



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

VALLEY REGIONAL OFFICE

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Secretary of Natural Resources

David K. Paylor
Director

Amy Thatcher Owens
Regional Director

August 4, 2020

Mr. Brett Waller
Virginia Department of Transportation (VDOT)
811 Commerce Road
Staunton, Virginia 24401
(Sent via email only)

Re: VDOT – Lexington Residency Shop, 626 Waddell Street, Lexington
DEQ Tracking Number: PC# 2020-6144, FAC ID# 6019709

Dear Mr. Waller:

On June 23, 2020, the Department of Environmental Quality (the “Department” or “DEQ”) received a copy of a Phase II Environmental Site Assessment (ESA) recently performed at the subject site for the City of Lexington. The ESA was performed by Commonwealth Environmental Associates, Inc. and dated June 22, 2020. The ESA included two soil borings around the current (temporarily closed) underground storage tank (UST) systems. Soil sample T-1 collected along the northern side of the tank basin at 7.5 feet revealed concentrations of benzene, ethylbenzene and xylenes, indicating evidence of a release. State Water Control Law authorizes the State Water Control Board (the “Board”), acting through DEQ, to require any owner or operator who is the responsible person for a petroleum release from an underground storage tank system to undertake corrective action for any such release.¹ Based on the evidence available to us, it appears that you are the Responsible Person (RP) for this petroleum release.

If you perform the required corrective action, it will not be necessary for the Board to initiate an administrative or judicial proceeding to render a final determination of liability. The first steps required for corrective action include:

* Taking the actions necessary to stop the discharge and abate and mitigate any immediate hazards caused by the discharge. This includes stopping any continued discharge of oil from the tank into the environment, removing free product, removing petroleum-saturated soil/gravel and eliminating immediate safety or environmental hazards (fire, vapors in buildings, oil on surface water, etc.). Conducting an investigation of the source, extent, risk posed by the release, proposed actions necessary for cleanup, **and submitting a Limited Site Characterization Report (SCR) to this office by October 5, 2020.**

¹ Code § 62.1-44.34:9. A responsible person is any person who is an owner or operator of an underground storage tank or an aboveground storage tank at the time the release is reported to the Board. §62.1-44.34:8.

The recommended elements for this report are available in the Storage Tank Program Technical Manual. If a discussion of these elements does not adequately describe your site conditions and cleanup rationale, include additional information as necessary to complete the report.

The Virginia Petroleum Storage Tank Fund (VPSTF), also administered by the Department on behalf of the Board, may be available to reimburse you for some of the costs to investigate and clean up the release (Fact Sheet available at <http://www.deq.virginia.gov/Portals/0/DEQ/Land/Tanks/012024dappendices.pdf>). Please note that prior approval of site work is required if you plan to seek reimbursement from the Fund. You may request prior approval by submitting an Activity Authorization Form (AAF) to this office before you start investigation and clean-up activities. You are not required to obtain pre-approval for conducting activities needed to abate immediate hazards; however, it is recommended that you contact this office as soon as possible should an emergency situation occur. Any activities performed more than 24 hours before the date this discharge was reported are ineligible for reimbursement.

Owners and operators who have insurance coverage for the costs of cleaning up a petroleum release will not have access to the VPSTF for reimbursement for any costs covered by the policy. Many owners and operators demonstrate financial responsibility for their tanks using an insurance policy. Please be aware that many of these policies cover the costs of cleaning up a petroleum release. You are responsible for making a timely claim on your insurance policy in the event of a petroleum release.

Please refer to the Storage Tank Technical Manual fact sheets for more information on Confirmed Releases, the Activity Authorization Package, VPSTF Reimbursement and other program requirements for petroleum storage tanks. The Storage Tank Program Technical Manual, the Reimbursement Manual and other materials are also available from this office or from our website at <http://www.deq.virginia.gov/Programs/LandProtectionRevitalization/PetroleumProgram/GuidanceRegulations.aspx>.

DEQ recommends that RP's who are not familiar with Virginia's environmental corrective action procedures consider hiring an environmental consultant. The consultant you select should demonstrate knowledge of Virginia's technical and administrative requirements under this program, experience with situations similar to yours, and justification of their proposed costs.

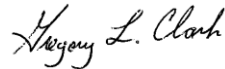
After we have received and reviewed your SCR, we may: (1) close this case, (2) request additional information, (3) require periodic monitoring of site conditions, or (4) require submittal of a Corrective Action Plan for cleanup. It is important that you maintain close contact with DEQ while conducting this cleanup, and submit all required reports by the appropriate deadlines.

If you choose not to perform the required corrective action, the Board may elect to initiate either administrative or judicial enforcement proceedings against you. In any administrative proceeding, whether initiated at your request or by the Board or the Department, your rights under Code § 2.2-4019 include notice and a chance to appear in person or by a representative to present factual data, argument, and proof in connection with this matter. During this proceeding you may dispute the Department's allegation that you are the RP for this petroleum release.

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This letter is intended to provide information to assist you in evaluating your compliance obligations and is not intended to be a case decision under the Administrative Process Act. I have been assigned as the case manager for this PC# and will assist you in completing a rapid and effective release investigation. **If you have any questions or would like to discuss the information contained in this letter, please contact me at 540-574-7911 or at gregory.clark@deq.virginia.gov.** In the event that discussions with staff do not lead to a satisfactory resolution of the contents of this letter, you may elect to participate in DEQ's Process for Early Dispute Resolution. For information on the Process for Early Dispute Resolution, please website for: <http://www.deq.virginia.gov/Programs/Enforcement/LawsRegulationsGuidance.aspx>.

Sincerely,



Gregory L. Clark, PE
Senior Hydrogeologist

cc: Petroleum LUST File
Referenced Documents (also available upon request)

Activity Authorization Form: <http://www.deq.virginia.gov/Portals/0/DEQ/Land/Tanks/007aafs.zip>
Storage Tank Program Technical Manual (including Fact Sheets): <http://www.deq.virginia.gov/Programs/LandProtectionRevitalization/PetroleumProgram/GuidanceRegulations.aspx>.