



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

VALLEY REGIONAL OFFICE

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Matthew J. Strickler
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STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO SOUTHERS GREENHOUSES, INC.

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 Southers Greenhouses, Inc., for the purpose of resolving certain violations of the State Water Control Law and the applicable regulations.

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. "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.

4. "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. "Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying or dumping.
7. "Southers Greenhouses" means Southers Greenhouses, Inc., a corporation authorized to do business in Virginia, and its affiliates, partners, and subsidiaries. Southers Greenhouses is a "person" within the meaning of Va. Code § 62.1-44.3. Southers Greenhouses operated a commercial greenhouse at the Site until 2012.
8. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
9. "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.
10. "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.
11. "Owner and Operator" means any person who owns, operates, charters, rents or otherwise exercises control over or responsibility for a facility or a vehicle or vessel.
12. "Person" means any firm, corporation, association or partnership, one or more individuals, or any governmental unit or agency thereof.
13. "Site" means a former commercial greenhouse located at 853 Old Greenville Road, Staunton, Virginia, located in Augusta County.
14. "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.
15. "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.
16. "Va. Code" means the Code of Virginia (1950), as amended.
17. "VAC" means the Virginia Administrative Code.

SECTION C: Findings of Fact and Conclusions of Law

1. Southers Greenhouses is a person and operator of a number of ASTs located on the Site.
2. On November 2, 2017, DEQ received notification from the City of Staunton Fire Department of a discharge of more than 25 gallons of diesel fuel from a 10,000 gallon AST at the Site. During a subsequent investigation that morning, the Augusta County Fire and Rescue Division Commander determined that an unknown but significant amount of diesel fuel had been discharged onto the ground during an attempt to decommission the tank.
3. On November 2, 2017, DEQ staff met on-site with representatives of Southers Greenhouses and observed a 10,000 gallon AST tipped on its side; a large portion of the flat end wall near ground level had been cut and bent out, and a pronounced stained and discolored flow path lead directly from the tank to a fire-damaged building approximately 50 feet downgradient. A representative of Southers Greenhouses advised DEQ that in an attempt to decommission the AST, the AST had been cut open, and the remaining fuel ignited to burn it off. Based upon the representative's report of the depth of fuel observed in the AST, DEQ staff estimates that approximately 550 gallons of diesel fuel was present in the tank before the incident. After the diesel fuel was ignited, the heated metal at the cut-out end of the AST expanded and enlarged, allowing the diesel to freely discharge onto the ground. The fire inside the tank then migrated out of the tank along the stream of diesel, ultimately setting an adjacent storage building on fire. The diesel fuel discharge continued approximately 200 additional feet downgradient through a combination of drainage pipes and open swales within the Site boundaries. DEQ staff observed stained and discolored vegetation and soil within the open swales along this flow path. DEQ staff also observed an intact 10,000 gallon AST at the Site. The Southers Greenhouses representative disclosed to DEQ that a third 10,000 gallon AST had recently been cut up, its remaining diesel contents ignited and burned off, and removed from the Site. In total, the storage capacity at the Site had been 30,000 gallons. DEQ has no record of registration for any of these three ASTs, which the Southers Greenhouses representative reported to have been installed between 1975 and 1980.
4. 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.
5. 9VAC 25-91-100 requires an operator of an individual AST located within the Commonwealth with a storage capacity of more than 660 gallons of oil to register such facility or AST with the Board.
6. 9VAC 25-91-120 requires ASTs to be closed in compliance with proper closure procedures, including the removal and proper disposal of all liquids, sludges, and vapors.

