



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

PIEDMONT REGIONAL OFFICE

4949-A Cox Road, Glen Allen, Virginia 23060

(804) 527-5020 Fax (804) 527-5106

www.deq.virginia.gov

Douglas W. Domenech
Secretary of Natural Resources

David K. Paylor
Director

Michael P. Murphy
Regional Director

STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO A.N.B.D INC. d/b/a MARKET PLACE CITGO Registration No. 51707

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 10.1-1309 and -1316, between the State Air Pollution Control Board and A.N.B.D Inc., for the purpose of resolving certain violations of the Virginia Air Pollution Control Law and the applicable regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "ANBD" means A.N.B.D Inc., a corporation authorized to do business in Virginia and its affiliates, partners, subsidiaries, and parents. A.N.B.D Inc. is a "person" within the meaning of Va. Code § 10.1-1300.
2. "Board" means the State Air Pollution Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and -1301.
3. "CFR" means the Code of Federal Regulations, as incorporated into the Regulations.

4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
5. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
6. "Facility" means the A.N.B.D Inc. d/b/a Market Place Citgo, a combination convenience store and gas station, located at 2605 Hull Street Road in Richmond City, Virginia.
7. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.
8. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the Virginia Air Pollution Control Law.
9. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
10. "Regulations" or "Regulations for the Control and Abatement of Air Pollution" mean 9 VAC 5 chapters 10 through 80.
11. "Stage I" means vapor recovery systems at gasoline dispensing facilities, as required under 9 VAC 5-40-5220.E.1.
12. "Stage II" means vapor recovery systems at gasoline dispensing facilities, as required under 9 VAC 5-40-5220.F.1.
13. "Va. Code" means the Code of Virginia (1950), as amended.
14. "VAC" means the Virginia Administrative Code.
15. "Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 *et seq.*) of Title 10.1 of the Va. Code.
16. "Warning Letter" or "WL" means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.

SECTION C: Findings of Fact and Conclusions of Law

1. ANBD owns and operates a combination convenience store and gas station located at 2605 Hull Street Road in Richmond City, Virginia.
2. The Facility is a true minor stationary source and is subject to Emission Standards for Petroleum Liquid Storage and Transfer Operations under 9 VAC 5-40-5220 *et seq.* of the Regulations.

3. On September 14, 2009, Department staff conducted an inspection of the Facility for compliance with the requirements of the Virginia Air Pollution Control Law, and the Regulations. Based on the inspection and follow-up information, Department staff made the following observations:

- a. The Stage I system was not operating in a manner to remove, destroy or prevent the discharge of at least 90% by weight of volatile organic compound (VOC) emissions because the vapor recovery system was malfunctioning.

9 VAC 5-40-5220(E)(1) requires that the transfer of gasoline from any tank truck into any stationary storage tank be made with a tank that is equipped with a vapor control systems to remove, destroy or prevent the discharge into the atmosphere of at least 90% by weight of VOC emissions.

- b. The Stage II system was not operating in a manner to remove, destroy or prevent the discharge into the atmosphere of at least 95% by weight of VOC emissions because the vapor recovery system was malfunctioning. DEQ staff also noted that the vapor hose at fueling point 4 was damaged and needed replacement.

9 VAC 5-40-5220(F)(1) prohibits owners or other persons to transfer or permit the transfer of gasoline into the fuel tank of any motor vehicle unless the transfer is made using a certified Stage II vapor recovery system that removes, destroys or prevents the discharge into the atmosphere of at least 95% by weight of VOC emissions.

- c. The operations labels were not on the fueling points.

AQP-9 Section (III)(F) requires the facility owner or operator to post operating instruction for the vapor recovery system on every gasoline dispensing pump.

- d. Records of operator training and maintenance, repair and testing of the Stage II system, and a valid Facility Registration and Compliance Form (FRC) were not on site.

9 VAC 5-40-5220(F)(6)(j) requires records of operator training, system registration, equipment approval, maintenance, repair, and testing be maintained on site.

9 VAC 5-40-5220(F)(6)(h) requires facility personnel be provided with training and written instructions to assure proper operation of the vapor recovery system.

9 VAC 5-40-5220(F)(6)(i) requires routine maintenance inspections of the Stage II system be performed on a daily and monthly basis and record the monthly inspection results.

