COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
NORTHERN REGIONAL OFFICE
13901 Crown Court, Woodbridge, Virginia 22193
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Molly Joseph Ward
Secretary of Natural Resources

David K. Paylor
Director

STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
VIRGINIA HOSPITAL CENTER ARLINGTON HEALTH SYSTEM
FOR
VIRGINIA HOSPITAL CENTER
Facility ID No. 3008156
AND
CARLIN SPRINGS HEALTH CAMPUS
Facility ID No. 3002795

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 Virginia Hospital Center Arlington Health System, 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 #1" means the physical location where the UST and/or UST system is installed and/or operated, known as the Virginia Hospital Center located at 1701 North George Mason Drive, Arlington Virginia. The Facility's USTs and UST system are owned by Virginia Hospital Center Arlington Health System, and the Facility is further identified by UST Facility ID#3008156.

5. "Facility #2" means the physical location where the UST and/or UST system is installed and/or operated, known as Carlin Springs Health Campus located at 601 South Carlin Springs Road, Arlington Virginia. The Facility's USTs and UST system are owned by Virginia Hospital Center Arlington Health System, and the Facility is further identified by UST Facility ID# 3002795.

6. "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.

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

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

9. "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.

10. "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.

11. "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.

12. "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.

13. "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.

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

15. "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.

16. "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.

17. "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.

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

19. "VAC" means the Virginia Administrative Code.

20. "Virginia Hospital Center" or "VHC" means Virginia Hospital Center Arlington Health System, a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Virginia Hospital Center is a "person" who owns and operates the Facility.

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. VHC is the owner of Facilities #1 and #2. VHC stores regulated substances in the form of diesel in USTs at the Facilities.

2. On April 4, 2013, DEQ staff conducted a formal inspection of the USTs at Facility #1 and conducted a file review of Facility records to evaluate VHC's compliance with the requirements of the State Water Control Law and the Regulations. File and UST registration documents were also reviewed. At that time, there were five USTs at the Facility: one 550 gallon diesel; one 4,000 gallon diesel; one 5,000 gallon diesel; one 10,000 gallon diesel; and one 20,000 gallon diesel UST. In response to the inspection, DEQ issued a Deficiency Letter (DL) to VHC on April 15, 2013. The issues remained uncorrected and DEQ issued a Warning Letter to VHC on September 13, 2013. During the inspection and the file review, DEQ made the following observations:

a. DEQ Form 7530-2, dated March 17, 2011, indicated that the bare steel piping for the 10,000 and 5,000 gallon USTs have been replaced with the double walled polyflexible piping. At the time of the inspection, documentation was not provided to demonstrate that interstitial monitoring is being performed on piping associated with the 10,000 and 5,000 gallon USTs and documents were not made available upon DEQ's request.

b. At the time of the inspection, operator training records were not maintained. Specifically, Class A and B operator training certifications; a current list of designated Class A, Class B and Class C operators; the Class C training record and the Class C Operator instructions or procedures were not provided at the time of inspection and the documents were not made available upon DEQ's request.

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

3. 9 VAC 25-580-180.2 requires that all UST system owners and operators must maintain records in accordance with 9VAC25-580-120, which requires these results must be maintained at the UST site and immediately available for inspection or at a readily available alternative site and be provided for inspection upon request.

4. 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.

5. 9 VAC 25-580-125 requires that owners and operators of petroleum UST systems shall designate Class A, Class B, and Class C operators for each UST system or facility that has underground storage tanks and maintain documentation of operator training required by, including verification of training for current Class A, Class B, and Class C operators, and a current list of operators and written instructions or procedures for Class C operators.

6. On November 22, 2013, the Department issued Notice of Violation No. NOV-UST-13-11-NRO-001, to VHC for violations listed in paragraphs C(2) through C(7), above.

7. On April 4, 2013, DEQ staff conducted a formal inspection of the USTs at Facility #2 and conducted a file review of Facility records to evaluate VHC's compliance with the requirements of the State Water Control Law and the Regulations. File and UST registration documents were also reviewed. At that time, there were two USTs at the Facility: 500 gallon diesel UST and one 4,000 gallon diesel UST. In response to the inspection, DEQ issued a DL to VHC on April 14, 2013. The issues remained uncorrected and DEQ issued a WL to VHC on September 13, 2013. During the inspection and the file review, DEQ made the following observations:

a. At the time of the inspection the inspector could not confirm that an overfill alarm had been installed on Tank Numbers 1 and 2, as indicated by Virginia notification form 7530-2, dated March 17, 2011.

b. At the time of the inspection, operator training records were not maintained. Specifically, Class A and B operator training certifications; a current list of designated Class A, Class B and Class C operators; the Class C training record and the Class C Operator instructions or procedures were not provided at the time of inspection and the documents were not made available upon DEQ's request.

