COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

Blue Ridge Regional Office

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STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
NASER #2 OF BROOKNEAL, LLC, D.B.A. NARUNA MINIT MART
Facility ID No. 7-001761

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 Naser, 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. "BRRO-R" means the Blue Ridge Regional Office of DEQ, located in Roanoke, Virginia.

3. "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.

4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

5. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

6. "Facility" means the physical location where the USTs are installed and/or operated, known as Naruna Minit Mart, located at 13492 Brookneal Highway in Gladys, Virginia (Campbell County). The Facility's USTs are owned by Naser, and the Facility is further identified by UST Facility ID# 7-001761.

7. "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.

8. "Form 7530-2" means the UST notification form used by DEQ to register and track USTs for proper operation, closure and ownership, in accordance with 9 VAC 25-580-70.

9. "Naser" means Naser #2 of Brookneal, LLC, a limited liability company authorized to do business in Virginia and its members, affiliates, partners, subsidiaries, and parents. Naser is a "person" who owns and operates the Facility.

10. "NOAV" means a Notice of Alleged Violation under Va. Code § 62.1-44.15.

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

12. "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.

13. "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.

14. "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.

15. "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.

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

17. "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.

18. "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.

19. "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.

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

21. "VAC" means the Virginia Administrative Code.

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. Naser is an owner and/or operator of the Facility within the meaning of Va. Code § 62.1-44.34:8 and 9 VAC 25-580-10.

2. Department staff inspected the Facility and conducted a file review of Facility records for compliance with the requirements of the State Water Control Law and the Regulations on the following dates: February 17, 2010, March 15, 2011, November 30, 2011, February 21, 2012, and May 2, 2012. At the date of each inspection, there were three USTs on-site: two 4,000-gallon USTs, and one 8,000-gallon UST. The USTs contain petroleum in the form of gasoline. DEQ staff observed the following during the May 2, 2012 inspection:

    a. Documentation was unavailable to demonstrate recent compliance with release detection requirements.

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

    c. Overfill protection was not present on the regular unleaded gasoline UST.

    d. No evidence that the UST system was protected from corrosion was observed. The rectifier appeared to be either turned off or inoperable at the time of the inspection. The rectifier was subsequently repaired, but the system did not pass a cathodic protection test following the rectifier repair.

e. The premium gasoline and diesel piping systems were closed but no closure assessment has been submitted.

f. The automatic tank gauge was not functioning for the regular unleaded gasoline tank.

g. During the February 21 and May 2, 2012 inspections, petroleum was discovered in the UST No. 1 submersible turbine pump area without containment measures. DEQ has not received any notification of this release from Naser.

3. On May 9, 2012, DEQ sent Mr. Salem a letter requesting that he perform a release investigation at Naruna and submit a Site Characterization Report. Mr. Salem did not respond to this letter.

4. On July 19, 2012, DEQ sent Mr. Salem a second letter requesting that he perform a release investigation at Naruna and submit a Site Characterization Report. Mr. Salem did not respond to this letter.

5. On April 18, 2013, DEQ Remediation Specialist Doug Carl inspected the Facility and observed petroleum in the regular gasoline tank (UST #1) submersible turbine pump area. DEQ has not received any notification of this suspected release from Naser. DEQ notified Naser of this suspected release on May 9, 2012 and July 19, 2012. Moreover, Naser has not performed a release investigation for this suspected release.

6. Department staff inspected the Facility and conducted a file review of Facility records for compliance with the requirements of the State Water Control Law and the Regulations on the May 16, 2013. At the date of each inspection, there were three USTs on-site: two 4,000-gallon USTs, and one 8,000-gallon UST. The USTs contain petroleum in the form of gasoline. DEQ staff observed the following:

   a. Documentation was unavailable to demonstrate: i) recent compliance with release detection requirements, and ii) operator training.

   b. Overfill protection was not present on the regular unleaded gasoline UST (UST #1).

   c. No evidence that the UST system was protected from corrosion was observed. Although the rectifier had been repaired, the system did not pass a cathodic protection test following the rectifier repair.

7. 9 VAC 25-580-120(2) and (3) requires owners and operators of UST systems to maintain documentation of corrosion protection equipment, documentation of UST system repairs, documentation of recent compliance with release detection requirements, results of the site investigation conducted as permanent closure, and make these records immediately

available for inspection or readily available at an alternative site and be provided for inspection upon request.

8. 9 VAC 25-580-180(2) requires that the results of any sampling, testing or monitoring required under the Regulations be maintained for at least one year.

9. 9 VAC 25-590-160 requires an owner or operator to maintain evidence of all financial assurance mechanisms used to demonstrate financial responsibility.

10. 9 VAC 25-580-70(A) requires any UST owner to submit an amended 7530 Notification Form within 30 days after any change or upgrade of the tanks(s) occurs.

11. 9 VAC 25-580-50(3)(a)(2) requires an owner or operator to have overfill protection equipment that will: (a) Automatically shut off flow into the tank when the tank is no more than 95% full; (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.

12. 9 VAC 25-580-50(1)&(2) state that any underground portion of new and existing UST systems that routinely contain product must be protected from corrosion.

