COMMONWEALTH of VIRGINIA

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

David K. Paylor
Director

Amy Thatcher Owens
Regional Director

STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
MR. B.G. LOCHER, JR
FOR
PETRO STOP AND GO
Registration No.: 6023384
Pollution Complaint No.: 2015-6087

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 Mr. B.G. Locher, Jr. for the purpose of resolving certain violations of the State Water Control Law and the applicable regulations at the Facility, Petro Stop and Go.

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. 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 UST system is installed and operated, known as Petro Stop and Go located at 818 Rockbridge Rd. in Glasgow, Virginia. The Facility's UST system is owned and operated by Mr. B.G. Locher, Jr. and the Facility is further identified by UST Facility ID# 6023384.

6. "Mr. Locher" means Mr. B.G. Locher, Jr., currently a resident of Lexington, Virginia. Mr. Locher is a "person" within the meaning of Va. Code § 62.1-44.3.

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

8. "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.

9. "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.

10. "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.

11. "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.

12. "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.

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

14. "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.

15. "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.

16. "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.

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

18. "VAC" means the Virginia Administrative Code.

19. "VRO" means the Valley Regional Office of DEQ, located in Harrisonburg, Virginia.

20. "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. Mr. B.G. Locher, Jr. is the owner of the Facility. Mr. Locher stores regulated substances in the form of gasoline and diesel in USTs at the Facility.

2. On September 11, 2014, DEQ staff performed a site inspection at the Facility to evaluate compliance with the requirements of the State Water Control Law and the Regulations. At that time, there were four USTs at the Facility: three 6,000 gallon gasoline USTs, and one 2,000 gallon diesel UST. DEQ staff observed the following:

    a. The Class B Operator training certificate was not on site;

    b. Release detection records for UST numbers 1, 2, 3 and 4 were not available on site and have not been provided to DEQ as requested.

3. 9 VAC 25-580-125.B.1 states that: "Owners and operators of UST systems shall designate Class A, Class B, and Class C operators for each UST system or facility that has underground storage tanks…b. Any person designated for more than one class of operator shall successfully complete the required training under subsection C of this section for each operator class for which he is designated."

4. 9 VAC 25-580-180 requires that: "All UST system owners and operators must maintain records in accordance with 9 VAC 25-580-120 demonstrating compliance with all applicable requirements of this part."

5. On September 11, 2014, DEQ sent a Request for Corrective Action (RCA) to Mr. Locher. The RCA requested the following be submitted to DEQ:

    a. Cathodic protection tests for tanks 1-3;
    b. Two months of valid, passing release detection records for all tanks;
    c. The Class B Operator certification.

6. On January 7, 2015, DEQ issued WL No. 15-1-VRO-003 to Mr. Locher due to lack of tank release detection records for the UST Tanks 1-4 during the September 11, 2014 inspection and for the lack of submission of a Class B Operator certificate or designation. DEQ does not have record of a response from the WL. Additionally, on January 7, 2015, DEQ received Leak Detection Records dated November 5, 2014, showing failures on USTs 1 and 2.

7. 9 VAC 25-580-190 requires that: "Owners and operators of UST systems must report to the board within 24 hours and follow the procedures in 9 VAC 25-580-210 for any of the following conditions: ...Unusual operating conditions observed by owners and operators (such as the erratic behavior of product dispensing equipment, the sudden loss of product from the UST system, or an unexplained presence of water in the tank), unless system equipment is found to be defective but not leaking, and is immediately repaired or replaced; Monitoring results from a release detection method required under 9 VAC 25-580-140 and 9 VAC 25-580-150 that indicate a release may have occurred unless: The monitoring device is found to be defective, and is immediately repaired, recalibrated or replaced, and additional monitoring does not confirm the initial result..."

8. On April 16, 2015, DEQ issued NOV No. 15-04-VRO-006 to Mr. Locher for the alleged violations as cited in paragraphs C(3) through C(4) above.

9. On April 23, 2015, Mr. Locher responded to the NOV in person at VRO and submitted incomplete Automatic Tank Gauge (ATG) records.

10. On May 5, 2015, DEQ received Release Detection records indicating invalid tests performed on March 26, 2015 for Tanks 1, 2, and 3.

11. On May 6, 2015, DEQ staff met with Mr. Locher and the Operator of the Facility. The Facility conveyed to DEQ that the failed and incomplete ATG tests were due to a software glitch believed to be incompatible with suction lines. The Facility submitted the following documents at the meeting: Class B Operator Certificate for Operator of the Facility, completed in 2012, the previous three months (February, March, and April 2015) release detection records for all tanks, and a complete and updated registration statement with a name change from CC's Stop and Go to Petro Stop and Go. DEQ requested additional testing to ensure there were no leaks due to incomplete records or failing release detection tests.

12. On May 7, 2015, DEQ requested information in the form of a Release Investigation Report Addendum via a letter sent to Mr. Locher. The letter requested the information be submitted to DEQ by June 8, 2015.

