



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

VALLEY REGIONAL OFFICE

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Secretary of Natural Resources

David K. Paylor
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STATE WATER CONTROL BOARD ENFORCEMENT ACTION A SPECIAL ORDER ISSUED BY CONSENT TO BALDWIN G. LOCHER, JR.

UST Facility at 818 Rockbridge Road, Glasgow, Rockbridge County, VA
Facility Identification No. 6023384

SECTION A: Purpose

This is a Special Order by consent issued under the authority of Va. Code §§ 62.1-44.15 (8a) and (8d) between the State Water Control Board and Baldwin G. Locher, Jr. to resolve certain violations of the State Water Control Law and regulations at Mr. Locher's Underground Storage Tank Facility located at 818 Rockbridge Road, Glasgow, Rockbridge County, Virginia.

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 citizen's board of the Commonwealth of Virginia as described in Code §10.1-1184 and 62.1-44.7.
2. "Code" means the Code of Virginia (1950), as amended.
3. "UST" means underground storage tank as further defined in 9 VAC 25-580 10 and Virginia Code § 62.1-44.34:8.
4. "Mr. Locher" means B. G. Locher, the UST owner within the meaning of Virginia Code § 62.1-44.34:8.
5. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the

Commonwealth of Virginia as described in Code § 10.1-1183.

6. “Director” means the Director of the Department of Environmental Quality.
7. “Facility” means the retail gasoline station and USTs owned and operated by Mr. Locher located at 818 Rockbridge Road, Glasgow, Rockbridge County, Virginia. The USTs are further identified as:

Tank number	1	2	3	4	R5 removed	6
Capacity	6000	6000	6000	3000	1000	2000
Contents	gasoline	gasoline	gasoline	diesel	kerosene	kerosene
Installed	11/1/89	11/1/89	11/1/89	12/1/87	12/1/87	7/1/00

8. “Order” means this document, also known as a Consent Special Order.
9. “Regional Office” means the Valley Regional Office of the Department.
10. “Regulation” means 9 VAC 25-580-10 *et seq.* (Underground Storage Tanks: Technical Standards and Corrective Action Requirements) relating to upgrading of existing USTs systems, registration of tanks, closure of non-compliant tanks, and release detection requirements.
11. “Form 7530” means the UST notification form used by the DEQ to register and track USTs for proper operation, closure and ownership purposes. See 9 VAC 25-580-70.

SECTION C: Findings of Fact and Conclusions of Law

1. The Regulation, at 9 VAC 25-580-10 *et seq.*, requires that the USTs at the Facility meet final, specific performance requirements for leak detection, spill and overfill protection, and corrosion protection by December 22, 1998.
2. Mr. Locher is the owner of the USTs at this Facility within the meaning of Virginia Code § 62.1-44.34:8.
3. On February 15, 2001, DEQ staff conducted a formal inspection of the Facility. The following deficiencies were noted:

- A Form 7530, registering the new ownership of the USTs and the newly installed UST number 6 with the DEQ, had not been submitted in apparent violation of 9 VAC 25-580-70.
- Testing of the corrosion protection systems installed on UST numbers 1, 2, 3 and 4 and their associated piping had not been performed in apparent violation of 9 VAC 25-580-90.
- Release Detection was not being performed on UST number 6 and its associated piping in apparent violation of 9 VAC 25-580-140.
- An integrity assessment was not performed on UST number 4 before upgrading with cathodic protection in apparent violation of 9 VAC 25-580-60.
- A Closure site assessment was not performed on UST number R5 when it was removed from the ground during June 2000 in apparent violation of 9 VAC 25-580-320 and -330.
- Compliance records were not available for review in apparent violation of 9 VAC 25-580-120.
- Financial Responsibility documentation was not available for review in apparent violation of 9 VAC 25-590-10 *et seq.*

Tank number	1	2	3	4	R5	6
Violation	6000	6000	6000	3000	1000	2000
9 VAC 25-580-70 Notification information	X	X	X	X	X	X
9 VAC 25-580-90 Corrosion protection	X	X	X	X		
9 VAC 25-580-140(1) Release detection for tanks and/or piping						X
9 VAC 25-580-60 Upgrade requirements				X		
9 VAC 25-580-320, -330 Closure assessment					X	
9 VAC 25-580-120 Compliance records	X	X	X	X	X	X
9 VAC 25-590-10 et seq. Financial Responsibility	X	X	X	X	X	X

DEQ staff sent a Warning Letter (No. 02-07-VRO-2) to Mr. Locher on July 2, 2001, for these apparent violations of the Regulation. The letter requested that Mr. Locher respond in writing by July 12, 2001, and included a copy of the formal inspection results, detailing the apparent violations noted above.

