

THE STATE OF MARYLAND
DEPARTMENT OF THE ENVIRONMENT

vs.

FALLSTON SERVICE CENTER, INC.
602 Fallston Road, Fallston
Harford County, Maryland 21047

Serve on:

Mr. Jack L. Almony
Fallston Service Center, Inc.
602 Fallston Road
Fallston MD 21047

* BEFORE AN
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* ADMINISTRATIVE LAW JUDGE
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* OF THE OFFICE OF
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* ADMINISTRATIVE HEARINGS
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* COV-2006-002
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* OCP Case No. 9-0816-HA
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* Case No.: 2005-_____-MDE-WAS-_____
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COMPLAINT

(1) The State of Maryland, Department of the Environment (“the Department”), pursuant to the powers, duties, and responsibilities vested in the Secretary of the Environment by Sections 1-301 and 4-401 through 4-708 of the Environment Article, Annotated Code of Maryland, and Section 10-226 of the State Government Article, and delegated to the Director, Waste Management Administration (“the Administration”), has reasonable grounds to believe that Fallston Service Center, Inc. has violated Maryland oil pollution laws.

(2) Under the aforesaid statutes and Code of Maryland Regulations (COMAR), Chapters 26.10.01 through 26.10.15, the Department regulates oil and oil pollution in and on land and waters of the State of Maryland.

(3) “Oil, petroleum products, and their by-products” as defined in Section 4-401(g) of the Environment Article, and in COMAR 26.10.01.01B(14), “means oil of any kind and in any liquid form including, but not limited to, petroleum, fuel oil, sludge, oil refuse, oil mixed with other waste, crude oils, and every other nonedible liquid hydrocarbon regardless of specific gravity. Oil includes aviation fuel, gasoline, kerosene, light and heavy fuel oils, diesel motor

fuels, asphalt, and crude oils, but does not include liquefied petroleum gases, such as liquefied propane, or any edible oils.”

(4) “Waters of the State” as defined in Section 4-101.1(d) of the Environment Article, and in COMAR 26.10.01.01B(41), “includes both surface and underground waters within the boundaries of the State subject to its jurisdiction, including that portion of the Atlantic Ocean within the boundaries of the State, the Chesapeake Bay and its tributaries, and all ponds, lakes, rivers, streams, public ditches, tax ditches, and public drainage systems within the State, other than those designed and used to collect, convey, or dispose of sanitary sewage. The flood plain of free-flowing waters determined by the Department on the basis of the 100-year flood frequency is included as waters of the State.”

(5) "Discharge" as defined in § 4-401(d) of the Environmental Article means “the addition, introduction, leaking, spilling, or emitting any oil to the State waters or placing of any oil in a location where it is likely to reach State Waters.” In COMAR 26.10.01.01B(7), “Discharge” means any spilling, leaking, pumping, pouring, emitting, emptying, dumping, addition of, introduction of any pollutant into waters of the State, or the placing of any pollutant in a location where it is likely to pollute.

(6) “Pollution” as defined in Section 4-101.1(c) of the Environment Article (and similarly in COMAR 26.10.01.01B(21)) means “any contamination or other alteration of the physical, chemical, or biological properties of any waters of the State, including change in temperature, taste, color, turbidity, or odor of the waters, or the discharge or deposit of any organic matter, harmful organism, liquid, gaseous, solid, radioactive, or other substance into any waters of the State, that will render the waters harmful or detrimental to: (1) public health, safety, or welfare; (2) Domestic, commercial, industrial, agricultural, recreational, other legitimate beneficial uses; (3) Livestock, wild animals or birds; (4) Fish or other aquatic life.”

(7) “UST system” as defined in COMAR 26.10.02.04B(66) “means an underground storage tank, connected underground piping, underground ancillary equipment, and containment system, if any.”

(8) “Operator” as defined under COMAR 26.10.02.04B(40) “means a person in control of, or having responsibility for, the daily and periodic operation, or the repair, maintenance, closure testing, or installation, of the UST system.”

(9) “Person-in-charge” as defined under COMAR 26.10.02.04B(44) “means the person designated by an owner, operator, or permittee as the one with the direct supervisory responsibility for an activity or operation at a facility, such as transfer of oil to or from any points in the facility, or the repair, installation, closure or testing of the UST system.”

(10) “Person responsible for the discharge” in Section 4-401(h) of the Environment Article, Annotated Code of Maryland “includes, (1) The owner of the discharged oil; (2) The owner, operator or person in charge of the oil storage facility, vessel, barge or vehicle involved in the discharge at the time of or immediately before the discharge; and (3) Any other person who through act or omission causes the discharge.”

