COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
PIEDMONT REGIONAL OFFICE
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David K. Paylor
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STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
Laburnum, L.L.C.
FOR
Airport BP
Facility ID No. 4-003671

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

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

4. "Facility" means the physical location where the USTs are installed and/or operated, known as Airport BP located at 5101 S. Laburnum Ave in Henrico County, Virginia. The Facility's USTs are owned by Laburnum, L.L.C., and the Facility is further identified by UST Facility ID# 4-003671.

5. "Form 7530" 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.

6. "Laburnum" means Laburnum, L.L.C., a limited liability company authorized to do business in Virginia and its affiliates, partners, subsidiaries, and parents. Laburnum is a "person" within the meaning of Va. Code § 62.1-44.3.

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

8. "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.

9. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.

10. "Regulated Substance" means an element, compound, mixture, solution or substance that, when released into the environment, may present substantial danger to the public health or welfare, or the environment, as defined in Va. Code § 62.1-44.34:8 and 9 VAC 25-580-10.

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

12. "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.

13. "UST" means underground storage tank as defined in Va. Code § 62.1-44.34:8 and 9 VAC 25-580-10.

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

15. "VAC" means the Virginia Administrative Code.

16. "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. Laburnum owns the Facility in Henrico County, Virginia. Laburnum stores gasoline in USTs at the Facility. Laburnum is an UST owner and/or operator within the meaning of Va. Code § 62.1-44.34:8 and 9 VAC 25-580-10.

2. The USTs contain gasoline, a Regulated Substance, and are therefore subject to the Regulations. The Regulations require that all USTs meet final, specific performance requirements for release detection and spill, overfill, and corrosion protection.

3. On July 17, 2008, Department staff inspected the Facility for compliance with the requirements of the State Water Control Law and the Regulations. At that time, there were four USTs on-site: three 10,000 gallon gasoline USTs and one 550 gallon used oil UST; all owned by Laburnum. DEQ staff observed the following:

    a. Records of the proper operation of the cathodic protection equipment were not available;
    b. Records of recent compliance with release detection requirements were not available;
    c. Several release detection failures were discovered but a suspected release was not reported; and
    d. It was unclear whether the used oil tank was in use.

4. 9 VAC 25-580-130 requires that owners and operators provide a method, or combination of methods, of release detection that can detect a release from any portion of the tank and the connected underground piping that routinely contains product. 9 VAC 25-580-140 specifies that USTs must be monitored at least every 30 days for releases using one of the methods listed.

5. 9 VAC 25-580-120 and 9 VAC 25-580-180 require that records of recent compliance with release detection requirements, including results of sampling, testing, or monitoring performed in the past year, must be maintained either at the UST site and immediately available for inspection, or at a readily available alternative site and be provided for inspection upon request.

6. 9 VAC 25-580-90(1) requires that all corrosion protection systems must be operated and maintained to continuously provide corrosion protection to the metal components of that portion of the tank and piping that routinely contain regulated substances and are in contact with the ground. In addition, 9 VAC 25-580-90(2) requires that all UST systems equipped with cathodic protection systems must be inspected for proper operation by a qualified cathodic protection tester within six months of installation and at least every three years thereafter in accordance with a code of practice developed by a nationally recognized association.

7. 9 VAC 25-580-110(5) requires that within six months following the repair of any cathodically protected UST system, the cathodic protection system must be tested in accordance with subsections 2 and 3 of 9 VAC 25-580-90 to ensure that it is operating properly.

8. Results of the two most recent cathodic protection system tests and the three most recent 60-day inspections (for impressed current systems) must be maintained either at the site and be immediately available for inspection or at a readily available alternative site and be provided for inspection upon request as required by 9 VAC 25-580-120.

9. 9 VAC 25-580-190 requires that owners/operators of UST systems report monitoring results from a release detection method that indicate a release may have occurred within 24 hours. It also requires that owners/operators follow the procedures set forth in 9 VAC 25-580-210 and take the necessary steps to address the risks posed by the release in accordance with Part VI of the Regulations. 9 VAC 25-580-210 and 25-580-240 specify the procedures to follow upon discovery of a suspected release of a Regulated Substance at the UST site.

10. 9 VAC 25-580-70 requires an owner or operator of a UST system to submit an amended UST notification Form 7530 to DEQ within 30 days of any change in ownership, tank status, tank/piping systems, or substance stored. Pursuant to 9 VAC 25-580-320(1), an owner or operator of a UST system must submit an amended UST notification Form 7530 to DEQ within 30 days of a UST being permanently closed. Other requirements for the closure of a UST in accordance with 9 VAC 25-580-320 include submitting a copy of the building permit obtained for the removal of the UST and submitting the results of a site assessment performed in accordance with 9 VAC 25-580-330.

