



STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL

OFFICE OF THE
SECRETARY

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**NOTICE OF ADMINISTRATIVE PENALTY ASSESSMENT
AND SECRETARY'S ORDER**

Issued Pursuant to 7 Del. C. §6005(b)(3)

Order No. 2010-A-0004

***PERSONALLY SERVED BY AN ENVIRONMENTAL
PROTECTION OFFICER***

Issued To:

Mr. Howard C. Wilkins , President
Wilkins Fuel Co.
S. Washington Street & Delaware Avenue
Milford, DE 19963

Registered Agent:

Wilkins Fuel Co.
S. Washington Street & Delaware Avenue
Milford, DE 19963

This is to notify Wilkins Fuel Company and Howard C. Wilkins, President (collectively, the "Respondents") that the Secretary of the Department of Natural Resources and Environmental Control ("DNREC") has found Respondents in violation of 7 Del. C. Chapter 60, 7 Del. C. Chapter 74, 7 Del. Admin. C. §1351 (*Regulations Governing Underground Storage Tank Systems*) ("UST Regulations"), and 7 Del. Admin. C. §1124, (*Regulations Governing the Control of Volatile Organic Compound Emissions*) ("VR Regulations"). Accordingly, the Department is issuing a Notice of Administrative Penalty Assessment and Secretary's Order ("Assessment and Order"), pursuant to 7 Del. C. §6005(b)(3).

BACKGROUND AND FINDINGS OF FACT

Respondents are the owners and operators of a bulk fuel and retail operation (Facility ID #5-000093), a facility as defined by the UST Regulations, located at 700 South Washington Street, Milford, DE 19963 ("Facility"). Respondents sell transportation and heating fuels at and from the Facility.

2007

On April 4, 2007, DNREC conducted a compliance inspection of the seven (7) regulated underground storage tank systems ("UST Systems") at the Facility. Four (4) of the underground storage tanks ("UST") hold 4,000 gallons each, and three (3) of the USTs hold 20,000 gallons each. The tanks hold diesel fuel, No. 2 fuel oil, and regular and premium gasoline, which are regulated substances. These seven (7) USTs hold a total of up to 76,000 gallons of petrochemicals. Eleven (11) regulatory violations were identified during this inspection, involving Respondents' failure to provide documentation necessary to identify and

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mitigate risks to Delaware's groundwater supply and environment. These eleven (11) regulatory violations are as follows: 1) Inventory Control Records; 2) Corrosion protection; 3) Spill and Overfill Protection; 4) Fill Line Protection; 5) Methods of Release Detection; 6) Release Detection Test Results; 7) Financial Responsibility; 8) Vapor Tight Seal Equipment; 9) Vapor Shear Valves; 10) Vapor Recovery Permits, Application, Installations and Testing Results; and 11) VR Regulations – Under-Dispenser Vapor Return Lines.

On April 18, 2007, the Department issued a Request for Information letter ("RFI letter") to Respondents. The RFI letter detailed the violations identified at the compliance inspection on April 4, 2007 and demanded submission of the information as required by the UST Regulations and the Vapor Recovery Regulations. The date demanded for receipt of the information was May 18, 2007. Respondents did not comply and have remained in violation. The RFI letter expressly notified Respondents of the sanctions for the violations and continued non-compliance, including, without limitation, civil penalties up to \$25,000.00 for each day that the violations continue and possible permit revocation.

Some six (6) months later, Respondents made an inadequate attempt to address two (2) of the categories of violations. On September 17, 2007 DNREC received inventory control records from Respondents that were missing the requisite data and thus noncompliant. On September 24, 2007, DNREC received compliant inventory control records for the months of June, July, and August 2007 only. DNREC has not received any other or further compliant inventory control records from Respondents.

2008

On January 28, 2008, DNREC issued a letter requesting that Mr. Wilkins meet with DNREC and immediately produce all documentation necessary to address the persistent, on-going violations. DNREC's letter again set out the language of the regulations being violated and warned of accruing penalties. By letter received by DNREC on March 25, 2008, Respondents provided documentation satisfactory to DNREC that five (5) of the eleven (11) on-going violations identified in the April 4, 2007 inspection had been corrected. DNREC has chosen to take no further action on the five (5) corrected violations and to not pursue the No. 11 Deficiency regarding Under-Dispenser Vapor Return Lines, leaving five (5) on-going violations for Respondents to address.

