

ENVIRONMENTAL APPEALS BOARD

APPEAL 2018-07

CHRONOLOGY

Environmental Appeals Board

APPEAL 2018-07

INDEX

<u>DATE</u>	<u>EVENT</u>	<u>EXHIBIT</u>
November 25, 2018	Secretary's Order to Upesh Vyas/Sitaram, Inc., T/A Pep Up #8	1
July 26, 2017	DNREC's Inspection Report for Pep Up #8	2
August 10, 2017	DNREC's Request for Information letter to Upesh Vyas/Sitaram Inc., T/A Pep Up #8	3
December 22, 2017	DNREC's Notice of Intent to Tag letter to Upesh Vyas/Sitaram Inc., T/A Pep Up #8	4
January 25, 2018	DNREC's Expedited Evidentiary Hearing Ruling letter to Upesh Vyas/Sitaram Inc., T/A Pep Up #8	5
April 9, 2018	DNREC's Notice of Violation letter to Upesh Vyas/ Sitaram Inc., T/A Pep Up #8	6
December 17, 2018	Upesh Vyas/Sitaram Inc., T/A Pep Up #8 Statement of Appeal of Secretary's Order No. 2018-WH-0064	7

EXHIBIT 1



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: _____

EXHIBIT 2

INSPECTION REPORT

Facility : Pep Up #8 , 24858 John J Williams Highway , Millsboro , DE

Inspection Date: 07/26/2017

Facility Name: Pep Up #8	Address: 24858 John J Williams Highway
Facility ID: 5-000160	Millsboro , DE
Owner Name: Sitaram, Inc T/A Pep-Up	
Owner Address: PO Box 510, Millsboro, DE 19966 US	Owner Phone: (302) 344-4475
Inspection Date: 07/26/2017	Inspector: JFS

Comment:

Tank - 7 : Gasoline - Regular (8000)

Question	Response	Comment
Tank-Sump		
Are containment sumps installed?	YES	
Tank Sump empty?	YES	
Contents - Water?	NO	
Contents - Product?	NO	
Contents - Debris?	NO	
Contents - Other?	NO	
Does tank sump have sensor?	NO	
Is sump sensor properly installed?	N/A	
Does tank have LLD if required?	YES	
Is LLD Electronic or mechanical?	MECH	
Are swing joints installed?	NO	

Tank-Fill/Spill		
Fill line size labeled?	NO	
Fill line product labeled?	NO	
Has overfill protection?	NO	
Is overfill protection compatible with delivery type?	N/A	
Is spill bucket installed?	YES	
Does spill bucket have sensor?	NO	

INSPECTION REPORT

Facility : Pep Up #8 , 24858 John J Williams Highway , Millsboro , DE

Inspection Date: 07/26/2017

Tank - 7 : Gasoline - Regular (8000)

Question	Response	Comment
Is spill bucket in good condition?	YES	
Is spill bucket empty?	NO	

Tank-Corrosion Protection		
Corrosion protection required?	YES	
Corrosion Protection installed?	YES	
If CP installed, functioning properly?	UNK	
Are Flex joints isolated or Corrosion Protected?	YES	
Is there a CP test station?	NO	

Tank-Vapor Recovery (Stage 1)		
Does Tank have Stage 1 Vapor Recovery?	YES	
Stage I Dry Break installed?	YES	
Does it have VR Spill Containment?	YES	
Does it have VR Swivel?	NO	
Is dry break tight?	YES	
VR manhole cover painted orange?	NO	

Tank - 8 : Gasoline- Midgrade (8000)

Question	Response	Comment
Tank-Sump		
Are containment sumps installed?	YES	
Tank Sump empty?	NO	
Contents - Water?	YES	
Contents - Product?	NO	
Contents - Debris?	NO	
Contents - Other?	NO	
Does tank sump have sensor?	NO	

INSPECTION REPORT

Facility : Pep Up #8 , 24858 John J Williams Highway , Millsboro , DE

Inspection Date: 07/26/2017

Tank - 8 : Gasoline- Midgrade (8000)

Question	Response	Comment
Is sump sensor properly installed?	N/A	
Does tank have LLD if required?	YES	
Is LLD Electronic or mechanical?	MECH	
Are swing joints installed?	NO	

Tank-Fill/Spill		
Fill line size labeled?	NO	
Fill line product labeled?	NO	
Has overfill protection?	NO	
Is overfill protection compatible with delivery type?	N/A	
Is spill bucket installed?	YES	
Does spill bucket have sensor?	NO	
Is spill bucket in good condition?	YES	
Is spill bucket empty?	NO	

Tank-Corrosion Protection		
Corrosion protection required?	YES	
Corrosion Protection installed?	YES	
If CP installed, functioning properly?	UNK	
Are Flex joints isolated or Corrosion Protected?	YES	
Is there a CP test station?	NO	

Tank-Vapor Recovery (Stage 1)		
Does Tank have Stage 1 Vapor Recovery?	YES	
Stage I Dry Break installed?	YES	
Does it have VR Spill Containment?	YES	
Does it have VR Swivel?	NO	
Is dry break tight?	YES	
VR manhole cover painted orange?	NO	

