



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

Office of the  
Secretary

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

**Order No. 2018-WH-0010**

**CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

**PERSONALLY SERVED BY A  
DELAWARE NATURAL RESOURCES  
POLICE OFFICER**

**Issued To:**

Mr. Syed Zaidi  
Owner and Operator  
K and Z Inc.  
1401 Northeast Blvd.  
Wilmington, DE 19802

The Secretary of the Department of Natural Resources and Environmental Control ("Department") has found Syed Zaidi /Northeast Gulf (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 August 4, 2016. During the inspection, the Department recorded seventeen (17) violations and noted that Respondent was doing nothing to maintain the UST System and Facility as a whole.

Evidence of suspected vapor and/or product release was found in each of the USTs onsite. As a result of the suspected release, the Department issued a *Field Notice of Prohibition of Product Delivery* to the Respondent on August 4, 2016. Respondent could not produce any of the required records of daily and monthly inspections, annual function tests for the UST system, and records to show that the UST System was in compliance since the last inspection. The UST system was in a state of complete disrepair and out of compliance. Respondent contacted his contractors to investigate the releases and test the UST system for tightness and compliance. Once all necessary testing and investigation was completed, the Department removed the *Field Notice of Prohibition of Product Delivery* on August 12, 2016.

As a result of that inspection, the Department issued a *Request for Information (RFI)* letter to Respondent on August 11, 2016 which specifically outlined seventeen (17) alleged violations that were discovered. Respondent did not submit any documentation to remedy the seventeen (17) violations.

The Department issued a Notice of Intent to Tag – Non-Imminent Threat Exists letter to Respondent on September 1, 2016. Respondent was required to appear for an Expedited Evidentiary Hearing and/or submit the required documentation for the seventeen (17) violations to the Department by October 3, 2016. Respondent did not appear for the hearing and the required documentation was not submitted. Subsequently, on October 4, 2016, the Department issued an Expedited Evidentiary Hearing Ruling (EEH) letter classifying the UST system as ineligible to receive product deliveries. The EEH Ruling letter was hand delivered on October 5, 2016. The Department also issued a Delivery Prohibition (Red Tag) for the UST system on October 6, 2016.

Only after Respondent was issued a Delivery Prohibition for a second time on October 6, 2016, did Respondent reach out to the Department to try and correct the numerous violations at the facility. Respondent met with DNREC-TMS staff on October 27, 2016 to discuss the violations and determine a path forward. Respondent corrected eleven (11) of the seventeen (17) violations and acknowledged that the remaining six (6) violations could not be corrected since five (5) of them were violations of requirements to keep contemporaneous records plus a previous year's missed annual testing event. The Department subsequently removed the Red Tags from the UST system on October 31, 2016. The Department informed Respondent that the remaining six (6) violations would be addressed under a Notice of Violation.

On December 14, 2016, the Department issued a Notice of Violation letter to Respondent for the remaining six (6) violations. The NOV letter was received on December 16, 2016.

Currently there are six (6) outstanding violations that Respondent has not addressed:

1. Failure to produce tank release detection records as described in the UST Regulations;
2. Failure to produce annual ATG release detection test results;
3. Failure to produce annual line leak detection test results;
4. Failure to produce annual tank tightness test results;
5. Failure to produce annual spill prevention test results;
6. Failure to produce annual vapor recovery test results

### **FINDINGS OF FACT AND VIOLATION INCLUDING REGULATORY REQUIREMENTS**

As noted in the December 14, 2016 NOV, Respondent was 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:

#### **1. The UST Regulations: Part B, Sec.2.9.1, General Requirements for Tank Release Detection**

2.9.1.1: Owners and Operators of UST Systems shall provide a method, or combination of methods of Release Detection on all UST Systems that:

2.9.1.1.1: Can detect a Release from any portion of the Tank and the connected underground Piping that routinely contain Regulated Substance; and

2.9.1.1.2: Is installed, calibrated, operated, and maintained in accordance with the manufacturer's specifications, including routine maintenance and service checks for operability or running condition; and

2.9.1.1.3: Meets the performance standards for Release Detection in this section, with any performance claims and their manner of determination described in writing by the equipment manufacturer or installer. The method shall be capable of detecting the leak rate or quantity specified for Precision Testing, automatic tank gauging, Line leak detectors, and Line tightness testing methods specified in these Regulations with a probability of detection of at least 0.95 and a probability of false alarm no greater than 0.05; and

2.9.1.1.4: Is operational prior to Regulated Substance being placed in the UST System.