The requested meeting was held on March 20, 2008. At the meeting, Mr. Wilkins did not produce the requisite documentation on the remaining five (5) violations. Notwithstanding his continued failure to comply, DNREC continued its attempts to provide constructive technical assistance, in addition to its other roles. For example, at the meeting, Mr. Wilkins requested a copy of the Excel software program used by DNREC, which DNREC sent to him on April 10, 2008, along with a data spreadsheet and directions for use. The software program is used as an aid in maintaining the proper records.

Prior to the meeting, on March 3, 2008, Respondents had a compliance survey of the cathodic protection systems on the seven (7) USTs performed. (DNREC did not receive the results of this compliance survey until August 19, 2008.) All of the cathodic protection systems failed, necessitating repairs to the cathodic protection system, which have not occurred; and thus, the UST Systems remain in violation.

Five (5) days after the meeting, on March 25, 2008, DNREC received a letter from Mr. Wilkins dated March 18, 2008. Mr. Wilkins' letter contained information on the remaining five (5) violations, but did not resolve them. Mr. Wilkins also stated that he was "shooting for a tentative date of the first of June 2008" to do a "10 year internal inspection," presumably on all seven (7) USTs. Respondents remain in

violation of five (5) categories of violations: inventory control records, corrosion protection, financial responsibility, vapor shear valves, and vapor recovery permits. These five (5) categories are explained as follows:

1) Inventory control records keeping and reconciliation requirements. Owners and operators are required to track the movement of petroleum products into and out of the USTs. Regular reconciliation of the records of input and output allows for the timely discovery and remediation of any leakage into the soil and groundwater.

2) Corrosion protection requirements. Owners and operators must use specified equipment and methods, such as cathodic protection, and must inspect the equipment regularly. This inhibits oxidation (commonly called "rusting") of the steel tanks, lines, and other components. Cathodic protection uses electrical current and a sacrificial anode to inhibit corrosion. These measures prevent leakage before the end of the normal and cost-effective life expectancy of the components. Failure to use these measures calls into question the integrity of the steel components and elevates the risk of a leak.

3) Financial responsibility requirements. Owners and operators must demonstrate the financial capacity to responsibly address the consequences of petrochemical leaks and spills, to the environment and to innocent third parties. There are several ways to make this demonstration, including insurance.

4) Vapor shear valve requirement. Stage II vapor recovery measures, as required by the Clean Air Act, address the need to capture gasoline vapors during the motor vehicle fueling process. Gasoline is a volatile organic compound that contributes to ground level ozone pollution. The requisite shear valves have spring-loaded poppets inside the valve which seal vapors within the dispenser riser and vapor piping, thus preventing release to the atmosphere, in the event the dispenser is displaced by an accident such as vehicle impact or severe weather event.

5) Vapor Recovery applications, permits and testing requirements. The document retention requirements apply to the fundamental regulatory measures in the vapor recovery program. Willful failure to comply with these requirements calls into question the integrity of the Stage II vapor recovery program.

On August 27, 2008, Respondents informed DNREC of their failure to obtain pollution liability insurance. On October 14 through 17, 2008, DNREC received a number of incorrect and incomplete insurance documentation from Respondents. Respondents remain in violation of the financial responsibility requirements. There is no financial responsibility in place for the four (4) 4,000 gallon UST Systems.

On August 29, 2008, DNREC received an e-mail from Mr. Wilkins indicating that the four (4) 4,000 gallon UST Systems would be removed. Mr. Wilkins had indicated that those tanks would be replaced with Aboveground Storage Tank ("AST") systems, and they would include new dispensers, so the vapor recovery violations pertaining to the dispensers would be resolved during the installation of this new equipment. Mr. Wilkins had stated that the three (3) 20,000 gallon UST Systems were to remain in service, but no plans were ever given for bringing them into compliance.

On September 2, 2008, Mr. Wilkins promised DNREC that the four (4) 4,000 gallon UST Systems would be removed no later than the week of October 27, 2008. The removal form was received by DNREC on September 19, 2008, with a scheduled removal date of October 31, 2008.

On October 30, 2008, Respondents' UST removal contractor informed DNREC that Respondents would not be removing the four (4) 4,000 gallon UST Systems, and on October 31, 2008, DNREC received a removal cancellation form. Respondents have not proposed an alternative date to remove the four (4) USTs.

