COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
PIEDMONT REGIONAL OFFICE
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Douglas W. Domenech
Secretary of Natural Resources

David K. Paylor
Director

Michael P. Murphy
Regional Director

STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
MIDGET MART NO. 2, INC.
Facility ID No. 4-002666

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 Midget Mart No. 2, 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. "Cathodic protection" is a technique to prevent corrosion of a metal surface by making that surface the cathode of an electrochemical cell. For example, a tank system can be cathodically protected through the application of either galvanic anodes or impressed current.

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" means the physical location where the USTs are installed and operated, known as Midget Mart located at 1420 W. Washington Street, Petersburg, Virginia. The Facility's USTs are owned by Midget Mart No. 2, Inc., and the Facility is further identified by UST Facility ID# 4-002666.

6. "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.

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. "Midget Mart" means Midget Mart No. 2, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, subsidiaries, and parents. Midget Mart is a "person" within the meaning of Va. Code § 62.1-44.3.

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

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. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.

15. "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.

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

17. "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.

18. "SIR" means statistical inventory reconciliation.

19. "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.

20. "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.

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

22. "VAC" means the Virginia Administrative Code.

23. "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. Midget Mart is the owner and/or operator of the Facility. The Facility stores a regulated substance in the form of gasoline, kerosene and diesel in USTs at the Facility.

2. On November 22, 2010, Department staff inspected the Facility and conducted a file review of Facility records to evaluate the Midget Mart's compliance with the requirements of the State Water Control Law and the Regulations. At that time, there were four USTs at the Facility: two 10,000 gallon gasoline USTs, one 10,000 gallon diesel UST and one 4,000 gallon kerosene UST. DEQ staff observed the following:

    a. Records showing recent compliance with release detection requirements were not immediately available at the UST site or readily available alternative site. Midget Mart staff confirmed that release detection was not conducted.

    b. Evidence of all financial assurance mechanisms used to demonstrate financial responsibility was not available at the underground storage tank site or the owner's or operator's place of work and was not made available upon request.

3. 9 VAC 25-580-130 requires that owners and operators must provide a method, or combination of methods, of release detection that can detect a release from any portion of the tank and the connected underground piping that routinely contains product. 9 VAC 25-580-180 requires that owners and operators maintain release detection records (in accordance with 9 VAC 25-580-120) at the facility and available for inspection, or at a readily available alternative site for at least one year.

4. 9 VAC 25-590-40(A) requires that owners or operators of petroleum underground storage tanks shall demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks.

5. 9 VAC 25-590-160 states that evidence of financial assurance mechanisms used to demonstrate financial responsibility must be maintained at the Facility or at the owner's or operator's place of work in this Commonwealth and be made available upon request.

6. On November 22, 2010, the Department issued a Request for Corrective Action (RCA) to Midget Mart requesting correction of the items listed above in Section C.2.

7. On January 27, 2011, the Department issued a Warning Letter to Midget Mart for the violations observed in Section C.2. Midget Mart did not respond.

8. On February 3, 2011, the Department issued another Warning Letter to Midget Mart for the violations observed in Section C.2.

9. On June 30, 2011, the Department sent a Letter of Agreement (LOA) to Midget Mart requesting corrective action completion by October 31, 2011. The LOA was signed by Midget Mart on July 20, 2011, and returned to the Department.

10. On August 3, 2012, after Midget Mart failed to meet the terms of the LOA, the Department issued Notice of Violation No. 8-12-PRO-501 to the Midget Mart for violations listed in C.2, above.

11. On February 19, 2013, Department staff met with representatives of Midget Mart to discuss the alleged violations cited in the NOV. The owner of Midget Mart stated that he has been measuring the level of product in the USTs and keeping records, but neither he nor the company he contracted to perform the statistical inventory reconciliation know the tank dimensions and therefore could not complete the necessary calculations for release detection. The Department instructed the owner on how to calculate the tank dimensions and provided him with financial assurance information and contact numbers. The owner stated he did not have financial assurance for the tanks but he had an insurance agent working on obtaining a policy.