2.9.1.2: Owners and Operators shall implement the Indicated Release investigation procedure in Part E of these Regulations if the Release Detection equipment or method shows indication of a Release.

2.9.1.3: Failure by Owners and Operators to maintain records of required Release Detection monitoring and inspection may be cause for the Department to require Tank tightness test(s) and inspection(s) of the UST Facility and a

Release investigation in accordance with Part E of these Regulations at the expense of Owners and Operators.

**Observation:**

At the time of the Department's compliance inspection, Tank Release Detection records were not available for review. Currently, Tank Release Detection records from 2014, 2015 and 2016 (excluding April, May and August for Premium UST) remain outstanding.

**2. 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 values 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 the 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 were not available for review. An ATG test from 8/25/16 was submitted. Currently, the ATG test from 2015 remains outstanding.

**3. The UST Regulations: Part B, Sec.2.20.1, Line Leak Detector Requirements**

2.20.1.1: Underground Piping that conveys Regulated Substances under pressure shall be equipped with an automatic Line leak detector.

2.20.1.2: The automatic Line leak detector shall alert Owners and Operators to the presence of a Release by restricting or shutting off the flow of the Regulated Substance through the Piping or triggering an audible or visual alarm.

2.20.1.3: Mechanical and Electronic automatic Line leak detectors shall be capable of reacting to leaks of three (3) gallons per hour at ten (10) pounds per square inch line pressure within one (1) hour.

2.20.1.4: Owners and Operators shall conduct an annual test of the operation of the automatic Line leak detector while installed in the UST System and under normal operating conditions. All Mechanical and Electronic automatic Line leak detectors shall pass a function test at least once every twelve (12) months at three (3) gallons per hour (gph) at ten (10) pounds per square inch line pressure within one (1) hour.

**Observation:**

At the time of the Department's compliance inspection, the annual Line Leak Detector functionality tests results were not available for review. Line Leak Detector Tests from 8/4/16 conducted by Mid Atlantic Petroleum Services were submitted. Currently, the Line Leak Detector Tests from 2015 remain outstanding.

**4. The UST Regulations: Part B, Sec.2.20.2, Tightness Test Requirements**

2.20.2.1: Owners and Operators shall conduct an annual tightness test of the entire pressurized underground Piping system, including primary and secondary Piping, in accordance with NFPA 329, Recommended Practice for Handling Releases of Flammable and Combustible Liquids and Gases.

2.20.2.2: Owners and Operators of UST Systems with underground pressurized Piping systems shall use a Piping tightness test method designed to detect a Release from any portion of the underground Piping system that routinely contains Regulated Substances.

2.20.2.3: Owners and Operators of UST Systems with underground pressurized Piping systems constructed of double wall design may utilize interstitial monitoring systems to comply with the annual piping tightness test requirements in §2.20.2.1 of this Part if the following requirements are met:

2.20.2.3.1: All interstitial monitoring devices shall be designed, constructed, installed and maintained to continuously detect a Release from any portion of the Piping that routinely contains Regulated Substance; and

2.20.2.3.2: At a minimum of once every thirty (30) calendar days, Owners and Operators shall provide proof via the interstitial monitoring equipment record that the interstitial monitoring device is functioning in accordance with the manufacturer's specifications; and

2.20.2.3.3: Owners and Operators shall maintain records of the interstitial Release Detection records for the life of the UST System; and

2.20.2.3.4: All sump and interstitial sensors shall comply with the testing and monitoring

requirements of §2.28. of this Part; and

2.20.2.3.5: All Containment Sumps shall comply with the testing and monitoring requirements of §2.26. of this Part.

**Observation:**

At the time of the Department's compliance inspection, the Line Tightness Tests for the UST piping were not available for review. Line Tightness Tests from 8/4/16 conducted by Mid Atlantic Petroleum Services, Inc. were submitted. Currently, the Line Tightness Tests form 2015 remain outstanding.