On December 12, 2008, Respondents submitted a revised insurance certificate but the tank schedule did not accompany it as required. Respondents remain in violation of the financial responsibility regulations.

On November 19, 2008, DNREC issued Notice of Violation 08-UT-09, which was received by Respondents on November 21, 2008. Respondents have not responded. The Notice of Violation was for the five (5) categories of violations that are the subject of this Assessment and Order, with further issues identified, and the alternative given for removal of all seven UST Systems.

STATUTORY AND REGULATORY PROVISIONS

Respondents are in violation of the following provisions 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. (The Department revised its UST Regulations effective January 11, 2008.)

1. Inventory and Reconciliation:

- Daily from and including September 1, 2007 through January 10, 2008:

The UST Regulations: Part A, Section 8.02. F. 1.) a.)

“Every owner and operator must maintain inventory control records for each tank containing a regulated substance. Records must be kept for each tank, or cluster of tanks if they are interconnected, and must include measurements of bottom water levels, sales, use, deliveries, inventory on hand and losses or gains. Reconciliation of records must be kept current, must account for all variables which could affect an apparent loss or gain and must be in accordance with generally accepted practices. The data must be accumulated for each day a tank has regulated substance added or withdrawn but not less frequently than once a week, and must include as a minimum:”

“[...] Daily reconciliation of the amount of regulated substance added to and removed from the tank. Recommended procedures for tank inventory and reconciliation procedures may be found in API Publication 1621 and must include: Losses or gains from each day's inventory must be reconciled monthly.”

- Daily from and including January 11, 2008 through the date of this Order:

The UST Regulations, Part B, Section 2.9.3.

“Every Owner and Operator shall perform inventory control procedures and shall maintain inventory control records for each Tank containing a Regulated Substance. Records shall be kept for each Tank, or cluster of Tanks if they are interconnected, and shall include measurements of bottom water levels, sales, use, deliveries, inventory on hand and losses or gains. Reconciliation of records shall be kept current, shall account for all variables which could affect an apparent loss

or gain and shall be in accordance with generally accepted practices. The data shall be accumulated for each day a Tank has Regulated Substance added or withdrawn but not less frequently than once a week, and shall include as a minimum:"

"[...] Daily reconciliation of the amount of Regulated Substance added to and removed from the Tank. Recommended procedures for Tank inventory and reconciliation procedures are detailed in API RP 1621, *Bulk Liquid Stock Control at Retail Outlets*, and shall include at a minimum:

[...] Losses or gains from each day's inventory shall be reconciled once during each calendar month. [...]"

2. Operation and Maintenance of Corrosion Protection Devices

- Daily from and including May 18, 2007 through January 10, 2008:

The UST Regulations: Part B, Section 1.06, B. (1.), (2.), (3.)

"[...] All corrosion protection systems must be operated and maintained to continuously provide corrosion protection to the metal components of that portion of the tank and piping that routinely contain a regulated substance and are in contact with the ground."

"[...] All cathodic protection systems which protect underground facility components must be tested ... at least once every three years."

"[...] An impressed current type tank protection system must be inspected at least every sixty (60) days and the results recorded. If the protective system is not operating in accordance with the manufacturer's requirements, the cause shall be determined and the necessary repairs be made within thirty (30) days of the test."

Respondents are in violation of Part B, Section 2.25.3., Impressed Current Cathodic Protection Requirements Operation and Maintenance Requirements

- Daily from and including January 11, 2008 through the date of this Order:

The UST Regulations: Part B, Section 2.25.3.2.

"Owners and Operators shall have all impressed current Cathodic Protection systems that protect underground Facility components tested by an individual certified by a nationally recognized industry standard setting organization, and in accordance with Department standards within six (6) months of installation and at least once every twelve (12) months thereafter."

"[...] Owners and Operators shall Repair or replace the impressed current Cathodic Protection system in accordance with NACE RP 0285, *Corrosion Control of Underground Storage Tank Systems by Cathodic Protection* if the impressed current Cathodic Protection system is not operating in accordance with the manufacturer's specifications and the requirements of these Regulations. This includes but is not limited to failure to register a negative voltage of at least 0.85 volts for each UST. An individual certified by a nationally recognized industry standard setting organization shall determine the cause of the failure and make the necessary Repairs

within sixty (60) days of the discovery of the failure of the impressed current corrosion protection system.”

