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*Commonwealth of Virginia*

*VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY*

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Jeffrey Hurst  
Regional Director

**STATE WATER CONTROL BOARD  
ENFORCEMENT ACTION - ORDER BY CONSENT  
ISSUED TO**

**Conny Oil, Inc.**

**FOR**

**Wythe Oil Distributors**

**Facility ID No. 1-024455**

**Incident Report (IR) No. 2018-S-2252; Pollution Complaint (PC) No. 2018-1024  
AT**

**1185 Church Street, Wytheville, Virginia**

**SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code § 62.1-44.34:20, between the State Water Control Board and Conny Oil, Inc., for the purpose of resolving certain violations of the State Water Control Law and the applicable regulations at Wythe Oil Distributors, located at 1185 Church Street, Wytheville, Virginia.

**SECTION B: Definitions**

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

1. "Aboveground storage tank" or "AST" means any one or combination of tanks, including pipes, used to contain an accumulation of oil at atmospheric pressure, and the volume of which, including the volume of the pipes, is more than ninety percent above the surface of the ground. This term does not include line pipe and breakout tanks of an interstate pipeline regulated under the Hazardous Liquid Pipeline Safety Act of 1979 or the Natural Gas Pipeline Safety Act of 1968, as amended.

2. “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.
3. “Conny Oil” means Conny Oil, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Conny Oil, Inc. is a “person” within the meaning of Va. Code § 62.1-44.3. Wythe Oil Distributors is a fictitious name used by Conny Oil, Inc. for its oil distributorship facility located in Wytheville, Virginia.
4. "Containment and cleanup" means abatement, containment, removal and disposal of oil and, to the extent possible, the restoration of the environment to its existing state prior to an oil discharge.
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, as described in Va. Code § 10.1-1185.
7. "Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying or dumping.
8. “Facility” means Conny Oil, Inc.’s Wythe Oil Distributors facility located at 1185 Church Street, Wytheville, Virginia.
9. “Location” means the location of the Wythe Oil Distributors Facility where the oil discharges occurred, at 1185 Church Street, Wytheville, Virginia.
10. “Notice of Violation” or “NOV” means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
11. “ODCP” means oil discharge contingency plan.
12. “Oil” means oil of any kind and in any form, including, but not limited to, petroleum and petroleum by-products, fuel oil, lubricating oils, sludge, oil refuse, oil mixed with other wastes, crude oils and all other liquid hydrocarbons regardless of specific gravity. *See* Va. Code §62.1-44.34:14.
13. "Operator" means any person who owns, operates, charters, rents or otherwise exercises control over or responsibility for a facility or a vehicle or vessel.
14. “Order” means this document, also known as a “Consent Order” or “Order by Consent,” a type of Special Order under the State Water Control Law.
15. "Person" means any firm, corporation, association or partnership, one or more individuals, or any governmental unit or agency thereof.

16. “Regulations” means the Facility and Aboveground Storage Tank (AST) Regulation, 9 VAC 25-91-10, *et seq.* These Facility and AST Regulations incorporate the federal Oil Pollution Prevention Regulations (40 CFR 112) by reference.
17. “State Water Control Law” means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code. Article 11 (Va. Code §§ 62.1-44.34:14 through 62.1-44.34:23) of the State Water Control Law addresses discharge of oil into waters. (Va. Code §§ 62.1-44.34:14 through 62.1-44.34:23) of the State Water Control Law addresses aboveground storage tanks.
18. “State waters” means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
19. “SWRO” means the Southwest Regional Office of DEQ, located in Abingdon, Virginia.
20. “Va. Code” means the Code of Virginia (1950), as amended.
21. “VAC” means the Virginia Administrative Code.
22. "Vehicle" means any motor vehicle, rolling stock or other artificial contrivance for transport whether self-propelled or otherwise, except vessels.
23. “Warning Letter” or “WL” means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