13. On June 8, 2015, DEQ received the Release Investigation Report for the USTs at Petro Stop and Go as prepared by Commonwealth Environmental Associates, Inc. The investigation consisted of the installation of five monitoring wells, advancement of five soil borings and subsequent analysis of five soil and groundwater samples. Per the report, "Each groundwater sample collected for laboratory chemical analysis…exhibited detectable BTEX concentrations…" and "The laboratory chemical analysis for the soil samples collected during the advancement of the monitoring well borings indicated low-level TPH concentrations at the MW-2 and MW-4 locations. No TPH concentrations were noted within the MW-1, MW-3, and MW-5 boring locations."

14. On July 13, 2015, DEQ staff requested the Facility to submit a Site Characterization Report (SCR) to DEQ by September 13, 2015 to delineate the extent of the groundwater contamination.

15. Based on the results of the September 11, 2014 inspection, the May 6, 2015 meeting, and the documentation submitted on June 8, 2015, the Board concludes that Mr. Locher has violated Va. Code 9 VAC 25-580-125.B.1 and Va. Code 9 VAC 25-580-180, as described in paragraphs C(2) through C(14), above.

16. In order for Mr. Locher to complete his return to compliance, DEQ staff and Mr. Locher 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 Mr. Locher, and Mr. Locher agrees to:

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

2. Pay a civil charge of $12,512.50 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

Mr. Locher 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, Mr. Locher 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 Mr. Locher for good cause shown by Mr. Locher, 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, in NOV No. 15-04-VRO-006 dated April 16, 2015, and Warning Letter No. 15-1-VRO-003 dated January 7, 2015. 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, Mr. Locher admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. Mr. Locher 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. Locher declares he has received fair and due process under the Administrative Process Act 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 modify, rewrite, amend, or enforce this Order.

6. Failure by Mr. Locher 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. Locher 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 his control and not due to a lack of good faith or diligence on its part. Mr. Locher shall demonstrate that such circumstances were beyond his control and not due to a lack of good faith or diligence on his part. Mr. Locher 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 Mr. Locher. Nevertheless, Mr. Locher 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 Mr. Locher has completed all of the requirements of the Order;

b. Mr. Locher petitions the Director or his designee to terminate the Order after he 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 Mr. Locher.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Mr. Locher from his 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 Mr. Locher 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. Mr. Locher certifies that he is the responsible officer authorized to enter into the terms and conditions of this Order and to execute and legally bind himself to this document. Any documents to be submitted pursuant to this Order shall be submitted by Mr. Locher or an authorized representative of Mr. Locher.

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 his signature below, Mr. Locher voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 9th day of November, 2015.

Amy T. Owens, Regional Director
Department of Environmental Quality

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Mr. B.G. Locher, Jr. voluntarily agrees to the issuance of this Order.

Date: 9/4/15 By: B.G. Locher Jr.
(Person)
Mr. B.G. Locher, Jr.

Commonwealth of Virginia
City/~~County of~~ Buena Vista

The foregoing document was signed and acknowledged before me this 4th day of September, 2015, by B.G. Locher, Jr.

Lana E. Austin
Notary Public

332400
Registration No.

My commission expires: 2/28/2019

Notary seal:

LANA E. AUSTIN
COMMONWEALTH OF VIRGINIA
NOTARY PUBLIC

APPENDIX A
SCHEDULE OF COMPLIANCE

1. **Remediation:**

By September 13, 2015, Mr. Locher shall submit the Site Characterization Report (SCR) to DEQ for review. Mr. Locher shall respond to any DEQ Notice of Deficiency regarding the SCR within 14 calendar days.

After DEQ has reviewed the SCR, Mr. Locher shall comply with DEQ's request for groundwater monitoring and/or submit a Corrective Action Plan (CAP), if required, to DEQ within 60 days for review and approval to remediate any pollution at the Facility as identified in the SCR. Mr. Locher shall respond to any DEQ Notice of Deficiency regarding the CAP within 14 calendar days. Once DEQ approves the CAP, Mr. Locher shall begin implementation of the CAP in accordance with the schedule contained therein and complete the CAP in accordance with its terms. Any changes to the approved final CAP or schedule shall not be initiated without advanced notice to and approval by DEQ.

2. **Tanks:**

By the 10th of the following month, Mr. Locher must submit ATG records that indicate passing result for all four USTs. Mr. Locher shall submit these records monthly, until three consecutive months of passing results have been submitted.

By August 28, 2015, Mr. Locher shall perform a Cathodic Protection Test (CPT) for UST tanks 1-3. By September 28, 2015, Mr. Locher shall submit the results of the CPT report to DEQ.

3. **DEQ Contact**

Unless otherwise specified in this Order, Mr. Locher shall submit all requirements of Appendix A of this Order to:

Tiffany R. Severs
Enforcement Specialist
VA DEQ –Valley Regional Office
4411 Early Road, Harrisonburg, VA 22801
540-574-7859
540-574-7878
tiffany.severs@deq.virginia.gov