



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

www.deq.virginia.gov

Stefanie K. Taillon
Secretary of Natural and Historic Resources

Michael S. Rolband, PE, PWD, PWS Emeritus
Director

DEPARTMENT OF ENVIRONMENTAL QUALITY

CONSENT ORDER

ISSUED to

EWING NO 1 LLC

**as the Owner/Operator of an UST FACILITY (ID# 1022474)
and the RESPONSIBLE PARTY(ies)**

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

Facility Address		Street Address	2304 2nd Street					
		City	Richlands			Virginia	Zip Code	24641
Inspection Date		December 16, 2024		Request for Compliance Action Date			December 17, 2024	
Warning Letter Date		March 17, 2025		Notice of Violation Date			July 2, 2025	
	UST #	Regulated Substance		Volume of UST (Gallons)				
	1	Gasoline		10000				
	2	Gasoline		10000				
	3	Gasoline		10000				
	4	Diesel		10000				
	5	Gasoline		10000				
Total # of UST	5	Total UST capacity at the Facility (Gallons)		50000				

Observations and Legal Requirements		Civil Charge		Subtotal
<input type="checkbox"/>	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	Potential for Harm	Blank	0
		Occurrences		
<input checked="" type="checkbox"/>	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	Potential for Harm	Serious	6615
		Occurrences	5	
<input checked="" type="checkbox"/>	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. 9VAC25-580-82: Periodic Testing 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	Potential for Harm	Serious	1323
		Occurrences	1	
<input type="checkbox"/>	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	Potential for Harm	Blank	0
		Occurrences		
<input type="checkbox"/>	Failed to properly perform, repair, replace test, or provide equipment that will prevent a release into the environment: <input type="checkbox"/> Overfill equipment <input type="checkbox"/> Spill prevention equipment 9VAC25-580-50: Performance Standards for New UST Systems 9VAC25-580-60: Upgrading Existing UST System 9VAC25-580-82: Periodic Testing 9VAC25-580-110: Repairs Allowed	Potential for Harm	Blank	0
		Occurrences		
<input type="checkbox"/>	Failed to conduct or properly conduct walkthrough inspections. 9VAC25-580-85: Periodic operation and maintenance walkthrough inspections	Potential for Harm	Blank	0
		Occurrences		
<input type="checkbox"/>	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	Potential for Harm	Blank	0
		Occurrences		
<input type="checkbox"/>	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	Potential for Harm	Blank	0
		Occurrences		
<input type="checkbox"/>	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	Potential for Harm	Blank	0
		Occurrences		

Observations and Legal Requirements		Civil Charge		Subtotal
<input type="checkbox"/>	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	Potential for Harm	Blank	0
		Occurrences		
<input type="checkbox"/>	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	Potential for Harm	Blank	0
		Occurrences		
<input type="checkbox"/>	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	Potential for Harm	Blank	0
		Occurrences		
<input type="checkbox"/>	UST system is not compatible with the substance stored, failed to notify 30 days before switching to a specified regulated substance, and/or failed to demonstrate proper compatibility. 9VAC25-580-100: Compatibility	Potential for Harm	Blank	0
		Occurrences		
<input type="checkbox"/>	Failed to investigate off-site impacts to determine if the UST system is the source. 9VAC25-580-200: Investigation Due to Off-Site Impacts	Potential for Harm	Blank	0
		Occurrences		
<input type="checkbox"/>	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	Potential for Harm	Blank	0
		Occurrences		
<input type="checkbox"/>	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	Potential for Harm	Blank	0
		Occurrences		
<input type="checkbox"/>	Failed to repair or permanently close a UST system that does not meet the new UST or UST upgrade requirements, and/or failed to follow the requirements to permanently close a UST system. 9VAC25-580-50: Performance Standards for New UST systems 9VAC25-580-60: Upgrading of existing UST systems 9VAC25-580-110: Repairs Allowed 9VAC25-580-310: Temporary Closure 9VAC25-580-320: Permanent Closure and Change-In-Service	Potential for Harm	Blank	0
		Occurrences		

