



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

SOUTHWEST REGIONAL OFFICE

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Director

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Regional Director

**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION – SPECIAL ORDER BY CONSENT
ISSUED TO
JUDY M. McGEE and MARTIN E. McGEE
FOR THE
GUNZ GROCERY AND DELI
UST Facility Identification No. 1-015321**

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and Judy M. McGee and Martin E. McGee 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, formerly known as Gunz Grocery and Deli located at 2032 Cedar Valley Drive in Cedar Bluff, in Tazewell County, Virginia. The Facility's USTs are owned by Judy M. McGee, and the Facility is further identified by UST Facility ID# 1-015321.

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. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
7. "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.
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. "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.
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. "Responsible Party" means Judy M. McGee, currently a resident of Tazewell County, Virginia. Judy M. McGee is a "person" within the meaning of Va. Code § 62.1-44.3.
13. "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.
14. "SWRO" means the Southwest Regional Office of DEQ, located in Abingdon, Virginia
15. "UST" means underground storage tank as defined in Va. Code § 62.1-44.34:8 and 9 VAC 25-580-10.
16. "Va. Code" means the Code of Virginia (1950), as amended.
17. "VAC" means the Virginia Administrative Code.
18. "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. Judy M. McGee owned USTs at the Facility in Tazewell County, Virginia. Judy M. McGee stored gasoline in USTs at the Facility. Judy M. McGee was an UST owner within the meaning of Va. Code § 62.1-44.34:8 and 9 VAC 25-580-10. Martin E. McGee was an UST Operator within the meaning of Va. Code § 62.1-44.34:8 and 9 VAC 25-580-10. Judy M. McGee was found to be the Owner and Responsible Person for the USTs located at the Facility as a result of an Informal Fact Finding proceeding held on June 2, 2009, with finding made by Case Decision on August 24, 2009.
2. The USTs contained 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. DEQ received results of tracer tests that were performed on three USTs at the site from Corpro Companies, Inc. May 24, 2005. These tests were performed in March, 2005 and reported to Corpro in April, 2005 by Tracer Research/Pixair. Two of the three tanks tested failed. By letter dated June 8, 2005, DEQ notified Mr. McGee of this potential petroleum release, Pollution Complaint ("PC") No. 2005-1069. That letter defined actions required for conducting release confirmation and performing certain activities associated with the release. These included submittal of an Activity Authorization Package by June 24, 2005, with performance of a "Site Check" notification to DEQ of either positive or negative confirmation of a release within 24 hours of discovery and submittal to DEQ of a Release Investigation and Confirmation Report by August 1, 2005. No response was received to the June 8, 2005 letter.
4. An NOV issued September 21, 2005 and mailed by certified mail was returned unclaimed. An NOV was hand delivered to Mr. McGee in person on January 20, 2006. It cited failure to respond to the June 8, 2005 potential petroleum release letter.
5. By letter dated May 25, 2006, Mr. McGee was notified of DEQ's intent to initiate corrective actions at the site (a site check) and pursue cost recovery. By letter dated November 21, 2006, Mr. McGee was notified of DEQ's intent to continue corrective actions (a site characterization and report) and pursue cost recovery. Each letter gave Mr. McGee the opportunity to notify DEQ that he would have the work done, and then proceed to have the work done. In each instance, no response was received by DEQ. Both a site check and a site characterization and report were completed for the tanks in question by a DEQ "state lead" contractor, paid by DEQ.
6. On September 26, 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 three USTs on-site: two 8,000 gallon gasoline USTs (tanks 1 and 2), and one 4,000 gallon gasoline UST (tank 3). DEQ staff observed that the tanks at the Facility were not in use, but had not been properly placed in "Temporary Closure" or permanently closed.