INSPECTION REPORT

Facility : Pep Up #8 , 24858 John J Williams Highway , Millsboro , DE

Inspection Date: 07/26/2017

Tank - 9 : Gasoline- Premium (8000)

Question	Response	Comment
Tank-Sump		
Are containment sumps installed?	YES	
Tank Sump empty?	NO	
Contents - Water?	YES	
Contents - Product?	NO	
Contents - Debris?	NO	
Contents - Other?	NO	
Does tank sump have sensor?	NO	
Is sump sensor properly installed?	N/A	
Does tank have LLD if required?	YES	
Is LLD Electronic or mechanical?	MECH	
Are swing joints installed?	NO	

Tank-Fill/Spill		
Fill line size labeled?	NO	
Fill line product labeled?	NO	
Has overfill protection?	NO	
Is overfill protection compatible with delivery type?	N/A	
Is spill bucket installed?	YES	
Does spill bucket have sensor?	NO	
Is spill bucket in good condition?	YES	
Is spill bucket empty?	YES	

Tank-Corrosion Protection		
Corrosion protection required?	YES	
Corrosion Protection installed?	YES	
If CP installed, functioning properly?	UNK	
Are Flex joints isolated or Corrosion Protected?	YES	

INSPECTION REPORT

Facility : Pep Up #8 , 24858 John J Williams Highway , Millsboro , DE

Inspection Date: 07/26/2017

Tank - 9 : Gasoline- Premium (8000)

Question	Response	Comment
Is there a CP test station?	NO	

Tank-Vapor Recovery (Stage 1)		
Does Tank have Stage 1 Vapor Recovery?	YES	
Stage I Dry Break installed?	YES	
Does it have VR Spill Containment?	YES	
Does it have VR Swivel?	NO	
Is dry break tight?	YES	
VR manhole cover painted orange?	NO	

Tank - 10 : Multi Compartment

Question	Response	Comment
Tank-Sump		
Are containment sumps installed?	YES	
Tank Sump empty?	NO	
Contents - Water?	YES	
Contents - Product?	NO	
Contents - Debris?	NO	
Contents - Other?	NO	
Does tank sump have sensor?	NO	
Is sump sensor properly installed?	N/A	
Does tank have LLD if required?	YES	
Is LLD Electronic or mechanical?	MECH	
Are swing joints installed?	NO	

Tank-Fill/Spill		
Fill line size labeled?	YES	
Fill line product labeled?	NO	

INSPECTION REPORT

Facility : Pep Up #8 , 24858 John J Williams Highway , Millsboro , DE

Inspection Date: 07/26/2017

Tank - 10 : Multi Compartment

Question	Response	Comment
Has overfill protection?	NO	
Is overfill protection compatible with delivery type?	N/A	
Is spill bucket installed?	YES	
Does spill bucket have sensor?	NO	
Is spill bucket in good condition?	YES	
Is spill bucket empty?	NO	

Tank-Corrosion Protection		
Corrosion protection required?	YES	
Corrosion Protection installed?	YES	
If CP installed, functioning properly?	UNK	
Are Flex joints isolated or Corrosion Protected?	YES	
Is there a CP test station?	NO	

Tank-Vapor Recovery (Stage 1)		
Does Tank have Stage 1 Vapor Recovery?	NO	
Stage I Dry Break installed?	N/A	
Does it have VR Spill Containment?	N/A	
Does it have VR Swivel?	N/A	
Is dry break tight?	N/A	
VR manhole cover painted orange?	N/A	

Dispensers

Question	Response	Comment
Vapor Recovery		
Is Stage I VR required?	YES	
Is Stage I VR permit on site?	NO	

INSPECTION REPORT

Facility : Pep Up #8 , 24858 John J Williams Highway , Millsboro , DE

Inspection Date: 07/26/2017

Dispensers

Question	Response	Comment
Is Stage II VR required?	YES	
Stage II VR type?	VA	
Is Stage II VR permit on site?	NO	
All Stage II VR equipment in good condition?	YES	
All Boots in good condition?	YES	
All Vapor shear valves properly installed?	YES	
All Vapor shear valves in good condition?	YES	
VR operating instructions and 800# posted?	NO	
Vapor Recovery Annual Testing in Compliance?	NO	
Vapor Recovery Training Certificate on site?	NO	
Daily VR Inspection checklist complete?	NO	
VR maintenance logs available and complete?	NO	
Are vents manifolded above ground?	YES	
Are vents in good condition?	YES	
P/V valves where required ?	YES	
Set at 3 and 8 where required ?	YES	

Dispenser-Hanging Hardware		
Are dispensers present?	YES	
All Break-aways in good condition?	YES	
All Product Hoses in good condition?	NO	

Dispenser-Sump		
Are dispensers present?	YES	
Are product shear valves properly installed?	YES	
All product shear valves in good condition?	YES	
Do any dispensers have contained sump?	YES	
Do any dispenser sumps have sensors?	NO	
Are all dispenser sump sensors installed properly?	N/A	
Are Dispenser Sumps empty?	NO	