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

8. 9 VAC 25-580-50.3 requires that "owners and operators must use overfill prevention equipment that will a) automatically shut off flow into the tank when the tank is no more than 95% full; or b) alert the transfer operator when the tank is no more than 90% full by restricting the flow into the tank or triggering a high-level alarm; or c) Restrict the flow 30 minutes prior to overfilling, alert the operator with a high level alarm one minute before overfilling, or automatically shut off flow into the tank so that none of the fittings located on top of the tank are exposed to product due to overfilling."

9. 9 VAC 25-580-125 requires that owners and operators of petroleum UST systems shall designate Class A, Class B, and Class C operators for each UST system or facility that has underground storage tanks and maintain documentation of operator training required by, including verification of training for current Class A, Class B, and Class C operators, and a current list of operators and written instructions or procedures for Class C operators.

10. 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.

11. On November 22, 2013, the Department issued Notice of Violation No. NOV-UST-13-11-NRO-002 to VHC for violations listed in paragraphs C(9) through C(13), above.

12. On January 6, 2014, a representative of VHC responded to the NOV via telephone. On January 14, 2014, VHC submitted a written response to the NOVs providing Class C training records for the operator for both Facilities #1 and #2, completed on January 8, 2014. In addition, VHC provided documentation detailing that interstitial monitoring is being performed on piping associated with the 10,000 and 5,000 gallon USTs located at Facility #1.

13. On January 14, 2014, VHC submitted an email stating that the failure to confirm an overfill alarm is installed on both Tanks #1 and #2 located at Facility #2, was being investigated by Tanknology, Inc..

14. On February 10, 2014, VHC submitted Class A & B training records for one operator at both Facilities #1 and #2, completed on February 10, 2014.

15. 9 VAC 25-580-125 D requires that owners and operators shall ensure that Class A, Class B and Class C operators are trained no later than August 8, 2012.

16. Based on the results of April 4, 2013 inspections and subsequent documentation submitted to DEQ by VHC, the Board concludes that VHC has violated 9 VAC 25-580-50.3, 9 VAC 25-580-50.6, 9 VAC 25-580-60.5, 9 VAC 25-580-120, 9 VAC 25-580-120.2, 9 VAC 25-580-130, 9 VAC 25-580-140.C, 9 VAC 25-580-180.2, and as described in paragraphs C(2) through C(13), above.

17. VHC has submitted documentation that verifies that the violations described in paragraph C(2)(a) has been corrected.

18. In order for VHC to complete its return to compliance, DEQ staff and representatives of VHC 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 Virginia Hospital Center, and Virginia Hospital Center agrees to:

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

2. Pay a civil charge of $10,675.00 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

Virginia Hospital Center 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, Virginia Hospital Center 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 Virginia Hospital Center for good cause shown by Virginia Hospital Center, 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-13-11-NRO-001, dated November 22, 2013 and NOV No. NOV-UST-13-11-NRO-002, dated November 22, 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, Virginia Hospital Center admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

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

b. Virginia Hospital Center 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 Virginia Hospital Center.

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

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, Virginia Hospital Center voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 29th day of August, 2014.

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

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Virginia Hospital Center Arlington Health System voluntarily agrees to the issuance of this Order.

Date: 6-27-14 By: Thomas King, Director Facilities Eng.
(Person) (Title)
Virginia Hospital Center Arlington Health System

Commonwealth of Virginia
City/County of Fairfax

The foregoing document was signed and acknowledged before me this 27th day of June, 2014, by Rita Chang who is Assistant Controller of Virginia Hospital Center Arlington Health System, on behalf of the corporation.

Notary Public

7511314
Registration No.

My commission expires: 11/30/2016

Notary seal:

RITA C CHANG
NOTARY PUBLIC
Commonwealth of Virginia
Reg. # 7511314
My Commission Expires Nov. 30, 2016

APPENDIX A
SCHEDULE OF COMPLIANCE

Virginia Hospital Center Arlington Health System Shall:

1. **Submissions:**

   a. No later than 30 days from the effective date of this Order, submit to DEQ proof that an overfill alarm had been installed on both USTs at Facility #2.

   b. No later than 30 days from the effective date of this Order, submit to DEQ all Class A and B operator training certifications; a current list of designated Class A, Class B and Class C operators; the Class C training record and the Class C Operator instructions or procedures for all operators working at Facilities #1 and #2, in accordance with 9 VAC 25-580-125 F.

2. **DEQ Contact:**

   Unless otherwise specified in this Order, Virginia Hospital Center Arlington Health System 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