Commonwealth of Virginia

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

Matthew J. Strickler
Secretary of Natural Resources

David K. Paylor
Director
(804) 698-4000

James Golden
Regional Director

STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
Wakefield Convenience Store, Inc.
FOR
Facility ID No. 4038508

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and Wakefield Convenience Store, Inc., for the purpose of resolving certain violations of the State Water Control Law and the applicable regulations.

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 citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.

2. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

3. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

4. "Facility" means the physical location where the UST and/or UST system are installed. The systems are located at 555 County Drive in Wakefield, Virginia (UST Facility ID# 4038508).

5. "Financial Responsibility" means the ability to demonstrate that one has the financial resources available to pay for the costs of containment and cleanup and third party lawsuits in the event of a release from an UST or UST system.

6. "Form 7530-2" means the Notification for Underground Storage Tanks form used by DEQ to register and track USTs for proper operation, closure and ownership, in accordance with 9 VAC 25-580-70.

7. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

8. "Operator" means any person in control of, or having responsibility for, the daily operation of the UST system as defined in Va. Code § 62.1-44.34:8 and 9 VAC 25-580-10.

9. "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.

10. "Owner" means any person who owns an UST system used for storage, use, or dispensing of regulated substances as defined in Va. Code § 62.1-44.34:8 and 9 VAC 25-580-10.

11. "Person" means an individual, trust, firm, joint stock company, corporation, including a government corporation, partnership, association, any state or agency thereof, municipality, county, town, commission, political subdivision of a state, any interstate body, consortium, joint venture, commercial entity, the government of the United States or any unit or agency thereof.

12. PRO means the Piedmont Regional Office of DEQ, located in Richmond, Virginia.

13. "Regulations" means the Underground Storage Tanks: Technical Standards and Corrective Action Requirements, 9 VAC 25-580-10 *et seq.*

14. "Release detection" means determining whether a release of a regulated substance has occurred from the UST system into the environment or into the interstitial space between the UST system and its secondary barrier or secondary containment around it.

15. "State Water Control Law" means Chapter 3.1(§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code. Article 9 (Va. Code §§ 62.1-44.34:8 through 62.1-44.34:9) of the State Water Control Law addresses Storage Tanks.

16. "Underground Storage Tank" or "UST" means any one or combination of tanks (including underground pipes connected thereto) that is used to contain an accumulation of regulated substances, and the volume of which (including the volume of underground pipes connected thereto) is 10% or more beneath the surface of the ground as defined in Va. Code § 62.1-44.34:8 and 9 VAC 25-580-10.

17. "Va. Code" means the Code of Virginia (1950), as amended.

18. "VAC" means the Virginia Administrative Code.

19. "Wakefield" means Wakefield Convenience Store, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Wakefield is a "person" who owns and operates the Facility as defined in 9 VAC 25-590-10.

20. 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. On 02/26/2015, Mr. Asif Kabani, President of Wakefield Convenience Store, Inc. submitted the UST Registration Form (7530-2). He indicated that were five UST's at the Facility: one 10,000 gallon UST, one 8,000 gallon diesel UST, two 6,000 gallon diesel UST, and one 6,000 gallon kerosene UST. The USTs were installed on 9/1/1998 and that Wakefield Convenience Store, Inc. is the owner and operator of the Facility. Mr. Kabani elected to conduct Statistical Inventory Reconciliation and line tightness test on the tanks as the form of release detection for the five USTs.

2. On 3/30/17, DEQ staff inspected the facility. DEQ staff made the following observations:

    a. Statistical inventory reconciliation records for UST numbers 1, 2, 3, 4, and 5 were not available;
    b. annual line tightness tests for tanks 1, 2, 3, 4, and 5 were not available.

3. 9 VAC25-580-120; 9VAC25-580-180, requires that the owner and operators maintain record illustrating that release detection tests were conducted on the tank and underground piping that routinely contains product. Owners and operators must keep the records required at the UST site and immediately available for inspection by the board; or at a readily available alternative site and be provided for inspection to the board upon request or at a readily available alternative site.

4. 9 VAC25-580-130 states that, "Owners and operators of UST systems must provide a method, or combination of methods, of release detection." Release detection is required for both the tanks and piping of UST systems.

5. 9 VAC25-580-160(8) states that, "Each method of release detection for tanks used to meet the requirements of 9VAC25-580-140 must be conducted ...and be designed to detect releases at the earliest possible time for the specific method chosen." Statistical inventory reconciliation is "Release detection methods based on the application of statistical principles

to inventory data similar to those described in subdivision 1 of this section must meet the following requirements: report a quantitative result with a calculated leak rate; be capable of detecting a leak rate of 0.2 gallon per hour or a release of 150 gallons within 30 days; and use a threshold that does not exceed one-half the minimum detectible leak rate."

