COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
NORTHERN REGIONAL OFFICE
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Douglas W. Domenech
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

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

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

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

14. "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.

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

16. "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.

17. "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.

18. "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.

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

20. "VAC" means the Virginia Administrative Code.

21. "Virginia Hospital Center" 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

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. Virginia Hospital Center is the owner and operator of the Facility. Virginia Hospital Center stores a regulated substance in the form of diesel in USTs at the Facility.

2. On March 29, 2010, Department staff inspected the Facility to evaluate the Virginia Hospital Center's compliance with the requirements of the State Water Control Law and the Regulations. At that time, there were five USTs at the Facility that appeared to be in use: one 20,000 gallon diesel UST, one 4,000 gallon diesel UST, one 550 gallon diesel UST, one 10,000 gallon diesel UST and one 5,000 gallon diesel UST. DEQ staff observed the following:

    a. The three active USTs onsite were still registered to the previous Owner.

    b. The spill catchment basin, used as spill prevention equipment on the 4,000 gallon UST, was damaged.

c. Documentation that the impressed current cathodic protection system (ICCP) system on the 550 gallon emergency generator UST had been tested every three years was not available.

d. Documentation that the ICCP system was being inspected every 60 days to ensure it was functioning properly was not available.

e. No records were available to demonstrated financial responsibility.

3. 9 VAC 25-580-70(A) states that any owner who brings an underground storage tank system into use after May 8, 1986, must within 30 days of bringing such tank into use, submit in the form prescribed in Appendix I of this chapter, a notice of existence of such tank system to the board. Any change in owner, tank status (e.g., temporarily/permanently closed out) tank/piping systems (e.g., upgrades such as addition of corrosion protection, internal lining, release detection), substance stored (e.g., change from petroleum to hazardous substance) requires the UST owner to submit an amended notification form within 30 days after such change/upgrade occurs or is brought into use.

4. 9 VAC 25-580-50(2) and (3)(a) requires that underground piping must be catholically protected and requires that to prevent spilling associated with product transfer to the UST system, owners and operators must use (1) spill prevention equipment that will prevent the release of a product to the environment when the transfer hose is detached from the fill pipe.

5. 9 VAC 25-580-120(2)(a) requires that owners and operators maintain documentation of operation of corrosion protection equipment.

6. 9 VAC 590-40A 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.

7. DEQ staff sent a Deficiency Letter to Virginia Hospital Center on March 31, 2010 based on the aforementioned observations noted during the March 29, 2010 inspection. The Deficiency Letter had a response deadline of May 1, 2010. The Deficiency Letter requested that the Facility submit a passing, valid cathodic protection test on the 550 gallon UST, keep a rectifier log, submit documentation that the spill catchment basin either functions properly or that it has been repaired or replaced, and requested that the Facility contact DEQ Office of Financial Assurance and provide them with documentation necessary to demonstrate financial assurance. The information requested was not received by DEQ.

8. 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.

9. On November 1, 2010, DEQ staff sent WL No. WL-UST-10-11-NRO-003 to Virginia Hospital Center based on the aforementioned observations noted during the March 29, 2010 inspection. The WL had a response deadline of December 3, 2010.

10. On January 18, 2011, the Department issued Notice of Violation No. NOV-UST-11-01-NRO-001 to Virginia Hospital Center for violations listed in paragraphs C(2) through C(11), above.

11. On January 19, 2011, DEQ received documentation from Virginia Hospital Center that the impressed current cathodic protection system had been repaired, and tested. The documentation included passing test results after the system was repaired.

12. Before January 19, 2011, DEQ did not receive any documentation that the UST system had been inspected at least every three years or that the system had been inspected every 60 days to ensure the equipment was running properly.

13. 9 VAC 25-580-90.2(a) requires that all UST systems equipped with cathodic protection systems be inspected for proper operation by a qualified cathodic protection tester within six months of installation and at least every three years thereafter in accordance with a code of practice developed by a nationally recognized association.

14. 9 VAC 25-580-90.3 requires that UST systems with impressed current cathodic protection systems be inspected every 60 days to ensure the equipment is running properly.

15. On January 24, 2011, Virginia Hospital Center submitted a written response to the NOV. The response included a Form 7530-2, documentation showing that the damaged spill catchment basin had been replaced on April 13, 2010, and a Permit for the replacement of the bare steel piping on the 5,000 gallon and 10,000 gallon UST systems with notification that the work was scheduled to begin December 2010, and be completed January 2011.

16. 9 VAC 25-580-320 requires that owners and operators, within 30 days after permanent closure or a change-in-service submit an amended UST notification form to the board.

17. On March 15, 2011, DEQ Office of Financial Assurance sent a Financial Responsibility Letter of Compliance to Virginia Hospital Center with an FR renewal date of May, 2011.

18. On March 17, 2011, Department staff met with a representative of Virginia Hospital Center to discuss the violations. At the meeting, DEQ received a completed, accurate Form 7530-2, 60 day rectifier log (to demonstrate that the ICCP system was inspected in January, February, March, and April of 2011), and documentation regarding the removal of the piping associated with the 5,000 and 10,000 gallon USTs.

19. DEQ was notified by Virginia Hospital Center that the required soil samples associated with the removal of the piping associated with the 5,000 and 10,000 gallon USTs had not been collected.

20. 9 VAC 25-580-330(A) requires that before permanent closure or a change-in-service is completed, owners and operators must measure for the presence of a release where contamination is most likely to be present at the UST site.

21. On April 22, 2011,soil samples were subsequently collected and the results were received by DEQ on May 9, 2011.

22. Based on the results of the March 29, 2010 inspection, and the March 17, 2011 meeting, , the Board concludes that Virginia Hospital Center has violated 9 VAC 25-580-70(A), 9 VAC 25-580-50(3)(a), 9 VAC 25-580-90(2)(a), 9 VAC 25-580-90(3), 9 VAC 25-580-120, 9 VAC 25-580-320, 9 VAC 25-580-330(A), 9 VAC 25-590-40(A), 9 VAC 25-580-120, as described in paragraphs C(2) through C(11), above.

23. In order for Virginia Hospital Center to complete its return to compliance, DEQ staff and representatives of Virginia Hospital Center 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 $8,914.00 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).

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. 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 to 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 _____ day of _____, 2012.

_____
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: 6-8-12 By: Thomas King (Person), Director DPO (Title)

Commonwealth of Virginia
City/County of Arlington

The foregoing document was signed and acknowledged before me this 8th day of June, 2012, by Rita C. Chang who is employee of Virginia Hospital Center Arlington Health System, on behalf of the corporation.

Notary Public

Registration No.

My commission expires:

Notary seal:

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

APPENDIX A
SCHEDULE OF COMPLIANCE

1. **Financial Responsibility**

   a. By June 8, 2012, submit all required Financial Responsibility renewal documentation to DEQ Office of Financial Assurance.