INSPECTION REPORT

Facility : Pep Up #8 , 24858 John J Williams Highway , Millsboro , DE

Inspection Date: 07/26/2017

Dispensers

Question	Response	Comment
Contents - Water	YES	
Contents - Product	NO	
Contents - Debris	NO	
Contents - Other	NO	
Rubber hose under any dispenser ?	NO	
Are Flex joints isolated or Corrosion Protected?	YES	

Record Keeping

Question	Response	Comment
Record Keeping-Release Detection		
Does tank have ATG?	YES	
ATG Functionality/ Operability Test passed every 12 months?	NO	
Tank Release Detection in Compliance?	NO	
Pressurized Piping Release Detection in Compliance?	NO	
Is suction piping "safe" and not subject to release detection?	N/A	
Suction Piping Release Detection in Compliance?	N/A	
Is LLD annual testing in compliance?	NO	

Record Keeping-Corrosion Protection/Tests		
Are Testing Records stored on site?	YES	
Are all sumps in compliance for tightness testing?	YES	
Are all spill buckets in compliance for tightness testing?	NO	
Do any tanks have linings?	NO	
If yes, are Lining Internal Inspection records on site?	N/A	
Is Internal Lining in compliance?	N/A	
Do any tanks or pipes have Cathodic Protection?	YES	
SA CP Annual Survey records on site?	NO	
SA CP Annual Survey passed?	UNK	

INSPECTION REPORT

Facility : Pep Up #8 , 24858 John J Williams Highway , Millsboro , DE

Inspection Date: 07/26/2017

Record Keeping

Question	Response	Comment
IC CP Annual Survey records on site?	N/A	
IC CP Annual Survey passed?	N/A	
ICCP 30-day Rectifier Log complete?	N/A	

Record Keeping-Inventory		
Is Inventory required?	YES	
Are inventory records maintained?	NO	
Daily inventory control correctly done?	UNK	
If Daily Inventory logged, Water Check (D/W/N)?	UNK	
Water Check frequency correct?	UNK	
Monthly Reconciliation correctly done?	UNK	

Record Keeping-Financial Responsibility/Registration		
Registration Certification posted on site?	NO	
30-day walk around inspection checklist?	NO	
Is FR required?	YES	
Is Financial Responsibility in compliance?	NO	
A/B Operator Training Certificate available?	NO	
C Operator Training List available?	NO	

EXHIBIT 3

STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL
DIVISION OF WASTE AND
HAZARDOUS SUBSTANCES



TANK MANAGEMENT SECTION
391 LUKENS DRIVE
NEW CASTLE, DE 19720
TELEPHONE: (302) 395-2500
FAX: (302) 395-2555
WWW.DNREC.DELAWARE.GOV/TANKS

August 10, 2017

CERTIFIED MAIL **FILE COPY**
RETURN RECEIPT REQUESTED
7016 3010 0001-1115 5871

Upesh Vyas
Sitaram, Inc T/A Pep-Up
PO Box 510
Millsboro, DE 19966

SCANNED
8/24/17

FACILITY: Pep Up #8
24858 John J Williams Highway
Millsboro, DE 19966

Facility ID#: 5-000160
File Code: 02

SUBJECT: Request for Information

TANKS: One (1) 8,000 gallon Gasoline – Regular UST
One (1) 8,000 gallon Gasoline – Midgrade UST
One (1) 8,000 gallon Gasoline – Premium UST
One (1) 2,000 gallon Diesel UST
One (1) 700 gallon Kerosene UST

Dear Mr. Vyas:

The Department of Natural Resources and Environmental Control (the Department), Tank Management Section (TMS) conducted a compliance inspection of the underground storage tank (UST) system at the above-referenced facility on July 26, 2017.

This facility is required to comply with 7 Del. C. Chapter 60, 7 Del. C. Chapter 74, DE Admin. Code 1351, State of Delaware *Regulations Governing Underground Storage Tank Systems* (the UST Regulations), DE Admin. Code 1124, State of Delaware *Regulations Governing the Control of Volatile Organic Compound Emissions* (the VR Regulations), and DE Admin Code 1102, *Permits*.

As a result of the compliance inspection, the following information must be submitted to determine if the above-referenced facility is in compliance with 7 Del. C. Ch. 60, 7 Del. C. Ch. 74, the UST Regulations, the VR Regulations, and *Permits*.

1. The UST Regulations: Part A, Sec.4.3.1, Registration Certificate

The Department shall issue a validated Registration Certificate for each UST Facility upon initial registration or notification of Change In Service or change in ownership. The Owner and Operator of the UST Facility must display a current and valid Registration Certificate on the premises of the UST Facility at all times. The Registration Certificate shall be made available for inspection upon request by any authorized local, state or federal representative.

Delaware's good nature depends on you!

Observation:

At the time of the Department's compliance inspection, the registration certificate was not available for inspection.