“[...] Owners and Operators shall record all rectifier readings at least once every thirty (30) calendar days. If the monthly rectifier reading demonstrates the impressed current Cathodic Protection is not operating in accordance with the manufacturer’s specifications and the requirements of these Regulations the procedures in §2.25.3.4. shall be followed.”

3. Amount and Scope of Required Financial Responsibility.

- Daily from and including May 18, 2007 through January 10, 2008:

The UST Regulations: Part F, Section 4.01.

"Owners or operators of petroleum UST systems must demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases from the operation of petroleum underground storage tanks in at least the following per-occurrence amounts: (A.) For owners or operators of petroleum UST systems that are located at petroleum marketing facilities, or that handle an average of more than 10,000 gallons of petroleum per month based on annual throughput for the previous calendar year; \$1 million., (B.) For all other owners or operators of petroleum UST systems; \$500,000."

- Daily from and including January 11, 2008 through the date of this Order:

The UST Regulations: Part F, Section 1.3.1., 1.3.2.

“Per-Occurrence Financial Responsibility Amounts

Owners and Operators of UST Systems shall demonstrate financial responsibility for taking corrective action and for compensating third parties for Bodily Injury and Property Damage caused by Accidental Releases from the operation of UST Systems in at least the following per-occurrence amounts:

For Owners or Operators of UST Systems that are located at Petroleum Marketing Facilities, or that handle an average of more than 10,000 gallons of Regulated Substance per month based on annual throughput for the previous calendar year, the demonstration of financial responsibility for corrective action and third-party liability shall be a minimum of one million dollars (\$1,000,000) per Occurrence.”

“[...] For Owners and Operators of UST Systems not described in §1.3.1.1.1. or §1.3.1.1.2. of this Part, the demonstration of financial responsibility for corrective action and third-party liability shall be a minimum of five hundred thousand dollars (\$500,000) per Occurrence.”

“Annual Aggregate Financial Responsibility Amounts

Owners and Operators of UST Systems shall demonstrate financial responsibility for taking corrective action and for compensating third parties for Bodily Injury and Property

Damage caused by Accidental Releases from the operation of UST Systems in at least the following annual aggregate amounts:

For Owners and Operators of 1 to 100 UST Systems the demonstration of financial responsibility for corrective action and third-party liability shall be a minimum of one million dollars (\$1,000,000) annual aggregate.

For Owners and Operators of 101 or more UST Systems the demonstration of financial responsibility for corrective action and third-party liability shall be a minimum of two million dollars (\$2,000,000) annual aggregate.”

4. Vapor Shear Valve Standards

The VR Regulations: Section 36.3.1.3.

“On and after May 1, 2003, install and maintain a vapor shear valve that functions similarly to the product shear valve.”

5. Permits and Applications, Installation and Testing Results

The VR Regulations: Sections 36.5.1.1. and 36.5.1.2.

“Copies of the Stage I and Stage II System permit applications and the current Construction/Operation Permits shall be permanently maintained.”

“The test results shall be dated, and shall note the installing and test companies’ names, addresses, and phone numbers. These records shall be kept on file until they are replaced with new test results verifying proper functioning of the Stage II system.”

CONCLUSION

Based on the foregoing findings and provisions, the Department has concluded that Respondents have violated the UST Regulations and the VR Regulations, as follows:

1. At the time of the Department’s inspection on April 4, 2007, Respondents could not or would not provide the specified and requisite inventory control records for DNREC’s review. Records were subsequently received, but were not maintained as required by the UST Regulations. Therefore, Respondents were in daily violation of Part A, Section 8.02. F.1.) a.), of the UST Regulations daily from and including September 1, 2007 through January 10, 2008 and was in daily violation of Part B, Section 2.9.3. daily from and including January 11, 2008 through the date of this Order. Respondents failed to maintain inventory control records as required under the UST Regulations, for each of the seven UST Systems at the Facility.
2. Respondents committed daily violations of the UST Regulations because, at the time of the Department’s inspection, no cathodic protection (CP) testing results or rectifier readings were available. Respondents have since submitted failing CP testing results, and internal lining inspection results for the three (3) 20,000 gallon UST Systems. However, replacement of the metal product lines for the (3) three 20,000 gallon UST Systems have not been accomplished.