(11) Pursuant to Section 4-410(a) of the Environment Article, Annotated Code of Maryland: “Except in case of emergency imperiling life or property, unavoidable accident, collision, or stranding, or as authorized by a permit issued under §9-323 of this Article, it is unlawful for any person to discharge or permit the discharge of oil in any manner into or on waters of this State.”

(12) Pursuant to COMAR 26.10.02.01A, “A person may not pump, discharge, spill, throw, drain, deposit, or cause to be deposited, oil, or other matter containing oil, into, near, or in an area likely to pollute, waters of the State.”

(13) Pursuant to COMAR 26.10.02.01C, “Responsibility for the prompt control, containment and removal of any released regulated substance shall be with the person responsible for the discharge, the owner of the property, the owner of the property, the owner of the regulated substance, the owner and operator of the storage system, and the person-in charge of the facility vessel, or vehicle involved in the release.”

(14) Pursuant to COMAR 26.10.09.06A, “In order to determine the full extent and location of soils contaminated by the release and the presence and concentrations of dissolved product contamination in the groundwater, owners, operators, and other responsible parties shall conduct investigations of the release, the release site, and the surrounding area potentially affected by the release if any of the following conditions exist: there is evidence that groundwater wells have been affected by the release; free product is present; there is evidence that contaminated soils may contaminate groundwater; and the Department requests an investigation, based on the potential effects of contaminated soil or groundwater on nearby surface water and groundwater resources.”

(15) Pursuant to COMAR 26.10.09.06B, “Owners, operators, and other responsible parties shall submit information collected under 26.10.09.06A as soon as practicable but not later than 60 days after confirmation of the discharge or in accordance with a schedule established by the Department.”

(16) Pursuant to COMAR 26.10.09.07, “The Department may require owners, operators, and other responsible parties to submit additional information or owners, operators, and other responsible parties shall submit the plan for responding to contaminated soil and groundwater. If a plan is required owners, operators and other responsible parties shall submit the plan according to a schedule and format established by the Department. Additionally, owners, operators, and other responsible parties may, after fulfilling the requirements of

COMAR 26.10.09.02 – 0.4, be required to submit a corrective action plan for responding to contaminated soil and groundwater. In either case, owners, operators, and other responsible parties are responsible for submitting a plan that provides for adequate protection of human health and the environment as determined by the Department, and shall modify the plan as necessary to meet this standard to develop and submit a corrective action plan for responding to contaminated soil and groundwater.”

(17) Section 4-471(d) of the Environment Article provides that the Secretary of the Environment, after considering certain factors enumerated in that statute, may assess an administrative penalty of up to \$10,000 for each day a person violates and provision of the oil control laws or corresponding regulations, to a maximum penalty of \$100,000.

(18) Fallston Service Center, Inc. is located at 602 Fallston Road in Fallston, Harford County, Maryland, a designated High Risk Groundwater Use area. This former gasoline retail facility utilized underground storage tank (UST) systems to store and dispense petroleum products. As such, Fallston Service Center, Inc. is subject to the previously described statutes and regulations.

(19) Since 1990, sampling of the on-site drinking water well, designated to be a transient non-community well, at the Fallston Service Center has had detectable levels of gasoline constituents [benzene ranging from 542 to 650 parts per billion (ppb) and methyl tertiary butyl ether (MTBE) ranging from 89 to 432 ppb].

(20) Groundwater sampling in June 1999 revealed elevated petroleum contamination in the UST field. The two tank field monitoring pipes had detections of benzene ranging from 34 to 63 ppb and MTBE levels ranging from 34,000 to 60,200 ppb. Sampling of the station’s drinking water well also revealed MTBE at 158 ppb.

(21) In March 2004, sampling of an off-site drinking water well, designated a transient non-community supply well, at the Fallston Presbyterian Church, located at 600 Fallston Road, revealed MTBE at 171 ppb, which is above the Department's action level of 20 ppb.

(22) In Notice of Violation NV-2005-007, issued August 2004 to Fallston Service Center, Inc., the Department required a detailed subsurface investigation and environmental assessment of the subject property. In January 2005, a Well Sampling Report was submitted for the Department's review. Existing shallow hand-dug monitoring wells were sampled and MTBE levels ranging from 119 to 266 ppb were detected. Sampling of the station's drinking water well continued to show elevated levels of MTBE at 846 ppb.