7. On November 9, 2017, DEQ identified Southers Greenhouses, Inc., as the Responsible Person for the diesel fuel release, and requested an Initial Abatement Report due December 9, 2017 and a Site Characterization Report due January 9, 2018.
8. On November 27, 2017, DEQ issued Notice of Violation No. 2017-VRO-0015 to Southers Greenhouses, Inc. for discharge of oil onto lands or storm drain systems, and for failure to register an individual AST with storage capacity of more than 660 gallons of oil.
9. On December 21, 2017, GES/EDAC, Inc., on behalf Southers Greenhouses, Inc., submitted to DEQ a combined Initial Abatement and Site Characterization Report. The report summarized corrective actions and sampling events completed through December 1, 2017. Corrective actions included removal and disposal of the remaining 63 gallons diesel fuel from the decommissioned 10,000 gallon AST, and the removal of 42.36 tons of petroleum contaminated soil from impacted areas within the open swales along the approximately 250 feet long flow path at the Site. The report concluded that, although laboratory analysis indicates minor petroleum contamination remains at these excavated areas, further leaching and contaminant migration should be limited.
10. On January 29, 2018, DEQ staff advised that based on the information provided in the report coupled with the lack of potential receptors known in the area, no further characterization or remedial action was necessary.
11. Based on the results of November 2, 2017 on-site meeting and the documentation submitted on December 21, 2017, the State Water Control Board concludes that Southers Greenhouses has violated Va. Code § 62.1-44.34:18, 9VAC 25-91-100, and 9VAC 25-91-120, as described in paragraphs C(3) through C(8), above.
12. In order for Southers Greenhouses to complete its return to compliance, DEQ staff and representatives of Southers Greenhouses 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 Southers Greenhouses, and Southers Greenhouses agrees to perform the actions described in Appendix A of this Order.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Southers Greenhouses for good cause shown by Southers Greenhouses, 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. 2017-VRO-0015 dated November 27, 2017. 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, Southers Greenhouses admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Southers Greenhouses 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. Southers Greenhouses 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 Southers Greenhouses 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. Southers Greenhouses 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. Southers Greenhouses shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Southers Greenhouses 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 Southers Greenhouses. Nevertheless, Southers Greenhouses 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 Southers Greenhouses has completed all of the requirements of the Order;
 - b. Southers Greenhouses 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 Southers Greenhouses

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Southers Greenhouses 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 Southers Greenhouses and approved by DEQ 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 Southers Greenhouses certifies that he or she is a responsible officer authorized to enter into the terms and conditions of this Order and to execute and legally bind Southers Greenhouses to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Southers Greenhouses.

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, Southers Greenhouses voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 20th day of June, 2018.



Amy T. Owens, Regional Director
Department of Environmental Quality

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Southers Greenhouses, Inc. voluntarily agrees to the issuance of this Order.

Date: 3-29-18 By: Jennifer S. Frank President
Jennifer S. Frank (Title)
Southers Greenhouses, Inc.

Commonwealth of Virginia
City/County of AUGUSTA

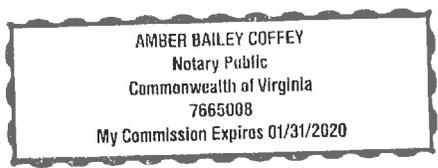
The foregoing document was signed and acknowledged before me this 29th day of MARCH, 2018, by JENNIFER S FRANK who is PRESIDENT of Southers Greenhouses, Inc. on behalf of the corporation.

Amber Bailey Coffey
Notary Public

7665008
Registration No.

My commission expires: 01/31/2020

Notary seal:



APPENDIX A SCHEDULE OF COMPLIANCE

1. Within 30 days of the effective date of the Order, Southers Greenhouses, Inc. shall submit documentation of the proper closure of all remaining petroleum ASTs in full compliance with the requirements of 9VAC25-91-120. Documentation shall include for each AST:
 - a. Documentation of removal and disposal of all liquids and sludge from the AST and associated piping in accordance with all applicable state and federal requirements;
 - b. Assessment of the AST site to confirm or confute a discharge as specified in 9VAC25-91-120 (C) (3)(a).

2. Contact

Unless otherwise specified in this Order, Southers Greenhouses, Inc. shall submit all requirements of Appendix A of this Order to:

Tamara Ambler
Enforcement Specialist Senior
VA DEQ –Valley Regional Office
P.O. Box 3000
540-574-7896
540-574-7878
tamara.ambler@deq.virginia.gov