4. Despite numerous telephone communications and meetings from July 2001 to April 2003, between DEQ Staff and Mr. Locher, no resolution was reached.
5. On August 20, 2003, DEQ staff sent a letter to Mr. Locher requesting that he submit information documenting the corrective actions taken to bring the facility into compliance with the Regulation. No additional documentation was received.
6. On February 6, 2004, Mr. Locher entered into a Letter of Agreement with the DEQ. It required that all corrective actions to comply with the Regulation and documentation supporting such actions be submitted to DEQ staff by April 30, 2004. Mr. Locher failed to comply with the conditions of the LOA.
7. DEQ staff communicated with Mr. Locher via meetings, telephone calls and electronic mail numerous times from December 2003 through June 2004. During this time DEQ staff received the following documentation from Mr. Locher:
 - A Form 7530 registering UST number 6 and the new ownership, effectively resolving the notification information violation.
 - Complete closure site assessment for UST number R5, effectively resolving the closure assessment violation.
 - Release detection records from December 2003 and January 2004 for UST numbers 1, 2, 3, & 4.
 - Passing tank tightness test results for UST number 6 performed on February 18, 2004.
 - Documentation confirming the material of construction for UST numbers 1, 2 & 3.
 - Cathodic protection system test results for UST numbers 1, 2 & 3, however, results were not submitted for the metallic portions of the UST piping in contact with the ground.
 - Complete Financial Responsibility documentation were submitted effectively resolving the financial responsibility requirement.

Despite these submissions, all of the noted violations were not resolved

8. On July 9, 2004, DEQ staff issued a Notice of Violation (NOV) No. 04-07-VRO-3 to Mr. Locher, for the apparent continuing violations of the Regulation. The NOV requested that Mr. Locher respond to the Department by July 19, 2004. The violations noted in the NOV are as follows:

Tank number	1	2	3	4	6
Violation	6000	6000	6000	3000	2000
9 VAC 25-580-50 New install requirements	X	X	X		
9 VAC 25-580-90 Corrosion protection				X	
9 VAC 25-580-140(1) Release detection for tanks and/or piping					X
9 VAC 25-580-60 Upgrade requirements				X	
9 VAC 25-580-120 Compliance records	X	X	X	X	X

9. DEQ staff met with Mr. Locher on July 12, 28 and August 12, 2004, to discuss possible remedies to the situation including a corrective action plan and the settlement of past violations. During these meetings, DEQ staff received documentation confirming that release detection was not being performed on UST number 6 (kerosene) and that the piping associated with this UST was adequately protected from corrosion. Additionally, DEQ staff verified that metallic portions of the piping associated with UST numbers 1, 2 & 3 were not protected from corrosion. Mr. Locher agreed to perform all corrective actions necessary to resolve the violations noted in the NOV and to comply with the Regulation.
10. On October 4, 2004, DEQ staff received a copy of passing cathodic protection test results performed on UST number 4 (diesel) on September 30, 2004.
11. On March 14, 2005, DEQ staff met with Mr. Locher and his attorney to discuss possible resolutions to the outstanding violations. All violations cited in the NOV were reviewed. Some of the violations noted were a result of a failure on Mr. Locher's tenant to perform certain duties as listed in their lease agreement. During the meeting, Mr. Locher indicated that legal action was pending with his current tenant and that he assumed responsibility for all outstanding violations.
12. On March 21, 2005, documentation was received confirming that the piping associated with UST numbers 1, 2 & 3 were adequately protected from corrosion. This effectively resolved the outstanding violation noted in the NOV for those three USTs.
13. During a June 21, 2005, telephone conversation, DEQ staff reviewed both the resolved and the continuing violations with Mr. Locher. The continuing violations are: 1) failure to perform release

detection on UST number 6 (kerosene); and 2) failure to perform an integrity assessment on UST number 4 (diesel). Mr. Locher informed the DEQ that he had recently leased the facility to new tenants and would be unable to provide release detection records to the DEQ for another two months. Additionally, his previous tenant had refused to provide him with a copy of the integrity assessment for UST number 4.