Information Requested:

Within thirty (30) days of receipt of this letter, submit proof that the registration certificate is posted at the facility.

2. The UST Regulations: Part A, Sec.10.1.7, Requirements for Class A, Class B, and Class C Operators

10.1.7: A Facility shall not operate after August 8, 2012 unless a Class A, Class B, and Class C has been designated for each UST System and Class A & Class B Operators have successfully completed a Department approved training program and Class C Operators have been trained in accordance with §10.1.12. of this Part.

Observation:

At the time of the Department's compliance inspection, proof of operator training for Class A, B, and C operators was not available.

Information Requested:

Within thirty (30) days of receipt of this letter, submit proof that Department approved training has been completed by the Class A and Class B operators for this facility.

3. The UST Regulations: Part B, Sec.2.1, General Requirements for UST Systems Storing Regulated Substance excluding Consumptive Use Heating Fuel or Hazardous Substance

2.1.4: Dispenser hoses shall be a maximum of eighteen (18) feet in length unless otherwise approved by the Department. When not in use, hoses shall be reeled, racked or otherwise protected from damage.

Observation:

At the time of the Department's compliance inspection, the following hoses were found to be either too long for the dispenser or damaged and need of replacement:

- Dispenser #1 Gasoline – Regular Whip Hose was dry rotted and damaged
- Dispenser #3 Gasoline – Regular Hose was damaged
- Dispenser #4 Gasoline – Regular Hose was damaged
- Dispenser #4 Gasoline – Premium Hose was damaged
- Dispenser #4 Gasoline – Midgrade Hose was too long and damaged
- Dispenser #6 Gasoline – Regular Hose was damaged
- Dispenser #6 Gasoline – Premium Hose was damaged
- Dispenser #6 Gasoline – Midgrade Hose was damaged
- Dispenser #6 Diesel – Diesel Hose was too long and damaged

- Dispenser #7 Gasoline – Regular Hose was damaged
- Dispenser #7 Gasoline – Premium Hose was damaged
- Dispenser #7 Gasoline – Midgrade Hose was damaged
- Dispenser #8 Gasoline – Regular Whip Hose was dry rotted and damaged

Information Requested:

Within thirty (30) days of receipt of this letter, submit proof that the thirteen above mentioned dispenser hoses have been replaced.

4. 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.

Information Requested:

Within thirty (30) days of receipt of this letter, please submit tank release detection records from the previous thirty-six (36) months for each of the five (5) USTs at the facility

5. The UST Regulations: Part B, Sec.2.9.3, Inventory Control Requirements

2.9.3.1: Inventory control procedures shall meet the following requirements:

2.9.3.1.1: 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 every seven (7) calendar days, and shall include as a minimum:

2.9.3.1.1.1: Description and amount of Regulated Substance in the Tank measured in inches to the nearest one-eighth (1/8") of an inch. The equipment used shall be capable of measuring the level of Regulated Substance over the full range of the Tank's height to the nearest one eighth (1/8") of an inch. These measurements shall be converted from inches to gallons and these measurements and conversions shall be performed daily; and

2.9.3.1.1.2: Inputs and outputs of Regulated Substance in gallons recorded daily; and

2.9.3.1.1.3: All deliveries and measurements shall be made through a drop tube that extends to within 5.9 inches of the Tank bottom; and

2.9.3.1.1.4: Regulated Substance dispensing equipment is metered and recorded within the local standards for meter calibration or an accuracy of six (6) cubic inches for every five (5) gallons of substance withdrawn; and

2.9.3.1.1.5: Weekly assessment of the amount of water in UST Systems storing non-ethanol blended Regulated Substances excluding Consumptive Use Heating Fuel or Hazardous Substance or other UST Systems with prior Department approval. The measurement of the water level in the bottom of the Tank shall be made to the nearest one eighth (1/8") of an inch. If the measurement is two inches or more of water, the water shall be removed from the Tank within seven (7) days. Water shall be properly disposed in accordance with all local, state and federal requirements; and

2.9.3.1.1.6: Daily assessment of the amount of water in UST Systems storing ethanol blended Regulated Substance. The measurement of water level in the bottom of the Tank shall be made to the nearest one eighth (1/8") of an inch.

2.9.3.1.1.7: For UST Systems storing ethanol blended Regulated Substance with a storage capacity of eight thousand (8000) gallons or less, if the measurement is one (1) inch or more of water, the water shall be removed from the Tank within seven (7) days. Water shall be properly disposed in accordance with all local, state and federal requirements.

2.9.3.1.1.8: For UST Systems storing ethanol blended Regulated Substance with a storage capacity greater than eight thousand (8000) gallons, if the measurement is two (2) inches or more of water, the water shall be removed from the Tank within seven (7) days. Water shall be properly disposed in accordance with local, state and federal requirements.

