COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

Valley Regional Office

W. Tayloe Murphy, Jr.
Secretary of Natural Resources

Street address: 4411 Early Road, Harrisonburg, Virginia 22801
Mailing address: P.O. Box 3000, Harrisonburg, Virginia 22801-9519
Telephone (540)574-7800 Fax (540)574-7878
www.deq.state.va.us

Robert G. Burnley
Director

R. Bradley Chewning, P.E.
Valley Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION
A SPECIAL ORDER BY CONSENT ISSUED TO
ANDERSON OIL COMPANY

UST Facility at 201 Emmet Street, Charlottesville, VA
Facility Identification No. 6026334

SECTION A: Purpose

This is a Special Order by consent issued under the authority of Va. Code §§ 62.1-44.15 (8a) and (8d) between the State Water Control Board and Anderson Oil Company to resolve certain violations of the State Water Control Law and regulations at Anderson Oil Company's Underground Storage Tank Facility located at 201 Emmet Street, Charlottesville, Virginia.

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 citizen's board of the Commonwealth of Virginia as described in Code §§ 10.1-1184 and 62.1-44.7.

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

3. "UST" means underground storage tank as further defined in 9 VAC 25-580 10 and Virginia Code § 62.1-44.34:8.

4. "Anderson" means Anderson Oil Company, the UST operator within the meaning of Virginia Code § 62.1-44.34:8.

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

6. "Director" means the Director of the Department of Environmental Quality.

7. "Facility" means the retail gasoline station and USTs operated by Anderson located at 201 Emmet Street, Charlottesville Virginia. The Facility's USTs are further identified by UST numbers: 1, 2 and 3.

Tank number	**1**	**2**	**3**
Capacity	10000	10000	10000
Contents	gasoline	gasoline	mixture
Installed	1/1/79	1/1/79	1/1/79
Upgraded	12/12/92	12/12/92	12/12/92

8. "Order" means this document, also known as a Consent Special Order.

9. "Regional Office" means the Valley Regional Office of the Department.

10. "Regulation" means 9 VAC 25-580-10 *et seq.* (Underground Storage Tanks: Technical Standards and Corrective Action Requirements) relating to upgrading of existing UST systems, registration of USTs, closure of non-compliant USTs, and release detection requirements.

11. "Form 7530" means the UST notification form used by the DEQ to register and track USTs for proper operation, closure and ownership purposes. See 9 VAC 25-580-70.

SECTION C: Findings of Fact and Conclusions of Law

1. The Regulation, at 9 VAC 25-580-10 *et seq.*, requires that the USTs at the Facility meet final, specific performance requirements for leak detection, spill and overfill protection, and corrosion protection by December 22, 1998.

2. Anderson is the operator of the USTs at this Facility within the meaning of Virginia Code § 62.1-44.34:8.

3. On February 8, 2001, DEQ staff conducted a formal inspection of the Facility. The following deficiencies were noted:

   a. Incorrect and incomplete information had been submitted on the Form 7530, registering the current USTs with the DEQ. Specifically, the current release detection methods for the USTs were incorrectly registered and a Form 7530 was not submitted for closure and replacement of the galvanized piping with fiberglass piping in apparent violation of 9 VAC 25-580-70.

b. Documentation that internal integrity assessments were performed on the USTs prior to upgrading with corrosion protection (internal lining) and that inspections of the internal linings were performed within ten years of installation were not available for review. This is an apparent violation of 9 VAC 25-580-60.

c. Release Detection was not being performed on USTs and their associated piping in apparent violation of 9 VAC 25-580-140.

d. Compliance records were not available for review in apparent violation of 9 VAC 25-580-120.

e. Financial Responsibility documentation was not available for review in apparent violation of 9VAC 25-590-10 *et seq*. Below is a chart summarizing the violations.

UST number / **Violation**	**1** 10000	**2** 10000	**3** 10000
9 VAC 25-580-70. A Notification information	X	X	X
9 VAC 25-580-90 Corrosion protection	X	X	X
9 VAC 25-580-120 Compliance records	X	X	X
9 VAC 25-580-140(1) Release detection for tanks and/or piping	X	X	X
9 VAC 25-590-10 et seq. Financial Responsibility	**X**	**X**	**X**

Subsequently, DEQ staff sent a Warning Letter (No. 01-12-VRO-3) to Anderson on December 7, 2001, for these apparent violations of the Regulations. The letter requested that Anderson respond by December 17, 2001, and included a copy of the formal inspection results, detailing the apparent violations noted above. It also requested that Anderson contact DEQ to discuss resolution of noncompliance by way of a Letter of Agreement.

4. On May 11, 2001, DEQ staff received a Form 7530 identifying an invalid release detection method for the USTs and copies of passing release detection records for UST numbers 1 & 2 for the months of October 2000 through January 2001. DEQ staff requested release detection records for the two most recent months. These records do not satisfy the request.

5. On July 23, 2001, DEQ staff received a copy of passing line leak detector operational tests for UST numbers 1 and 2, performed on June 25, 2001.

6. On June 26, 2002, DEQ staff provided Anderson with an updated summary of the Facility's non-compliant status with the Regulation via electronic mail.

7. On July 15, 2002, DEQ staff received financial responsibility documentation from Anderson, resolving this violation as previously noted in paragraph 3.

8. On October 6, 2003, DEQ staff received copies of the internal lining warranty and installation documentation. The internal lining installation was deemed complete on December 12, 1992. DEQ staff also received a summary of passing release detection results for USTs number 1 and 2 for the twelve months prior to August 2003.

