COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
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STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
Mike Leech
FOR
M & M Grocery
Facility ID No. 2-010834

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

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

5. "Facility" means the physical location where the USTs are installed and/or operated, known as M&M Grocery, located at 5348 Ararat Highway. in Ararat, Virginia. The Facility's USTs are owned by Mr. Leech, and the Facility is further identified by UST Facility ID# 2-010834.

6. "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.

7. "Mr. Leech" means Mr. Mike Leech. Mr. Leech is a "person" within the meaning of Va. Code § 62.1-44.3.

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

9. "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.

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. Mr. Leech owns and operates the Facility. Mr. Leech stores gasoline and diesel fuel in USTs at the Facility. Mr. Leech 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, kerosene and diesel, each 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. Mr. Leech filed a Form 7530 (UST notification form) for the USTs at the Facility on July 15, 2009 to change the status of Tanks 1, 2 & 3 to temporary closure. Mr. Leech filed a separate Form 7530, also dated July 15, 2009, to add active tanks 6C, 7C & 8C.

4. On June 27, 2007, Department staff inspected the Facility for compliance with the requirements of the State Water Control Law and the Regulations. At that time, there were six USTs on-site: three 3,000-gallon gasoline USTs, one 12,000-gallon gasoline UST, one 4,000-gallon gasoline UST, and one 4,000-gallon diesel UST; all owned by Mr. Leech. The three 3,000-gallon USTs were inactive at the time of the inspection. DEQ staff observed the following:

   a. The UST system in use at the time of this inspection had not been registered.

   b. Documentation of tank tightness testing for tanks systems that had been recently installed was not provided.

   c. Documentation of certification of installation was not provided for the active USTs.

   d. Overfill prevention devices were not installed on the UST systems.

   e. Documentation of release detection on pressurized piping for the active USTs was not provided.

   f. Documentation of measurement of water level in the bottom of the USTs was not provided.

   g. Documentation of inventory control volume measurements was not provided.

   h. The equipment provided for inventory control volume measurements was not in usable condition.

   i. Inventory control data was not adequate to satisfactorily perform inventory control.

   j. The three 3,000-gallon inactive USTs had not been properly closed.

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

5. On July 15, 2009, Department staff inspected the Facility for compliance with the requirements of the State Water Control Law and the Regulations. At that time, there were six USTs on-site: three 3,000-gallon gasoline USTs, one 12,000-gallon gasoline UST, one 4,000-gallon gasoline UST, and one 4,000-gallon diesel UST; all owned by Mr. Leech. The three 3,000-gallon USTs were inactive and empty at the time of the inspection. DEQ staff observed the following:

    a. Documentation of certification of installation was not provided for the active USTs.

    b. Cathodic protection was not provided for the inactive USTs.

    c. Documentation of inspection of the impressed current cathodic protection systems for the inactive USTs was not provided.

    d. Documentation of release detection on pressurized piping for the active USTs was not provided.

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

    f. Documentation of release detection for the active USTs was not provided.

    g. The three 3,000-gallon inactive USTs had not been properly closed.

    h. Cathodic protection system inspection results were not provided for the inactive USTs.

6. At the conclusion of the July 15, 2009 inspection, the DEQ inspector gave Mr. Leech a completed Request for Corrective Action form, dated July 15, 2009, that identified all of the violations listed in Paragraph C(5) above as "Apparent Non-Compliance Issues".

7. 9 VAC 25-580-50(5) requires an owner or operator to provide appropriate certification of installation of all USTs prior to bringing them into use.

8. 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.

9. 9 VAC 25-580-90(3) requires UST systems with impressed current cathodic protection systems to be inspected every 60 days to ensure that the equipment is running properly.

10. 9 VAC 25-580-140(2)(a) requires that all pressurized piping be equipped with a functional automatic line leak detector tested in accordance with 9 VAC 25-580-170(1) and have an annual line tightness test or monthly monitoring conducted in accordance with 9 VAC 25-580-170(2) or 9 VAC 25-580-170(3).

11. 9 VAC 25-590-150(E) requires an owner or operator to submit evidence of financial assurance as described in 9 VAC 25-590-160.

12. 9 VAC 25-580-140(1) requires an owner or operator to provide release detection for tanks. Tanks must be monitored at least every 30 days for releases using an approved method.

13. 9 VAC 25-580-310 requires an owner or operator to obtain a permit from the building official prior to temporary tank closure. No UST system shall be temporarily closed unless and until the system is inspected in accordance with the provisions of the Virginia Uniform Statewide Building Code.

14. 9 VAC 25-580-310(1) requires an owner or operator to continue operation and maintenance of corrosion protection, including periodic testing, in accordance with 9 VAC 25-580-90, and any release detection in accordance with Part IV, when the UST system is temporarily closed.