2.9.3.1.1.9: 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:

2.9.3.1.1.9.1: Losses or gains from each day's inventory shall be reconciled at the end of each

calendar month; and

2.9.3.1.1.9.2: For any day in which there is a loss of five percent or more of the calculated daily inventory in gallons, or for any month in which there is a significant loss or gain of Regulated Substance that meets or exceeds one percent plus one hundred and thirty (130) gallons of the total monthly throughput, or any month in which there is an unexplainable consistent negative trend, the Release investigation procedure in Part E of these Regulations shall be followed; and

2.9.3.1.1.9.3: Tanks equipped with automatic inventory control systems or continuously operating automatic in tank gauging systems may use these devices to perform inventory reconciliation procedures.

2.9.3.3: All automatic systems utilized for performing inventory procedures shall comply with the preventative maintenance program requirements of §2.9.5.1.5. of this Part.

2.9.3.4: The Department may, at its discretion, approve other types of inventory control methods or a combination of methods or devices not specified in this section upon a determination that the proposed method or combination of methods is no less protective of human health, safety or the environment than the above requirements.

2.9.3.5: Failure to maintain and reconcile inventory control records may be cause for the Department to require Tank tightness test(s) and inspection(s) of the UST Facility at the expense of Owners and Operators.

Observation:

At the time of the Department's compliance inspection, monthly reconciled inventory records for the three (3) USTs were not available for review

Information Requested:

Within thirty (30) days of receipt of this letter, please submit the last thirty-six (36) months of daily inventory control records for each of the USTs at the above referenced facility, including daily inventory, daily loss and gains, daily/weekly water checks, and monthly reconciliation

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

2.9.5.1: Monthly Tank Tightness Testing using Automatic Tank Gauging (ATG) shall meet the following requirements:

2.9.5.1.1: The ATG equipment can detect a 0.2 gallon per hour leak rate from any portion of the Tank that routinely contains Regulated Substance; and

2.9.5.1.2: The ATG equipment shall be capable of producing a record of Release Detection test results; and

2.9.5.1.3: At a minimum of once every thirty (30) calendar days the ATG equipment shall perform a Release Detection test for each Tank and shall produce a record of each such test; and

2.9.5.1.4: If used for inventory control, the ATG equipment shall be able to conduct inventory control in accordance with §2.9.3. of this Part.

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.

Information Requested:

Within thirty (30) days of receipt of this letter, please submit proof that all ATG equipment has been inspected and programmed three (3) times within the last thirty-six (36) months by a certified technician.

7. 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.

Information Requested:

Within thirty (30) days of receipt of this letter, submit proof of three (3) passing annual Line Leak Detector functionality test results performed within the last thirty-six (36) months.

8. 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 release detection records for the UST piping were not available for review.

Information Requested:

Within thirty (30) days of receipt of this letter, please submit the last thirty-six (36) months of passing release detection results for the UST piping for three (3) USTs on site.

9. The UST Regulations: Part B, Sec.2.22.4, Spill Prevention Requirements for UST Systems Storing Regulated Substance excluding Consumptive Use Heating Fuel or Hazardous Substance

2.22.4: Owners and Operators shall immediately remove water, Regulated Substance or debris that accumulates in the spill containment device. Owners and Operators shall maintain spill containment devices to be capable of containing a spill of the containment design capacity at all times.

Observation:

At the time of the Department's compliance inspection, the spill containment devices on the one (1) 8,000 gallon Gasoline – Regular, one (1) 8,000 gallon Gasoline – Mid Grade, and one (1) 2,000 gallon Diesel USTs were not empty.

Information Requested:

Within thirty (30) days of receipt of this letter, submit proof that the spill containment devices have been emptied and the contents properly disposed.

10. 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.

Information Requested:

Within thirty (30) days of receipt of this letter, submit the last three (3) results of spill containment device testing conducted within the past thirty-six (36) months.

11. The UST Regulations: Part B, Sec.2.23.1, Overfill Prevention Requirements for UST Systems Storing Regulated Substance excluding Consumptive Use Heating Fuel or Hazardous Substance

2.23.1: No Person shall construct, install, use, or maintain any UST Facility without providing a reliable means of detecting and preventing an overfill.

Observation:

At the time of the Department's compliance inspection, the overfill device could not be verified on the three Gasoline USTs and the one Diesel UST.

Information Requested:

Within thirty (30) days of receipt of this letter, submit photographic or document proof of overfill device for the four above mentioned USTs.

12. The UST Regulations: Part B, Sec.2.24.1, Fill Line Protection Requirements for UST Systems Storing Regulated Substance excluding Consumptive Use Heating Fuel or Hazardous Substance

2.24.1: Owners and Operators shall clearly mark all fill lines for UST Systems to indicate the size of the Tank and the type of Regulated Substance stored. These markings shall be as follows:

2.24.1.1: A label or permanent tag at the fill connection which states the size of the UST and the specific type of Regulated Substance stored; and

2.24.1.2: A color symbol system shall be implemented according to the following requirements:

2.24.1.2.1: Fill and vapor recovery covers shall be marked consistent with API RP 1637, Using the API Color-Symbol System to Mark Equipment and Vehicles for Product Identification at Service Stations and Distribution Terminals or API IP 1542, Identification Markings for Dedicated Aviation Fuel Manufacturing and Distribution Facilities, Airport Storage and Mobile Fuel Equipment; and

2.24.1.2.2: A different color symbol shall be used for each type of Regulated Substance or grade of substance being stored at the Facility.