11. On September 26, 2008, the Department issued Notice of Violation No. 08-09-PRO-571 to Laburnum for violations listed in paragraphs 3(a) through 3(c) and 3(e) through 3(i), above.

12. On October 13, 2008, Laburnum submitted a written response to the NOV. Laburnum began work immediately to resolve the deficiencies.

13. Pollution complaint (PC) # 2009-4023 was issued for the suspected release. DEQ remediation staff witnessed the tank tightness testing in August 2008. All tanks and lines passed. The testing noted no water in the USTs.

14. Staff requested that monitoring wells that were on-site from previous releases be resurveyed and redeveloped by vacuum truck and used for sampling in the current PC investigation. Results indicated a slight increase in dissolved phase concentrations over results from the previous PC data from 1992.

15. Dissolved phase concentrations were tracked for two more quarters. The second quarter results indicated that the dissolved phase concentrations had decreased. There was no evidence of an on-going release, no free product and no nearby receptors, so the PC was closed on June 1, 2009. It is not clear from the testing whether there was actually a new release or whether contamination remained on-site from previous releases.

16. Laburnum also began to address the cathodic protection and release detection issues. On October 13, 2008, Laburnum submitted a report indicating that the cathodic protection system had been repaired and tested. The test results indicated that the system was functioning properly, and a retest was to be performed in February, 2009.

17. On February 11, 2009, Laburnum submitted 60-day rectifier readings for the impressed current system.

18. The cathodic protection system retest that was due to be performed in February, 2009 was not conducted. However, on January 7, 2010, Laburnum's consultant performed a cathodic protection system retest that indicated passing results.

19. Laburnum has been working for nearly a year to establish an operational release detection method. It initially attempted to use Statistical Inventory Reconciliation (SIR) but did not have proper records to analyze. Subsequently, Laburnum installed a Veeder Root Automatic Tank Gauge system with Continuous Statistical Leak Detection in the spring of 2009 and has submitted results from that system indicating it meets the regulatory requirements.

20. Line tightness tests were conducted in August and September 2008 that indicated that the UST piping met the release detection requirements of the regulation.

21. On August 11, 2009, Department staff met with representatives of Laburnum to discuss the violations. The parties discussed the possibility of civil penalties and the proposed consent order. Laburnum indicated that it would continue to provide testing records and reports and would finalize the closure of the used oil tank.

22. Documentation has been submitted in accordance with 9 VAC 25-580-320, -330, and -350 indicating that the used oil tank that was improperly taken out of service, referenced in paragraph 3(d), has been closed in accordance with the Regulation.

23. Based on the results of the inspection on July 17, 2008 and the documentation submitted by Laburnum, the Board concludes that Laburnum has violated 9 VAC 25-580-70, -90, -110, -120, -130, -140, -180, -190, -210 , -240, -320 as described in paragraphs 3(a) through 3(d), above.

24. Laburnum has submitted documentation that verifies that the violations described in paragraphs 3(a), 3(c) and 3 (d) have been corrected.

25. In order for Laburnum to complete its return to compliance, DEQ staff and representatives of Laburnum have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order and relates to the violations described in paragraph 3(b).

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Laburnum, and Laburnum agrees to:

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

2. Pay a civil charge of $6,000.00 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

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

4. Laburnum 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. Laburnum declares 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 Laburnum 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. Laburnum 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. Laburnum shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Laburnum 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 Laburnum 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 Laburnum. Nevertheless, Laburnum 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. Laburnum petitions the Director or his designee to terminate the Order after it 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 Laburnum.

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

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, Laburnum voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2010.

_____

Michael P. Murphy, Regional Director
Department of Environmental Quality

Laburnum, L.L.C. voluntarily agrees to the issuance of this Order.

Date: 7/14/10 By: _____, Partner
(Person) (Title)
Laburnum, L.L.C.

Commonwealth of Virginia
City/County of Glen Allen/Henrico

The foregoing document was signed and acknowledged before me this 14 day of July, 2010, by P. Duncan Vanness who is _____ of Laburnum, L.L.C., on behalf of the company.

Stacie Cavin Carter
Notary Public

7328826
Registration No.

My commission expires: 3/31/2015

Notary seal:

Notary seal:

APPENDIX A
SCHEDULE OF COMPLIANCE

1. **Release Detection Records**

   a. **Laburnum** shall continue to submit valid, passing ATG monitoring results to DEQ. These thirty day monitoring event results shall be submitted to DEQ in accordance with 9 VAC 25-580-120 as follows: the first set of results shall be due no later than October 31, 2010; the second set of results shall be due no later than November 30, 2010; and the third set of results shall be due no later than December 31, 2010.

2. **DEQ Contact**

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

   Steve Pollock
   Department of Environmental Quality
   Piedmont Regional Office
   4949-A Cox Road
   Glen Allen, Virginia 23060
   804-527-5100
   Steve.pollock@deq.virginia.gov