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
WORKMAN OIL COMPANY
Facility ID No. 7-013730

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 WOC, 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 UST and or UST system is installed and/or operated, known as D-n-G's Stop-N-Go, located at 12201 Philpott Road, Alton, Virginia (Halifax County). The Facility's USTs and /or UST system are owned by WOC, and the Facility is further identified by UST Facility ID# 7-013730.

7. "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.

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

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

10. "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.

11. "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.

12. "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.

13. "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.

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. "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.

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

19. "VAC" means the Virginia Administrative Code.

20. "WOC" means Workman Oil Company, a company authorized to do business in Virginia, and its affiliates, partners, and subsidiaries. WOC is a "person" who owns the UST system at the Facility.

SECTION C: Findings of Fact and Conclusions of Law

1. WOC 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 April 24, 2013. At the date of the inspection, there were three USTs on-site: one 2,000-gallon UST containing gasoline, one 2,000-gallon USTs containing diesel fuel, and one 1,000-gallon UST designated for gasoline. The USTs use cathodic protection as a means of corrosion protection. DEQ staff observed the following:

    a. A suspected release was indicated by the following: 1) release detection results from January and February 2011, 2) the results of a tank tightness test on March 10, 2011 (after which the product in the tank was pumped out), and 3) the observation of a declining level of water in measurements performed from December 29, 2011 through January 10, 2012 after the addition of water to the tank to test for a leak.

    b. Records of twelve months of release detection results were not available.

    c. A current three-year test for the cathodically protected UST systems (both tanks and piping) was not available. A test had been performed on March 29, 2013, but the records were provided upon request. The 2,000-gallon UST and the unprotected steel piping failed the March 29, 2013 cathodic protection test.

    d. Registration information did not represent the current UST operational information. UST No. 1 was registered for premium fuel but was being used for diesel as of the date of the inspection.

3. 9 VAC 25-580-120(1) requires owners and operators of UST systems to report all releases and suspected releases in accordance with 9 VAC 25-580-190.

4. 9 VAC 25-580-190 states that owners and operators must report all releases of regulated substances within 24 hours.

5. 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.

6. 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.

7. 9 VAC 25-580-90(4) requires owners and operators of UST systems using cathodic protection to maintain records of operation of the cathodic protection system in accordance with 9 VAC 25-580-120.

8. 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.

9. On September 11, 2013, the Department issued Warning Letter No. 13-09-BRRO-007 to WOC for failure to complete a site check and submit a Site Characterization Report for a suspected release as requested in a DEQ letter dated May 31, 2013.

10. On October 22, 2013, the Department issued Notice of Violation No. 13-09-BRRO-003 to WOC for violations listed in paragraph C(2) above.

11. On November 14, 2013, a contractor for WOC removed all of the USTs at the Facility. Subsequent investigation has confirmed a release from UST No. 2. An Initial Abatement Measures Report ("IAMR") for the site was received by DEQ on April 11, 2014. The IAMR recommends further investigation. DEQ responded to the IAMR in a letter dated April 21, 2014. That letter specified technical content for a Site Characterization Report that WOC should submit by July 21, 2014.

12. On May 6, 2014, Department staff met with a representative of WOC to discuss the violations.

13. Based on the results of the April 24, 2013 inspection and documentation submitted by WOC, the Board concludes that WOC has violated 9 VAC 25-580-70(A) (registration), 9 VAC 25-580-90(2) (3-year recertification evaluation of cathodic protection for inactive tanks), 9 VAC 25-580-120(2) and (3) and 9 VAC 25-580-180(2) (release detection and cathodic protection recordkeeping), and 9 VAC 25-580-120(1) and 9 VAC 25-580-190 (release reporting), as described above.

14. In order for WOC to return to compliance, DEQ staff and WOC 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 Workman Oil Company, and Workman Oil Company agrees to:

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

2. Pay a civil charge of $15,000.00 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

WOC shall include its Federal Employer Identification Number (FEIN) (54-0968997) 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 WOC for good cause shown by WOC, 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, WOC admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

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

11. This Order shall continue in effect until:

    a. WOC 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 WOC.

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

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, WOC 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

Workman Oil Company voluntarily agrees to the issuance of this Order.

Date: 06/26/14 By: Mike Duncan - V.P.

Commonwealth of Virginia

City/County of Bedford

The foregoing document was signed and acknowledged before me this 26th day of June, by Mike Duncan.

Cheryl B. Harris
Notary Public

7533962
Registration No.

My commission expires: 5/31/2016

Notary seal:

CHERYL BROWN HARRIS
NOTARY PUBLIC
REG. #7533962
MY COMMISSION EXPIRES 5/31/16
COMMONWEALTH OF VIRGINIA

APPENDIX A
SCHEDULE OF COMPLIANCE

The following requirements pertain to the Facility:

1. **Remediation**. By July 21, 2014, WOC shall submit a Site Characterization Report in accordance with 9 VAC 25-580-260 and the letter from DEQ to WOC dated April 21, 2014 regarding "Techincal Review of the Initial Abatement Measures Report." WOC shall respond to any requests from DEQ for supplemental investigation, analysis, or corrective action in accordance with the deadlines specified in any such request from DEQ. WOC shall complete remediation as appropriate in accordance with the Regulations and State Water Control Law, including Va. Code § 62.1-44.34:9(9) and 9 VAC 25-580-230 *et seq*.

2. **DEQ Contact**

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

   David Kirby, P.G.
   VA DEQ – Blue Ridge Regional Office
   7705 Timberlake Road
   Lynchburg, VA 24502

   Phone: (434) 582-6225
   Fax: (434) 582-5125
   Email: david.kirby@deq.virginia.gov

with copy 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