



STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL

OFFICE OF THE
SECRETARY

89 KINGS HIGHWAY
DOVER, DELAWARE 19901

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

**NOTICE OF ADMINISTRATIVE PENALTY ASSESSMENT
AND SECRETARY'S ORDER**
Issued Pursuant to 7 Del. C. §6005(b)(3)

Order No. 2009-A-0027

**PERSONALLY SERVED BY
AN ENVIRONMENTAL
PROTECTION OFFICER**

Issued To:

Penny Hill Mobil, Inc.
d/b/a Ron's Discount Energy Mart
and Ron's Discount Tires
2509 Philadelphia Pike
Wilmington, DE 19899

Mr. Ronald C. Palimere
4010 Concord Pike, Suite D
Wilmington, DE 19803

Registered Agent:

Norman E. Levine, Esquire
2961 Centerville Road, Suite 302
Wilmington, DE 19808

Facility ID#: 3-000712

This is to notify Penny Hill Mobil, Inc., d/b/a Ron's Discount Energy Mart and Ron's Discount Tires, Facility ID # 3-000712 ("the Facility") and Mr. Ronald C. Palimere (collectively "the Respondents") that the Delaware Department of Natural Resources and Environmental Control (the "Department") has found Respondents' retail gas station formerly located at 2509 Philadelphia Pike at the intersection with Hillside Road to be in violation of the Delaware *Regulations Governing Underground Storage Tank Systems* ("the UST Regulations") and accordingly, is issuing this Secretary's Order and Administrative Penalty.

BACKGROUND AND FINDINGS OF FACT

On November 15, 1988 New Castle County workers observed evidence of a petroleum release, consisting of petroleum vapors in the sanitary sewer and in basements of residences along

Delaware's Good Nature depends on you!

Hillside Road, Claymont. The source of the release was identified as the petroleum underground storage tank ("UST") system owned by the Respondents.

The Respondents refused to assume responsibility for the investigation and clean up of the petroleum release. The Department has, therefore, undertaken extensive corrective actions in response to the release, accumulating considerable costs. Corrective actions performed by the Department include the following: 1) temporary re-location of the residents of #10 Hillside

Road in February through August 1989; 2) diversion of the flow of contaminated groundwater away from several homes on Hillside Road in 1989; 3) on-site remediation in 2000 and 2001; 4) remediation of the off-site portion of the contaminant plume in the upper section of Hillside Road in 2005; and 5) repair of monitor wells located at the facility in 2007. In addition, the Department is currently performing an additional investigation, including groundwater monitoring, to determine the effectiveness of the recent actions.

Following identification of the source of the release, on November 18, 1988 the Department directed the Respondents to take cleanup actions by issuing "**Notice of DNREC Interest in the Discharge of a Regulated Substance in Delaware's Environment.**" The Notice described the release as a violation of 7 Del. C. Chapter 60. By signing the Notice, Mr. Palimere acknowledged responsibility to take cleanup action. On the same date the Department also issued a "Field Work Order" listing the following required actions, to be undertaken immediately:

- Define extent of petroleum product contamination
- Remove or remediate all related contamination
- Evacuate any tank determined to be leaking
- Properly stage and secure all contamination
- Any impact on Hillside Rd. and its residents relating to [the] release is to be addressed

By November 28, 1988 the Respondents refused to pay their consultant, which had started a hydrogeologic investigation at the facility. This established the Respondents' refusal to comply with the Department's requirements.

The Department conducted a compliance inspection of the UST system at the facility on November 15, 1988. In a certified letter dated November 30, 1988, the Department notified the Respondents of observed violations of 7 Del. C. Chapter 74, the *Regulations Governing Underground Storage Tank Systems*. The letter listed violations, primarily concerning leak detection requirements, and provided a five-day deadline for the Respondents to correct the violations, or submit a written plan of how the violations will be corrected.

REGULATORY AND PERMIT REQUIREMENTS

Respondents failed to correct six (6) violations of the July 11, 1986 version of the UST Regulations in effect at the time of the November 1988 violations.

1. UST Regulations, Part B, Section 4.02 B

"The owner or operator shall immediately conduct an investigation which shall include as a minimum:

1. An estimation of the amount and type of regulated substance lost and the location of the release,
2. A thorough investigation which may include a hydrogeologic investigation at the request of the Department. The hydrogeologic investigation shall follow the Department's *Guidelines for a Hydrogeologic Investigation.*"

The Respondents failed to conduct an investigation of the release according to the requirements of the UST Regulations, as directed by the Department. The Department had to assume control of the release situation to ensure the investigation was performed. The Respondents have violated Part B, Section 4.02 B of the UST Regulations.

