COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
TIDEWATER REGIONAL OFFICE
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Doug Domenech
Secretary of Natural Resources

David K. Paylor
Director

Francis L. Daniel
Regional Director

STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
SALT PONDS MARINA RESORT, LLC
FOR

UST Facility at 11 Ivory Gull Crescent, Hampton, Virginia
Facility ID No. 5-041443

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

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

4. "Facility" means the physical location where the USTs are installed and/or operated, known as Salt Ponds Marina Resort located at 11 Ivory Gull Crescent in Hampton, Virginia. The Facility's USTs are owned by Salt Ponds Marina Resort, LLC, and the Facility is further identified by UST Facility ID# 5-041443.

5. "Form 7530-2" 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.

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

7. "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.

8. "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.

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

10. "Salt Ponds Marina" means Salt Ponds Marina Resort, LLC, a limited liability company authorized to do business in Virginia and its members, affiliates, partners, subsidiaries, and parents. Salt Ponds Marina is a "person" within the meaning of Va. Code § 62.1-44.3.

11. "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.

12. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.

13. "UST" means underground storage tank as defined in Va. Code § 62.1-44.34:8 and 9 VAC 25-580-10.

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

15. "VAC" means the Virginia Administrative Code.

SECTION C: Findings of Fact and Conclusions of Law

1. Salt Ponds Marina owns and operates the Facility in Hampton, Virginia, on Salt Pond where it provides transient and long-term dockage in floating slips for as many as 254 vessels of up to 110 feet in length. The Facility stores gasoline and diesel fuel in USTs at the Facility for the purpose of resale to marina customers. Salt Ponds Marina is an UST owner and/or operator within the meaning of Va. Code § 62.1-44.34:8 and 9 VAC 25-580-10. Salt Pond is a salt-water tidal tributary within the lower Chesapeake Bay.

2. The USTs contain gasoline and diesel fuel, which are Regulated Substances and are therefore subject to the Regulations. The Regulations require that all USTs meet final,

specific performance requirements for, among other things, UST release detection, pipe line-leak detection, and corrosion protection, and demonstration of financial responsibility. The USTs were installed in 1987 by a previous owner. Salt Ponds Marina acquired the Facility in 1997.

3. As the result of a report by Salt Ponds Marina of the release from the Facility of a small amount (approximately forty gallons) of diesel fuel into State waters, Department staff inspected the Facility on September 28, 2009, for compliance with the requirements of the State Water Control Law and the Regulations. There were two (2) USTs at the Facility -- one 10,000 gallon gasoline UST and one 10,000 gallon diesel-fuel UST -- both owned by Salt Ponds Marina. DEQ staff observed the following:

    a. Neither UST had been registered with DEQ. Salt Ponds Marina has owned the two UST systems since 1997 when it acquired the Facility from a third party. It did not notify DEQ of the change of ownership.

    b. The mechanical release-detection devices installed on the USTs and associated piping were not functional. There were no records that release detection has been conducted on the USTs.

    c. The pumps, flex connectors, and other metal components of the piping systems associated with both USTs were not protected from corrosion. All the metal components were in direct contact with the ground.

    d. The records of the annual automatic pipe line-leak detector checks were not available.

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

4. 9 VAC 25-580-70(A) requires an owner to register USTs with DEQ and an owner who acquires a preexisting UST system to notify DEQ of the change of ownership by submitting an amended Form 7530-2 within thirty days of the change of ownership.

5. 9 VAC 25-580-130 and 9 VAC 25-580-140 require that UST 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.

6. 9 VAC 25-580-50(2) requires that piping associated with an UST system that routinely contains regulated substances and is in contact with the ground must be properly designed, constructed, and protected from corrosion.

7. 9 VAC 25-580-170(1) requires that the operation of automatic line-leak detectors be tested annually.

8. 9 VAC 25-590-40(A) requires that owners or operators of petroleum USTs 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 the petroleum USTs.

9. During the DEQ compliance inspection on September 28, 2009, a Facility representative completed a Form 7530-2 for both of the Facility's UST systems. The Facility was assigned UST Facility ID # 5-041443.

10. On October 8, 2009, the Department issued Notice of Violation No. 05-00-TRO-01 to Salt Ponds Marina for violations listed in paragraphs C(3) through C(8), above.

11. Salt Ponds Marina responded to the NOV by letter dated October 14, 2009, to the effect that the owner of the Facility was unaware that the USTs were required to be registered with DEQ when he had acquired the Facility in 1997 or that the release-detection system needed to be monitored. The response also stated that all the piping associated with both USTs was being replaced; that the mechanical release-detection devices that had been installed on the USTs, but which had not been working, would be either repaired or replaced; and that the Facility owner was in the process of obtaining a line of credit to satisfy the financial-responsibility requirements of the Regulation. Work on the USTs and associated piping is scheduled to begin in January 2010.

12. Based on the results of the September 28, 2009, inspection, and the documentation submitted on October 14, 2009, the Board concludes that Salt Ponds Marina has violated State Water Control Law and Regulations, as described in paragraphs C(3) through C(8), above.

13. Documentation has been submitted that verifies that the violation described in paragraph C(4) has been corrected.

14. In order for Salt Ponds Marina to complete its return to compliance, DEQ staff and representatives of Salt Ponds Marina 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 Salt Ponds Marina, and Salt Ponds Marina agrees to:

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

2. Pay a civil charge of $13,465 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

Salt Ponds Marina shall include its Federal Employer Identification Number (FEIN) (54-1850399) 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).

SECTION E: Administrative Provisions

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

4. Salt Ponds Marina 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. Salt Ponds Marina 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 Salt Ponds Marina 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. Salt Ponds Marina 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. Salt Ponds Marina shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Salt Ponds Marina 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 Salt Ponds Marina 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 Salt Ponds Marina. Nevertheless, Salt Ponds Marina agrees to be bound by any compliance date which precedes the effective date of this Order.

11. Order shall continue in effect until:

    a. Salt Ponds Marina 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 Salt Ponds Marina.

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

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, Salt Ponds Marina voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 22 day of June, 2010.

Francis L. Daniel

Francis L. Daniel, Regional Director
Department of Environmental Quality

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Salt Ponds Marina Resort, LLC, voluntarily agrees to the issuance of this Order.

Date: 2/12/10 By: _____, Owner
(Person) (Title)
Salt Ponds Marina Resort, LLC

State/~~Commonwealth~~ of Maryland

City/County of Queen Anne's

The foregoing document was signed and acknowledged before me this 12 day of February, 2010, by Jody J. Schulz who is Owner of Salt Ponds Marina Resort, LLC, on behalf of the company.

Notary Public
Kimberly J. Ruth
N/A for MD
Registration No.

My commission expires: 8-1-10

Notary seal:

KIMBERLY J. RUTH
NOTARY
PUBLIC
QUEEN ANNE'S COUNTY, MD

APPENDIX A
SCHEDULE OF COMPLIANCE

1. By May 1, 2010, Salt Ponds Marina 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 USTs in the amount and using a mechanism, or a combination of mechanisms, prescribed by 9 VAC 25-590.

2. By June 1, 2010, Salt Ponds Marina shall submit for review and approval a corrective action plan ("plan") and schedule to bring both UST systems into full compliance with statutory and regulatory requirements including, but not limited to the following:

   - Installation of new piping associated with both USTs, which includes automatic line-leak detectors and which are properly designed, constructed, and protected from corrosion.
   - Installation of a method, or combination of methods, of release detection on each UST that can detect a release from any portion of the tank and the connected underground piping that routinely contains product.

   All actions under the approved plan and schedule shall be completed by December 1, 2010.

3. By June 10, 2010; September 10, 2010; December 10, 2010; March 10, 2011; and June 10, 2011, submit to DEQ Tidewater Regional Office, reports of all inspections of and tests performed on the UST systems at the Facility conducted by or on behalf of Salt Ponds Marina during the preceding three-month period. Such reports shall include, but not be limited to, records of release detection and tests of the corrosion-protection system and pipe line-leak detectors.

4. Unless otherwise specified in this Order, Salt Ponds Marina shall submit all requirements of Appendix A of this Order to:

   Mr. Francis L. Daniel, Regional Director
   DEQ, Tidewater Regional Office
   5636 Southern Boulevard
   Virginia Beach, VA 23462