Respondents are in violation of Part B, Section 1.06 B.(1.), (2.) and (3.) of the UST Regulations daily from and including May 18, 2007 to January 10, 2008 and in violation of Part B, Section 2.25.3.2. daily from and including January 11, 2008 and continuing through the date of this Order by not having proper CP, CP testing results or rectifier readings available, for each of the seven USTs at the Facility. Four (4) 4,000 gallon UST Systems still do not have functioning CP based on the information available to the Department.

3. Respondents committed daily violations of the UST Regulations because, at the time of the Department's inspection, no proof of financial responsibility was available. **At this time, Respondents have not removed the four (4) 4,000 gallon UST Systems that do not have financial responsibility in place.** Respondents are in violation of Part F, Section 4.01. of the UST Regulations daily from and including May 18, 2007 to January 10, 2008 and in violation of Part F, Section 1.3.1. and 1.3.2. daily from and including January 11, 2008 continuing through the date of this Order, for each of the seven (7) UST Systems at the Facility.
4. Respondents committed daily violations of the VR Regulations because, at the time of the Department's inspection, no proof of replacement or repair to the vapor shear valve, or proper installation of the vapor shear valve under the dispensers has been submitted to the Department. Respondents are in violation of Section 36.3.1.3. of the VR Regulations daily from May 18, 2007 continuing through the date of this Order, for each of the four (4) 4000 gallon UST Systems at the Facility.
5. Respondents committed daily violations of the VR Regulations because, at the time of the Department's inspection, copies of the Stage I and Stage II Vapor Recovery permits were not available and, to date, have not been submitted to the Department. As well, copies of the latest vapor recovery test results have not been submitted to the Department. Respondents are in violation of Sections 36.5.1.1. and 36.5.1.2. of the VR Regulations from May 18, 2007 continuing through the date of this Order, for the three (3) 4,000 gallon gasoline UST Systems at the Facility.

ASSESSMENT OF PENALTY

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 \$66,550.00 for the violations identified in this Assessment and Order.

In addition to the penalty assessment, Respondents are hereby assessed estimated costs in the amount of \$12,468.75 pursuant to 7 *Del. C.* §6006(c). These costs were incurred by the Department in the investigation of the noted violations. Respondents shall submit two (2) checks to the Department in the amounts of \$66,550.00 and \$12,468.75 within thirty (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: David L. Ormond, Jr., Deputy Attorney General, Department of Justice, 102 W. Water Street, Dover, DE 19904.

PUBLIC HEARING

This Order and Assessment shall become effective and final unless the Department receives from Respondents, no later than thirty (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 the Respondents' facility, including, but not limited to, the imposition of civil penalties and recovery of the Department's costs and attorney's fees pursuant to 7 Del. C. §6005(c). The Department reserves the right to do so at its discretion.

PRE-PAYMENT

Respondents may pre-pay the administrative penalty of \$66,550.00 and the Department's estimated costs in the amount of \$12,468.75 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 a final Order.

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

Date: 22 Feb 2010



Collin P. O'Mara, Secretary

- cc: Marjorie A. Crofts, Acting Director
David L. Ormond, Jr., Deputy Attorney General
Alex Rittberg, DNREC-TMB
David Brixen, DNREC-TMB
Rebecca Keyser, DNREC-TMB
Jennifer Bothell, Enforcement Coordinator
Patricia Finn, DNREC-TMB

WAIVER OF STATUTORY RIGHT TO A HEARING

Respondents hereby waive their right to a hearing and their opportunity to appeal or contest this Assessment and Order and agree to the following:

Respondents will pay the administrative penalty in the amount of \$66,550.00 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 David L. Ormond, Jr., Deputy Attorney General, 102 W. Water Street, Dover, DE 19904; and

Respondents will reimburse the Department in the amount of \$12,468.75 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 payable to the "State of Delaware" and be directed to David L. Ormond, Jr., Deputy Attorney General, 102 W. Water Street, Dover, DE 19904.

Respondents:

Howard C. Wilkins

Date: _____

By: _____

**Howard C. Wilkins, President
Wilkins Fuel Co.**

Date: _____

By: _____

Title: _____