13. 9 VAC 25-580-320 states that owners and operators must, within 30 days after permanent closure, notify the building official, empty and clean the tank by removing all liquids and accumulated sludge, perform an assessment of the excavation zone, and submit an amended 7530 notification form. All tanks taken out of service permanently must also be either removed from the ground or filled with an inert solid material.

14. 9 VAC 25-580-190 states that owners and operators must report all releases of regulated substances within 24 hours.

15. 9 VAC 25-580-140(C)(1) requires an owner or operator to monitor the tanks at least every 30 days for releases using one of the methods listed in subdivision 4 through 8 of 9 VAC 25-580-160.

16. 9 VAC 25-580-190 requires owners and operators to report all releases of petroleum within 24 hours.

17. The Department has issued multiple NOAVs to Naser for the observations made in the inspections listed above in the form of Warning Letters and Notices of Violation on June 3, 2008, September 12, 2008, May 20, 2010, March 15, 2011, December 29, 2011, April 4, 2012, May 22, 2012, and June 11, 2013 to document new and/or continuing violations of the regulations cited above.

18. On April 29, 2011 and November 21, 2013, Department staff met with a representative of Naser to discuss the violations.

19. On May 9, 2012, the Department sent a petroleum release investigation request for the release identified during the May 2, 2012 inspection.

20. Naser has submitted documentation that verifies and DEQ staff inspected the Facility on March 15, 2011 and verified that the violation regarding release detection for pressurized piping described in Paragraph C(2)(a) above, had been corrected. Subsequent documentation submitted by Naser verified that the violations described in Paragraphs C(2)(a) regarding the 60-day inspection of impressed cathodic protection system, C(2)(c)(registration), and C(2)(d)(overfill protection), C(6)(a)(release detection recordkeeping and operator training), 6(c)(cathodic protection test), above, have been corrected.

21. Based on the results of the February 17, 2010, March 15, 2011, November 30, 2011, February 21, 2012, May 2, 2012, April 18, 2013, and May 16, 2013 inspections, the Board concludes that Naser has violated 9 VAC 25-580-50(3) (overfill prevention), 9 VAC 25-580-70(A) (registration), 9 VAC 25-580-90(3) (60-day inspection of impressed cathodic protection system), 9 VAC 25-580-90(2) (3-year recertification evaluation of cathodic protection for inactive tanks), 9 VAC 25-580-140(C)(2)(a) and 9 VAC 25-580-170 (release detection for pressurized piping), VAC 25-580-140(C)(1) (release detection for USTs), 9 VAC 25-580-180(2), 9 VAC 25-580-120(2) and (3) (release detection and cathodic protection recordkeeping), 9 VAC 25-590-150(E) (financial assurance), 9 VAC 25-580-50(1)&(2) (operation of corrosion protection), 9 VAC 25-580-320 (closure requirements), and 9 VAC 25-580-190 (release reporting), as described above.

22. In order for Naser to return to compliance, DEQ staff and Naser 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 Naser, and Naser agrees to:

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

2. Pay a civil charge of $8,888.00 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

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

4. Naser 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. Naser declares that 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 Naser 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. Naser 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 occurrence. Naser shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on his part. Naser 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 Naser intends 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, 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 Naser.

11. This Order shall continue in effect until:

    a. Naser petitions the Director or his designee to terminate the Order after he has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or

    b. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Naser.

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

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, Naser voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____.

_____
Robert J. Weld, Regional Director
Department of Environmental Quality

Naser #2 of Brookneal, LLC voluntarily agrees to the issuance of this Order.

Date: 1-21-14 By: _____
Mr. Itemaad Salem

Commonwealth of Virginia
City/County of Petersburg
The foregoing document was signed and acknowledged before me this 21 day of January, 2014 by Mr. Itemaad Salem.

Dena E. Patrick
Notary Public

159380
Registration No.

My commission expires: 9-30-14

Notary seal:

DENA E. PATRICK
Notary Public
Commonwealth of Virginia
Reg. #159380

APPENDIX A
SCHEDULE OF COMPLIANCE

The following requirements pertain to the USTs at the Facility:

1. **Overfill Prevention**. By **30 days after the effective date of this Order**, Naser shall submit documentation of repair of overfill protection for the regular gasoline tank (UST #1).

2. **Site Investigation.** By **30 days after the effective date of this Order**, Naser shall submit an Initial Abatement Measures Report for the release of petroleum identified during an inspection at the Facility on May 2, 2012, as further described in a letter from DEQ dated May 9, 2012.

3. **Site Characterizaiton**. By **60 days after the effective date of this Order**, Naser shall submit a Site Characterization Report, and, if necessary, a Free Product Removal Report for the release refereced above.

4. **DEQ Contact**

   Unless otherwise specified in this Order, Naser shall submit all requirements of Appendix A of this Order to:

   Robert Steele
   VA DEQ –Blue Ridge Regional Office
   3019 Peters Creek Road
   Roanoke, VA 24019

   Phone: (540) 562-6777
   Fax: (540) 562-6725
   Email: Robert.Steele@deq.virginia.gov