



# 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 BLACK STALLION LLC.

UST Facility at 8257 Spotswood Trail, Stanardsville, VA  
Facility Identification No. 6037287

#### **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 Black Stallion LLC, to resolve certain violations of the State Water Control Law and regulations at Black Stallion's Underground Storage Tank Facility located at 8257 Spotswood Trail, Stanardsville, 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. "BSL" means Black Stallion LLC, the 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 and operated by BSL located at 8257 Spotswood Trail, Stanardsville, Virginia. The USTs are further identified as gasoline tanks #1 (12,000 gallons) and #2 (8,000 gallons), and kerosene tank #3 (2,000 gallons) all installed during June 1996.
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 USTS 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 is a petroleum product. 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, at 9 VAC 25-580-10 *et seq.*, 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. BSL is the owner of the USTs at this Facility within the meaning of Va. Code § 62.1-44.34:8.
3. On September 21, 2007, DEQ staff responded to a report from the Greene County Director of Public Safety regarding the presence of petroleum in the nearby storm water drainage and in an unnamed tributary of Stanardsville Run. DEQ staff confirmed the release and the subsequent discharge to the intermittent stream near the Facility. Petroleum vapors had been reported by a citizen and free product was observed in the stream by the responding officials. Greene County officials closed the surrounding roadways and hired a remediation contractor to remove the free-phase petroleum from the stream. DEQ staff met with the Greene County officials to collect information on the extent and cause of the petroleum release. Staff observed free product exiting the culvert that runs beneath Route 33 (Business) and impacted vegetation near this same area indicating that the release had been adversely affecting the surface water quality for more than two days.
4. As part of the release investigation, DEQ staff interviewed the Facility owner, BSL. BSL's president stated that he was unaware of any problems with the petroleum tanks or piping. Information stored on the Facility's automatic tank gauging (ATG) system indicated four fuel

and one sensor alarm. When asked about the alarms, the owner stated that the ATG routinely reports such alarms. DEQ staff requested previous reports from the ATG. The owner was unable to produce any. DEQ staff then inspected the submersible turbine pump and dispenser containment sumps. One of the pump containment sumps contained water covering the top of the pump. One eighth inch of petroleum was observed floating on top of this water. The containment sump for dispenser number 3/4 was full of liquid and overflowing with what appeared to be pure gasoline. At this point, DEQ staff instructed BSL to cease fueling operations. BSL complied. Staff also informed Greene County officials of their findings and requested subsurface engineering information for the area between the Facility and the storm sewer drain to the impacted stream.

5. DEQ staff observed free-phase gasoline entering the stream from a storm drain near the Facility. Gasoline vapors were significant at each contaminated discharge point. Subsurface engineering information obtained from the County Engineer confirmed that the paved areas between the Facility and the storm drain is underlain with approximately two feet of gravel which could both contain a large volume of petroleum and provide a conduit for any petroleum leaving the Facility to enter the storm drain and, subsequently, the stream.
6. DEQ instructed BSL to abate the release in accordance with 9 VAC 25-580-250. BSL hired Crawford Environmental, who in turn sub-contracted the existing contractor on site, originally hired by Greene County, to perform the initial abatement measures. The contractor removed the petroleum from Facility containment sumps and the free-phase petroleum from the storm drains and stream. It then flushed the storm drain with approximately 700 gallons of water to dispel the gasoline vapors and installed petroleum absorbent booms and pads in the immediate and downstream surface waters to limit the adverse environmental impact of the released gasoline. Removal of the product from dispenser number 3/4 containment sump revealed damaged and leaking piping and containment sump.
7. On September 22, 2007, the contractor informed DEQ staff, via telephone, that it had flushed the storm drain with an additional 700 gallons of water and installed approximately one hundred and sixty feet of eight inch booms across the stream at different locations. There were no gasoline vapors noticeable when they left the Facility around midnight on September 21, 2007. However, free product mixed with water was still entering the storm drain.
8. On September 23, 2007, Greene County officials reported the strong presence of gasoline vapors around the storm drain and stream. DEQ staff conveyed this information to BSL representatives.
9. On September 24, 2007, DEQ staff met with BSL representatives to discuss actions to be taken for the continuing initial abatement and site check in response to the release. DEQ staff directed BSL to test the entire petroleum dispensing system, sample the surface waters for contamination and to monitor and replace the petroleum absorbent booms and pads in the surface waters. Both DEQ and CES staff agreed that utilizing a trailer mounted liquid ring

