



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY

PIEDMONT REGIONAL OFFICE

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L. Preston Bryant, Jr.  
Secretary of Natural Resources

David K. Paylor  
Director

Gerard Seeley, Jr.  
Regional Director

### **STATE WATER CONTROL BOARD ENFORCEMENT ACTION SPECIAL ORDER BY CONSENT ISSUED TO MR. W. SCOTT BAUGH**

#### **SECTION A: Purpose**

This is a Consent Special Order issued under the authority of Va. Code §§ 62.1-44.15(8a) and (8d), between the State Water Control Board and Mr. W. Scott Baugh for the purpose of resolving certain violations of environmental law and 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 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. "VA Code" means the Code of Virginia (1950), as amended.
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.
5. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
6. "Order" means this document, also known as a Consent Special Order.
7. "Property" means property formerly known as the Do Drop In General Store located at 5920 Old Buckingham Road in Powhatan County. The Property

consisted of a gasoline station/convenience store and associated 3000 gallon compartmentalized UST.

8. "Mr. Baugh" means Mr. Walter Scott Baugh, owner of the Property and associated USTs.
9. "Notification form" means Form 7530 used by the DEQ to register and track USTs for proper operation, closure and ownership purposes. See 9 VAC 25-580-70.
10. "Regulation" means 9 VAC 25-580-10 *et seq.* (Underground Storage Tanks: Technical Standards and Corrective Action Requirements) relating to upgrading of existing USTs systems, registration of tanks, closure of non-compliant tanks, and release detection requirements.
11. "UST" means underground storage tank as further defined in 9 VAC 25-580-10 and Virginia Code § 62.1-44.34:8.

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

1. Mr. Baugh is the owner of the Property, formerly called the Do Drop In General Store, located at 5920 Old Buckingham Road, in Powhatan, Virginia and is a UST owner and/or operator within the meaning of VA Code § 62.1-44.34:8.
2. When Mr. Baugh bought the Property in 2007, there was a compartmentalized underground storage tank consisting of two 1500 gallon compartments to store petroleum for retail sale. The USTs are identified as follows:

Tank No.	Capacity	Content
1	1,500	Gasoline
2	1,500	Gasoline

3,000 Gallon Total Tank Capacity

3. Because petroleum is a "regulated substance" as defined by VA. Code 62.1-44.34:8 and 9 VAC 25-580-10, the USTs at the Property are regulated under 9 VAC 25-580-10, *et seq.*
4. On July 16, 2006, DEQ staff inspected the Property. At the time of the inspection, the Property was owned by a Mr. Wendell Flynn. On April 4, 2007, DEQ issued a Notice of Violation (NOV) to Mr. Flynn to address issues of noncompliance with the UST regulations.
5. Mr. Baugh contacted DEQ on April 16, 2007 and stated that he had bought the Property from Mr. Flynn on March 5, 2007 and planned to remove the USTs from the ground and install new USTs at the Property.

6. On April 17, 2007, DEQ staff emailed Mr. Baugh the Notification Form and UST closure requirements.
7. Mr. Baugh contacted DEQ on June 4, 2007 and stated that he was having the USTs pulled from the ground at the Property on that day.
8. On July 16, 2007, a Warning Letter (WL) was sent to Mr. Baugh for the following:
  - Failure to submit an amended UST Notification Form to register as the current owner/operator of the USTs and Property in apparent violation of Regulation 9 VAC 25-580-70.
  - Failure to submit an amended UST Notification Form for proper closure of the USTs in apparent violation of Regulation 9 VAC 25-580-320(1).
  - Failure to provide a copy of the permit from the County building official for the removal and permanent closure of the USTs in apparent violation of Regulation 9 VAC 25-580-320.
  - Failure to submit the results of a site assessment of the excavation zone performed at the time of the USTs closure in apparent violation of Regulation 9 VAC 25-580-330.
9. After receiving no response, on September 19, 2007, DEQ issued a Notice of Violation (NOV) to Mr. Baugh for the above-described, alleged violations.
10. In response to the NOV, Mr. Baugh called DEQ staff on September 27, 2007, and stated that he would submit the required information. DEQ has not received any correspondence from Mr. Baugh.

#### **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 Mr. Baugh, and Mr. Baugh voluntarily agrees, to pay a civil charge of **\$3,700** in accordance with Appendix A of the Order in settlement of the violations cited in this Order. The payment shall note that it is being made pursuant to this order and shall note the Federal Identification Number for Mr. Baugh. Payment shall be by check, certified check, money order, or cashiers check payable to "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 the Order with the consent of Mr.

Baugh, for good cause shown by Mr. Baugh, or on its own motion after notice and opportunity to be heard.

2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the NOV issued on September 19, 2007 as listed above in Section C. 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 property 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, Mr. Baugh admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Mr. Baugh 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. Mr. Baugh declares he has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the State Water Control Law and he 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 enforce this Order.
6. Failure by Mr. Baugh 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. Mr. Baugh 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. Mr. Baugh shall show that such circumstances were beyond his control and not due to a lack of good faith or diligence on his part. Mr. Baugh shall notify the DEQ Regional Director in writing 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 within 24 hours 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, 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 Mr. Baugh. Notwithstanding the foregoing, Mr. Baugh 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. Mr. Baugh 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 Mr. Baugh.

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

12. By the signature below, Mr. Baugh voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of July 31 2008.

Gerard Seeley, Jr.  
Gerard Seeley, Jr., Regional Director  
Department of Environmental Quality

Mr. Baugh voluntarily agrees to the issuance of this Order.

By: Walter S Baugh  
Date: 8-20-08

Commonwealth of Virginia  
City/County of Carroll and

The foregoing document was signed and acknowledged before me this 20<sup>th</sup> day of February, 2008 by Walter Scott Baugh, who is owner of the Property. (name)

BETTY J. DAVIS  
NOTARY PUBLIC  
Commonwealth of Virginia  
Reg. #246018  
My Commission Expires 8/31/09

Betty Davis  
Notary Public  
My commission expires: 8/31/09

## APPENDIX A

In order to come into compliance, Mr. Baugh shall:

1. **By no later than March 14, 2008**, submit to DEQ a completed 7530 Notification Form reflecting the current status of the USTs associated with the Property as required by UST regulations.
2. **By no later than March 14, 2008**, submit to DEQ a complete Site Characterization Report of the reported removal of the USTs at the Property in accordance with UST regulation 9 VAC 25-580-330.
3. **Pursuant to this Order, submit all documentation as required by Appendix A to:**

**Cynthia Akers  
Department of Environmental Quality  
Piedmont Regional Office  
4949-A Cox Road  
Glen Allen, Virginia 23060**