



STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL
89 KINGS HIGHWAY
DOVER, DELAWARE 19901

OFFICE OF THE
SECRETARY

TELEPHONE: (302) 739-9000
FAX: (302) 739-6242

SECRETARY'S ORDER

Pursuant to 7 Del. C. § 6005

Order No. 2018-WH-0064

***PERSONALLY SERVED BY
AN ENVIRONMENTAL CRIMES
UNIT OFFICER***

Issued To:

Mr. Upesh Vyas/Sitaram, Inc. T/A Pep Up #8
Owner and Operator
Pep Up #8
P.O. Box 510
Millsboro, DE 19966

The Secretary of the Department of Natural Resources and Environmental Control ("Department") has found Upesh Vyas /Sitaram, Inc. ("Respondent") in violation of 7 Del. C. Chapters 60 and 74, 7 DE Admin. Code 1351, the Delaware *Regulations Governing Underground Storage Tank Systems* ("UST Regulations") and 7 DE Admin. Code 1124, Delaware *Regulations Governing the Control of Volatile Organic Compound Emissions* ("VR Regulations"). Accordingly, the Department is issuing this Notice of Administrative Penalty Assessment and Secretary's Order ("Assessment and Order") pursuant to 7 Del. C. § 6005(b)(3).

BACKGROUND

The Department's Tank Management Section ("TMS") conducted a compliance inspection of the Underground Storage Tank ("UST") systems at the above-referenced facility on July 26, 2017. During the inspection, the Department recorded twenty (20) violations. The Department issued a certified *Request for Information* ("RFI") letter on August 10, 2017, requiring that Respondent submit proof of compliance to TMS within thirty (30) days of receipt of the RFI for the twenty (20) violations. Respondent submitted documentation satisfying thirteen (13) of the twenty (20) violations. Seven (7) of the violations from the RFI remained unresolved.

The Department issued a Notice of Intent to Tag – Non-Imminent Threat Exists ("NOIT") letter to Respondent on December 22, 2017. Respondent was required to appear for an Expedited Evidentiary Hearing and/or submit the required documentation for the remaining seven (7) violations to the Department by January 22, 2018. Respondent appeared for the hearing and submitted documentation, satisfying three (3) of the remaining seven (7) violations. Subsequently, on January 25, 2018, the Department issued an Expedited Evidentiary Hearing letter to the Respondent granting an additional thirty (30) days until February 28, 2018, to correct the remaining four (4) violations or the Department would classify the UST System as ineligible to receive product deliveries. Respondent produced documentation satisfying one (1) of the four (4) remaining violations.

On April 9, 2018, the Department issued a Notice of Violation ("NOV") letter to Respondent for the remaining three (3) violations. Respondent produced documentation satisfying violations #1 and # 2 as listed on the NOV. However, violation # 3 remained unresolved. Currently, there is one (1) outstanding violation that Respondent has not addressed:

1. Failure to produce annual Automatic Tank Gauging ("ATG") equipment inspection results.

FINDINGS OF FACT AND VIOLATION INCLUDING REGULATORY REQUIREMENTS

As noted in the April 9, 2018 NOV, Respondent was in violation of the following provision of 7 Del. C. Chapters 60 and 74, the UST Regulations, and the VR Regulations. Each day of violation is a separate violation for each UST System:

1. The UST Regulations: Part B, Sec.2.9.5, Automatic Tank Gauging Release Detection Requirements for Tanks

2.9.5.1.5: Owners and Operators shall have all ATG equipment inspected by a certified technician once every twelve (12) months as part of a preventive maintenance program to minimize in-service failures. The inspection shall at a minimum include:

2.9.5.1.5.1: Inspection of the ATG console for proper printer operation if so equipped; and

2.9.5.1.5.2: Verification of the system setup valves and battery backup; and

2.9.5.1.5.3: Verification of the test programming; and

2.9.5.1.5.4: Verification of the operability of all warning and alarm indicator lights and audible alarms; and

2.9.5.1.5.5: Inspection and testing of the magnetostrictive probes and sensors in accordance with the manufacturer's specifications or as directed by the Department to verify proper probe and sensor operation; and

2.9.5.1.5.6: Inspection of all cables that are visible during normal operating conditions for any cracking or swelling; and

2.9.5.1.5.7: Correction of any problems found as a result of the required inspection.

2.9.5.2: Owners and Operators shall maintain a record of all Release Detection tests performed by ATG equipment for the life of the UST System.

Observation:

At the time of the Department's compliance inspection, the annual ATG equipment inspection results for 2015 and 2016 were not available for review.

ASSESSMENT OF PENALTY AND COSTS

Pursuant to the provisions of 7 *Del. C.* § 6005(b)(3), this is written notice to Respondent that on the basis of its findings, the Department is assessing Respondent an administrative penalty of \$32,550.00 for the violations identified in this Assessment and Order.

In addition to the penalty assessment, Respondent is hereby assessed estimated costs in the amount of \$2,950.00 pursuant to 7 *Del. C.* § 6005(c), which were incurred by the Department in the investigation of the noted violations.

Respondent shall submit one (1) check to the Department in the amount of \$32,550.00 to pay the penalty and one (1) check to the Department in the amount of \$2,950.00 to pay the estimated costs within thirty (30) days from the receipt of this Assessment and Order. The checks shall be made payable to the "State of Delaware" and shall be directed to: Robert F. Phillips, Deputy Attorney General, 391 Lukens Drive, New Castle, Delaware 19720.

The Department reserves the right to take additional enforcement actions regarding these and other violations at Pep Up #8, including but not limited to, one or more of the following: an action under 7 *Del. C.* § 6005(b)(1) seeking penalties for past violations, an action under 7 *Del. C.* § 6005(b)(2) seeking penalties for continuing violations, an action in the Court of Chancery pursuant to 7 *Del. C.* § 6005(b)(2) seeking a temporary restraining order or an injunction, and the imposition of civil penalties and recovery of the Department's costs and attorney's fees pursuant to 7 *Del. C.* §§ 6005(b)(3) & (c)(1).

PUBLIC HEARING AND APPEAL RIGHTS

This Assessment and Order is effective and final upon receipt by Respondent. Pursuant to § 7412(a) of Title 7 of the Delaware Code, which incorporates by reference the appeal provisions of §6008 of Title 7, any person whose interest is substantially affected by this action of the Secretary may appeal to the Environmental Appeals Board within twenty (20) days of the receipt of the Assessment and Order. In the alternative, Respondent may, pursuant to 7 *Del. C.* § 7411(c) and 7 *Del. C.* § 6309(A)(3), request a public hearing on the penalty Assessment and Order within thirty (30) days of receipt of the Assessment and Order. A hearing would be conducted pursuant to 7 *Del.C.* § 6006, and the Secretary's order following the hearing would be subject to appeal by any person substantially affected.

If no hearing is requested and no appeal is filed, the administrative penalty of \$32,550.00 and costs in the amount of \$2,950.00 shall be due and owing. In the alternative, Respondent may pay the penalty and costs within thirty (30) days of receipt of this Notice as delineated in the Assessment Section above by executing the attached waiver form and remitting two (2) checks payable to the State of Delaware in the amounts of \$32,550.00 and \$2,950.00 and mail to Robert F. Phillips, Deputy Attorney General, 391 Lukens Drive, New Castle, Delaware 19720. By doing so, Respondent waives its right to a hearing and the opportunity to appeal or contest this Assessment and Order, which shall become a final Order.

To request a hearing, please submit your request, in writing, to:

Department of Natural Resources and Environmental Control
Office of the Secretary
89 Kings Highway
Dover, DE 19901
Ph: (302) 739-9000

To submit an appeal to the Environmental Appeals Board, there is a \$50.00 filing fee that should be made payable to the: "Environmental Appeals Board" and sent to:

Department of Natural Resources and Environmental Control
Office of the Secretary
Attn: Assistant to the Environmental Appeals Board
89 Kings Highway
Dover, DE 19901
Ph: (302) 739-9000

If you have any questions, please contact Alex Rittberg at (302) 395-2500.

Date: _____

11/25/18



Shawn M. Garvin, Secretary

cc: Robert Phillips, Deputy Attorney General
Marjorie A. Crofts, WHS Director
Alex Rittberg, TMS Program Administrator

WAIVER OF STATUTORY RIGHT TO A HEARING

Upesh Vyas / Sitaram, Inc, T/A Pep Up #8 hereby waives its right to a hearing and its opportunity to appeal or contest this Assessment and Order and agrees to the following:

Upesh Vyas/Sitaram, Inc. T/A Pep Up #8 will pay the administrative penalty in the amount of \$32,550.00 by sending a check payable to the "State of Delaware" within thirty (30) days of receipt of this Assessment and Order. The check shall be directed to Robert F. Phillips, Deputy Attorney General, 391 Lukens Drive, New Castle, Delaware 19720; and

Upesh Vyas/Sitaram Inc. T/A Pep Up #8 will reimburse the Department in the amount of \$ 2,950.00 which represents the Department's estimated costs. The reimbursement shall be paid within thirty (30) days of receipt of this Assessment and Order. The check shall be made payable to the "State of Delaware" and be directed to Robert F. Phillips, Deputy Attorney General, 391 Lukens Drive, New Castle, Delaware 19720.

**Upesh Vyas/ Sitaram Inc. T/A
Pep Up #8**

Date: _____

By: _____

Title: _____