(23) In April 2005, Fallston Service Center, Inc. submitted a Monitoring Well Installation and Groundwater Sampling Report that confirmed the presence of gasoline constituents at Fallston Service Center with groundwater contaminants containing MTBE (19,400 ppb), benzene (1,150 ppb), ethylbenzene (750 ppb), and naphthalene (384 ppb). These constituents exceed the Department's levels for MTBE (20 ppb), benzene (5 ppb), ethylbenzene (700 ppb), and naphthalene (10 ppb). Monitoring well MW6, located along the property boundary shared with Fallston Presbyterian Church, also had elevated MTBE levels at 548 ppb.

(24) On June 9, 2005, the Department issued a letter requiring a supplemental subsurface investigation be completed no later than August 1, 2005. The letter stated the Department's concern regarding off-site migration and impacts to sensitive drinking water receptors. To date, the requested investigation, critical to the development of a Corrective Action Plan, has not been completed.

(25) On January 19, 2006, Oil Control Program Supervisor Susan Bull and Environmental Compliance Specialist Jeanette Guzik performed a site visit to confirm the status of gasoline retail activities at the station. They determined that retail activities had ceased since

January 8, 2006 when the petroleum product remaining in the UST systems was sold. At the time of inspection all the USTs were empty.

(26) On February 3, 2006, the Department issued a directive requiring that the USTs be removed and that the Department's June 9, 2005 requirement that Fallston Service Center complete a Supplemental Subsurface Investigation remained in effect.

(27) On April 28, 2006, the Department received a *Corrective Action Plan- Revised – April 26, 2006* proposing the following: UST removal, petroleum impacted soil removal and confirmatory sampling, well installation, replacement of lost monitoring points, off-site potable well sampling, and monitoring of the POET system at 600 Fallston Road.

(28) On July 20 and 21, 2006, Oil Control Program Supervisor Susan Bull made a site visit to witness the removal of four UST systems. Two soil samples were collected from two feet below tank bottom in the northeast and northwest corners of the excavation to characterize soils for disposal.

(29) Fallston Service Center did not supply the Department with the results of soil sampling, install required monitoring wells, nor perform additional site investigations as required.

(30) Based on the events described in paragraphs 12 through 29 hereinabove, Fallston Service Center, Inc., violated Environment Article 4-410 and COMAR 26.10.02.01A and C, 26.10.09.06A and B, and 26.10.09.07A.

ORDER

It is hereby Ordered, by the Director of the Waste Management Administration that Fallston Service Center, Inc. shall complete the following activities within thirty (30) days of receipt of this Order:

(1) Conduct a subsurface investigation to evaluate the vicinity of the former tank field to determine how the release of petroleum products has impacted the local groundwater. The shallow hand-dug monitoring pipes (MW2 and MW3) must be properly abandoned and replaced with properly constructed monitoring wells suitable for groundwater recovery. Soil samples must be collected from each new monitoring well from at least every five-foot interval and at the soil/groundwater interface. These samples must be submitted to a fixed laboratory for the analysis of full-suite volatile organic compounds (VOCs), including all fuel oxygenates, using EPA Method 8260 and for total petroleum hydrocarbons/diesel and gasoline-range organics (TPH/DRO and TPH/GRO) using EPA Method 8015B. If soils are field screened using a photo-ionization detector (PID) and elevated readings are recorded, a grab sample must be collected at the corresponding depth in addition to those collected at five-foot intervals and the soil/groundwater interface.

(2) Evaluate hydrogeologic and geologic on-site and off-site conditions based on all previous environmental site assessments and supplemental field activities conducted to date including the installation of at least four or more nested pairs of monitoring wells to fully delineate the potential cross communication between the shallow and deeper groundwater flow regimes. Two of the nested wells must be installed in the vicinity of MW-6 between the active tank field and the on-site production well and in the vicinity of MW-9 between the non-community supply well at Fallston Presbyterian Church and the active tank field at Fallston

Service Center, Inc. The remaining two must be installed in a location as determined by the Department based on site conditions. Care must be exercised to fully maintain separation between the shallow and deeper aquifer zones by the utilization of proper installation and construction of nested monitoring wells that fully seal off each zone. Summarize how this work will be completed and submit this information prior to the installation of these nested wells.

(3) Provide all groundwater sampling results, boring logs annotated with field screening results, and litho logic descriptions, illustrative maps showing groundwater interpretations (e.g. groundwater contour maps, cross-sections of geologic and hydrogeologic conditions), and other pertinent qualitative and/or quantitative discussions.

