COMMONWEALTH of VIRGINIA

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

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Director

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STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
Washington Street Inc.
FOR
Happy Shopper #5
Facility ID No. 5001486

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 Washington Street Inc., 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 another metal surface the cathode, receptor of corrosion-producing electrochemicals, instead of the metal surface to be protected.

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 Happy Shopper #5 located at 600 E Washington Street in Suffolk, Virginia. The Facility's UST and/or UST system are owned and operated by Washington Street Inc., and the Facility is further identified by DEQ UST Facility ID# 5001486.

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 of a regulated substance from an UST or UST system.

7. "WSI" means Washington Street Inc., a corporation authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries. WSI is a "person" within the meaning of Va. Code § 62.1-44.3 and operates the Facility.

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

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.

SECTION C: Findings of Fact and Conclusions of Law

1. WSI is the owner and operator of the Facility. WSI stores a regulated substance in the form of gasoline/kerosene in USTs at the Facility.

2. On January 27, 2012, Department staff inspected the Facility to evaluate WSI's compliance with the requirements of the State Water Control Law and the Regulations. At that time, there were three USTs at the Facility: two 8,000-gallon gasoline USTs, one 6,000-gallon gasoline UST and one 4,000-gallon kerosene UST. DEQ staff observed the following:

    a. There was no evidence that release detection has been conducted on the UST systems.

    b. Cathodic protection testing records for the metallic components of the piping associated with the USTs were not available.

    c. Release detection records for the tanks and associated piping were not available.

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

3. 9 VAC 25-580-140 and -160 require owners or operators of petroleum UST systems to provide release detection for tanks and piping.

4. 9 VAC 25-580-90, -120, -180 and 9 VAC 25-590-160 require owners or operators to maintain records including documentation of operation of corrosion protection equipment, records of compliance with release detection requirements and evidence of all financial assurance mechanisms.

5. 9 VAC 25-590-40 requires that owners or operators of petroleum underground storage tanks 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.

6. On February 21, 2012, the Department issued a Notice of Violation to WSI for violations listed in paragraphs C(2) through C(5), above.

7. On June 15, 2012, Department staff met with representatives of WSI to discuss the violations. During the meeting, WSI submitted documentation that indicated that a cathodic protection system evaluation had been conducted on February 17, 2012 and that all protected structures at the Facility passed the cathodic protection survey.

8. On April 4, 2013, WSI submitted release detection records from November 2012 to April 2013 and demonstrated financial responsibility for the Facility.

9. Based on the results of the January 27, 2012 inspection and the June 15, 2012 meeting, the Board concludes that WSI has violated the Regulations, as described in paragraphs C(2) through C(5), above.

10. WSI has submitted documentation that verifies that the violations described in paragraphs C(2) through C(5), have been corrected.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it pursuant to Va. Code §§ 10.1-1309 and 1316, the Board orders WSI and WSI agrees to pay a civil charge of $4,205.00 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

WSI 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 WSI for good cause shown by WSI, 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, WSI admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

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

b. WSI 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 WSI.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve WSI 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 WSI 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 WSI 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

WSI to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of WSI.

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, WSI voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 18 day of June, 2013.

Maria R. Nold
Department of Environmental Quality

Washington Street Inc. voluntarily agrees to the issuance of this Order.

Date: 4/10/13 By: Sanjay Patel, President
(Person) (Title)

Commonwealth of Virginia
City/County of Chesapeake

The foregoing document was signed and acknowledged before me this 10th day of April, 2013, by Sanjay Patel who is President of Washington Street Inc. on behalf of the corporation.

Notary Public

7507118
Registration No.

My commission expires: 8/30/15

Notary seal:

ATUL R PATEL
COMMONWEALTH OF VIRGINIA
REGISTRATION NO. 7507118
MY COMM. EXPIRES
NOTARY PUBLIC