COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
PIEDMONT REGIONAL OFFICE
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Douglas W. Domenech
Secretary of Natural Resources

David K. Paylor
Director

Michael P. Murphy
Regional Director

STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
LUCKY CONVENIENCE STORES, INC.
FOR A
UST FACILITY AT 607 E. LABURNUM AVENUE
Facility ID No. 4-001592

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 Lucky Convenience Stores, Inc. 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 or Site" means the physical location where the USTs are installed and/or operated, known as Lucky Convenience Stores, Inc. located at 607 E. Laburnum Avenue in Henrico County, Virginia. The Facility's USTs are owned by Lucky Convenience Stores, Inc., and the Facility is further identified by UST Facility ID# 4-001592.

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. "Lucky's" means Lucky Convenience Stores, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, subsidiaries, and parents. Lucky's 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. Lucky's owns USTs containing gasoline, kerosene and diesel fuel, all of which are Regulated Substances, at its Facility in Henrico County, Virginia. Lucky's is a UST owner within the meaning of Va. Code § 62.1-44.34:8 and 9 VAC 25-580-10. Lucky's leases the site to a tenant who operates the USTs.

2. The USTs are subject to the Regulations, which require that they meet final, specific performance requirements for release detection and spill, overfill, and corrosion protection.

3. On May 28, 2008, Department staff inspected the Facility for compliance with the requirements of the State Water Control Law and the Regulations. At the time of the inspection, there were 4 USTs on-site: two 10,000 gallon gasoline USTs, one 10,000 gallon kerosene UST, and one 10,000 gallon diesel UST; all owned by Lucky's. Below are the DEQ staff observations and associated legal requirements:

   a. At the time of the inspection, there were discrepancies between the registered facility information and operational status on the 7530-2 Notification Form, including the name of the owner and operator, and accurate information concerning overfill prevention devices for the diesel and kerosene USTs. Pursuant to 9 VAC 25-580-70, an owner or operator of a UST system must submit an amended UST notification form (7530-2) to DEQ within 30 days of any change in ownership, tank status, tank/piping systems, or substance stored, including accurate information concerning overfill prevention devices for the diesel and kerosene USTs.

   b. The spill prevention buckets were filled with liquid and debris. Pursuant to 9 VAC 25-580-50(3)(a)(1), to prevent spilling associated with product transfer to the UST system, regulated UST systems must comply with spill prevention equipment requirements.

   c. Lucky's staff did not have documentation confirming that the flexible piping met the codes and standards outlined in 9VAC 25-580-50(2).

   d. The submersible turbine pump sumps were filled with liquid and debris. All grades of piping were submerged in this liquid and debris and did not appear to be protected from corrosion or degradation. Pursuant to 9 VAC 25-580-50(2), UST piping that routinely contains regulated substances and is in contact with the ground must be protected from corrosion.

   e. Records of recent compliance with release detection requirements were not available. Pursuant to 9 VAC 25-580-180, release detection records, including results of any sampling, testing, or monitoring must be maintained for at least one year, either at the facility and be immediately available for inspection or at a readily available alternative site and be available for inspection upon request.

      Pursuant to 9 VAC 25-580-140(1), USTs must be monitored for releases at least every 30 days in accordance with the requirements of that subsection. Pursuant to 9 VAC 25-580-140(2), pressurized underground piping must be monitored for releases by being equipped with an automatic line leak detector that is operated in accordance with 9 VAC 25-

80-170(1), and either having an annual line tightness test conducted in accordance with 9 VAC 25-580-170(2) or conducting monthly monitoring in accordance with 9 VAC 25-580-170(3). Pursuant to 9 VAC 25-580-170(1), automatic line leak detectors must be tested annually in accordance with manufacturer's requirements.

f. Financial responsibility was not demonstrated. Pursuant to 9 VAC 25-590-40, owners or operators of UST systems must demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases in the per-occurrence amounts stated in 9 VAC 25-590-40. Pursuant to 9 VAC 25-590-160, evidence of financial assurance mechanisms used to demonstrate financial responsibility must be maintained at the UST site or at the owner or operator's place of work in the Commonwealth and be made available upon request.

4. On May 28, 2008, the Department issued a request for corrective action for the issues described in section C.3. The corrective action was to be completed by June 30, 2008. The Department did not receive a response to the corrective action request by the deadline.

5. On August 18, 2008, Lucky's sent a letter to the Department advising that Lucky's had met with the tenant to confirm a plan of action to address the repairs and maintenance required in the May 28, 2008 request for corrective action.

6. On November 7, 2008, the Department issued a Warning Letter for the violations listed in section C.3. Lucky's stated in a written response dated November 25, 2008 that several of the items were corrected and the remainder would be completed in 90 days. The letter did not identify the corrected items or those to be corrected. DEQ received no documentation of compliance from Lucky's.

7. In December 2008, Lucky's requested a re-inspection of the Facility and submitted an invoice for replacing the flexible piping. On December 12, 2008 DEQ responded by e-mail requesting they schedule an inspection after the remaining compliance items listed in the warning letter.

8. On January 8, 2009, the Department mailed a Letter of Agreement to Lucky's for signature. The letter of agreement contained a schedule to bring the Facility into compliance. Lucky's declined to sign the agreement.

9. Lucky's informed the Department that its tenant was unwilling to correct outstanding violations even though the tenant had a binding lease with Lucky's to conduct recordkeeping and maintenance on the USTs. Lucky's further advised the Department that it planned to file suit against the tenant.