2. UST Regulations, Part B, Section 4.02 C

"The released substance shall be recovered and disposed of or otherwise controlled to the satisfaction of the Department."

The Respondents failed to recover or control the released substance, which resulted in extensive on-site and off-site contamination. The Department had to take over the release situation to control and remediate the release. The Respondents have violated Part B, Section 4.02 C of the UST Regulations.

3. UST Regulations, Part B, Section 5.03 A

"Leak Detection Requirements – All existing underground storage tanks shall be provided with a means of monitoring for any release of the stored regulated substance. The monitoring system must consist of:

- (1) Inventory control procedures and record keeping...; and
- (2) A properly installed line leak detector in all positive pressurized delivery systems which shall be tested once a year."

The Respondents failed to provide documentation that inventory control procedures and record keeping were performed. The Respondents have violated Part B, Section 5.03 A of the UST Regulations.

4. UST Regulations, Part B, Section 5.03 A

"Leak Detection Requirements – All existing underground storage tanks shall be provided with a means of monitoring for any release of the stored regulated substance. The monitoring system must consist of:

- (1) Inventory control procedures and record keeping...; and
- (2) A properly installed line leak detector in all positive pressurized delivery systems which shall be tested once a year."

The Respondents failed to maintain operating line leak detection equipment as required. The Respondents have violated Part B, Section 5.03 A of the UST Regulations.

5. UST Regulations, Part B, Section 5.03 A

“Leak Detection Requirements – All existing underground storage tanks shall be provided with a means of monitoring for any release of the stored regulated substance. The monitoring system must consist of:

- (2) Inventory control procedures and record keeping...; and
- (2) A properly installed line leak detector in all positive pressurized delivery systems which shall be tested once a year.”

The Respondents failed to test line leak detection equipment as required. The Respondents have violated Part B, Section 5.03 A of the UST Regulations.

6. UST Regulations, Part B, Section 5.03 B (1)

“Tank Testing Requirements – The owner or operator of a storage system shall test the entire storage system according to the schedule prescribed in Section 5.03 A (3) (a) and whenever the Department has ordered that such a test is necessary to protect the ground waters, surface waters or soils of the State.”

The Respondents failed to test the underground storage tank system as required. The Respondents have violated Part B, Section 5.03 B (1) of the UST Regulations

The Department also issued additional Orders and correspondence that listed corrective actions required of the Respondents, and provided deadlines for compliance:

- **Order to Take Corrective Action No. 89-UT-01 – February 10, 1989** - Describes the Respondents’ failure to comply with the November 18, 1988 and November 30, 1988 Notices as violations of 7 Del. C. § 6003(a) (2), and 7 Del. C. § 7406(a), (b) and (c), and the UST Regulations. The Order provided a ten-day deadline to correct all UST system violations cited in the November 30, 1988 letter. The Order also required Respondents to complete the required clean up actions, to “assume all financial and legal responsibilities for the release immediately” and to “reimburse the Department for all expenses incurred by the Department for all expenses incurred by the Department and its agents...since November 15, 1988 at 1:00 p.m. with respect to this incident.”
- **Cease and Desist Order No. 89-UT-02 – February 22, 1989** - Required Respondents to immediately cease all operations relating to petroleum sale, delivery, receipt, or transfer of petroleum products. Respondents were also required to complete all actions previously required by the Department, and to “assume all financial and legal responsibilities for the release of gasoline products at the site.”
- **Secretary’s Order No. 92-UT-0049 – August 14, 1992** -- Provided a list of requirements, including removal of all underground storage tanks from the facility, and to “characterize any contamination from the underground storage tanks that are presently or were formerly on the property...and secure the perimeter of the property against outward migration of such contaminants toward Hillside Road.” The Respondents were required to reimburse the Department for monitoring of existing wells through February 1993, and for monitoring additional wells to be installed at the Department’s direction.

- **Certified Letter – July 18, 1994** – Listed the requirements that remained incomplete, and provided the Respondents a final opportunity to comply with requirements, within 15 days following receipt of the letter.

CONCLUSION

Based on the foregoing findings and provisions, the Department has determined that the Respondents have violated the UST Regulations regarding Release Prohibition and Correction at Part B, Sections 4.02 B & C, Requirements for Existing Tanks and Leak Detection Requirements at Part B, Section 5.03 A (three separate violations), and Tank Testing Requirements at Part B, Section 5.03 B (1).