12. Based on the results of November 22, 2010, inspection, the February 19, 2013 meeting, the Board concludes that Midget Mart has violated 9 VAC 25-580-120, 9 VAC 25-580-130, 9 VAC 25-580-180, 9 VAC 25-580-140(A)(4), 9 VAC 25-580-160, 9 VAC 25-580-170, 9 VAC 25-590-40(A), and 9 VAC 25-590-160 as noted above.

13. On March 5, 2013, Midget Mart submitted passing line tightness test results to the Department.

14. In order for Midget Mart to return to compliance, DEQ staff and representatives of Midget Mart 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 Midget Mart, and Midget Mart agrees to:

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

2. Pay a civil charge of $8,655 in settlement of the violations cited in this Order. The civil charge shall be paid in accordance with the following schedule:

Due Date	Amount
July 15, 2013	$1082.00 or balance
October 15, 2013	$1082.00 or balance
January 15, 2014	$1082.00 or balance
April 15, 2014	$1082.00 or balance
July 15, 2014	$1082.00 or balance
October 15, 2014	$1082.00 or balance
January 15, 2015	$1082.00 or balance
April 15, 2015	$1081.00

3. If the Department fails to receive a civil charge payment pursuant to the schedule described above, the payment shall be deemed late. If any payment is late by 30 days or more, the entire remaining balance of the civil charge shall become immediately due and owing under this Order, and the Department may demand in writing full payment by Midget Mart. Within 15 days of receipt of such letter, Midget Mart shall pay the remaining balance of the civil charge. Any acceptance by the Department of a late payment or of any payment of less than the remaining balance shall not act as a waiver of the acceleration of the remaining balance under this Order.

4. 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

5. Midget Mart shall include its Federal 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, Midget Mart 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 Midget Mart for good cause shown by Midget Mart, 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. 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, Midget Mart admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. Midget Mart 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. Midget Mart 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 Midget Mart 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. Midget Mart 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. Midget Mart shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Midget Mart 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 Midget Mart 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 Midget Mart. Nevertheless, Midget Mart 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 Midget Mart has completed all of the requirements of the Order;

    (b) Midget Mart 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 Midget Mart.

    Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Midget Mart 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 Midget Mart 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 Midget Mart 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 Midget Mart to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Midget Mart.

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, Midget Mart voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 18th day of JUNE, 2013.

Michael P. Murphy, Regional Director
Department of Environmental Quality

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Midget Mart No. 2, Inc. voluntarily agrees to the issuance of this Order.

Date: 04-17-2013 By: _____, owner
(Person) (Title)
Midget Mart No. 2, Inc.

Commonwealth of Virginia
City/County of Petersburg

The foregoing document was signed and acknowledged before me this 17 day of April, 2013, by In Chang who is owner of Midget Mart No. 2, Inc., on behalf of the corporation.

Kimberly P. Rose
Notary Public

7502378
Registration No.

My commission expires: 4/30/15

Notary seal:

KIMBERLY P. ROSE
Notary Public
Commonwealth of Virginia
7502378
My Commission Expires Apr 30, 2015

APPENDIX A
SCHEDULE OF COMPLIANCE

Midget Mart shall:

Release Detection

On or before August 1, 2013, conduct release detection on all the tanks and piping in accordance with 9 VAC 25-580-160 for three consecutive months and submit copies of the results to the Department.

Reporting of Suspected Releases and Release Investigation

Immediately report any suspected releases to the Department in accordance with 9 VAC 25-580-190 and investigate and confirm all suspected releases of regulated substances in accordance with 9 VAC 25-580-210.

Financial Responsibility

By August 1, 2013, submit documentation to demonstrate financial responsibility in accordance with 9 VAC 25-590-10 *et.seq.*, to the Department.

Contact

All requirements of Appendix A of this Order shall be submitted to:

Frank Lupini
Enforcement Specialist
VA DEQ –Piedmont Regional Office
4949A Cox Road,
Glen Allen, Virginia 23060
Frank.Lupini@deq.virginia.gov