COMMONWEALTH of VIRGINIA

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Secretary of Natural Resources

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STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
MR. ITEMAAD SALEM
FOR
SALEM AND SONS NO. 9
Facility ID No. 7-010393

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. Salem, 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. "BRRO-R" means the Blue Ridge Regional Office of DEQ, located in Roanoke, Virginia.

3. "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.

4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

5. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

6. "Facility" means the physical location where the USTs are installed and/or operated, known as Salem & Sons #9 at 3618 Campbell Avenue in Lynchburg, Virginia. The Facility's USTs are owned by Mr. Salem, and the Facility is further identified by UST Facility ID# 7-010393.

7. "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.

8. "Form 7530" means the UST notification form used by DEQ to register and track USTs for proper operation, closure and ownership, in accordance with 9 VAC 25-580-70.

9. "Mr. Salem" means Mr. Itemaad Salem. Mr. Salem is a "person" who owns and operates the Facility.

10. "NOAV" means a Notice of Alleged Violation under Va. Code § 62.1-44.15.

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

12. "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.

13. "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.

14. "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.

15. "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.

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. "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.

19. 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.

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

21. "VAC" means the Virginia Administrative Code.

22. "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. Salem is an owner and/or operator of the Facility within the meaning of Va. Code § 62.1-44.34:8 and 9 VAC 25-580-10.

2. Department staff inspected the Facility and conducted a file review of Facility records for compliance with the requirements of the State Water Control Law and the Regulations on May 16, 2013. At the date of each inspection, there were three USTs on-site: two 6,000-gallon USTs, and one 10,000-gallon UST. The USTs contain petroleum in the form of gasoline. DEQ staff observed the following:

    a. Spill protection equipment was not properly maintained.

    b. Documentation of operator training was not provided.

    c. Financial responsibility had not been demonstrated based on review of the current documentation.

3. 9 VAC 25-580-50(3) and 9 VAC 25-580-60(4) require owners and operators of USTs to use spill prevention equipment that will prevent release of product to the environment when the transfer hose is detached from the fill pipe (for example, a spill catchment basin) and overfill prevention equipment that meets specified performance standards.

4. 9 VAC 25-580-125(F) requires owners and operators of USTs to maintain at UST facilities copies of certificates of training of operators of each UST system or facility that has USTs.

5. 9 VAC 25-590-160 requires an owner or operator to maintain evidence of all financial assurance mechanisms used to demonstrate financial responsibility.

6. The Department has issued a NOV to Mr. Salem for the observations made in the inspection listed above in the form of a Notice of Violation dated May 31, 2013 to document new and/or continuing violations of the regulations cited above.

7. On November 21, 2013, Department staff met with Mr. Salem to discuss the violations.

8. Mr. Salem has submitted documentation that verifies that the violations described in Paragraphs C(2) above, have been corrected.

9. Based on the results of the May 16, 2013 inspection, the Board concludes that Mr. Salem has violated 9 VAC 25-590-160 (financial responsibility), 9 VAC 25-580-50(3)(a) and 9 VAC 25-580-60(4) (spill prevention), and 9 VAC 25-580-125(F) (documentation of operator training), as described above.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Mr. Salem, and Mr. Salem agrees to pay a civil charge of $5,562.00 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

Mr. Salem 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).

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Mr. Salem for good cause shown by Mr. Salem, 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, Mr. Salem admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. Mr. Salem 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. Salem declares that 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. Salem 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. Salem 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. Salem shall show that such circumstances were beyond his control and not due to a lack of good faith or diligence on his part. Mr. Salem 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 Mr. Salem intends 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. Salem.

11. This Order shall continue in effect until:

    a. Mr. Salem 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

    b. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Mr. Salem.

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

14. By his signature below, Mr. Salem voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 11th day of March, 2014.

Robert J. Weld, Regional Director
Department of Environmental Quality

Mr. Itemaad Salem voluntarily agrees to the issuance of this Order.

Date: 1-21-14 By: _____
Mr. Itemaad Salem

Commonwealth of Virginia
City/County of Petersburg

The foregoing document was signed and acknowledged before me this 21 day of January, 2014, by Mr. Itemaad Salem.

Dena E. Patrick
Notary Public

159380
Registration No.

My commission expires: 9-30-14

Notary seal:

DENA E. PATRICK
Notary Public
Commonwealth of Virginia
Reg. #159380