### **SECTION C: Findings of Fact and Conclusions of Law**

1. Wythe Oil Distributors is registered with the Department as being owned by Conny Oil, Inc., and as having six aboveground storage tanks (ASTs) used for the purpose of storing and distributing petroleum products at the Facility. The Facility has a combined storage capacity of 85,000 gallons of petroleum products and is thus subject to the ODCP and Pollution Prevention requirements contained in the Regulations.
2. On March 19, 2018, a site visit was conducted in response to the report from Town of Wytheville personnel of a release of petroleum at the Facility.
3. On April 4, 2018, DEQ staff conducted a formal pollution prevention inspection and ODCP review at the Facility as a result of the findings from the March 19, 2018 site visit, and upon discovering that there had been changes of Facility personnel.
4. The ODCP for the Facility was last approved on April 4, 2013. The approved ODCP for the Facility indicates that visual monitoring is used to meet the regulatory requirement to establish a means of early detection of a discharge from the tanks at the Facility.

5. At the time of the April 4, 2018 inspection, no documentation was available to verify that a training program had been developed for personnel conducting the daily and weekly inspections.

A “Conceptual Spill Prevention, Control and Countermeasure Plan/Oil Discharge Contingency Plan” (SPCC/ODCP) was received by DEQ staff on June 29, 2018. This documentation did not contain an actual Facility-specific training program.

Regulation 9 VAC 25-91-130.B.6.a states “Each facility operator shall establish a training program for those facility personnel conducting the daily visual and weekly inspections of the facility”.

6. At the time of the April 4, 2018 inspection, documentation verifying that the required training for authorized Facility personnel conducting the daily and weekly inspections had been conducted was not provided.

A “Conceptual Spill Prevention, Control and Countermeasure Plan/Oil Discharge Contingency Plan” (SPCC/ODCP) was received by DEQ staff on June 29, 2018. This documentation did not contain an actual Facility-specific training program, or record of Facility personnel actually having received such training.

Regulation 9 VAC 25-91-130.B.6.d states “The operator of a facility shall train facility personnel upon any changes to the contents of the initial training program or every three years and shall document this training in the facility records”.

7. At the time of the April 4, 2018 inspection, records indicate that inspections were only being conducted one time per month, and no evidence of the required training of the personnel conducting the inspections was provided. It was noted during the site visit conducted on March 19, 2018, that the gravel area beneath the main loading rack was stained, and that a leak had developed at one of the valves installed in the piping adjacent to the pump house. A red dyed petroleum product was observed leaking from the valve and onto the ground. It was stated that the piping was associated with the 30,000-gallon kerosene AST.

Regulation 9 VAC 25-91-130.B.5.b states” The operator or a duly authorized representative shall conduct a weekly inspection each week in which normal operation occurs, but no less frequently than once every 14 days, of the facility in the areas where this chapter applies, using a checklist that contains at least the items found in subdivision 5 c of this subsection. The checklist is not inclusive of all safety or maintenance procedures but is intended to provide guidance to the requirements within this chapter. The weekly checklist shall be maintained at the facility and provided to the board upon request. This checklist shall be signed and dated by the facility person or persons conducting the inspection and shall become part of the facility record.”

8. At the time of the April 4, 2018 inspection, it appeared that the vehicle spill containment system (berm) for each of two transfer areas had eroded such that each berm appeared to no longer meet minimum containment requirements.

Regulation 9 VAC 25-91-130.B.3.b states “All oil transfer areas where filling connections are made with vehicles shall be equipped with a spill containment system capable of containing and collecting those spills and overfills. The containment system shall be designed to hold at least the capacity as required by 40 CFR Part 112.”

9. At the time of the April 4, 2018 inspection, no documentation was available to verify that the liquid level gauges installed on the tanks had been calibrated within the last year. This requirement was satisfied by documentation dated June 28, 2018, which was submitted electronically and received by DEQ staff on June 29, 2018.

Regulation 9 VAC 25-91-130.B.3.d states “All ASTs shall be equipped with a gauge that is readily visible and indicates the level of oil or quantity of oil in the tank. In addition, the storage capacity, product stored and tank identification number shall be clearly marked on the tank at the location of the gauge. These gauges shall be calibrated annually.”

10. Based on a review of the DEQ's registration database (CEDDS) and the file for this Facility, an AST registration renewal was due on, or before, February 18, 2014. An initial 7540-AST form was received by DEQ on June 25, 2018. A complete 7540-AST form documenting the required renewal of registration of the AST systems and dated June 29, 2018, was received by DEQ staff on June 29, 2018.

Regulation 9 VAC 25-91-100.F states “The owner or a duly authorized representative of the facility or AST shall renew the registration required by this section every five years or whenever title to the facility or AST is transferred (change of ownership), whichever occurs first”.

11. It was noted during the April 4, 2018 inspection that there have been significant changes at the Facility since the last ODCP renewal, such as a change in Facility personnel or operator, and incomplete documentation of weekly, monthly and annual inspection activities. However, DEQ has no record of having been notified of these or other significant changes. A “Conceptual Spill Prevention, Control and Countermeasure Plan/Oil Discharge Contingency Plan” (SPCC/ODCP) was received by DEQ staff on June 29, 2018. However, the existing ODCP expired on June 26, 2018. DEQ staff has not received an up-to-date ODCP, reflecting all changes made at the Facility.

Regulation 9 VAC 25-91-170.E states “Oil discharge contingency plans shall be reviewed, updated if necessary and resubmitted to the board for approval every 60 months from the date of approval unless significant changes occur sooner. Operators shall notify the board of significant changes and make appropriate amendments to the contingency plan within 30 days of the occurrence.”

12. At the time of the April 4, 2018 inspection, no secondary containment recertification documentation was available for the AST containment dike area.

Regulation 9 VAC 25-91-130.B.2.a states “The operator shall have and maintain secondary containment or another method approved by the board for each AST. The containment structure must be capable of containing oil and shall be constructed in accordance with 40 CFR Part 112 so that any discharge from the AST will not escape the containment before cleanup occurs. The operator shall have each secondary containment or approved method evaluated and certified to be in compliance with the applicable requirements of 40 CFR Part 112, the Uniform Statewide Building Code and its referenced model codes and standards, and 29 CFR 1910.106. The operator of a facility existing on June 24, 1998, shall have had this evaluation or certification performed by a professional engineer or person approved by the board on or before June 30, 1998, and every 10 years thereafter, unless otherwise exempted.”

13. At the time of the April 4, 2018 inspection, Facility personnel stated that not all fuel delivery receipts were monitored continuously, either manually or automatically. The Facility’s (expired) ODCP/SPCC Plan contains safe fill, shutdown and transfer procedures, which include pre-authorization and continuous monitoring of all product transfers.

9VAC 25-91-130.B.3.a states “Each operator shall institute safe fill, shutdown, and transfer procedures, or equivalent measures approved by the board, that will ensure that spills resulting from tank overfills or other product transfer operations do not occur. Written safe fill, shutdown, and transfer procedures shall be maintained by the operator for use by facility personnel. All receipts of oil shall be authorized by the operator or facility personnel trained by the operator who shall ensure the volume available in the tank is greater than the volume of oil to be transferred to the tank before the transfer operation commences. The operator shall ensure the transfer operation is monitored continually, either by manual or automatic means, until complete. The operator shall ensure that all tank fill valves not in use are secured and that only the tank designated is receiving oil.”

14. As stated in C.2 above, a site visit was conducted on March 19, 2018, in response to the report from Town of Wytheville personnel of a release of petroleum at the Facility. DEQ staff directed Facility personnel to call the Virginia Department of Emergency Management, and the National Response Center, as well as anyone else listed on the emergency call list within the Facility’s ODCP. The gravel area beneath the main loading rack was stained, and a leak had developed at one of the valves installed in the piping adjacent to the pump house. There was significant staining on the gravel surface adjacent to an in-ground vault, leading to the edge of the property. There was also an area of stained soil at the end of a drain pipe in the VDOT right of way across the street (Church Street). According to Facility personnel, the vault had been used as a depository for petroleum left in the hoses of delivery trucks following loading/unloading operations, and for petroleum caught in buckets from leaking valves in the AST piping system.