(4) Quality assurance and quality control measures must be implemented during field activities and sample collection (refer to the Department's Maryland Environmental Assessment Technology (MEAT) for Leaking Underground Storage Tanks guidance document, which may be accessed at: <http://www.mde.state.md.us/assets/document/MEAT-Guidance.pdf>).

(5) Within ninety (90) days of receipt of this Order, submit a Site Assessment Report and a Corrective Action Plan to address groundwater contamination that has impacted sensitive drinking water receptors.

(6) Implement the Corrective Action Plan upon approval of the plan by the Department. Continue satisfactory performance associated with the plan until released by the Department.

ADMINISTRATIVE PENALTY

The Waste Management Administration is seeking a civil, administrative penalty in the amount of Forty Thousand Dollars (\$40,000.00). This penalty is based on factors set forth in Section 4-417(d) of the Environment Article, Annotated Code of Maryland.

**PROCEDURE FOR REQUESTING A HEARING
ON THE COMPLAINT, ORDER, and PENALTY**

(1) Pursuant to Sections 4-412 and 4-417(d) of the Environment Article, Sections 10-201 through 10-225 of the State Government Article, Annotated Code of Maryland, and COMAR 26.01.02, Fallston Service Center, Inc. has the right to a hearing on the Complaint, Order, and Administrative Penalty.

(2) You may obtain a hearing to contest the Complaint and Order portions of this document by filing a written request for a hearing within ten (10) days of receipt of this document, in accordance with Section 4-412 of the Environment Article.

(3) You may obtain a hearing to contest the Administrative Penalty portion of this document by filing a written request for a hearing within thirty (30) calendar days of receipt of this document, in accordance with COMAR 26.01.02.05C. Depending upon the evidence presented at the hearing, the Office of Administrative Hearings could assess any penalty up to ten thousand dollars (\$10,000) for each violation, with each day of the violation constituting a separate violation, up to a maximum of one hundred thousand dollars (\$100,000). However, the Penalty portion of this matter may be settled by prepaying the penalty in accordance with the attached letter. By prepaying and settling, you waive the right to a hearing and opportunity to contest the assessment of the penalty, but do not admit the allegations supporting the penalty.

(4) The request(s) for a hearing on the Administrative Penalty and on the Complaint and Order may be filed individually or consolidated. In accordance with COMAR 26.01.02.06, the request(s) must include a brief statement of the factual and legal basis for the request(s). All requests should be sent to the Maryland Department of the Environment, Horacio Tablada, Director, Waste Management Administration, Suite 610, 1800 Washington Boulevard, Baltimore, Maryland 21230-1719. A copy should be sent to the attorney who signed this document, at the

Office of the Attorney General, Department of the Environment, Suite 640, 1800 Washington Boulevard, Baltimore, Maryland 21230-1719.

(5) If a hearing is requested, the Office of Administrative Hearings will notify the parties of the hearing date and location. As previously indicated, the hearing will be conducted under the Administrative Procedure Act, Sections 10-201 through 10-225 of the State Government Article, Annotated Code of Maryland, and COMAR 26.01.02. You would have the same rights as any party in a contested case hearing under those provisions.

(6) If you choose not to request a hearing within the times stated, the Complaint, Order, and Administrative Penalty will become final, and you will be legally required to pay the penalty.

(7) If you request a hearing but fail to participate in a pre-hearing conference, the hearing you requested, or other stage of the adjudicative proceeding, a Default Order may be entered against you. If you fail to pay a final administrative penalty, a lien may be placed against your property for the amount of the penalty, plus costs and interest. If that amount remains unpaid, your account may be declared delinquent and it may be transferred to the State's Central Collections Unit for possible collection action.

(8) You must be represented by an attorney in an administrative hearing. The attorney must be admitted to the Bar in the State of Maryland or be specifically admitted to the Bar pursuant to Rule 14 of the Maryland Rules of Procedure governing the special admission of out-of-state attorneys.

If you have any questions concerning this matter, please contact Mr. Herbert M. Meade, Administrator of the Oil Control Program, Suite 620, 1800 Washington Boulevard, Baltimore, Maryland 21230-1719, or telephone 410-537-3443.

Date

Horacio Tablada, Director
Waste Management Administration

Approved as to form and

legal sufficiency this _____

day of _____, 2006.

Sheila Lundy-Moreau
Office of the Attorney General