- pump for remediation activities was the best short-term solution for the surface waters. CES agreed to have this equipment on site by the following week (October 1-5, 2007). Potential monitoring well installation points were also discussed during this meeting. The Facility was not dispensing petroleum at this time.
10. On September 24, 2007, DEQ staff also conducted a formal inspection of the Facility USTs. The following deficiencies were noted:
    - a. Release detection records for the piping associated with UST numbers 1, 2 and 3 for the previous twelve consecutive months were not available for review in apparent violation of 9 VAC 25-580-180.
    - b. Interstitial monitoring alarms for the piping release detection had been activated for at least one week and were recorded as being in alarm as of February 19, 2007, and a suspected release of regulated substances was not reported to the State Water Control Board or Department of Environmental Quality in apparent violation of 9 VAC 25-580-190.
  11. On September 26, 2007, DEQ staff issued a Notice of Violation (NOV) No. 07-09-VRO-2 to BSL, for these apparent violations of the Regulation. The NOV requested that BSL respond to the Department by October 4, 2007. The inspection report was included with the NOV and it detailed the violations noted during the inspection.
  12. On October 3, 2007, DEQ issued a confirmed release letter to BSL requesting the submittal of an initial abatement report (IAR) by November 3, 2007, and a Site Characterization Report (SCR) by December 3, 2007.
  13. On October 31, 2007, DEQ staff performed a site visit to observe the continuing initial abatement measures. The facility was dispensing gasoline and precision tightness tests for the tanks and piping had not been submitted to the DEQ and the Facility ATG was still reporting fuel alarms. The remediation equipment was neither at the Facility nor installed. There were no petroleum absorbent booms or pads in the surface waters. Free-phase petroleum was not observed in the surface waters.
  14. DEQ staff met with BSL on November 1, 2007, to discuss the IAR, possible remedies to the situation, including a corrective action plan, and the settlement of past violations. During that meeting, BSL agreed to submit a Site Characterization Report (SCR) by December 1, 2007. During this meeting, BSL representatives stated that it had performed four site visits since the release date: Once on September 22, 2007 for water and vapor sampling and to replace petroleum absorbent booms, Once on September 24, 2007 for consultation with DEQ staff, and twice more for replacement of booms and pads. They had also removed residual petroleum from the dispenser sumps and the surface waters on October 1, 2007. However, it had not installed the mobile liquid ring pump in the surface waters to remediate the continuing contamination.

15. DEQ staff met with BSL on December 19, 2007, to review remedial actions taken and to continue discussions regarding possible remedies and/or a corrective action plan and the settlement of past violations. DEQ staff informed BSL that the SCR was late. BSL agreed to submit the SCR by January 2, 2007.
16. DEQ staff received the SCR on December 29, 2007. A January 3, 2008, meeting was held between DEQ staff and BSL to discuss the findings of the SCR and to consider future actions to remediate the release. Both parties agreed that additional information was necessary in order to develop a corrective action plan. DEQ requested an addendum to the Site Characterization Report (SCRA) and that it be submitted by January 25, 2008.
17. DEQ staff received the SCRA on January 23, 2008. A January 25, 2008, meeting was held between DEQ staff and BSL to discuss the findings of the SCRA and to consider future actions to remediate the release. Remediation activities were presented and agreed upon by both parties. The remediation system was to be installed and operational by February 1, 2008, and was to operate for 30 days. Due to inclement weather, the system was not operational until February 4, 2008.
18. On March 4, 2008, DEQ staff and BSL held a conference call to discuss the sampling data collected during the past thirty days. The data revealed an observable decrease in contamination at the facility. Both parties agreed to continue operation of the system until further sampling was performed and the data was available for review. A report of BSL's findings is to be submitted by March 14, 2008.
19. On March 18, 2008, DEQ staff received additional sampling data from the facility and held a conference call with BSL to discuss a corrective action plan. Site characterization, including the installation of six groundwater monitoring wells and a groundwater extraction pilot test, was also completed.
20. On April 8, 2008, DEQ staff and BSL representatives held a conference call to discuss the possible remedial solutions for inclusion in the Corrective Action Plan. DEQ staff received a complete Corrective Action Plan on April 21, 2008.
21. DEQ staff received an amended Corrective Action Plan from the owner on June 27, 2008, and applied revision to the Plan on July 11, 2008.
22. On July 16, 2008, DEQ staff and BSL representatives held a conference call to finalize the conditions and parameters of the Corrective Action Plan. The finalized Corrective Action Plan is to be implemented by August 25, 2008.