7. An NOV was issued January 23, 2008 and mailed by certified mail. It cited failure to respond to the June 8, 2005 potential petroleum release letter, failure to conduct a site check and failure to conduct a site characterization. That NOV was signed for by Judy McGee on February 7, 2008. Another NOV, citing the same items was issued to both Martin E. McGee and Judy M. McGee on April 24, 2008.
8. Judy M. McGee was found to be the Owner and Responsible Person for the USTs located at the Facility as a result of an Informal Fact Finding proceeding held on June 2, 2009, with finding made by Case Decision on August 24, 2009. Neither Martin E. McGee nor Judy M. McGee attended this proceeding.
9. An Informal Fact-Finding Proceeding regarding Delivery Prohibition, held at DEQ's SWRO on November 17, 2010, found that UST Numbers 1 and 3 were in violation of the Regulations, due to failure to perform initial abatement measures and a site check. These tanks were "red-tagged" for delivery prohibition on November 22, 2010.
10. Per documentation submitted to DEQ on May 10, 2011, Judy McGee sold all USTs at the Facility to Douglas Vance on April 13, 2011.
11. Articles 9 and 10 of Va. Code, Sections 62.1-44.34:8 – 62.1-44.34:13, inclusive, address requirements for performance of activities related to the potential release. The Virginia Administrative Code requires the following activities by the regulations cited: performance of a Site Check is required by Regulation 9 VAC 25-580-210; notification of release within 24 hours of confirmation of release is required by Regulation 9 VAC 25-580-240; a release confirmation report is required by Regulation 9 VAC 25-580-250; performance of a Site Characterization is required by Regulation 9 VAC 25-580-260. Virginia Code Section 62.1-44.34:9(10) authorizes pursuit for reimbursement of costs incurred by the State of Virginia.
12. Based on the results of September 26, 2007 inspection, the Facility file review, the Informal Fact Finding Proceeding held on June 2, 2009 to determine the Responsible Person, and the Informal Fact Finding Proceeding held November 17, 2010 regarding Delivery Prohibition, the Board concludes that Judy M. McGee and Martin E. McGee have violated Articles 9 and 10 of Va. Code, Sections 62.1-44.34:8 – 62.1-44.34:13, inclusive, and Virginia Administrative Code Regulations 9 VAC 25-580-210, 9 VAC 25-580-240, 9 VAC 25-580-250 and 9 VAC 25-580-260, as described in paragraphs C(1) through C(9), above.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Judy M. McGee and Martin E. McGee, and Judy M. McGee and Martin E. McGee agree to:

1. Reimburse \$5,000.00 of non-“fund eligible” costs incurred by the State of Virginia for authorized “state lead” activities, payment being due within 30 days of the effective date of the Order; and,
2. Pay a civil charge of \$3,750.00 in settlement of the violations cited in this Order. The civil charge shall be paid in accordance with the following schedule:

Due Date	Amount
90 days from the effective date of the Order	\$1,875.00
180 days from the effective date of the Order	\$1,875.00

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 by 30 days or more, the entire remaining balance of the civil charge shall become immediately due and owing under this Order, and the Department may demand in writing full payment by Judy M. McGee and Martin E. McGee. Within 15 days of receipt of such letter, Judy M. McGee and Martin E. McGee shall pay the remaining balance of the civil charge. Any acceptance by the Department of a late payment or of any payment of less than the remaining balance shall not act as a waiver of the acceleration of the remaining balance under this Order.
4. All payments 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

5. Judy M. McGee and Martin E. McGee shall include their Federal Employer Identification Numbers (FEINs) 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 Judy M. McGee and Martin E. McGee, for good cause shown by Judy M. McGee and Martin E. McGee, 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, Judy M. McGee and Martin E. McGee admit the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Judy M. McGee and Martin E. McGee consent to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Judy M. McGee and Martin E. McGee declare they have received fair and due process under the Administrative Process Act and the State Water Control Law and they waive 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 Judy M. McGee and Martin E. McGee 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. Judy M. McGee and Martin E. McGee 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. They shall show that such circumstances were beyond their control and not due to a lack of good faith or diligence on their part. They 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 they 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 Judy M. McGee and Martin E. McGee. Nevertheless, Judy M. McGee and Martin E. McGee agree to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. Judy M. McGee and Martin E. McGee petition the Director or his designee to terminate the Order after they have 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 Judy M. McGee and Martin E. McGee.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Judy M. McGee and Martin E. McGee from their 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 Judy M. McGee Judy M. McGee and Martin E. McGee 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 Judy M. McGee and Martin E. McGee certify that they are authorized to enter into the terms and conditions of this Order and to execute and legally bind themselves to this document. Any documents to be submitted pursuant to this Order shall also be submitted by Judy M. McGee and Martin E. McGee.

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 their signatures below, Judy M. McGee and Martin E. McGee voluntarily agree to the issuance of this Order.

And it is so ORDERED this 8th day of August, 2011.



Dallas R. Sizemore, Regional Director
Department of Environmental Quality

Judy M. McGee voluntarily agrees to the issuance of this Order.

Date: 5/12/11 By: Judy M. McGee
Judy M. McGee

Commonwealth of Virginia

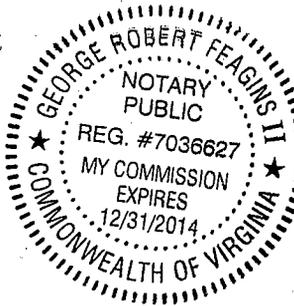
City/County of WASHINGTON

The foregoing document was signed and acknowledged before me this 12th day of May, 2011, by JUDY M. MCGEE

George Robert Feagin, II
Notary Public

7036627
Registration No.

My commission expires: 12/31/2014
Notary seal:



Martin E. McGee voluntarily agrees to the issuance of this Order.

Date: May 12, '11 By: Martin E. McGee
Martin E. McGee

Commonwealth of Virginia

City/County of WASHINGTON

The foregoing document was signed and acknowledged before me this 12th day of May, 2011, by MARTIN E. MCGEE

George Robert Feagin, II
Notary Public

7036627
Registration No.

My commission expires: 12/31/2014
Notary seal:

