VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY
ENFORCEMENT ACTION - ORDER by CONSENT
ISSUED to

Rocketts Landing Marina

as the OWNER/OPERATOR of a UST FACILITY
and the RESPONSIBLE PARTY

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15 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 terms used in this Consent Order have the meanings assigned to them in Va. Code §62.1-44.2 *et seq.*, 10.1-1182 *et seq.*, and 9VAC25-580-10 *et seq.*

SECTION C: Findings of Fact and Conclusions of Law

UST Owner		Rocketts Landing Marina	**UST Operator**	Rocketts Landing Marina	
Facility ID		4042300			
Facility Address		**Street Address**	1 Orleans St		
		City Richmond	**VA**	**Zip Code**	23231
Inspection		4/26/22	**Request for Corrective Action**		
Warning Letter		9/12/22	**Notice of Violation**	2/6/23	
	UST #	**Regulated Substance**	**Volume of UST (Gallons)**		
	1C	Gasoline	8,000		
	2C	Diesel	4,000		
		Gasoline			
		Not Applicable			
		Not Applicable			
		Not Applicable			
Total # of UST	2	**Total UST capacity at the Facility (Gallons)**	12,000		

Violation	Observations and Legal Requirements	Civil Charge	Subtotal
✔	Failed to keep required records at the Facility, readily available at an alternative site, or make them immediately available upon request. **9VAC25-580-120: Reporting and Recordkeeping**	$ 305 # of Violations 4	$ 1,220
✔	Failed to properly perform, repair, replace, test, or provide a method, or combination of methods, of release detection for tanks, and/or operation of electronic and mechanical components for USTs at the Facility. **9VAC25-580-110: Repairs Allowed** **9VAC25-580-130: General Requirements for all UST Systems** **9VAC25-580-140: Requirements for Petroleum UST Systems** **9VAC25-580-160: Methods of Release Detection for Tanks**	$ 712 # of Violations 1	$ 712
✔	Failed to properly perform, repair, replace, test, or provide release detection for piping, and/or operation of electronic and mechanical components for USTs at the Facility. **9VAC25-580-110: Repairs Allowed** **9VAC25-580-130: General Requirements for all UST Systems** **9VAC25-580-140: Requirements for Petroleum UST Systems** **9VAC25-580-170: Methods of Release Detection for Piping**	$ 712 # of Violations 1	$ 712
	Failed to provide, operate, repair, test and/or maintain corrosion protection of the UST system. **9VAC25-580-50: Performance Standards for New UST Systems** **9VAC25-580-60: Upgrading of Existing UST Systems** **9VAC25-580-90: Operation and Maintenance of Corrosion Protection** **9VAC25-580-110: Repairs Allowed**	$ 0 # of Violations	$ 0
	Failed to provide overfill and/or spill prevention / equipment that will prevent a release into the environment. **9VAC25-580-50: Performance Standards for New UST Systems** **9VAC25-580-60: Upgrading of existing UST Systems**	$ 0 # of Violations	$ 0
	Failed to conduct or properly conduct walkthrough inspections. **9VAC25-580-85: Periodic operation and maintenance walkthrough inspections**	$ 0 # of Violations	$ 0
	Failed to submit a UST notification form or an amended notification form regarding a change in ownership, tank status, tank/piping systems, or substance stored within 30 days after such change or upgrade occurs or is brought into use. **9VAC25-580-70: Notification Requirements**	$ 0 # of Violations	$ 0

Violation	Observations and Legal Requirements	Civil Charge	Subtotal
	Failed to complete the required training and/or designate Class A, Class B, and/or Class C operators and/or failed to provide written instructions or emergency procedures. **9VAC25-580-125: Operator Training**	$ 0 # of Violations	$ 0
✔	Failed to properly conduct testing and/or test spill prevention equipment, overfill equipment, and/or containment sumps. **9VAC25-580-82: Periodic Testing**	$ 712 # of Violations 1	$ 712
	Failed to report a suspected release or unusual operating condition within 24 hours. **9VAC25-580-190: Reporting of Suspected Releases** **9VAC25-580-220: Reporting and Cleanup of Spills and Overfills**	$ 0 # of Violations	$ 0
	Failed to immediately investigate and confirm all suspected releases of regulated substances requiring system test/site check and reporting within seven days. **9VAC25-580-210: Release Investigation and Confirmation Steps**	$ 0 # of Violations	$ 0
	Failed to contain and immediately clean up a spill or overfill that results in a release to the environment that exceeds 25 gallons or that causes a sheen on nearby surface water; and/or take immediate action to prevent further release or migration of a regulated substance; and/or failed to identify and mitigate fire, explosion and vapor hazards; and/or failed to remedy hazards posed by contaminated soils; and/or measure for a release where contamination is most likely; and/or failed to submit an initial abatement report; and/or failed to investigate and remove free product. **9VAC25-580-220: Reporting and Cleanup of Spills and Overfills** **9VAC25-580-240: Initial Response** **9VAC25-580-250: Initial Abatement Measure and Site Check** **9VAC25-580-270: Free Product Removal**	$ 0 # of Violations	$ 0
	Failed to assemble information about the site and the nature of the release, including information gained while confirming the release or completing the initial abatement measures. **9VAC25-580-260: Site Characterization**	$ 0 # of Violations	$ 0

Violation	Observations and Legal Requirements	Civil Charge	Subtotal
	Failed to notify 30 days before switching to a specified regulated substance and/or failed to demonstrate proper compatibility. **9VAC25-580-100: Compatibility**	$ 0 # of Violations	$ 0
	Failed to investigate off-site impacts to determine if the UST system is the source. **9VAC25-580-200: Investigation Due to Off-Site Impacts**	$ 0 # of Violations	$ 0
	Failed to submit a corrective action plan, with all necessary information, according to the required schedule, or perform corrective action to address contaminated soils and groundwater. **9VAC25-580-270: Free Product Removal** **9VAC25-580-280: Corrective Action Plan**	$ 0 # of Violations	$ 0
✔	Failed to follow the requirements to temporarily close a UST system and/or failed to keep temporarily closed UST system in compliance with requirements. **9VAC25-580-310: Temporary Closure**	$ 712 # of Violations 1	$ 712
	Delivered or accepted a regulated substance into an ineligible UST. **9VAC25-580-370: Requirements for Delivery Prohibition**	$ 0 # of Violations	$ 0
	Failed to permanently close a UST system that does not meet the new UST or UST upgrade requirements. **9VAC25-580-50: Performance Standards for New UST systems** **9VAC25-580-60: Upgrading of existing UST systems** **9VAC25-580-310: Temporary Closure**	$ 0 # of Violations	$ 0
	Failed to demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs. **9VAC25-590-40: Amount and Scope of Financial Responsibility Requirement.** **9VAC25-590-50: Allowable Mechanisms**	$ 0 # of Violations	$ 0
	Failed to maintain evidence of all financial assurance mechanisms used to demonstrate financial responsibility. **9VAC25-590-160: Recordkeeping**	$ 0 # of Violations	$ 0
Civil Charge Subtotal		$ 4,068	

Aggravating Factors		
	Additional Civil Charge Assessment	**Subtotal**
Degree of Culpability	0.25	$ 1,017.00
Consent Order in another media Program within 36 months	0.00	$ 0.00
Consent Order in the same media program within 36 months	0.00	$ 0.00
Aggravating Factors Subtotal		$ 1,017.00
Civil Charge Subtotal and Aggravating Factor Subtotal		$ 5,085.00
Civil Charge Reduction	0.00	$ 0.00
Economic Benefit of Noncompliance		$ 4,763.00
In accordance with 62.1-44.15(8e), the Responsible Party's Ability to Pay was evaluated and it was determined that there is an ability to pay.	Yes	
Total Civil Charge		$ 9,848
Based on the results of staff observations, the Department concludes that the Responsible Party has violated Va. Code and Regulations as identified herein.		