14. During an October 24, 2005, telephone conversation, DEQ staff reviewed both the resolved and the continuing violations with Mr. Locher. Mr. Locher agreed to submit release detection records for UST number 6 (kerosene), but still did not have copies of an integrity assessment for UST number 4 (diesel).

15. On October 25, 2005, DEQ staff received passing release detection records for UST number 6 (kerosene) for the months of August and September 2005.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. Code §§ 62.1-44.15 (8a) and (8d), orders Mr. Locher and Mr. Locher agrees that:

1. To remedy the violations described above and bring the Facility into compliance with the Regulation, Mr. Locher shall perform the actions described in Appendix A to the Order.
2. Mr. Locher shall pay a civil charge of \$1,800.00, within 30 days of the effective date of the Order. Payment shall be by check, certified check, money order, or cashier's check payable to "Treasurer of the Commonwealth of Virginia" and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

3. Mr. Locher shall also include his Social Security Number with the civil charge payment and shall note on the payment that it is being made pursuant to this Order.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Mr. Locher, for good cause shown by Mr. Locher, or on its own motion after notice and opportunity to be heard.

2. This Order addresses only those violations specifically identified herein. This Order shall not preclude the Board or Director from taking any action authorized by law, including, but not limited to: (1) taking any action regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the Facility as may be authorized by law; and/or (3) taking subsequent action to enforce the terms of this Order. Nothing herein shall affect appropriate enforcement actions by other federal, state, or local regulatory authority, whether or not arising out of the same or similar facts.
3. For purposes of this Order and subsequent actions with respect to this Order, Mr. Locher admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Mr. Locher 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. Locher declares he has received fair and due process under the Virginia Administrative Process Act, Code §§ 2.2-4000 *et seq.*, 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 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 enforce this Order.
6. Failure by Mr. Locher to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall act to waive or bar 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. Locher shall be responsible for failing to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other act of God, war, strike, or such other occurrence. Mr. Locher must show that such circumstances resulting in noncompliance were beyond his control and not due to a lack of good faith or diligence on his part. Mr. Locher shall notify the Director of the Regional Office in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this Order. Such notice shall set forth:

- a. The reasons for the delay or noncompliance;
- b. The projected duration of 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.

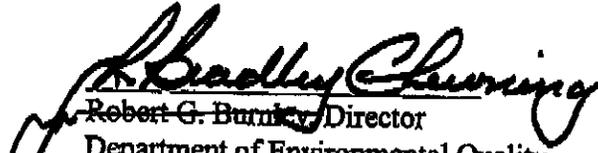
Failure to so notify the Director of the Regional Office in writing within 10 days of learning of any condition listed above, which Mr. Locher intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim of inability to comply with a requirement of this Order.

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. Locher. Notwithstanding the foregoing, Mr. Locher 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. Mr. Locher petitions the Regional Director to terminate the Order after he has completed all requirements of the Order and the Director or his designee approves the termination of the Order; or
 - b. The Director or the Board terminates this Order in his or its whole discretion upon 30 days written notice to Mr. Locher.

Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve Mr. Locher from his obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. By his signature below, Mr. Locher voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 16 day of March, 2006.


Robert G. Burnley, Director
Department of Environmental Quality
David K. Paylor

The terms and conditions of the Order are voluntarily accepted by Baldwin G. Locher Jr.:

Date: 12-09-05

By: BG Locher Jr.
Baldwin G. Locher, Jr.

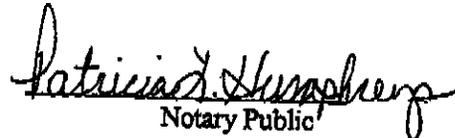
Commonwealth of Virginia, City/County of Rockingham

The foregoing instrument was acknowledged before me this ___ day of _____, 2005, by

Baldwin G. Locher, Jr.
(name)

March 31, 2008
Date

My commission expires:


Notary Public

Appendix A
Baldwin G. Locher, Jr.
UST Facility at 818 Rockbridge Road, Glasgow, Rockbridge County, VA

For the USTs, Mr. Locher shall:

- A. By December 15, 2005, submit copies of release detection results for all the USTs for the month of November 2005.

- B. By January 15, 2006:
 1. Submit copies of release detection results for all the USTs for the months of December 2005, AND,
 2. Submit EITHER: a) copies of the tank integrity assessments performed on UST number 4 prior to upgrading with corrosion protection or subsequently, OR b) copies of a corrosion expert's certification of eligibility of the cathodic protection system design for UST number 4.