10. On February 18, 2009, Lucky's filed suit against the tenant and its guarantors in the Circuit Court for the County of Henrico. The suit requested the Court to direct the tenant to perform the remaining maintenance and repairs required by the Department.

11. On May 8, 2009, the Department issued Notice of Violation No. 09-05-PRO-590 to Lucky's for the violations listed in C.3, above. The Department did not receive a response from Lucky's and the lawsuit against the tenant was still pending.

12. On June 19, 2009, the Department issued a letter requesting Lucky representatives attend a meeting on July 13, 2009. Lucky's stated that after receiving the Department's June 19, 2009 letter, a Motion was filed for a Temporary Injunction and sought an emergency hearing in the Henrico Circuit Court regarding the Department's remaining maintenance and repair issues for the Facility. On June 29, 2009, the Circuit Court issued an Order directing the tenant to produce all release detection records for the USTs and to perform certain maintenance as required by the Department.

13. On July 13, 2009, Department staff met with representatives of Lucky's to discuss the violations. Lucky's stated that they had a binding lease agreement with a tenant making the tenant responsible for recordkeeping and other maintenance issues regarding the petroleum equipment. The Department informed Lucky's that since Lucky's is the registered owner of the USTs, Lucky's is responsible for the UST compliance issues at the Facility.

14. Based on the results of the May 28, 2008, inspection and the July 13, 2009 meeting, the Board concludes that Lucky's has violated 9 VAC 25-580-70, 9 VAC 25-580-50(3)(a)(1), 9VAC 25-580-50(2), 9 VAC 25-580-180, 9 VAC 25-580-140(1) and (2), 9 VAC 25-580-180, 9 VAC 25-590-40, and 9 VAC 25-590-160 as noted above.

15. Lucky's submitted documentation on June 12, 2009, which confirmed the cleaning of spill buckets; confirmed and corrected overfill protection; pumped out sumps and replaced sump lids and gaskets; replaced and tested the diesel line; confirmed proper operation of the Veeder-root release detection system; secured observation wells; and completed line and leak detection tests. In addition, Lucky's submitted an amended registration form on July 10, 2009, correcting the deficiencies in the old registration documentation.

16. In order for Lucky's to return to compliance, DEQ staff and representatives of Lucky's 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(8a) and (8d), the Board orders Lucky's, and Lucky's agrees to:

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

2. Pay a civil charge of $13,600 in settlement of the violations cited in this Order. The civil charge shall be paid in accordance with the following schedule:

Due Date	Amount
January 15, 2011	$1,700 or balance
April 15, 2011	$1,700 or balance
July 15, 2011	$1,700 or balance
October 15, 2011	$1,700 or balance
January 15, 2012	$1,700 or balance
April 15, 2012	$1,700 or balance
July 15, 2012	$1,700 or balance
October 15, 2012	$1,700

3. If the Department fails to receive a civil charge payment pursuant to the schedule described above, the payment shall be deemed late. If any payment is late, the Department shall have the right to demand in writing full payment of the entire remaining balance under this Order by Lucky's, and the entire remaining balance of the civil charge shall be immediately due and owing. Lucky's shall pay the entire remaining balance within 15 days of receipt of the demand letter from the Department. Any acceptance by the Department of a late payment or of a payment of less than the entire remaining balance shall not serve as a waiver of the Department's right to accelerate payment of the balance under 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

Lucky's shall include its Federal Identification Number 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 Lucky's for good cause shown by Lucky's, 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, Lucky's admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. Lucky's 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. Lucky's 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 Lucky's 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. Lucky's 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. Lucky's shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Lucky's 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 parties intend 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 Lucky's. Nevertheless, Lucky's 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) Lucky's 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 Lucky's.

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

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, Lucky's 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

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Lucky Convenience Stores, Inc. voluntarily agrees to the issuance of this Order.

Date: 10-12-10 By: _____
Mr. Tommy W. England, President
Lucky Convenience Stores, Inc.

Commonwealth of Virginia
City/County of Buckingham

The foregoing document was signed and acknowledged before me this 12th day of October, 2010, by Mr. Tommy W. England who is President of Lucky Convenience Stores, Inc., on behalf of the corporation.

Lisa N. Warner
Notary Public

303380
Registration No.

My commission expires: 1-31-2013

Notary seal:

LISA WARNER
NOTARY PUBLIC
MY COMMISSION NUMBER 303380
COMMONWEALTH OF VIRGINIA

APPENDIX A
SCHEDULE OF COMPLIANCE

1. **Release Detection**

   a. On or before December 15, 2010, Lucky's shall install, test, and/or repair the necessary equipment to conduct adequate release detection.

   b. On or before January 1, 2011, Lucky's shall submit copies of release detection records and results for the three months preceding and following this Order to the Department.

   c. Lucky's shall immediately institute any needed repairs and remediation identified as a result of any failing release detection in 1.b. above.

2. **Flexible Piping**

   a. On or before January 1, 2011, Lucky's shall provide documentation that all the flexible piping meets the codes and standards pursuant to 9 VAC 25-580-50(2).

3. **Financial Responsibility**

   On or before January 1, 2011, Lucky's shall submit documentation to demonstrate financial responsibility that meets the requirements of 9 VAC 25-590-40 to the Department. Lucky's shall respond to all information requests or notices of deficiency from the Department in accordance with the terms of such request or notice.

4. **Contact**

   All requirements of Appendix A of this Order must be submitted to:

   Frank Lupini
   Enforcement Specialist
   VA DEQ –Piedmont Regional Office
   4949A Cox Road,
   Glen Allen, Virginia 23060
   Frank.Lupini@deq.virginia.gov