Facility personnel stated that the staining in this area was from a release of product from the vault. No official notifications to required entities regarding the release were made by Conny Oil. Incident Report (IR) No. 2018-S-2252 was assigned to this incident. Later, Pollution Complaint (PC) No. 2018-1024 was also assigned to this incident. DEQ staff conducted interviews with nearby residents and business owners, who indicated that petroleum odors had been noted the week prior to March 19<sup>th</sup> and were worse during rainfall events.

Va. Code § 62.1-44.34:18.A of Article 11 of the State Water Control Law states “The discharge of oil into or upon state waters, lands, or storm drain systems within the Commonwealth is prohibited”. Va. Code § 62.1-44.34:18.B of Article 11 of the State Water Control Law states “Any person discharging or causing or permitting a discharge of oil into or upon state waters, lands, or storm drain systems, discharging or causing or permitting a discharge of oil which may reasonably be expected to enter state waters, lands, or storm drain systems, or causing or permitting a substantial threat of such discharge and any operator of any facility, vehicle or vessel from which there is a discharge of oil into or upon state waters, lands, or storm drain systems, or from which there is a discharge of oil which may reasonably be expected to enter state waters, lands, or storm drain systems, or from which there is a substantial threat of such discharge shall, immediately upon learning of such discharge or threat of discharge, implement any applicable oil spill contingency plan approved under this article or take such other action as may be deemed necessary in the judgment of the Board to contain and clean up such discharge or threat of such discharge.” Va. Code § 62.1-44.34:19.A of Article 11 of the State Water Control Law states “Any person discharging or causing or permitting a discharge of oil into or upon state waters, lands, or storm drain systems within the Commonwealth or discharging or causing or permitting a discharge of oil which may reasonably be expected to enter state waters, lands, or storm drain systems within the Commonwealth, and any operator of any facility, vehicle or vessel from which there is a discharge of oil into state waters, lands, or storm drain systems, or from which there is a discharge of oil which may reasonably be expected to enter state waters, lands, or storm drain systems, shall, immediately upon learning of the discharge, notify the Board, the director or coordinator of emergency services appointed pursuant to § 44-146.19 for the political subdivision in which the discharge occurs and any other political subdivision reasonably expected to be affected by the discharge, and appropriate federal authorities of such discharge.”

Va. Code § 62.1-44.34:18 prohibits the discharge of oil into or upon state waters, lands, or storm drain systems that violate applicable water quality standards or cause a film or sheen upon or discoloration of the surface of the water.

Va. Code § 62.1-44.34:19 requires any person causing or permitting a discharge of 25 gallons or more of oil that enters, or may reasonably be expected to enter, state waters, lands or storm drain systems within the Commonwealth immediately upon learning of the discharge to notify the Board.

15. On May 3, 2018, the Department issued Notice of Violation No. NOV-004-0518-WA to Conny Oil for violations of AST program requirements, for a discharge of oil to the land and storm drain systems, and for failure to report/clean up the discharge.
16. On May 23, 2018, Department staff met with representatives of Conny Oil to discuss AST program requirements, the discharge, emergency response, reporting, containment and clean-up, and future actions.
17. Based on the results of the March 19, 2018 site visit, the April 4, 2018 inspection, the May 23, 2018 meeting, and the documentation submitted on June 25, 2018 and June 29, 2018, the State Water Control Board concludes that Conny Oil has violated the AST Regulation, 9 VAC 25-91-10, *et seq.* as described in paragraphs C.5 through C.13, above. Conny Oil has also violated Va. Code § 62.1-44.34:18, which prohibits the discharge of oil into or upon state waters, lands, or storm drain systems and Va. Code § 62.1-44.34:19, which requires reporting/cleanup of discharges of oil into or upon state waters, lands, or storm drain systems within the Commonwealth, as described in paragraph C.14, above.
18. In order for Conny Oil to complete its return to compliance, DEQ staff and representatives of Conny Oil 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 § 62.1-44.34:20, the Board orders Conny Oil, Inc., and Conny Oil, Inc. agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$22,785.00 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

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

Conny Oil, Inc. 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 Petroleum Storage Tank Fund (VPSTF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Conny Oil, Inc. shall be liable for attorneys' fees of 30% of the amount outstanding.

**SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of Conny Oil for good cause shown by Conny Oil, 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 and in NOV No. NOV-004-0518-WA dated May 3, 2018. 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, Conny Oil admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Conny Oil 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. Conny Oil declares it has received fair and due process under the Administrative Process Act 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 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 Conny Oil 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. Conny Oil 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 unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Conny Oil shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Conny Oil 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 parties intend 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 and any 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 Conny Oil. Nevertheless, Conny Oil 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. The Director or his designee terminates the Order after Conny Oil has completed all of the requirements of the Order;
  - b. Conny Oil 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
  - c. The Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Conny Oil.

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

And it is so ORDERED this 18<sup>th</sup> day of April, 2019.



Jeffrey L. Hurst, Regional Director  
Department of Environmental Quality

Conny Oil, Inc. voluntarily agrees to the issuance of this Order.

Date: 2/18/19 By: Coy T. Bowling, \_\_\_\_\_  
Coy T. Bowling President  
Conny Oil, Inc.

Commonwealth of Virginia

City/County of Roanoke

The foregoing document was signed and acknowledged before me this 18<sup>th</sup> day of

February, 2019, by Coy T. Bowling who is

President of Conny Oil, Inc., on behalf of the corporation.

Lisa W. Minnix  
Notary Public

116727  
Registration No.

My commission expires: April 30, 2021

Notary seal:



## **APPENDIX A SCHEDULE OF COMPLIANCE**

In order to comply with the provisions of the State Water Control Law and Regulations, Conny Oil, Inc. agrees to implement the following actions by the dates noted below:

- 1) Continue all remedial activities associated with the petroleum contamination as agreed to or directed by DEQ staff;
- 2) No later than April 1, 2019:
  - a) Submit documentation verifying that all fuel delivery receipts are monitored continuously, either manually or automatically, as required by 9VAC 25-91-130.B.3.a; and
  - b) Develop and submit to DEQ for approval a training program for authorized Facility personnel that conduct the daily and weekly inspections that meets the requirements of Regulation 9 VAC 25-91-130.B.6;
- 3) No later than May 1, 2019:
  - a) Conduct the approved training for authorized Facility personnel conducting the daily and weekly inspections and submit documentation that the training has been administered to those individuals, as required by Regulation 9 VAC 25-91-130.B.6.d;
  - b) Submit documentation verifying completion of the vehicle spill containment system at each of two fuel transfer areas that meets the requirements of Regulation 9 VAC 25-91-130.B.3.b;
  - c) Submit certification of the AST secondary containment from a Professional Engineer licensed to do work in the Commonwealth of Virginia that meets the requirements of Regulation 9 VAC 25-91-130.B.2.a;
  - d) Submit records verifying that inspections are being conducted on a weekly basis, by authorized Facility personnel that have received the approved training, as required by Regulation 9 VAC 25-91-130.B.5.b;
  - e) Complete and submit to DEQ for approval an Oil Discharge Contingency Plan that incorporates all changes at the Facility and meets the requirements of 9 VAC 25-91-170.E; and
  - f) Submit a Site Characterization Report regarding the release of petroleum product from the “vault”, the leaking valves and any other sources at the Facility.
- 4) All documentation submitted to DEQ’s SWRO shall be mailed to the attention of:

Ruby Scott  
Compliance Auditor  
Department of Environmental Quality  
Southwest Regional Office  
355-A Deadmore Street  
Abingdon, VA 24210