



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

VALLEY REGIONAL OFFICE

4411 Early Road, P.O. Box 3000, Harrisonburg, Virginia 22801

(540) 574-7800 Fax (540) 574-7878

www.deq.virginia.gov

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 JEAN H. SHEPHERD

UST Facility at 4192 Harry Byrd Highway, Berryville, Clarke County, VA
Facility Identification No. 6017224

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 Jean H. Shepherd to resolve certain violations of the State Water Control Law and regulations at Ms. Shepherd's Underground Storage Tank Facility located at 4192 Harry Byrd Highway, Berryville, Clarke 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. "Ms. Shepherd" means Jean H. Shepherd, 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. "Facility" means the retail gasoline station and USTs owned and operated by Ms. Shepherd located at 4192 Harry Byrd Highway, Berryville, Clarke County, Virginia. The USTs are further identified as gasoline tanks #1 (8,000 gallons) and #2 (4,000 gallons), both installed during April 1991, and as diesel tank #3 (4,000 gallons) also installed during April 1991.
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 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 Facility meet final, specific performance requirements for leak detection, spill and overfill protection, and corrosion protection by December 22, 1998.
2. Ms. Shepherd is the owner of the USTs at this Facility within the meaning of Virginia Code § 62.1-44.34:8.
3. On December 19, 2006, DEQ staff conducted a formal inspection of the Facility. The following deficiencies were noted:
 - a. Documentation confirming that UST numbers 1, 2 and 3 were protected from corrosion in accordance with 9 VAC 25-580-50 was not available for review in apparent violation of 9 VAC 25-580-120.
 - b. Testing of the corrosion protection systems installed on UST numbers 1, 2 and 3 had not been performed in apparent violation of 9 VAC 25-580-90.
 - c. Release Detection was not being performed on UST numbers 1, 2 and 3 in apparent violation of 9 VAC 25-580-140.
 - d. Financial Responsibility documentation was not available for review in apparent violation of 9 VAC 25-590-10 *et seq.*

DEQ staff issued a Request for Corrective Action (RCA) to Ms. Shepherd on December 19, 2006, for these apparent violations of the Regulation. The RCA detailed the violations noted during the inspection and requested that Ms. Shepherd respond to the DEQ in writing by February 19, 2007, with a plan to resolve the violations and any corrective actions performed

4. DEQ staff received no communication from Ms. Shepherd by the RCA due date. As a result, DEQ staff performed a site visit at the Facility on February 28, 2007, to discuss the outstanding violations with the owner and to assess the current compliance status of the Facility. The owner informed DEQ staff that they were working with a contractor to resolve two (corrosion protection and release detection) of the violations noted. The other two violations (financial responsibility and material of construction) had not been addressed.
5. In response, DEQ staff sent a Warning Letter (No. 07-02-VRO-3) on March 1, 2007, for these apparent violations of the Regulation. The letter requested that Ms. Shepherd respond in writing by March 12, 2007, and included a copy of the formal inspection report, detailing the apparent violations noted in paragraph 3. of Section C. Despite an additional telephone communication with the owner on April 27, 2007, no response to the letter was received from the owner.
6. On July 25, 2007, DEQ staff issued a Notice of Violation (NOV) No. 07-07-VRO-1 to Ms. Shepherd, for the apparent continuing violations of the Regulation. The NOV requested that Ms. Shepherd respond to the Department by August 6, 2007. The violations noted for all three USTs in the NOV are failure to: a) protect the USTs from corrosion (9 VAC 25-580-50), b) perform testing on the cathodic protection systems for the USTs (9 VAC 25-580-90), c) perform release detection on the USTs (9 VAC 25-580-140) and d) provide financial responsibility documentation for the USTs (9 VAC 25-590-10 *et seq.*).
7. Between August 9 and August 28, 2007, the representatives for the tank owner contacted DEQ staff numerous times via telephone to discuss the outstanding violations. On August 13, 2007, DEQ staff received a copy of passing cathodic protection test results performed on UST numbers 1, 2 and 3 on March 8, 2007, effectively resolving the corrosion protection violation cited in section 3.
8. DEQ staff met with Mr. James Shepherd, representative for the tank owner, on August 29, 2007, to discuss possible remedies to the situation including a corrective action plan and the settlement of past violations.
9. On September 18, 2007, DEQ staff met with Mr. James Shepherd to discuss remedies to the outstanding violations. Mr. Shepherd also submitted documentation confirming that the USTs were STI-P3 tanks and protected from corrosion, effectively resolving the violation noted in paragraph 3.a.

10. On September 21, 2007, DEQ staff received financial assurance documentation from the UST owner, resolving the violation noted in paragraph 3.d.

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 Ms. Shepherd and Ms. Shepherd agrees that:

1. To remedy the violations described above and bring the Facility into compliance with the Regulation, Ms. Shepherd shall perform the actions described in Appendix A to the Order.
2. Ms. Shepherd shall pay a civil charge of \$5,299.00, 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. Ms. Shepherd shall also include her Social Security 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 Ms. Shepherd, for good cause shown by Ms. Shepherd, 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 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, Ms. Shepherd admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Ms. Shepherd 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. Ms. Shepherd declares she 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 she 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 Ms. Shepherd 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. Ms. Shepherd 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. Ms. Shepherd must show that such circumstances resulting in noncompliance were beyond her control and not due to a lack of good faith or diligence on her part. Ms. Shepherd 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 Ms. Shepherd 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 Ms. Shepherd. Notwithstanding the foregoing, Ms. Shepherd 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. Ms. Shepherd petitions the Regional Director to terminate the Order after she 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 Ms. Shepherd.

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

12. By her signature below, Ms. Shepherd voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 21st day of April, 2008


Amy T. Owens, Regional Director
Department of Environmental Quality

The terms and conditions of the Order are voluntarily accepted by Jean H. Shepherd.:

Date: 10-24-07

By 
Jean H. Shepherd

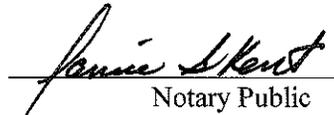
Commonwealth of Virginia, ~~City~~/County of Clarke

The foregoing instrument was acknowledged before me this 24 day of Oct., 2007, by

(name)

8-31-09
Date

My commission expires:


Notary Public

Reg # 289055



Appendix A
Jean H. Shepherd
UST Facility at 4192 Harry Byrd Highway, Berryville, Clarke County, VA

For the USTs, Ms. Shepherd shall:

- A. By October 15, 2007, have:
 - 1. either repaired or replaced the automatic tank gauge system used to perform release detection on the USTs and submitted documentation to the DEQ of the same.
 - 2. submit copies of release detection results for all the USTs for the month of September 2007.

- B. By November 15, 2007, submit copies of release detection results for all the USTs for the month of October 2007.

- C. By December 15, 2007, submit copies of release detection results for all the USTs for the month of November 2007.