



# ***COMMONWEALTH of VIRGINIA***

## ***DEPARTMENT OF ENVIRONMENTAL QUALITY***

PIEDMONT REGIONAL OFFICE

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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 HULL STREET EXPRESS, INC d/b/a CHIPPENHAM BP Registration No. 51751**

#### **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 Hull Street Express, 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. "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.
2. "CFR" means the Code of Federal Regulations, as incorporated into the Regulations.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
5. "Facility" means the Hull Street Express, Inc combination convenience store and gas station, located at 6400 Hull Street Road in Richmond City, Virginia.
6. "HSE" means Hull Street Express, Inc d/b/a Chippenham BP, a corporation authorized to do business in Virginia and its affiliates, partners, subsidiaries, and parents. Hull Street Express, Inc is a "person" within the meaning of Va. Code § 10.1-1300.
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.

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

1. HSE owns and operates a combination convenience store and gas station located at 6400 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 9, 2009, Department staff conducted an inspection (September 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 a coaxial system, which is not certified in Virginia as able to remove, destroy or prevent the discharge of at least 90% by weight of volatile organic compound (VOC) emissions.

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 upgraded and placed in service in approximately September 2008 without registering, previously testing, or certifying the system. Without testing/certification of the Stage II system, HSE could not demonstrate that the system was able to remove, destroy or prevent the discharge into the atmosphere of at least 95% by weight of VOC emissions.

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.

9 VAC 5-40-5220(F)(6)(a) requires that the board be notified no later than 30 days of any repairs or modifications to an existing Stage II vapor recovery system that change the approved configuration.

9 VAC 5-40-5220(F)(6)(d) requires that tests be performed upon major system replacement or modification to ensure the Stage II vapor recovery system is vapor tight.

- c. Records of operator training and maintenance, repair and testing of the Stage II system 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.

4. On October 2, 2009, based on the September inspection and follow-up information, the Department issued Warning Letter No. 09-10-PRO-402 (WL) to the HSE for the violations described in paragraph C.3, above. HSE failed to provide a response to the WL.
5. On February 24, 2010, Department staff conducted a follow-up inspection of the Facility (February inspection). Department staff observed that the conditions noted during the September inspection with regard to the Stage I system and the Stage II system had not been corrected. Records for the daily and monthly inspections for January and February 2010 were on site. No other records were available. A representative of HSE was contacted during the inspection. The representative stated that the records were in the office locked up. HSE was given the deadline of March 1, 2010 to submit the records to verify compliance.
6. On March 1, 2010, the Department received an incomplete facility registration and compliance form (FRC), automatic tank gauge reports, and daily and monthly inspection records for calendar year 2009. The submitted records did not adequately address the record keeping requirements.
7. On April 7, 2010, based on the September and February inspections and follow-up information the Department issued Notice of Violation No. 10-03-PRO-401 to HSE for the violations described in paragraph C.3, above.
8. On April 22, 2010, Department staff discussed the violations with a representative of HSE. HSE provided notification that the Stage I system was scheduled to be updated to a certified system and tested by the following week.
9. On April 29, 2010, Department staff conducted a follow-up inspection of the Facility. Department staff observed that the Stage I system had been updated to a certifiable system. Testing on the Stage I and the Stage II system had not yet been conducted. The testing was not conducted when the system was updated because there was not enough product in the tank at that time, as required by the approved testing method. Department staff also noted that, with the exception of the operator training certificate and the FRC, all other required records were on site. Department staff spoke to a representative of the company that provided the operator training and confirmed that it had been completed, but they had misplaced the training certificate.
10. On May 27, 2010, the Department received a copy of the operator training certificate, an incomplete FRC, and results of the State I and Stage II system testing that was performed on May 10, 2010. Department staff reviewed the test results and found the Stage I and Stage II systems as certified systems.
11. On June 22, 2010, Department staff spoke to a representative of HSE to explain the deficiency with the FRC, how to complete the FRC and to re-submit it once it was complete.

12. Based on the results of the inspections and subsequent information, the Board concludes that HSE has violated 9 VAC 5-40-5220(E)(1), 9 VAC 5-40-5220(F)(1), 9 VAC 5-40-5220(F)(6)(a), 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.
13. In order for HSE to return to compliance, DEQ staff and representatives of HSE have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

**SECTION D: Agreement and Order**

1. Accordingly, by virtue of the authority granted it in Va. Code §§ 10.1-1309 and -1316, the Board orders HSE, and HSE agrees to pay a civil charge of **\$6,184** in settlement of the violations cited in this Order. The civil charge shall be paid in accordance with the following schedule:

Due Date	Amount
November 1, 2010	\$618.40
December 1, 2010	\$618.40
January 1, 2011	\$618.40
February 1, 2011	\$618.40
March 1, 2011	\$618.40
April 1, 2011	\$618.40
May 1, 2011	\$618.40
June 1, 2011	\$618.40
July 1, 2011	\$618.40
August 1, 2011	\$618.40

2. If the Department fails to receive a civil charge payment pursuant to the schedule described above, the payment shall be deemed late. If any payment is late, the Department shall have the right to demand in writing full payment of the entire remaining balance under this order by HSE, and the entire remaining balance of the civil charge shall be immediately due and owing. HSE shall pay the entire remaining balance within 15 days of receipt of the demand letter from the Department. Any acceptance by the Department of a late payment or of a payment of less than the entire remaining balance shall not serve as a waiver of the Department's right to accelerate payment of the balance under this Order.
3. All payments 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

4. HSE 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 HSE for good cause shown by HSE, 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, HSE admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. HSE 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. HSE 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 HSE 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. HSE 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. HSE shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. HSE 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 HSE 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 HSE. Nevertheless, HSE 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. HSE 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 HSE.

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

And it is so ORDERED this 4<sup>th</sup> day of OCTOBER, 2010.

  
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Michael P. Murphy, Regional Director  
Department of Environmental Quality

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Hull Street Express, Inc. voluntarily agrees to the issuance of this Order.

Date: 9-24-10 By: Asmat Ali, President  
(Person) (Title)  
Hull Street Express, Inc.

Commonwealth of Virginia  
City/County of Henrico

The foregoing document was signed and acknowledged before me this 24th day of September, 2010, by Asmat Ali who is President of Hull Street Express, Inc., on behalf of the corporation.

Christy Renee Johnson  
Notary Public

367349  
Registration No.

My commission expires: June 30, 2013

Notary seal:

