COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

VALLEY REGIONAL OFFICE

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Preston Bryant
Secretary of Natural Resources

David K. Paylor
Director

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Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION
A SPECIAL ORDER ISSUED BY CONSENT TO
JOHNNY R. MAYS

UST Facility 264 Front Street, Lovingston, VA
Facility Identification No. 6017855

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 Johnny R. Mays to resolve certain violations of the State Water Control Law and regulations at Johnny R. Mays, Underground Storage Tank Facility known as Johnny's Automotive located at 264 Front Street, Lovingston, Nelson 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. Mays" means Johnny R. Mays, 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 automotive repair shop known as Johnny's Automotive, along with the USTs owned and operated by Mr. Mays located at 264 Front Street, Lovingston, Virginia. The USTs are further identified as gasoline tanks #1C and #2C, both installed on February 28, 1993, with capacities of 2,000-gallons.

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 UST systems, registration of tanks, closure of non-compliant tanks, and release detection requirements.

11. "Form 7530-2" 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. Mays is the owner of the USTs at this Facility within the meaning of Virginia Code § 62.1-44.34:8.

3. On July 28, 2005, DEQ staff conducted a formal inspection of the Facility. The following deficiencies were noted for both USTs:
   - Documentation confirming that the USTs and their associated piping were protected from corrosion was not available for review, in violation of 9 VAC 25-580-50.
   - Metallic components of the piping associated with both USTs were in contact with the ground and were not protected from corrosion, in violation of 9 VAC 25-580-50 and 9 VAC 25-580-90.
   - Release Detection was not being performed on the USTs in violation of 9 VAC 25-580-140.
   - Financial Responsibility documentation was not available for review in violation of 9 VAC 25-590-10 *et seq.*

4. DEQ staff sent a Warning Letter (No. 05-08-VRO-15) to Mr. Mays on August 31, 2005, for these violations of the Regulation. The letter requested that Mr. Mays respond in writing by September 9, 2005, and included a copy of the formal inspection results, detailing the violations identified during the July 28, 2005 inspection.

5. Mr. Mays failed to respond to the Warning Letter. Subsequently, DEQ staff consulted with Mr. Mays and prepared a Letter of Agreement (LOA) for his consideration. This LOA required that all corrective actions to comply with the Regulation be performed and documentation supporting such actions be submitted to DEQ staff by March 31, 2006. Mr. Mays signed this LOA on January 5, 2006; DEQ received the LOA on January 17, 2006.

6. Also on January 17, 2006, DEQ staff received a letter from Mr. Mays confirming that the remaining product had been removed from the USTs. This information effectively resolves the release detection violation noted during the July 28, 2005 inspection. The letter also included the installation history of the USTs and Mr. Mays intentions to discontinue use of the USTs. DEQ staff attempted to contact Mr. Mays via telephone during the month of March, 2006, to ascertain the progress of corrective actions stipulated in the LOA. Despite multiple attempts, there was no answer at Mr. Mays' telephone number.

7. Mr. Mays failed to comply with the conditions of the LOA by March 31, 2006.

8. On June 8, 2006, DEQ staff issued a Notice of Violation (NOV) No. 06-06-VRO-2 to Mr. Mays, for the continuing alleged violations of the Regulation. In the NOV, the Department requested that Mr. Mays respond by June 19, 2006. The alleged violations for both USTs are noted in the NOV as follows:
   - Documentation confirming that the USTs and their associated piping were protected from corrosion was not available for review, in violation of 9 VAC 25-580-50.

   - Metallic components of the piping associated with both USTs were in contact with the ground and were not protected from corrosion, in violation of 9 VAC 25-580-50 and 9 VAC 25-580-90.

   - Financial Responsibility documentation was not available for review in violation of 9 VAC 25-590-10 *et seq.*

9. DEQ staff met with Mr. Mays on June 28, 2006, to discuss possible remedies to the situation including a corrective action plan and the settlement of past violations. After a brief explanation of the alleged violations, Mr. Mays chose to close the USTs rather than update them to obtain compliance with the Regulation. Based on Mr. Mays' lack of use of the USTs and his professed intention to close them, it became apparent that a more appropriate citation for the alleged violation of the Regulation was "Failure to close a non-compliant UST" as

required by 9 VAC 25-580-320 & -330. Mr. Mays agreed to perform all corrective actions necessary to resolve the alleged violations noted in the NOV by properly closing the USTs.

10. On October 20, 2006, DEQ staff received complete documentation detailing the closure activities for the USTs. This effectively resolves the noted violation.

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. Mays and Mr. Mays agrees that:

1. Mr. Mays shall pay a civil charge of $1,738.00, 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
   P.O. BOX 1105
   Richmond, Virginia 23218

2 Mr. Mays 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. Mays, for good cause shown by Mr. Mays, 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. Mays admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.

4. Mr. Mays 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. Mays 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. Mays 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. Mays 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. Mays 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. Mays 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. Mays 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. Mays. Notwithstanding the foregoing, Mr. Mays 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. Mays 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 Mr. Mays

    Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve Mr. Mays 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. Mays voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____day of _____, 2007.

_____
David K. Paylor, Director
Department of Environmental Quality

The terms and conditions of the Order are voluntarily accepted by Mr. Mays:

Date: 11/7/06 By: Johnny R. Mays
Johnny R. Mays

Commonwealth of Virginia, City/County of Nelson

The foregoing instrument was acknowledged before me this 7 day of Nov., 2006, by

JOHNNY R. MAYS
(name)

11-7-06
Date

Notary Public

My commission expires: 2-28-09