**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 BSL and BSL agrees that:

1. To remedy the violations described above and to reduce the chances of this violation occurring again, BSL shall perform the actions described in Appendix A to the Order.
2. BSL shall pay a civil charge of \$35,100.00, 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 1104  
Richmond, Virginia 23240

3. BSL 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 BSL, for good cause shown by BSL, or on its own motion after notice and opportunity to be heard.
2. This Order addresses only those violations specifically identified herein, including the violations mentioned in the September 26, 2007, 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 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 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, BSL admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. BSL 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. BSL declares it has received fair and due process under the Virginia 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 BSL 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. BSL 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. BSL must show that such circumstances resulting in noncompliance were beyond its control and not due to a lack of good faith or diligence on its part. BSL 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 BSL 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 BSL. Notwithstanding the foregoing, BSL 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. BSL petitions the Director to terminate the Order after it 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 BSL.

Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve BSL 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, BSL voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 21<sup>st</sup> day of October, 2008.

  
 Amy T. Owens, Regional Director  
 Department of Environmental Quality

The terms and conditions of the Order are voluntarily accepted by Black Stallion LLC.:

Date: 8-4-08 By:   
 Ethesham Zakaria  
 President

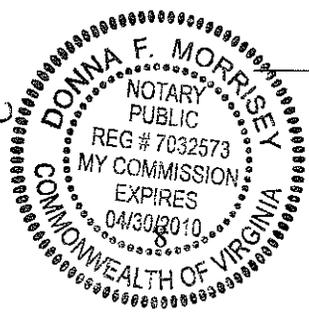
Commonwealth of Virginia, City/County of Greene

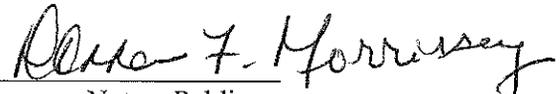
The foregoing instrument was acknowledged before me this 17<sup>th</sup> day of August, 2008, by

Ethesham Zakaria, who is President of Black Stallion, LLC, on behalf of Black Stallion, LLC.

8/4/08  
 Date

My commission expires: 4/30/10



  
 Notary Public

**Appendix A**  
**Black Stallion, LLC.**

For PC 2008-6028 and UST numbers 1, 2 & 3, BSL shall:

- A. By July 30, 2008, submit copies of release detection results for the month of July 2008.
- B. Continue all remedial activities associated with the petroleum contamination as agreed to or directed by DEQ staff. Those activities will be necessary until the discharge from the storm drain under State Route 33 does not exceed aquatic toxicity criteria and the remaining contamination does not pose a risk to human health or the environment. Groundwater extraction and treatment will continue as established in the Facility Corrective Action Plan, as amended June 27 and revised by DEQ staff on July 11, 2008, both of which are incorporated herein by reference. The initial phase of the Facility Corrective Action Plan shall be completed by August 25, 2008.
- C. By August 30, 2008, submit copies of release detection results for the month of August 2008.
- D. By September 30, 2008, submit copies of release detection results for the month of September 2008.