Observation:

At the time of the Department's compliance inspection, the five (5) above mentioned USTs were not labeled with their product. The above mentioned three (3) Gasoline USTs were also not labeled with their capacity.

Information Requested:

Within thirty (30) days of receipt of this letter, submit photographic proof that the five (5) USTs on site are labeled with their product and capacity.

13. The UST Regulations: Part B, Sec.2.25.2, Sacrificial Anode Cathodic Protection System Operation and Maintenance Requirements

2.25.2.1: Owners and Operators shall test all UST Systems equipped with Sacrificial Anode Cathodic Protection systems for proper operation using standard corrosion engineering practices and in accordance with the following requirements:

2.25.2.1.1: Testing procedures shall be done in accordance with NACE RP 0285, Corrosion Control of Underground Storage Tank Systems by Cathodic Protection, and the manufacturer's specifications, and shall include the following:

2.25.2.1.1.1: A minimum of three (3) voltage readings along the center line for UST Systems less than twenty thousand (20,000) gallons and a minimum of five (5) voltage readings along the center line for UST Systems greater than or equal to twenty thousand (20,000) gallons; and

2.25.2.1.1.2: A minimum of one (1) voltage reading for every ten (10) feet of Piping.

2.25.2.2: All Sacrificial Anode Cathodic Protection systems that protect UST System components shall be 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.

2.25.2.3: The Sacrificial Anode Cathodic Protection system shall be tested by an individual certified by a nationally recognized industry standard setting organization, and in accordance with Department standards within six (6) weeks after underground work is performed at or near a site with a Sacrificial Anode Cathodic Protection system and once every twelve (12) months thereafter.

2.25.2.4: Owners and Operators shall Repair or replace the Sacrificial Anode Cathodic Protection system in accordance with NACE RP 0285, Corrosion Control of Underground Storage Tank Systems by Cathodic Protection and the requirements of §1.6 of this Part if the Sacrificial Anode 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 corrosion protection system.

2.25.2.5: UST System Owners and Operators shall notify the Department within forty-eight (48) hours of the discovery of the failure of a Sacrificial Anode Cathodic Protection system.

2.25.2.6: The Department shall approve, either verbally or in writing, all Cathodic Protection repair or replacement plans prior to work commencing.

2.25.2.7: If the Cathodic Protection system is not operating in accordance with the manufacturer's specifications and the requirements of these Regulations, the Department shall review the Release Detection and Cathodic Protection records of the UST System prior to repair or replacement of the Cathodic Protection system. The Department may require that Owners and Operators determine the current integrity of the UST system.

2.25.2.8: The following information shall be submitted to the Department prior to Repair or replacement of the Sacrificial Anode Cathodic Protection system:

2.25.2.8.1: Results of one of the following:

2.25.2.8.1.1: The two (2) most recent Sacrificial Anode Cathodic Protection system tests including the failed test, or

2.25.2.8.1.2: The results of an internal assessment, or

2.25.2.8.1.3: The results of a third party approved integrity assessment; and

2.25.2.8.2: Records of the Tank Release Detection method from the date of the most recent passed Sacrificial Anode Cathodic Protection test.

2.25.2.9: If the tank has an internal lining, no internal assessment results will be accepted for the purpose of determining the current integrity of the UST System.

2.25.2.10: The use of alternate methods of monitoring shall be those described in NACE RP 0285, Corrosion Control of Underground Storage Tank Systems by Cathodic Protection, and shall only be used with prior written approval from the Department.

2.25.2.11: Owners and Operators shall maintain a record of the operation of Sacrificial Anode Cathodic Protection systems to demonstrate compliance with the requirements of this Section. These records shall be retained in a permanent record and shall at a minimum provide the following information:

2.25.2.11.1: The results of all tests and inspections of the Sacrificial Anode Cathodic Protection

system.

2.25.2.12: Impressed current Cathodic Protection systems shall not be utilized as a Repair, Upgrade or Replacement after the Effective Date of these Regulations.

Observation:

At the time of the Department's compliance inspection, Cathodic Protection testing results were not available for review

Information Requested:

Within thirty (30) days of receipt of this letter, submit the results of Cathodic Protection testing conducted within the past thirty-six (36) months.

14. The UST Regulations: Part B, Sec.2.32.1, Routine Inspection for UST Systems Storing Regulated Substance excluding Consumptive Use Heating Fuel or Hazardous Substance

2.32.1: Owners and Operators shall conduct an inspection at an interval no less frequently than once every twenty-eight (28) to thirty-one (31) calendar days to monitor the condition of the UST System including but not limited to all dispensers, dispenser sumps, access ports, spill containment devices, sumps and Containment Sumps. The routine inspection shall at a minimum include the following:

2.32.1.1: The removal of all dispenser covers and visual inspection for any evidence of a Release of a Regulated Substance and inspection of all fittings, couplings and filters; and

2.32.1.2: The removal of all Containment Sump and sump covers and visual inspection of the sump for any evidence of a Release of a Regulated Substance or intrusion of water; and

2.32.1.3: The inspection of all access ports to make sure that the covers, caps and adaptors are tightly sealed; and

2.32.1.4: The removal of all spill containment device covers and inspection to ensure all spill containment devices are empty and free of debris, water or Regulated Substance.

