COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
PIEDMONT REGIONAL OFFICE
4949-A Cox Road, Glen Allen, Virginia 23060
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Preston Bryant
Secretary of Natural Resources

David K. Paylor
Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION SPECIAL ORDER BY CONSENT ISSUED TO HMR, LLC

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code §§ 62.1-44.15(8a) and (8d), between the State Water Control Board and HMR, LLC for the purpose of resolving certain violations of the State Water Control Law and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning 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. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.

3. "Director" means the Director of the Department of Environmental Quality.

4. "HMR" means HMR, LLC owner and operator of the Property and UST, certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.

5. "Notification Form" means Form 7530 used by DEQ to register and track USTs for proper operation, closure and ownership purposes. 9 VAC 25-580-70.

6. "Order" means this document, also known as a Consent Special Order.

7. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.

8. "Property" means the property located at 11901 Old Stage Road in Chester, Virginia. The Property contains one (1) 10,000 gallon diesel underground storage tank currently reported not in use, FAC ID No. 4002111.

9. "Regulation" means 9 VAC 25-580-10 *et seq.* (Underground Storage Tanks: Technical Standards and Corrective Action Requirements) relating to upgrading of existing USTs systems, registration of tanks, closure of noncompliant tanks, and release detection requirements.

10. "UST" means underground storage tank as defined in 9 VAC 25-580-10 and Va. Code § 62.1-44.34:8.

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

12. "VAC" means Virginia Administrative Code.

SECTION C: Findings of Fact and Conclusions of Law

1. HMR owns and operates the Property and UST. The Property is located at 11901 Old Stage Road, Chester, Virginia.

2. At the Property there is one UST, currently reported not in use, which has been used to store petroleum. The UST is identified as follows:

Tank No.	Capacity	Content
1	10,000	diesel

3. Because petroleum is a "regulated substance" as defined by Va. Code 62.1-44.34:8 and 9 VAC 25-580-10, the UST at the Facility is regulated under 9 VAC 25-580-10, *et seq.*

4. On May 30, 2008, the Department conducted a formal inspection of the Property. The following deficiencies were noted:

   - Records verifying the periodic tank lining inspection were not available, in apparent violation of 9 VAC 25-580-60(2)(a)(2); and
   - Records of recent compliance with release detection requirements were not available, in apparent violation of 9 VAC 25-580-120, and failure to perform

recent monthly release detection was evident, in apparent violation of 9 VAC 25-580-140.1.

5. The Department staff issued HMR a Request for Corrective Action (RCA) on May 30, 2008, listing the above described deficiencies observed during the inspection. HMR did not respond to the RCA.

6. On July 29, 2008, the Department issued HMR a Warning Letter (WL) for the deficiencies as described above; and also included the failure by HMR to provide financial responsibility documentation in apparent violation of 9 VAC 25-590-10 *et seq.* HMR did not respond to the WL.

7. On November 24, 2008, the Department issued a Notice of Violation (NOV) to HMR for:

   - Failure to provide release detection records upon DEQ staff inspection, in apparent violation of 9 VAC 25-580-120 and 9 VAC 25-580-180;
   - Failure to perform release detection testing for the USTs and piping, in apparent violation of 9 VAC 25-580-140;
   - Failure to provide documentation that the ten year tank lining inspection has been performed, in apparent violation of 9 VAC 25-580-60(2)(a)(2); and
   - Failure to demonstrate and provide financial responsibility documentation upon DEQ staff request and inspection at the site, in apparent violation of 9 VAC 25-590-40 and 9 VAC 25-590-160.

8. Regulation 9 VAC 25-580-180 requires that the release detection records, including results of any sampling, testing, or monitoring must be maintained 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, in accordance with 9 VAC 25-180-120.

9. Regulation 9 VAC 25-580-140 requires that USTs must be monitored for releases at least every 30 days in accordance with the requirements of that subsection.

10. Regulation 9 VAC 25-580-60(2)(a)(2) requires that within 10 years after installation of an internal lining in a steel tank, and every five years thereafter, the lined tank will be internally inspected and found to be structurally sound with the lining still performing in accordance with original design specifications.

11. Regulation 9 VAC 25-590-40 and 9 VAC 25-590-160 requires that owners and operators of UST systems must demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases in the per-occurrence amounts as stated in the regulation and that evidence of financial assurance mechanisms used to demonstrate financial responsibility must be maintained at the UST site or at the

owner or operator's place of work in the Commonwealth and be made available upon request.

12. On December 16, 2008, Mr. Henry Moore, managing member of HMR, LLC, and his registered agent met with the Department to discuss resolution of the violations. At the meeting, Mr. Moore provided a letter from Baird Petroleum Equipment, LLC stating that the company had pumped and cleaned the 10,000 diesel UST on October 1, 2008. Baird Petroleum Equipment, LLC stated that the UST was empty pending removal or abandonment.

13. Based on the foregoing information, the Board concludes that HMR has violated the Regulations as described in this Section.

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 HMR, and HMR voluntarily agrees, to perform the actions described in Appendix A of this Order. In addition, the Board orders HMR, and HMR voluntarily agrees to pay a civil charge of **$3,720** in settlement of the violations cited in this Order. The payment shall note that it is being made pursuant to this order and shall note the Federal Employer Identification Number for HMR. Payment shall be by check, certified check, money order, or cashiers check payable to "Treasurer of Virginia" and sent to:

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

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of HMR, for good cause shown by HMR, or on its own motion pursuant to the Administrative Process Act 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 terms of this Order.

3. For purposes of this Order and subsequent actions with respect to this Order only, HMR admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. HMR consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the Order.

5. HMR declares it has received fair and due process under the Administrative Process Act and the Virginia 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 HMR 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. HMR 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 occurrence. HMR shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. HMR 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 HMR intends 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, 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 HMR. Nevertheless, HMR 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. HMR 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

    b. The Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to HMR.

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

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

And it is so ORDERED this____ day of _____, 2009.

_____

Richard F. Weeks, Regional Director
Department of Environmental Quality

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

Date: 8-26-09 By: Henry D Moore, member.
(Person) (Title)

Commonwealth of Virginia,
City/County of Henrico

The foregoing document was signed and acknowledged before me this 26 day of August, 2009 by Henry D Moore who is a member of HMR, LLC on behalf of the company.

Notary Public

7039385
Registration No.

My Commission Expires
January 31, 2010

My commission expires:

Notary seal:

APPENDIX A

HMR shall:

1. **By no later than September 15, 2009,** submit to the Department documentation verifying that the 10,000 gallon diesel UST has been properly closed or removed from the Property, in accordance with 9 VAC 25-580-320.

2. **Within 30 days of UST removal,** but by no later than **October 15, 2009,** submit a tank closure report for the removed UST, in accordance with 9 VAC 25-580-330.

3. **Pursuant to this Order, submit all documentation as required by Appendix A to:**

   Cynthia Akers
   Department of Environmental Quality
   Piedmont Regional Office
   4949-A Cox Road
   Glen Allen, Virginia 23060