COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
NORTHERN REGIONAL OFFICE
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Molly Joseph Ward
Secretary of Natural Resources

David K. Paylor
Director

Thomas A. Faha
Regional Director

STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
BURKE PETROLEUM REALTY, LLC
FOR
EXXON R/S # 28066
Facility ID No. 3009929
AND
EXXON R/S # 22693
Facility ID No. 3009960

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 Burke Petroleum Realty, LLC, 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. "Burke Petroleum" means Burke Petroleum Realty, LLC, a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Burke Petroleum is a "person" who owns and operates the Facility.

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, as described in Va. Code § 10.1-1185.

5. "Facility #1" means the physical location where the UST and/or UST system is installed and/or operated, known as Exxon R/S # 28066 located at 5701 Burke Centre Parkway, Burke, Virginia. The Facility's USTs and UST system are owned by Burke Petroleum Realty, LLC, and the Facility is further identified by UST Facility ID#3009929.

6. "Facility #2" means the physical location where the UST and/or UST system is installed and/or operated, known as Exxon R/S # 22693 located at 7230 Arlington Boulevard Falls Church, Virginia. The Facility's USTs and UST system are owned by Burke Petroleum Realty, LLC, and the Facility is further identified by UST Facility ID#3009960.

7. "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.

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

9. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.

10. "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.

11. "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.

12. "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.

13. "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.

14. "Regulated Substance" means an element, compound, mixture, solution or substance that, when released into the environment, may present substantial danger to the public health or welfare, or the environment, as defined in Va. Code § 62.1-44.34:8 and 9 VAC 25-580-10.

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

16. "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.

17. "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.

18. "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.

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

20. "VAC" means the Virginia Administrative Code.

21. "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. Burke Petroleum is the owner of Facilities #1 and #2. Burke Petroleum stores regulated substances in the forms of gasoline and diesel in USTs at the Facilities.

Facility #1:

2. On May 23, 2012, Department staff inspected Facility#1 and conducted a file review of Facility records to evaluate Burke Petroleum's compliance with the requirements of the State Water Control Law and the Regulations. In response to the inspection, DEQ issued a Deficiency Letter to Burke Petroleum on June 1, 2012. The issues remained uncorrected and therefore DEQ issued a Warning Letter to Burke Petroleum on April 26, 2013. At that time of the inspection, there were three USTs at the Facility: two 10,000 gallon gasoline and one 12,000 gallon gasoline USTs. The following issues were noted during this inspection:

    a. At the time of the inspection, documentation was not provided to demonstrate that interstitial monitoring for secondary containment is being performed on piping associated with Tank Numbers 1, 2, and, 3 and the documents were not made available upon DEQ's request.

b. At the time of the inspection, the DEQ inspector observed that the double walled section of the piping appeared to be sealed with drain plugs at the submersible turbine pump (STP) sumps. If the primary piping fails and the access ways on the double wall piping are not open, then the fuel may not drain back to the containment sump and the double walled piping with secondary containment may not work as intended in this situation.

c. Failure to provide all the documentation requested to demonstrate compliance with the UST regulations.

3. 9 VAC 25-580-50.7 requires that each new or replaced petroleum underground storage tank, or piping connected to any petroleum underground storage tank, installed within 1,000 feet of any existing community water system or existing potable drinking water well must be secondarily contained in accordance with 9 VAC 25-580-140.

4. 9 VAC 25-580-140.A.5 requires that owners and operators of petroleum UST systems must perform interstitial monitoring in accordance with subdivision 7 of 9 VAC 25-580-160.

5. 9 VAC 25-580-180 requires that UST system owners and operators must maintain records in accordance with 9 VAC 25-580-120, including results of any sampling, testing, or monitoring, for at least one year, either at the facility and immediately available for inspection or at a readily available alternative site and available for inspection upon request.

6. 9 VAC 25-580- 160.7 and 170.3 requires that interstitial monitoring between the UST system and a secondary barrier immediately around or beneath it may be used, but only if the system is designed, constructed and installed to detect a leak from any portion of the tank that routinely contains product.

7. 9 VAC 25-580-130.A requires that owners and operators of UST systems must provide a method or combination of methods, of release detection that: 1) can detect a release from any portion of the tank and the connected underground piping that routinely contains product. 2) is installed, calibrated, operated, and maintained in accordance with the manufacturer's instructions including routine maintenance and service checks for operability or running condition; and 3) meets the performance requirements in 9 VAC 25-580-160 or 9 VAC 25-580-170, with any performance claims and their manner of determination described in writing by the equipment manufacturer or installer.

8. 9 VAC 25-580-120 requires that owners and operators of UST systems must cooperate fully with inspections, as well as requests for document submission.

9. On September 6, 2013, the Department issued Notice of Violation No. NOV-UST-13-9-NRO-006, to Burke Petroleum for violations listed in paragraphs C(2) through C(8), above.

Facility #2:

10. On June 21, 2012, Department staff inspected the Facility #2 and conducted a file review of Facility records to evaluate Burke Petroleum's compliance with the requirements of the State Water Control Law and the Regulations. In response to the inspection, DEQ issued a Deficiency Letter (DL) to Burke Petroleum on June 26, 2012. The issues remained uncorrected and therefore DEQ issued a Warning Letter (WL) to Burke Petroleum on April 12, 2013. At that time, there were five USTs at the Facility: one 4,000 gallon gasoline UST; two 6,000 gallon gasoline USTs, one 10,000 gallon gasoline UST and one 10,000 gallon diesel UST. The following were issues noted during this inspection:

    a. At the time of the inspection, Burke Petroleum failed to provide documentation to demonstrate that release detection was being performed for the 4,000 gallon gasoline UST. Specifically, release detection records for the UST were missing. Further, the documents were not made available upon DEQ's request.

    b. Burke Petroleum failed to provide all the documentation requested to demonstrate compliance with the UST regulations.

11. 9 VAC 25-580-180 requires that UST system owners and operators must maintain records in accordance with 9 VAC 25-580-120, including results of any sampling, testing, or monitoring, for at least one year, either at the facility and immediately available for inspection or at a readily available alternative site and available for inspection upon request.

12. 9 VAC 25-580-120 states that owners and operators of UST systems must cooperate fully with inspections, as well as requests for document submission.

13. On September 6, 2013, the Department issued Notice of Violation No. NOV-UST-13-09-NRO-005 to the Burke Petroleum for violations listed in paragraphs C(10) through C(14), above.

14. On September 20, 2013 Burke Petroleum submitted a written response to the NOVs summarizing the actions taken at Facilities #1 and #2. In the written response, Burke Petroleum stated that the record keeping compliance issues at Facilities #1 and #2 were due to the fact that at the time of the inspection they were switching the Veeder-Root monitoring software from FMS (Third Party) to Inform.net (In-house). This reset the Veeder-Root, so all previous data was erased.

15. On September 25, 2013, Department staff met with representatives of Burke Petroleum to discuss the violations, including Burke Petroleum's response, dated September 20, 2013. At the meeting Burke Petroleum stated that the 4,000 gallon UST at Facility #2 is a premium gasoline tank that is out-of-service. The plan for the UST located at Facility #2 is to convert it to diesel and connect the tank to the Veeder Root release detection system. As result of the meeting, DEQ received copies of three months of sensor status reports for the USTs for Facility #1 and proof that the drain plug had been removed at Facility #1.

16. Based on the results of May 23, 2012 and June 21, 2012 inspections, the September 25, 2013 meeting, and subsequent documentation submitted to DEQ by Burke Petroleum, the Board concludes that Burke Petroleum has violated 9 VAC 25-580-50.6, 9 VAC 25-580-120, 9 VAC 25-580-125.B.1.5, 9 VAC 25-580-130, 9 VAC 25-580-180, and as described in paragraphs C(2) through C(12), above.

17. Burke Petroleum has submitted documentation that verifies that the violations described in paragraphs C(2) have been corrected.

18. In order for Burke Petroleum to complete its return to compliance, DEQ staff and representatives of Burke Petroleum 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 §§ 62.1-44.15, the Board orders Burke Petroleum, and Burke Petroleum agrees to:

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

2. Pay a civil charge of $2,625.00 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

Burke Petroleum shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Petroleum Storage Tank Fund (VPSTF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Burke Petroleum shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Burke Petroleum for good cause shown by Burke Petroleum, 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. NOV-UST-13-09-NRO-006, dated September 6, 2013 and NOV No. NOV-UST-13-10-NRO-005, dated September 6, 2013. 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, Burke Petroleum admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. Burke Petroleum 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. Burke Petroleum 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 Burke Petroleum 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. Burke Petroleum 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. Burke Petroleum shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence

on its part. Burke Petroleum 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 Burke Petroleum. Nevertheless, Burke Petroleum 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 Burke Petroleum has completed all of the requirements of the Order;

b. Burke Petroleum 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 Burke Petroleum.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Burke Petroleum 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 Burke Petroleum 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.

13. The undersigned representative of Burke Petroleum certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Burke Petroleum to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Burke Petroleum.

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, Burke Petroleum voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 24th day of October, 2014.

Thomas A. Faha

Thomas A. Faha, NRO Regional Director
Department of Environmental Quality

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Burke Petroleum Realty, LLC voluntarily agrees to the issuance of this Order.

Date: 09/02/2014 By: EYOB MAMO, AS PRESIDENT OF BURKE SPE, INC., THE MANAGING MEMBER OF BURKE PETROLEUM REALTY, LLC

(Person) (Title)
Burke Petroleum Realty, LLC

Commonwealth of Virginia
City/County of FAIRFAX

The foregoing document was signed and acknowledged before me this 2ND day of September, 2014, by Eyob Mamo who is President, Burke SPE, Inc Managing Member of Burke Petroleum Realty, LLC, on behalf of the company.

Notary Public

367803
Registration No.

My commission expires: 10/31/2018

Notary seal:

ERIKA LASHAY DOGAN
COMMONWEALTH OF VIRGINIA
REGISTRATION NO. 367803
MY COMM. EXPIRES: 10/31/2018
NOTARY PUBLIC

APPENDIX A
SCHEDULE OF COMPLIANCE

Burke Petroleum Shall:

1. **Submissions:**

   a. No later than 30 days from the effective date of this Order, Burke Petroleum shall submit to DEQ a minimum of two months of passing release detection records for the 4,000 gallon UST at Facility #2.

   b. If the 4,000 gallon UST at Facility #2 is not in use, then no later than 30 days from the effective date of this Order, Burke Petroleum shall submit to DEQ proof that the 4,000 gallon UST at Facility #2 has been properly closed in compliance with the regulations. Closure shall include the submission of an amended 7530-2 registration form.

2. **DEQ Contact**

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

   Enforcement
   Virginia Department of Environmental Quality
   Northern Regional Office
   13901 Crown Court
   Woodbridge, VA 22193