2.32.1.4: The removal of all spill containment device covers and inspection to ensure all spill containment devices are empty and free of debris, water or Regulated Substance.

Observation:

At the time of the Department's compliance inspection, routine inspection records were not available.

Information Requested:

Within thirty (30) days of receipt of this letter, submit previous thirty-six (36) months of routine inspections.

15. The UST Regulations: Part B, Sec.2.26.3., Containment Sump Requirements for UST Systems Storing Regulated Substance excluding Consumptive Use Heating Fuel or Hazardous Substance

2.26.3: Owners and Operators shall immediately upon discovery remove water, Regulated Substance or debris that accumulates in any Containment Sump.

Observation:

At the time of the Department's compliance inspection, liquid was discovered in the STP Containment Sumps of the one (1) 8,000 gallon Gasoline – Midgrade, one (1) 8,000 gallon Gasoline – Premium, and one (1) 2,000 gallon Diesel USTs. Liquid was also discovered in the containment sump of Dispenser #1/2.

Information Requested:

Within thirty (30) days of receipt of this letter, submit proof that the liquid has been removed and properly disposed of.

16. The UST Regulations: Part F, Sec.1.3, Amount and Scope of Financial Responsibility

1.3.1: Per-Occurrence Financial Responsibility Amount

1.3.1.1: 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:

1.3.1.1.1: 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.

1.3.1.1.2: For Owners and Operators of Hazardous Substance 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) per Occurrence.

1.3.1.1.3: 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.

1.3.2: Annual Aggregate Financial Responsibility Amounts

1.3.2.1: 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:

1.3.2.1.1: 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.

1.3.2.1.2: 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.

Observation:

At the time of the Department's compliance inspection, proof of financial responsibility was not available.

Information Requested:

Within thirty (30) days of receipt of this letter, submit proof of Financial Responsibility, ensuring that the proper templates are utilized.

17. The VR Regulations: 1124: Sec.36.3.1, Standards

36.3.1.4.3: A toll-free telephone number to report problems experienced with the vapor recovery system to the Department.

Observation:

At the time of the Department's compliance inspection, Dispensers #6 and #8 did not have the toll-free number to report problems affixed.

Information Requested:

At the time of the Department's compliance inspection, submit photographic proof that Dispenser #6 and #8 have the toll-free number affixed.

18. The VR Regulations: 1124: Sec.36.3.2, Standards

36.3.2: At least one representative (an owner, facility manager, or designated employee) from each facility, or facilities under common ownership, shall attend a training program on the operation and maintenance requirements of the Stage II equipment that is selected for installation or installed on their facility premises. Acceptable forms of training include equipment manufacturer's seminars, classes or workshops, or any other training approved by the Department.

36.3.2.1: Verification, such as a certificate of attendance from the training program, shall be obtained by the attendee within three months of the installation of the Stage II system. The certificate shall display the name of the person who completed the training program.

36.3.2.2: The representative that completed the training program is then responsible for informing all facility employees about conducting routine maintenance pursuant to 36.3.3 of this regulation and about the operation and maintenance of the Stage II system. The representative shall maintain proof of training for all employees who will be conducting daily inspections. If such representative leaves that facility, or the company owning several facilities, another representative shall take and successfully complete the training within three months.

36.3.2.3: Training shall include, but not be limited to, the following subjects:

36.3.2.3.1: Purposes and effects of the Stage II Vapor Control Program.

36.3.2.3.2: Equipment operation and function specific to their facility's equipment.

36.3.2.3.3: Maintenance schedules and requirements for the facility's equipment.

36.3.2.3.4: Equipment warranties.

36.3.2.3.5: Equipment manufacturer contracts (names, addresses, and phone numbers) for parts and service.

Observation:

At the time of the Department's compliance inspection, vapor recovery training certificates were not available for the individuals performing the daily vapor recovery inspections.

Information Requested:

Within thirty (30) days of receipt of this letter, submit proof of Stage II vapor recovery training certificates for operators at the above referenced facility.

19. The VR Regulations: 1124: Sec.36.6.1, 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 36.6.1.1 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.

Information Requested:

Within thirty (30) days of receipt of this letter, submit the results of vapor recovery testing conducted within the past twelve (12) months.

20. The VR Regulations: 1124: Sec.36.7.1, Recordkeeping and Reporting

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

36.7.1.2: Installation and Testing Results. 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.

36.7.1.3: Maintenance Records. Any maintenance conducted on any part of the Stage II vapor recovery system shall be logged on a maintenance record. This maintenance record shall include a general part description, the date repaired or replaced, the replacement part manufacturer's information, and a description of the problem and solution.

