closure and ownership purposes. See 9 VAC 25-580-70.

SECTION C: Findings of Fact and Conclusions of Law

1. The Regulation, at 9 VAC 25-580-10 *et seq.*, requires that the USTs at the Facilities meet final, specific performance requirements for leak detection, spill and overfill protection, and corrosion protection by December 22, 1998.

2. Mr. Moomau is the owner of the USTs at these Facilities within the meaning of Virginia Code § 62.1-44.34:8.

3. On April 14, 2005, DEQ staff conducted a formal inspection of the Facilities. Prior to the inspection, all the USTs were registered as being currently in use. During the inspection, DEQ staff received a Form 7530 from Mr. Moomau, placing all USTs into temporary closure status. Based on the new operational status of the USTs, the following deficiencies were noted at both Facilities:

   - Portions of the UST piping did not appear to be protected from corrosion in apparent violation of 9 VAC 25-580-60(3).
   - Release Detection was not being performed on the USTs in apparent violation of 9 VAC 25-580-140.
   - Compliance records were not available for review in apparent violation of 9 VAC 25-580-120.
   - Documentation confirming that the owner had complied with the requirements for Financial Assurance had not been submitted in an apparent violation of 9 VAC 25-590-10 *et seq.*

For 6017790:

Tank number / **Violation**	**6** 10000	**7** 10000	**8** 8000
9 VAC 25-580-60(3) Existing USTs upgrading requirements (piping)	**X**	**X**	**X**
9 VAC 25-580-140(1) Release detection for tanks	**X**	**X**	**X**
9 VAC 25-580-120 Compliance records	**X**	**X**	**X**
9 VAC 25-590-10 Financial Assurance	**X**	**X**	**X**

For 6017791:

Tank number / **Violation**	**1** 10000	**2** 10000	**3** 10000	**4** 12000
9 VAC 25-580-60(3) Existing USTs upgrading requirements (piping)	**X**	**X**	**X**	**X**
9 VAC 25-580-140(1) Release detection for tanks	**X**	**X**	**X**	**X**
9 VAC 25-580-120 Compliance records	**X**	**X**	**X**	**X**
9 VAC 25-590-10 Financial Assurance	**X**	**X**	**X**	**X**

DEQ staff sent Warning Letters (Nos. 05-05-VRO-009 & 010) to Mr. Moomau on May 20, 2005, for these apparent violations of the Regulation. The letters requested that Mr. Moomau respond in writing by May 31, 2005, and included a copy of the formal inspection results, detailing the apparent violations noted above.

4. Mr. Moomau failed to respond to the May 20, 2005, Warning Letters. As a result, DEQ staff prepared a Letter of Agreement (LOA), detailing necessary corrective actions to resolve the alleged violations, for Mr. Moomau's consideration. On September 27, 2005, Mr. Moomau entered into a Letter of Agreement with the DEQ. The LOA required that all corrective actions to comply with the Regulation and documentation supporting such actions be submitted to DEQ staff by December 31, 2005. Mr. Moomau failed to comply with all of the conditions of the LOA.

5. On March 2, 2006, DEQ staff issued Notices of Violation (Nos. 06-3-VRO-1 & 2) to Mr. Moomau, for the apparent continuing violations of the Regulation. The Notices of Violation requested that Mr. Moomau respond to the Department by March 12, 2006. The alleged violations noted in the Notices of Violation are as follows:

For 6017790:

Tank number / **Violation**	**6** 10000	**7** 10000	**8** 8000
9 VAC 25-580-60(3) Existing USTs upgrading requirements (piping)	**X**	**X**	**X**
9 VAC 25-580-140(1) Release detection for tanks	**X**	**X**	**X**
9 VAC 25-580-120 Compliance records	**X**	**X**	**X**
9 VAC 25-590-10 Financial Assurance	**X**	**X**	**X**

For 6017791:

Tank number / Violation	1 10000	2 10000	3 10000	4 12000
9 VAC 25-580-60(3) Existing USTs upgrading requirements (piping)	X	X	X	X
9 VAC 25-580-140(1) Release detection for tanks	X	X	X	X
9 VAC 25-580-120 Compliance records	X	X	X	X
9 VAC 25-590-10 Financial Assurance	X	X	X	X

6. On May 2, 2006, DEQ staff met with Mr. Moomau to discuss possible remedies to the situation including a corrective action plan and the settlement of past violations.