6. 9 VAC25-580-140(1)(a) states that," Owners and operators of petroleum UST systems must provide release detection for tanks and piping. Tanks installed before September 15, 2010, must be monitored for releases at least every 30 days for releases using one of the methods listed in subdivisions 4 through 9 of 9VAC25-580-160."

7. 9VAC25-580-170(2) states that, "Each method of release detection for piping used to meet the requirements of 9VAC25-580-140 must be conducted in accordance with the following: A periodic test of piping may be conducted only if it can detect a 0.1 gallon per hour leak rate at one and one-half times the operating pressure."

8. 9VAC25-580-140(2)(a)(1)(b) states that, "Underground piping that routinely contains regulated substances must be monitored for releases in a manner that meets one of the following requirements: Have an annual line tightness test conducted in accordance with subdivision 2 of 9VAC25-580-170 or have monthly monitoring conducted in accordance with subdivision 3 of 9VAC25-580-170."

9. On 4/6/17, DEQ sent the Wakefield a Request for Corrective Action requesting the following:
    a. Submit the next two (2) consecutive months of SIR records; and
    b. Submit precision line tightness test (LTT) records.

10. The response deadline was 6/5/17; Wakefield did not respond.

11. On 7/25/17, DEQ sent a Warning Letter, WL No. TPRO191297, requesting the same records as identified above. The facility did not respond.

12. On 3/23/18, DEQ sent the facility a Notice of Violation, NOV No. TPRO207016.

13. In response to an email from enforcement staff, Wakefield submitted a passing test results for an 8/16/16 line detection test and a 7/21/14 cathodic protection test.

14. On 1/31/19, Wakefield Convenience Store, Inc. submitted an invoice dated 1/31/19 evidencing passing and cathodic protection tests.

15. Based on the results of the 3/30/17 inspection, the Board concludes that Wakefield has violated 9 VAC25-580-120; 9VAC25-580-180; 9 VAC25-580-130; 9 VAC25-580-140; and 9 VAC25-580-160 as described in paragraphs C (4) and C (11), above.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders, Wakefield Convenience Store, Inc. agrees to:

1. Perform the actions described in Appendix A of this Order; and

2. Pay a civil charge of **$ 5,364.00** 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

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Wakefield for good cause shown by Wakefield, 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 Notice of Violation NOV No. TPRO207016 dated March 23, 2018 and Warning Letter WL No. TPRO191297 dated July 25, 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, Wakefield admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. Wakefield 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. Wakefield 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 Wakefield 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. This Order shall become effective upon execution by both the Director or his designee an Wakefield Convenience Store, Inc.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.

10. This Order shall continue in effect until:

    a. The Director or his designee terminates the Order after Wakefield has completed all of the requirements of the Order;

    b. Wakefield 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 Wakefield Convenience Store, Inc..

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

11. Any plans, reports, schedules or specifications attached hereto or submitted by Wakefield 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.

12. Any documents to be submitted pursuant to this Order shall be submitted by Wakefield or an authorized representative of Wakefield. The undersigned representative of Wakefield 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 Wakefield to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible officer of Wakefield.

13. 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.

14. By its signature below, Wakefield voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2019.

_____
James Golden, Regional Director
Department of Environmental Quality

Wakefield Convience Store, Inc. voluntarily agrees to the issuance of this Order.

Date: 8/6/19 By: _____, PRESIDENT
(Person) (Title)
Wakefield Convience Store, Inc.

Commonwealth of Virginia
City/County of Richmond

The foregoing document was signed and acknowledged before me this 6th day of August, 2019, by Asif Kabani who is President of Wakefield Convience Store, Inc. on behalf of the corporation.

_____
Notary Public

307891
Registration No.

My commission expires: 12/31/21

Notary seal:

TONYA M. VAUGHAN
NOTARY PUBLIC
Commonwealth of Virginia
Reg. #307891
My Commission Expires 12/31/21

APPENDIX A
SCHEDULE OF COMPLIANCE

1. **Release Detection Tests**

   a. Within 30 days of the effective date of this order, and three consecutive months, Wakefield shall submit passing release detection records in accordance with 9VAC25-580-160.
      i) In the event of a failing or inclusive result, Wakefield shall report a suspected release to DEQ in accordance with 9VAC25-580-190 within seven days and complete a release investigation as required in 9VAC25-580-210.

2. **Operator Training**

   a. Within 30 days of the effective date of this order, Wakefield shall re-take and submit passing certification of Operator B training in accordance with 9VAC25-580-125.

3. **DEQ Contact**

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

   VA DEQ- Central Office
   Attention: Enforcement
   1111 East Main Street
   Richmond, Virginia 23319
   natalie.womack@deq.virginia.gov