15. 9 VAC 25-580-310(3) requires that when an UST system is temporarily closed for more than 12 months, owners and operators must permanently close the UST system if it does not meet either performance standards in 9VAC25-580-50 for new UST systems or the upgrading requirements in 9VAC25-580-60, except that the spill and overfill equipment requirements do not have to be met. Owners and operators must permanently close the substandard UST systems at the end of this 12-month period in accordance with 9VAC25-580-320 through 9VAC25-580-350, unless the building official provides an extension of the 12-month temporary closure period. Owners and operators must complete a site assessment in accordance with 9VAC25-580-330 before such an extension can be applied for.

16. DEQ staff sent Warning Letter No. WL-07-07-WCRO-007 on July 27, 2007 for the violations listed in paragraph C(4) above.

17. On February 26, 2008, the Department issued Notice of Violation No. 08-02-WCRO-005 to Mr. Leech for the violations listed in paragraphs C(4)(a), C(4)(c), C(4)(d), and C(4)(h)-(k) above.

18. On August 13, 2009, the Department issued Notice of Violation No. 09-08-BRRO-R-005 to Mr. Leech for the violations listed in paragraph C(5) above.

19. Based on the results of the August 13, 2009, the Board concludes that Mr. Leech has violated 9 VAC 25-580-50(5) (certification of installation), 9 VAC 25-580-90(1)

(operation of corrosion protection systems for inactive tanks, as required by 9 VAC 25-580-310(1)), 9 VAC 25-580-90(3) (60-day inspection of cathodic protection system for inactive tanks, as required by 9 VAC 25-580-310(1)), 9 VAC 25-580-140(2)(a) and 9 VAC 25-580-170 (release detection for pressurized piping), 9 VAC 25-590-150(E) (financial assurance), 9 VAC 25-580-140(1) (release detection for active and inactive tanks), 9 VAC 25-580-310 (building permit requirement for temporary tank closure), 9 VAC 25-580-90(2) (3-year recertification evaluation of cathodic protection for inactive tanks, as required by 9 VAC 25-580-310(1)), and, as described in paragraphs C(4) through C(5) above.

20. In order for Mr. Leech to return to compliance, DEQ staff and Mr. Leech 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 Mr. Leech, and Mr. Leech agrees to:

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

2. Pay a civil charge of $12,000.00 in settlement of the violations cited in this Order. Payment of the civil charge shall be made in four installments of $3,000 each, due on the following schedule:

Installment Number	Amount Due	Due Date
1	$3,000.00	November 15, 2010
2	$3,000.00	February 15, 2011
3	$3,000.00	May 15, 2011
4	$3,000.00	August 15, 2011

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

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

4. Mr. Leech 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. Leech declares that he has received fair and due process under the Administrative Process Act 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 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 Mr. Leech 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. Mr. Leech 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. Mr. Leech shall show that such circumstances were beyond his control and not due to a lack of good faith or diligence on his part. Mr. Leech 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 Mr. Leech 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 Mr. Leech.

11. This Order shall continue in effect until:

a. Mr. Leech 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 Mr. Leech.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Mr. Leech 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 Mr. Leech 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. 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.

14. By his signature below, Mr. Leech voluntarily agrees to the issuance of this Order.

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

_____
Regional Director
Department of Environmental Quality

Mr. Mike Leech voluntarily agrees to the issuance of this Order.

Date: 6-4-10 By: Mike Leech
Mr. Mike Leech

Commonwealth of Virginia
City/County of Roanoke

The foregoing document was signed and acknowledged before me this 4th day of June, 2010, by Mr. Mike Leech.

Cathy D. Kibler
Notary Public

361784
Registration No.

My commission expires: 8/31/13

Notary seal:

CATHY D. KIBLER
NOTARY PUBLIC
REG. #361784
MY COMMISSION EXPIRES 8/31/2013
COMMONWEALTH OF VIRGINIA

APPENDIX A
SCHEDULE OF COMPLIANCE

Financial Responsibility

1. By **August 15, 2010**, Mr. Leech shall submit documentation of financial responsibility to DEQ, in accordance with 9 VAC 25-590-10 *et seq.*

Certification of Installation

2. By **July 15, 2010**, Mr. Leech shall submit documentation of certification of installation of the active USTs in accordance with 9 VAC 25-580-50(5).

Release Detection

3. By **August 15, 2010**, Mr. Leech shall install, test, and/or repair the necessary equipment to conduct adequate release detection for the active USTs and the associated pressurized UST piping in accordance with 9 VAC 25-580-140.

Inactive Tanks.

4. By **July 15, 2010**, Mr. Leech shall submit verification of removal of the three 3,000-gallon inactive USTs. Such verification may consist of a signed contract for removal of the USTs or an invoice for the completed removal;
5. By **August 15, 2010**, Mr. Leech shall submit documentation that the three 3,000-gallon inactive USTs have been permanently closed in accordance with Part VII of the Regulations. Such documentation shall consist of a completed closure report for removal of the USTs.

DEQ Contact

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

Robert Steele
Regional Enforcement Coordinator
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