Observation and Legal Requirements			Civil Charge	Subtotal
<input type="checkbox"/>	Delivered or accepted a regulated substance into an ineligible UST. 9VAC25-580-370: Requirements for Delivery Prohibition	Potential for Harm	Blank	0
		Occurrences		
<input type="checkbox"/>	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 9VAC25-590-50: Allowable Mechanisms	Potential for Harm	Blank	0
		Occurrences		
<input type="checkbox"/>	Failed to maintain evidence of all financial assurance mechanisms used to demonstrate financial responsibility. 9VAC25-590-160: Recordkeeping	Potential for Harm	Blank	0
		Occurrences		
Civil Charge Subtotal			7938	
Potential for Harm				
<p>Potential for Harm Classifications:</p> <p>Serious: A violation is classified as Serious if (1) the severity of the violation presents a substantial deviation from the regulatory requirement or actual harm to the integrity of the regulatory program and /or (2) has or may have a substantial adverse effect to human health or the environment.</p> <p>Moderate: A violation is classified as Moderate if (1) the severity of the violation presents some deviation from the regulatory requirement or actual harm to the integrity of the regulatory program and /or (2) has or may have some adverse effect to human health or the environment.</p> <p>Marginal: A violation is classified as Marginal if (1) the severity of the violation presents little or no deviation from the regulatory requirement or actual harm to the integrity of the regulatory program and /or (2) has or may have little to no adverse effect to human health or the environment.</p> <p>Mitigating or Aggravating Factors:</p> <div style="display: flex; justify-content: space-between;"> <div> <p><u>Human Health or the Environment</u></p> <p>Receptor Nearby: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Adjacent to surface water: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>UST location: <input checked="" type="checkbox"/> residential <input checked="" type="checkbox"/> industrial/commercial <input type="checkbox"/> rural</p> <p>Groundwater used as drinking water: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Unknown</p> <p>Vapor intrusion potential: <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Unknown</p> </div> <div> <p><u>Regulatory Harm</u></p> <p>Facility Risk Ranking: <input checked="" type="checkbox"/> High <input type="checkbox"/> Medium <input type="checkbox"/> Low</p> <p>Deviation from requirement: <input type="checkbox"/> High <input checked="" type="checkbox"/> Medium <input type="checkbox"/> Low</p> <p>Harm to integrity of program: <input type="checkbox"/> High <input checked="" type="checkbox"/> Medium <input type="checkbox"/> Low</p> <p>Risk to Agency: <input type="checkbox"/> High <input checked="" type="checkbox"/> Medium <input type="checkbox"/> Low</p> </div> </div> <p>Additional Information:</p> <p>The Facility is located adjacent to commercial properties and across the street from residential properties.</p>				
Degree of Culpability				
<p>Culpability Ranking: <input type="checkbox"/> Low <input type="checkbox"/> Medium <input checked="" type="checkbox"/> Serious <input type="checkbox"/> High</p> <p><input checked="" type="checkbox"/> Sophisticated Owner/Operator <input type="checkbox"/> History of compliance. <input checked="" type="checkbox"/> Degree of control over the events</p> <p><input checked="" type="checkbox"/> Foreseeability of the events. <input checked="" type="checkbox"/> Evidence of unjustified delay.</p> <p><input type="checkbox"/> Reasonable precautions taken to mitigate violations. <input type="checkbox"/> Failed to comply with a consent order, or special order.</p> <p>Additional Information:</p> <p>The violations were first identified during a December 2024 inspection and remained unresolved at the time of preparation of this Order.</p>				

Additional Civil Charge Assessment		Subtotal
Degree of Culpability	Serious	3969
Consent Order in another media Program within 36 months	No	0
Consent Order in the same media program within 36 months	No	0
Aggravating Factors Subtotal		3969
Civil Charge Subtotal and Aggravating Factor Subtotal		11907
Cooperativeness and Quick Settlement	30%	-3572.1
Economic Benefit of Noncompliance	No	
Ability to Pay was evaluated and there is an ability to pay.	Yes	
Total Civil Charge		8334.9
Based on the results of staff observations, The Department concludes 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:

- ☐ Submit documentation demonstrating financial responsibility in accordance with 9VAC25-590-10 et seq within 30 days of the effective date of the Consent Order, if this box is checked.
- ☒ Pay the total civil charge of 8334.9 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
December 1, 2025	\$2000
March 1, 2026	\$2000
June 1, 2026	\$2000
September 1, 2026	\$2,335

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 Consent Order, and the Department may demand in writing full payment by the Permittee. Within 15 days of receipt of such letter, Permittee 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 Consent Order.

Payment shall be made by either credit card at www.deq.virginia.gov, or 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 Consent Order for deposit into the Virginia Petroleum Storage Tank Fund (VPSTF).

If the Department must 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 Consent 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 Consent Order addresses and resolves only those violations specifically identified in Section C of this Consent Order. This Consent 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 Consent Order.
3. For purposes of this Consent Order and subsequent actions with respect to this Consent 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 Consent 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 Consent 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 Consent Order.
6. Failure by the Responsible Party to comply with any of the terms of this Consent 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 Consent Order is found to be unenforceable for any reason, the remainder of the Consent 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 Consent 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 Consent 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.
 - e. 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 Consent Order.
9. This Consent Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Consent 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 Consent Order.
11. This Consent Order shall continue in effect until:
 - a. The Director or his designee terminates the Consent Order after the Responsible Party has completed all of the requirements of the Consent Order;
 - b. The Responsible Party petitions the Director or his designee to terminate the Consent Order after it has completed all of the requirements of the Consent Order and the Director or his designee approves the termination of the Consent Order; or
 - c. The Director or Department terminates the Consent Order in his or its sole discretion upon 30 days' written notice to the Responsible Party.
 - d. Termination of this Consent Order, or any obligation imposed in this Consent 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 Consent Order are incorporated into this Consent Order. Any noncompliance with such approved documents shall be considered a violation of this Consent 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 Consent Order and to execute and legally bind the Responsible Party to this document. Any documents to be submitted pursuant to this Consent Order shall also be submitted by a responsible official of the Responsible Party.
14. This Consent Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Consent Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Consent Order.
15. By its signature below, the Responsible Party voluntarily agrees to the issuance of this Consent Order.

And it is so **ORDERED**.

DEQ Signature

Date

DEQ Name Printed

Title

I hereby certify that I am the Responsible Party or duly appointed representative/officer of the Responsible Party.



Responsible Party Signature

9/15/2025

Date

Donald Mitchem

Responsible Party Name Printed

Owner

Title

DEQ Contact

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

John Brandt
Virginia DEQ - Tidewater Regional Office
5636 Southern Blvd, Virginia Beach, Virginia 23462
john.brandt@deq.virginia.gov

APPENDIX A SCHEDULE OF COMPLIANCE

The Responsible Party shall take the following actions upon the effective date of the Consent Order:

Correction to be Performed		Due Date
<input type="checkbox"/>	Submit an updated Notification for the UST system in accordance with 9VAC25-580-70.	
<input type="checkbox"/>	Submit documentation demonstrating financial responsibility in accordance with 9VAC25-590-10 <i>et seq.</i>	
<input type="checkbox"/>	Provide passing records for <u>2</u> months of tank release detection in accordance with the requirements set forth in 9VAC25-580-130 <i>et seq.</i>	
<input type="checkbox"/>	Submit training documentation verify training has been conducted in accordance with 9VAC25-580-120, and - 125. <input type="checkbox"/> Certification for Class A <input type="checkbox"/> Class B <input type="checkbox"/> Class C <input type="checkbox"/> Current list of operators <input type="checkbox"/> <input type="checkbox"/> Emergency procedures	
<input type="checkbox"/>	Provide records demonstrating adequate corrosion protection on the UST system is in accordance with 9VAC25-580-90, -110, -120. <input type="checkbox"/> Repair or installation records <input type="checkbox"/> Passing cathodic protection system test results <input type="checkbox"/> 60 day rectifier test results	
<input checked="" type="checkbox"/>	Provide passing results demonstrating compliance with equipment inspections and testing in accordance with 9 VAC25-580-82, -110, -130, -170, -180. <input checked="" type="checkbox"/> Release detection equipment testing: <input checked="" type="checkbox"/> Tank <input checked="" type="checkbox"/> Pipe <input type="checkbox"/> Equipment testing or inspection: <input type="checkbox"/> Spill <input type="checkbox"/> Overfill <input type="checkbox"/> Containment sumps <input type="checkbox"/> Automatic line leak detector testing. <input type="checkbox"/> Line tightness testing.	30 days
<input type="checkbox"/>	Submit walkthrough inspection results in accordance with 9VAC25-580-85. <input type="checkbox"/> Annual walkthrough <input type="checkbox"/> Monthly walkthrough; <u> </u> Months	
<input type="checkbox"/>	Submit temporary tank closure documentation in accordance with 9VAC25-580-70, and -310. <input type="checkbox"/> Building Permit <input type="checkbox"/> Notification form registering tank(s) as temporarily closed <input type="checkbox"/> Demonstrate the vent lines are open and functioning and ancillary equipment is secured <input type="checkbox"/> Demonstrate the tank(s) are empty	
<input type="checkbox"/>	Submit permanent tank closure documentation in accordance with 9VAC25-580-70, and -320. <input type="checkbox"/> Building Permit <input type="checkbox"/> Notification form registering tank(s) as permanently closed <input type="checkbox"/> Site assessment report including closure soil sampling results	
<input type="checkbox"/>		