



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
VALLEY REGIONAL OFFICE

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L. Preston Bryant, Jr.
Secretary of Natural Resources

David K. Paylor
Director

R. Bradley Chewning, P.E.
Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION A SPECIAL ORDER ISSUED BY CONSENT TO PLECKER CONSTRUCTION CO., INC. UST Facility 172 Parkersburg Turnpike, Staunton, VA Facility Identification No. 6013887

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 Plecker Construction Co., Inc. to resolve certain violations of the State Water Control Law and regulations at Plecker Construction Co., Inc. Underground Storage Tank Facility located at 172 Parkersburg Turnpike, Staunton, 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. "Plecker" means Plecker Construction Co., Inc, 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 construction company and USTs owned and operated by Plecker located at 172 Parkersburg Turnpike, Staunton, Virginia. The USTs are further identified as:

Tank number	R1	R2	4
Capacity	4000	4000	10000
Contents	diesel	diesel	diesel
Installed	5/6/81	5/6/81	6/1/99
Closed	6/1/99	6/1/99	N/A

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. Plecker is the owner of the USTs at this Facility within the meaning of Virginia Code § 62.1-44.34:8.
3. On April 20, 2005, DEQ staff conducted a formal inspection of the Facility. The following deficiencies were noted:

- An amended Form 7530, correctly identifying the installation date and material of construction for UST number 4, had not been submitted in apparent violation of 9 VAC 25-580-70.
- A spill prevention device was not installed on UST number 4 in apparent violation of 9 VA 25-580-50
- UST number 4 and its associated piping did not appear to be protected from corrosion in apparent violation of 9 VAC 25-580-90.
- Release Detection was not being performed on the piping associated with UST number 4 in apparent violation of 9 VAC 25-580-140.
- A complete closure site assessment, including a building permit, was not submitted for UST numbers 1 & 2 when they were removed from the ground during June 1999 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 Violation	R1 4000	R2 4000	4 10000
9 VAC 25-580-70 Notification information			X
9 VAC 25-580-90 Corrosion protection			X
9 VAC 25-580-140(2) Release detection for piping			X
9 VAC 25-580-50 New install requirements			X
9 VAC 25-580-320, -330 Closure assessment	X	X	
9 VAC 25-580-120 Compliance records			X
9 VAC 25-590-10 et seq. Financial Responsibility			X

DEQ staff sent a Warning Letter (No. 05-06-VRO-2) to Plecker on June 1, 2005, for these apparent violations of the Regulation. The letter requested that Plecker respond in writing by June 15, 2005, and included a copy of the formal inspection results, detailing the apparent violations noted above.

4. Despite numerous telephone communications from June 2005 to September 2005, between DEQ Staff and Plecker, no resolution was reached. Plecker submitted no documentation in response to the June, 2005 Warning Letter.
5. On October 11, 2005, DEQ staff issued a Notice of Violation (NOV) No. 05-10-VRO-4 to Plecker, for the continuing alleged violations of the Regulation. In the NOV, the Department requested that Plecker respond by July 19, 2004. The alleged violations noted in the NOV are as follows:

Tank number	R1	R2	4
Violation	4000	4000	10000
9 VAC 25-580-70 Notification information			X
9 VAC 25-580-90 Corrosion protection			X
9 VAC 25-580-140(2) Release detection for piping			X
9 VAC 25-580-50 New install requirements			X
9 VAC 25-580-320, -330 Closure assessment	X	X	
9 VAC 25-580-120 Compliance records			X
9 VAC 25-590-10 et seq. Financial Responsibility			X

6. DEQ staff met with Plecker on November 8, 2005, 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 resolving the incomplete closure documentation for UST numbers 1 & 2. After a brief explanation of the alleged violation, Plecker chose to close UST number 4 rather than update it in compliance with the Regulation. Based on this information, it became apparent that a more appropriate citation for the alleged violation of the Regulation on UST number 4 would be “Failure to close a non-compliant UST” as required by 9 VAC 25-580-320 & -330. Plecker

agreed to perform all corrective actions necessary to resolve the alleged violations noted in the NOV by properly closing UST number 4.

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 Plecker and Plecker agrees that:

1. To remedy the alleged violations described above and bring the Facility into compliance with the Regulation, Plecker shall perform the actions described in Appendix A to the Order.
2. Plecker shall pay a civil charge of \$1,820.00, within 30 days after 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. Plecker 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 Plecker, for good cause shown by Plecker, 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, Plecker admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.

4. Plecker 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. Plecker declares it 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 it 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 Plecker 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. Plecker 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. Plecker must show that such circumstances resulting in noncompliance were beyond its control and not due to a lack of good faith or diligence on its part. Plecker 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.

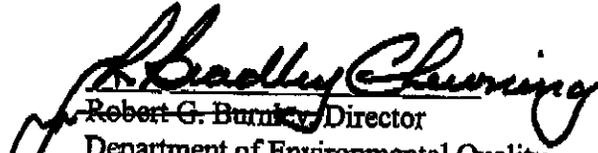
Failure to so notify the Director of the Regional Office in writing within 10 days of learning of any condition listed above, which Plecker intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim of inability to comply with a requirement of this Order.

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 Plecker. Notwithstanding the foregoing, Plecker 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. Plecker petitions the Regional Director to terminate the Order after it 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 Plecker

Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve Plecker from its 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.

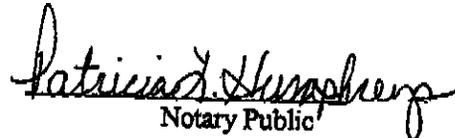
Commonwealth of Virginia, City/County of Rockingham

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
Plecker Construction Co., Inc..
UST Facility at 172 Parkersburg Turnpike, Staunton, VA

For the UST number 4, Plecker shall:

- A. By January 1, 2006, complete all closure activities as required by the Regulation.
- B. By February 1, 2006, submit copies of all required documentation to the DEQ for the closure of UST number 4.