9 VAC 5-40-5220 (F)(6)(d) requires that the Stage II system be tested at least every five years, upon major system replacement or modification, or if requested by the board.

4. On October 1, 2009, based on the inspection the Department issued Warning Letter No. 09-10-PRO-401 to the ANBD for the violations described in paragraph C.3, above.
5. On April 21, 2010, Department staff conducted a review of the Facility record and found that ANBD had failed to provide a response to the WL issued on October 1, 2009.
6. On May 25, 2010, based on the inspections the Department issued Notice of Violation No. 10-04-PRO-404 to ANBD for the violations described in paragraph C.3, above.
7. On July 1, 2010, Department staff discussed the violations with a representative of ANBD.
8. Based on the results of the inspections and subsequent information, the Board concludes that ANBD has violated 9 VAC 5-40-5220(E)(1), 9 VAC 5-40-5220(F)(1), AQP-9 Section (III)(F), 9 VAC 5-40-5220(F)(6)(d), 9 VAC 5-40-5220(F)(6)(j), 9 VAC 5-40-5220(F)(6)(h), and 9 VAC 5-40-5220(F)(6)(i) as described in paragraph C.3 above.
9. In order for ANBD to return to compliance, DEQ staff and representatives of ANBD have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 10.1-1309 and -1316, the Board orders ANBD, and ANBD agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of **\$5,820** in settlement of the violations cited in this Order. The civil charge shall be paid in accordance with the following schedule:

Due Date	Amount
June 10, 2011	\$727.50
September 10, 2011	\$727.50
December 10, 2011	\$727.50
March 10, 2012	\$727.50
June 10, 2012	\$727.50
September 10, 2012	\$727.50
December 10, 2012	\$727.50
March 10, 2013	\$727.50

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

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

ANBD shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF).

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of ANBD for good cause shown by ANBD, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, 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 Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, ANBD admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. ANBD 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. ANBD declares it has received fair and due process under the Administrative Process Act and the Virginia Air Pollution 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 ANBD 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. ANBD 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. ANBD shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. ANBD 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 ANBD 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 ANBD. Nevertheless, ANBD 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. ANBD 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 ANBD.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve ANBD 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 ANBD 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 ANBD 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 ANBD to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of ANBD.
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, A.N.B.D Inc. voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 10th day of FEBRUARY, 2011.



Michael P. Murphy, Regional Director
Department of Environmental Quality

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A.N.B.D Inc. voluntarily agrees to the issuance of this Order.

Date: Feb 9, 2011 By: Rehana Atker, President
Rehana Atker (Title)
A.N.B.D Inc.

Commonwealth of Virginia
City/County of Norfolk

The foregoing document was signed and acknowledged before me this 9th day of Feb., 2011, by Rehana Atker who is President of A.N.B.D Inc., on behalf of the corporation.

Carole P. Ackie
Notary Public

7069262
Registration No.

My commission expires: Sept 30, 2014

Notary seal:

APPENDIX A SCHEDULE OF COMPLIANCE

1. ANBD shall submit to DEQ documentation of passing vapor recovery system test results to include air-to-liquid ratio testing for fuel point 1 and 2 and passing pressure decay test results. Submit the test results to DEQ **no later than 15 days after system testing is completed or March 1, 2011, whichever occurs first.**
2. ANBD shall submit to DEQ copies of daily and monthly inspection certifications for December 2010, January 2011, and February 2011 **by no later than March 10, 2010.**
3. In accordance with 9 VAC 5-20-230(A), in all documents or reports submitted to DEQ pursuant to this Consent Order, ANBD shall by its officers, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering and evaluating the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

4. Unless otherwise specified in this Order, ANBD shall submit all requirements of Appendix A of this Order to:

Jennifer Hoeffner
Enforcement Specialist, Sr.
VA DEQ – Piedmont Regional Office
4949-A Cox Road
Glen Allen, Virginia 23060
804-527-5123
804-527-5106 (fax)
jennifer.hoeffner@deq.virginia.gov

Charles “Boots” King
Air Compliance Manager
VA DEQ – Piedmont Regional Office
4949-A Cox Road
Glen Allen, Virginia 23060
804-527-5036
804-527-5106 (fax)
charlesboots.king@deq.virginia.gov