**5. The UST Regulations: Part B, Sec.2.22.6, Spill Prevention Requirements for UST Systems Storing Regulated Substance excluding Consumptive Use Heating Fuel or Hazardous Substance**

2.22.6: Owners and Operators shall test spill containment devices once every twelve (12) months for tightness, or in accordance with the manufacturer's specifications, or when deemed necessary by the Department to determine if a threat to human health, safety or the environment exists.

**Observation:**

At the time of the Department's compliance inspection, spill containment device testing results were not available. Spill Containment Tests form 8/4/16 conducted by Mid Atlantic Petroleum Services, Inc. were submitted. Currently, Spill Containment Tests from 2015 remain outstanding.

**6. The VR Regulations: 1124: Sec.36.6, Testing Requirements**

36.6.1.1: The following tests shall be performed and passed within 10 days of installation of the Stage II vapor recovery system:

36.6.1.1.1: A Pressure Decay/Leak Test, conducted in accordance with Test Procedure TP-96-1 of the San Diego Protocol, Revision III dated 3-1-96. This test procedure is hereby incorporated by reference.

36.6.1.1.2: A Dynamic Backpressure and Liquid Blockage Test, conducted in accordance with the procedures in "Recommended Practices for Installation and Testing of Vapor Recovery Systems at Vehicle Fueling Sites, PEI/RP300-97", Chapter 8. This test procedure is hereby incorporated by reference.

36.6.1.1.3: For assist systems, an Air to Liquid Volume Ratio Test conducted in accordance with the procedures in "Recommended Practices for Installation and Testing of Vapor Recovery Systems at Vehicle Fueling Sites, PEI/RP300-97", Chapter 9. This test procedure is hereby incorporated by reference.

36.6.1.1.4: A Vapor Tie Test, conducted in accordance with Test Procedure TP-96-1 of

the San Diego Protocol, Revision III dated 3-1-96. This test procedure is hereby incorporated by reference.

36.6.1.2: The following tests shall be performed and passed annually for each Stage II vapor recovery system according to the test procedures stated in 36.4.1.1 of this regulation:

36.6.1.2.1: A Pressure Decay/Leak Test.

36.6.1.2.2: For Balance Systems, A Dynamic Backpressure and Liquid Blockage Test.

36.6.1.2.3: For Assist Systems, An Air to Liquid Volume Ratio Test.

36.6.1.3: Any additional testing or testings required by the Department or the manufacturer shall be carried out according to the schedule stated in any permit issued pursuant to 7 DE Admin. Code 1102.

**Observation:**

At the time of the Department's compliance inspection, annual vapor recovery test results were not available for review. Vapor Recovery Tests from 8/4/16 conducted by Mid Atlantic Petroleum Services, Inc. were submitted. Currently, Vapor Recovery Tests from 2015 remain outstanding.

Based on the foregoing, the Department has concluded that Syed Zaidi/Northeast Gulf has violated each of the above cited regulatory provisions.

**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 \$145,000.00 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 \$2,888.00 pursuant to 7 *Del. C.* §6005(c), which were incurred by the Department in the investigation of the noted violations.

Respondent shall submit one check to the Department in the amount of \$145,000.00 to pay the penalty and one check to the Department in the amount of \$2,888.00 to pay the estimated costs within 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 Northeast Gulf, 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 **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.* §6006, request a public hearing on the penalty Assessment and Order within **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, pursuant to 7 *Del. C.* §6008.

If no hearing is requested and no appeal is filed, the administrative penalty of \$145,000.00 and costs in the amount of \$2,888.00 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 \$145,000.00 and \$2,888.00 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: \_\_\_\_\_

2/11/18



Shawn M. Garvin, Secretary

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

**WAIVER OF STATUTORY RIGHT TO A HEARING**

**Syed Zaidi / Northeast Gulf** hereby waives its right to a hearing and its opportunity to appeal or contest this Assessment and Order and agrees to the following:

**Syed Zaidi / Northeast Gulf** will pay the administrative penalty in the amount of \$145,000.00 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 Phillips, Deputy Attorney General, 391 Lukens Drive, New Castle, Delaware 19720; and

**Syed Zaidi /Northeast Gulf** will reimburse the Department in the amount of \$ 2,888.00 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.

**Syed Zaidi**

**Northeast Gulf**

Date: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_