SECTION D: Agreement and Order

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

☑ Perform the actions described in Appendix A of this Order if this box is checked and

Pay the total civil charge of $ 9,848 in settlement of the violations cited in this Order in accordance with the following:

☑ Within 30 days of the effective date of the Order, or

☐ In accordance with the following payment schedule:

Due Date	Amount

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, VA 23218

The Responsible Party shall include its Federal Employer Identification Number (FEIN), if applicable, 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). If the Department has to refer collection of moneys due under this Order to the Department of Law, Responsible Party shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Department may modify, rewrite, or amend this Order with the consent of the Responsible Party for good cause shown by the Responsible Party, 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 Department 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, the Responsible Party admits the jurisdictional allegations, and agrees not to contest, but neither admits nor denies, the findings of fact and conclusions of law in this Order.

4. The Responsible Party 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. The Responsible Party 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 Department to modify, rewrite, amend, or enforce this Order.

6. Failure by the Responsible Party to comply with any of the terms of this Order shall constitute a violation of an order of the Department. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Department 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. The Responsible Party 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 unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. The Responsible Party shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. The Responsible Party 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 and any 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 The Responsible Party. Nevertheless, the Responsible Party 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. The Director or his designee terminates the Order after the Responsible Party has completed all of the requirements of the Order;

    b. The Responsible Party 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

    c. The Director or Department terminates the Order in his or its sole discretion upon 30 days' written notice to the Responsible Party.

    Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve the Responsible Party 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 the Responsible Party 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 the Responsible Party certifies that he or she is a responsible official [or officer] authorized to enter into the terms and conditions of this Order and to execute and legally bind the Responsible Party to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of the Responsible Party.

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, the Responsible Party voluntarily agrees to the issuance of this Order.

And it is so ORDERED.

DEQ Signee Signature

Date

DEQ Signee Name

Title

As the owner/operator of the UST system identified herein, I hereby certify that I am the Responsible Party and acknowledge that there are no material facts in dispute with respect to the violations as identified in this consent order.

Date: March 27, 2023 By: Michael R. Tomajczyk, C.F.O.

Michael R. Tomajczyk

Responsible Party Name

Title

DEQ Contact

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

Craig R. Nicol Regional Director VA DEQ - Tidewater Regional Office 5636 Southern Boulevard Virginia Beach, Virginia

APPENDIX A
SCHEDULE OF COMPLIANCE

The Responsible Party shall take the following actions:

	Correction to be Performed	Due Date
	Provide release detection for the UST system as required in 9VAC25-580-140.	
✔	Provide records for 2__ months in accordance with 9VAC25-580-120 demonstrating compliance with all release detection requirements as required in 9VAC25-580-180.	10/1/2023
	Provide records demonstrating the automatic line leak detector has been tested within the past 12 months, presenting passing results in accordance with the performance requirements set forth in 9VAC25-580-130 and 170.	
	Provide records demonstrating line tightness testing has been completed within the past 12 months, presenting passing results in accordance with the performance requirements set forth in 9VAC25-580-130 and 170.	
	Provide records demonstrating the proper repair and/or replacement of electronic and mechanical components of a UST system upon failed testing results, is in accordance with 9VAC25-580-110.	
	Provide records demonstrating that the install and/or repair of the necessary equipment to provide adequate corrosion protection on the UST system is in accordance with 9VAC25-580-90 and 9VAC25-580-110.	
	Complete cathodic protection system testing in accordance with 9VAC25-580-90 and submit copies of these cathodic protection system test results in accordance with 9VAC25-580-120.	
	Submit documentation that the impressed current cathodic protection system is inspected every 60 days in accordance with 9VAC25-580-90(3).	
✔	Provide records demonstrating periodic testing and inspections of spill/overfill prevention equipment and containment sumps has been performed within the past 12 months in accordance with 9VAC25-580-82.	10/1/2023
	Submit an updated Notification for the UST system in accordance with 9VAC25-580-70.	
	Submit documentation demonstrating financial responsibility in accordance with 9VAC25-590-10 *et seq.*	
	Submit training documentation for all the Class A, B, and C operators, including a current list of operators and written instructions or procedures for Class C operators. All training documentation shall verify training has been conducted in accordance with 9VAC25-580-120, and -125.	
	Submit results of____ months of walkthrough inspections results in accordance with 9VAC25-580-85.	
	Submit annual walkthrough inspections results in accordance with 9VAC25-580-85.	

APPENDIX A
SCHEDULE OF COMPLIANCE

The Responsible Party shall take the following actions:

	Correction to be Performed	Due Date