Respondents violated the UST Regulations at Part B, Section 4.02 B by failing to conduct an investigation of the release as directed by the Department. In fact, the Department had to assume responsibility of the release to ensure timely investigation. The UST Regulation, Part B, Section 4.02 C was violated because Respondents failed to recover or control the released substance, which resulted in extensive on-site and off-site contamination. The Department had to take over the release situation to control and remediate the release.

Respondents violated the UST Regulations at Part B, Section 5.03 A by failing to provide documentation that inventory control procedures and record keeping were performed, failing to maintain operating line leak detection equipment as required and failing to test line leak detection equipment as required.

In addition, Respondents failed to test the underground storage tank system as required violating the UST Regulations at Part B, Section 5.03B (1).

ASSESSMENT OF PENALTY

In reference to the Orders, the Certified letter described above and Respondents' non-compliance with the UST Regulations, which the Department provided several opportunities for the Respondents to comply with, we note that the Respondents refused each time.

Pursuant to the provisions of 7 Del. C. §6005(b)(3), this is written notice to Respondents that on the basis of its findings, the Department is assessing Respondents an administrative penalty of \$447,125.00 for the violations identified in this Assessment and Order.

Respondent will reimburse the Department in the amount of \$67,068.75, which represents the Department's estimated investigative and legal costs incurred in bringing this action.

In addition to the penalty assessment and estimated investigative and legal costs, Respondents are hereby assessed, pursuant to 7 Del. C. § 6005(c), costs incurred in the amount of \$712,887.00 for the Department's performance of the initial response, investigative and remedial activities. The Department is continuing to perform corrective actions at the site and the Respondent will also be held liable for future cleanup costs associated with the Department's actions to cleanup the petroleum release.

Respondents shall submit three checks to the Department in the amounts of \$447,125.00, \$67,068.75, and \$712,887.00 within 30 days from the receipt of this Assessment and Order for the aforementioned penalties and costs. The checks shall be made payable to the "State of Delaware" and shall be directed to: Robert Kuehl, Deputy Attorney General, DNREC-SIRB, 391 Lukens Drive, New Castle, Delaware 19720.

PUBLIC HEARING

This Order and Assessment shall become effective and final unless the Department receives from Respondents, no later than 30 days from the receipt of this Notice, a written request for a public hearing on these matters as provided in 7 Del. C. §6005(b)(3). In the event Respondents request a hearing, the Department reserves the right to withdraw this Assessment and Order and take additional enforcement actions regarding these and other violations at Respondents' facility, including, but not limited to, the imposition of civil penalties and recovery of the Department's costs, including interest, and attorney's fees pursuant to 7 Del. C. §6005(b)(3) and (c). The Department reserves the right to do so at its discretion.

PRE-PAYMENT

Respondents may prepay the administrative penalty of \$447,125.00; the Department's estimated investigative and legal costs incurred in bringing this action in the amount of \$67,068.75, and the Department's estimated initial response, investigative and remedial activities costs in the amount of \$712,887.00, in the manner described in the attached Waiver. By doing so, Respondents waive their right to a hearing and the opportunity to appeal or contest the Assessment, which shall become final Order.

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

Date:

31st 2009



Collin P. O'Mara, Secretary

cc: Marjorie Crofts, Acting Director
Robert Kuehl, Deputy Attorney General
Alex Rittberg, Program Manager II
Jennifer Roushey, Program Manager I
David Brixen, Program Manager I
Chris Brown, Hydrologist III
Patricia Finn, Paralegal
Jennifer Bothell, Enforcement Coordinator

WAIVER OF STATUTORY RIGHT TO A HEARING

Penny Hill Mobil, Inc., d/b/a Ron's Discount Energy Mart and Ron's Discount Tires, and Mr. Ron Palimere hereby waive their right to a hearing and opportunity to appeal or contest this Assessment and Order and agrees to submit the following checks, made payable to the State of Delaware, in the amounts of:

1. \$447,125.00 for the penalty;
2. \$67,068.75 for the Department's estimated investigative and legal costs incurred in bringing this action; and
3. \$712,887.00 for the Department's estimated initial response, investigative and remedial activities costs associated with the noted violations.

The checks shall be submitted, along with this executed Waiver, within 30 days of receipt of this Assessment and Order. The checks and signed Waiver shall be directed/mailed to: Robert S. Kuehl, Deputy Attorney General, DNREC-SIRB, 391 Lukens Drive, New Castle, Delaware 19720.

**Penny Hill Mobil, Inc., d/b/a
Ron's Discount Energy Mart and
Ron's Discount Tires**

Date: _____

By: _____

Title: _____

Date: _____

Mr. Ronald C. Palimere, Individually