7. On May 24, 2006, DEQ staff met with Mr. Moomau to discuss work performed and possible options for achieving compliance with the Regulation. DEQ staff performed a second formal UST inspection on this date revealing these current alleged violations:

For 6017790:

Tank number / Violation	6 10000	7 10000	8 8000
9 VAC 25-580-140(1) & (2) Release detection for tanks & piping	X	X	X
9 VAC 25-580-120 Compliance records	X	X	X
9 VAC 25-590-10 Financial Assurance	X	X	X

For 6017791:

Tank number / Violation	1 10000	2 10000	3 10000	4 12000
9 VAC 25-580-60(3) Existing USTs upgrading requirements (piping)				X
9 VAC 25-580-140(1) & (2) Release detection for tanks & piping	X	X	X	X
9 VAC 25-580-120 Compliance records	X	X	X	X
9 VAC 25-590-10 Financial Assurance	X	X	X	X

8. On June 7, 2006, DEQ staff met with Mr. Moomau to review additional work performed and to discuss additional remedies, a corrective action plan and the settlement of past violations. On this date, DEQ staff members confirmed that the metal piping associated with UST number 4 had been removed, effectively resolving the alleged violation of 9 VAC 25-580-60 (3) at facility number 6017791.

9. On June 30, 2006, DEQ staff received financial assurance documentation from Mr. Moomau effectively resolved the alleged violation of 9 VAC 25-590-10 at both facilities.

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 Mr. Moomau and Mr. Moomau agrees that:

1. To remedy the violations described above and bring the Facilities into compliance with the Regulation, Mr. Moomau shall perform the actions described in Appendix A to the Order.

2. Mr. Moomau shall pay a civil charge of $6,000.00, within 30 days of the effective date of the Order. 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. Mr. Moomau shall also include his Social Security 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 Mr. Moomau, for good cause shown by Mr. Moomau, 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 Facilities 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, Mr. Moomau admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.

4. Mr. Moomau 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. Mr. Moomau declares he 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 he 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 Mr. Moomau 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. Mr. Moomau 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. Mr. Moomau must show that such circumstances resulting in noncompliance were beyond his control and not due to a lack of good faith or diligence on his part. Mr. Moomau 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 Mr. Moomau 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 Mr. Moomau. Notwithstanding the foregoing, Mr. Moomau 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. Mr. Moomau petitions the Regional Director to terminate the Order after he has completed all requirements of the Order and the Director or his designee approves the termination of the Order; or

   b. The Director or the Board terminates this Order in his or its whole discretion upon 30 days written notice to Mr. Moomau.

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

12. By his signature below, Mr. Moomau voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____day of _____, 2006.

_____
R. Bradley Chewning, Regional Director
Department of Environmental Quality

The terms and conditions of the Order are voluntarily accepted by Mr. Moomau:

Date: 8/15/06 By: Alvin R. Moomau
Alvin R. Moomau
Owner

Commonwealth of Virginia, City/County of Augusta

The foregoing instrument was acknowledged before me this 15th day of August, 2006, by

Alvin R. Moomau
(name)

4/30/06
Date

My commission expires:

Notary Public

Appendix A
Mr. Alvin R. Moomau.
UST Facilities at 4201 and 4544 Lee Jackson Highway,
Greenville, Augusta County, VA
Facility Identification Nos. 6017790 & 6017791

For all the USTs, Mr. Moomau shall:

A. By September 1, 2006, submit copies of release detection results for UST number 8 for the month of August 2006.

B. By October 1, 2006, submit copies of release detection results for UST number 8 for the month of September 2006.

C. By November 1, 2006, submit copies of release detection results for UST number 8 for the month of October 2006.

D. By April 20, 2008, perform an internal inspection of all the USTs to confirm that the tanks are structurally sound with the internal lining still performing in accordance with original design specifications.

E. By May 20, 2008, submit copies of the internal lining inspection report to the DEQ.