9. On October 7, 2003, Anderson entered into a Letter of Agreement with the DEQ, dated September 24, 2003, wherein Anderson agreed to resolve all of the apparent violations at the Facility by December 24, 2003.

10. On October 20, 2003, DEQ staff received a facsimile copy of a signed contract, of the same date, for the performance of an inspection of the internal lining installed in the USTs.

11. On October 22, 2003, Anderson submitted a corrected and completed Form 7530, that reflected the steel piping had been properly closed and replaced in 1998. Through this submission, Anderson complied with the requirement to submit a completed Form 7530.

12. On December 16, 2003, Anderson requested, in writing, an extension of the December 24, 2003, compliance deadline agreed to in the September 24, 2003, Letter of Agreement. The request was not granted.

13. On December 29, 2003, DEQ staff received a facsimile copy of the December 10, 2003 internal lining inspection performed on USTs number 1 and 2. Neither UST passed the inspection criteria.

14. On March 15, 2004, DEQ staff issued NOV No. 04-03-VRO-3 to Anderson for the apparent continuing violation of the Regulation on USTs number 1, 2 and 3. The NOV requested that Anderson respond to the Department by March 25, 2004.

15. On March 24, 2004, DEQ staff received electronic copies of photographs taken during the installation of new anodes to one or more of the USTs at the Facility.

Documentation confirming the installation and repair of the corrosion prevention system has not been received.

16. On April 8, 2004, DEQ staff met with Anderson to discuss possible remedies to the situation including a corrective action plan and the settlement of past violations. Additional information was received during the meeting which clarified the actual violations at the facility as compared to those cited in the NOV. A compilation of these violations is outlined in the chart below:

UST number / **Violation**	**1** 10000	**2** 10000	**3** 10000
9 VAC 25-580-90 Corrosion protection	X	X	X
9 VAC 25-580-120 Compliance records	X	X	X
9 VAC 25-580-140(1) Release detection for tanks and/or piping			X

17. On May 25, 2004, DEQ staff received copies of integrity assessments performed on the USTs in preparation for the installation of a corrosion protection system. The integrity assessments showed that the USTs were in acceptable condition for upgrading with an impressed current corrosion protection system. Additionally, DEQ staff received a certified corrosion system designed for the USTs and passing test results indicating that the system was protecting the USTs from corrosion in compliance with the Regulation.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. Code §§ 62.1-44.15 (8a) and (8d), orders Anderson and Anderson agrees that:

1. To remedy the violations described above and bring the Facility into compliance with the Regulation, Anderson shall perform the actions described in Appendix A to the Order.

2. Anderson shall pay a civil charge of $3,700.00, within 30 days of the effective date of the Order. Payment shall be by check, certified check, money order, or cashier's check payable to "Treasurer of the Commonwealth of Virginia" and delivered to:

   Receipts Control
   Department of Environmental Quality

Post Office Box 10150
Richmond, Virginia 23240

3. Anderson shall also include its Federal Identification Number with the civil charge payment and shall note on the payment that it is being made pursuant to this Order.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Anderson, for good cause shown by Anderson, or on its own motion after notice and opportunity to be heard.

2. This Order addresses only those violations specifically identified herein. This Order shall not preclude the Board or Director from taking any action authorized by law, including, but not limited to: (1) taking any action regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the Facility as may be authorized by law; and/or (3) taking subsequent action to enforce the terms of this Order. Nothing herein shall affect appropriate enforcement actions by other federal, state, or local regulatory authority, whether or not arising out of the same or similar facts.

3. For purposes of this Order and subsequent actions with respect to this Order, Anderson admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.

4. Anderson 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. Anderson declares it has received fair and due process under the Virginia Administrative Process Act, Code §§ 2.2-4000 *et seq.*, 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 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 enforce this Order.

6. Failure by Anderson to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall act to waive or bar 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. Anderson shall be responsible for failing to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other act of God, war, strike, or such other occurrence. Anderson must show that such circumstances resulting in noncompliance were beyond its control and not due to a lack of good faith or diligence on its part. Anderson shall notify the Director of the Regional Office in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this Order. Such notice shall set forth:

   a. The reasons for the delay or noncompliance;

   b. The projected duration of 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 Director of the Regional Office in writing within 10 days of learning of any condition listed above, which Anderson intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim of 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 Anderson Notwithstanding the foregoing, Anderson 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. Anderson petitions the Regional Director to terminate the Order after it has completed all requirements of the Order and the Director or his designee approves the termination of the Order; or

b. The Director or the Board terminates this Order in his or its whole discretion upon 30 days written notice to Anderson

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

12. By its signature below, Anderson voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 8 day of Dec, 2004.

K. Bradley Chewning
Robert G. Burnley, Director
Department of Environmental Quality

The terms and conditions of the Order are voluntarily accepted by Anderson Oil Company:

Date: 12 oct 04

By: Mark Anderson
Title: President

Commonwealth of Virginia, City/County of Spotsylvania

The foregoing instrument was acknowledged before me this 12 day of Oct, 2004, by Mark Anderson (name) of Anderson, a President (title), on behalf of the corporation.

10-12-04
Date

Christine L. Dickerson
Notary Public

My commission expires: 7-31-07

Appendix A
Anderson Oil Company
UST Facility at 201 Emmet Street, Charlottesville, VA

For all USTs, Anderson shall:

A. By September 30, 2004, submit release detection records for UST numbers 1 and 2 and their associated piping for the month of August 2004.

B. By October 15, 2004, submit release detection records for all the USTs and their associated piping for the month of September 2004.

C. By November 15, 2004, submit release detection records for all the USTs and their associated piping for the month of October 2004.