COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

VALLEY REGIONAL OFFICE
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L. Preston Bryant, Jr.
Secretary of Natural Resources

David K. Paylor
Director

Amy Thatcher Owens
Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION
A SPECIAL ORDER ISSUED BY CONSENT TO
LSF5 CAVALIER INVESTMENTS, LLC

UST Facility at 240 Rolkin Road, Charlottesville, VA
(aka Everyday Shop & Café #43)
Facility Identification No. 6038521

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 LSF5 Cavalier Investments, LLC, to resolve certain violations of the State Water Control Law and regulations at the LSF5 Cavalier Investments, LLC Underground Storage Tank Facility located at 240 Rolkin Road, Charlottesville, 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 Va. Code §§ 10.1-1184 and 62.1-44.7.

2. "Va. 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 Va. Code §62.1-44.34:8.

4. "Cavalier" means LSF5 Cavalier Investments, LLC, the current UST owner within the meaning of Va. 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 Va. Code §10.1-1183.

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

7. "Facility" means the retail gasoline station and USTs owned by Cavalier located at 240 Rolkin Road, Charlottesville, Va. (aka Everyday Shop & Café #43). The USTs are further identified as tank numbers: **1** (20,000-gallon gasoline tank installed in 2001), **2** (15,000-gallon gasoline tank installed in 2001), and **3** (6,000-gallon diesel tank installed in 2001).

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 to be submitted to the DEQ by UST owners to register and document UST operation, closure and ownership. See 9 VAC 25-580-70.

SECTION C: Findings of Fact and Conclusions of Law

1. Gasoline and Diesel are petroleum products. Petroleum is a "regulated substance" as defined by Va. Code § 62.1-44.34:8 and 9 VAC 25-580-10; therefore, the USTs at the Facility are regulated under 9 VAC 25-580-10 *et seq.* The Regulation requires that the USTs at the Facility meet final, specific performance requirements for leak detection, spill and overfill protection, and corrosion protection by December 22, 1998.

2. Cavalier is the current owner of the USTs at this Facility within the meaning of Va. Code § 62.1-44.34:8.

3. On June 4, 2008, DEQ staff conducted a formal inspection of the Facility. The following deficiencies were identified for the USTs:

   a. Release detection was not being performed on UST numbers 1 and 2 in apparent violation of 9 VAC 25-580-140.

   b. Release detection compliance records were not being maintained for at least one year in apparent violation of 9 VAC 25-590-180.

   c. The double-walled, polyflexible piping associated with the regular gasoline UST number 1 is severely kinked and does not comply with the manufacturer's installation and

operating specifications in apparent violation of 9 VAC 25-590-50.

4. 9 VAC 25-580-140 requires the UST owner to monitor the UST system for releases of regulated substances every 30 days. (UST numbers 1 & 2)

5. 9 VAC 25-580-180 requires the UST owner to maintain records of release detection for at least one year. (all USTs)

6. 9 VAC 25-580-50 requires the UST owner to install and to maintain the tanks and piping in accordance with manufacturer's instructions. (UST number 1)

7. On July 1, 2008, DEQ staff received release detection documentation confirming the violation noted in paragraph 3.a. The owner submitted release detection records performed at 3 gallons per hour for the dates of January through June 2008. The Regulation at 9 VAC 25-580-160 requires that release detection be performed at .2 gallons per hour.

8. On July 10, 2008, DEQ staff issued a Notice of Violation (NOV) No. 08-07-VRO-1 to Cavalier for these apparent violations of the Regulation. The NOV requested that Cavalier respond to the Department by July 18, 2008. The inspection report was included with the NOV and detailed the violations noted during the inspection.

9. DEQ spoke with a representative from Cavalier on July 18, 2008, to discuss possible remedies to the situation including a corrective action plan and the settlement of past violations. Cavalier agreed to resolve the violations as soon as possible which included the performance of release detection on UST numbers 1and 2 and repair of the piping associated with UST number 1.

10. On July 31, 2008, DEQ staff received documentation confirming that the violation noted in paragraph 3.c. had been resolved.

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 Cavalier and Cavalier agrees that:

1. To remedy the violations described above and to reduce the chances of these violations occurring again, Cavalier shall perform the actions described in Appendix A to the Order.

2. Cavalier shall pay a civil charge of $3,583.00, 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 Va." and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Va. 23240

3. Cavalier shall also include its Federal Tax 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 Cavalier, for good cause shown by Cavalier, or on its own motion after notice and opportunity to be heard.

2. This Order only addresses and resolves those violations specifically identified herein, including the violations addressed in the July 10, 2008, NOV. 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 authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the Facility as may be authorized by law; and/or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.

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

4. Cavalier 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. Cavalier declares it has received fair and due process under the Va. Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, 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 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 Cavalier 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. Cavalier 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 act of God, war, strike, or such other occurrence. Cavalier shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Cavalier 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 within 10 days of learning of any condition listed above, which Cavalier 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 Cavalier. Notwithstanding the foregoing, Cavalier 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. Cavalier petitions the 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 sole discretion upon 30 days written notice to Cavalier.

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

12. By its signature below, Cavalier voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____day of _____, 2009.

_____
Amy T. Owens, Regional Director
Department of Environmental Quality

The terms and conditions of the Order are voluntarily accepted by LSF5 Cavalier Investments, LLC.:

Date: 4/16/09 By: Brad Davis
Brad Davis
Vice-President

Commonwealth of Va., City/County of Dallas

The foregoing instrument was acknowledged before me this 16 day of April, 2009, by

Brad Davis, who is Vice-President of LSF5 Cavalier Investments LLC., on behalf of LSF5

Cavalier Investments, LLC.

3/1/13
Date
My commission expires:

Notary Public

LEE TAYLOR EVANS
MY COMMISSION EXPIRES
March 1, 2013

Appendix A
LSF5 Cavalier Investements, LLC

For all the USTs at the Facility, Cavalier shall:

A. By January 31, 2009, submit copies of release detection results for the months of December 2008 and January 2009, and implement a company-wide program to maintain copies of release detection records performed at least every 30 days for the past year for each regulated UST.

B. By February 15, 2009, submit copies of release detection results for the month of January 2009.

C. By March 15, 2009, submit copies of release detection results for the month of February 2009.