36.7.1.4: Inspection Records. A file shall be maintained of all daily inspection reports including records of daily self-inspections, and any third party inspection records.

36.7.1.5: Compliance Records. A file shall be maintained of all compliance records. This record shall include:

36.7.1.5.1: Any warning letters and notices of violations issued by the Department to the facility.

36.7.1.5.2: Proof of attendance and completion of a training program for each person trained in accordance with 36.3.2.2 of this regulation. This does not apply to the records of an employee who is no longer in service for at least one year.

Observation:

At the time of the Department's compliance inspection, the following records were not available:

Stage I Vapor Recovery Operating Permit & Permit Application

Stage II Vapor Recovery Operating Permit & Permit Application

Inspection Records

Maintenance Records

Information Requested:

Within thirty (30) days of receipt of this letter, please submit proof that the two (2) Vapor Recovery Operating Permits are maintained on site. Submit previous thirty-six months of Vapor Recovery Inspection and Maintenance Records.

The Department requires that the owner submit the requested information within the specified time periods. Prior to commencement of upgrade, removal, closure in place, or new installation, proper notification must be submitted to the Department pursuant to the provisions of Part A, Sections 4.1., 4.5., 4.6. and 4.7., and 4.8. of the UST Regulations. A State of Delaware-certified contractor must be used to perform any of the above-listed activities.

In accordance with *Permits*, Section 6.2, "the Department may suspend or revoke an operating permit for violation of any permit condition or violation of this or any other applicable rule or regulation of the Department or any law administered by the Department and may take such action as it deems necessary."

Upesh Vyas
August 10, 2017
Page 16

Should the owner refuse to submit the requested information and refuse to comply with Ch. 60, Ch. 74, the UST Regulations, the VR Regulations, and *Permits* within the specified time periods, the Department may find it necessary to take enforcement actions to ensure compliance. Pursuant to 7 Del. C., §7411, Sitaram, Inc T/A Pep-Up may be liable for civil penalties up to \$25,000.00 for each day that the citations continue. Additionally, the Department may prohibit delivery of petroleum products to the UST systems pursuant to Part A, Section 9. of the UST Regulations.

If you have any questions, please contact me at John.Sunkler@state.de.us or (302) 395-2500.

Sincerely,



John Francis Sunkler
Environmental Scientist
Tank Management Section

BAF:JFS\mcl
JFS2017-042

Enclosure: UST Registration Certificate


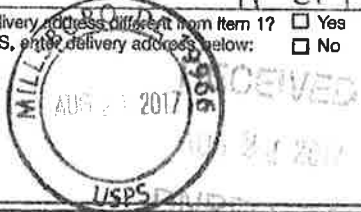
SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY												
<ul style="list-style-type: none"> ■ Complete items 1, 2, and 3. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits. 	<p>A. Signature <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name)</p> <p>C. Date of Delivery 8-21-17</p>												
<p>1. Article Addressed to:</p> <p>Upesh Vyas Sitaram, Inc T/A Pep-Up PO Box 510 Millsboro, DE 19966 JFS2017-042;5-160;02</p>  <p>9590 9402 2487 6306 0834 16</p>	<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>  <p>3. Service Type</p> <table border="0"> <tr> <td><input type="checkbox"/> Adult Signature</td> <td><input type="checkbox"/> Priority Mail Express®</td> </tr> <tr> <td><input type="checkbox"/> Adult Signature Restricted Delivery</td> <td><input type="checkbox"/> Registered Mail™</td> </tr> <tr> <td><input type="checkbox"/> Certified Mail®</td> <td><input type="checkbox"/> Registered Mail Restricted Delivery</td> </tr> <tr> <td><input type="checkbox"/> Certified Mail Restricted Delivery</td> <td><input type="checkbox"/> Return Receipt for Merchandise</td> </tr> <tr> <td><input type="checkbox"/> Collect on Delivery</td> <td><input type="checkbox"/> Signature Confirmation™</td> </tr> <tr> <td><input type="checkbox"/> Collect on Delivery Restricted Delivery</td> <td><input type="checkbox"/> Signature Confirmation Restricted Delivery</td> </tr> </table>	<input type="checkbox"/> Adult Signature	<input type="checkbox"/> Priority Mail Express®	<input type="checkbox"/> Adult Signature Restricted Delivery	<input type="checkbox"/> Registered Mail™	<input type="checkbox"/> Certified Mail®	<input type="checkbox"/> Registered Mail Restricted Delivery	<input type="checkbox"/> Certified Mail Restricted Delivery	<input type="checkbox"/> Return Receipt for Merchandise	<input type="checkbox"/> Collect on Delivery	<input type="checkbox"/> Signature Confirmation™	<input type="checkbox"/> Collect on Delivery Restricted Delivery	<input type="checkbox"/> Signature Confirmation Restricted Delivery
<input type="checkbox"/> Adult Signature	<input type="checkbox"/> Priority Mail Express®												
<input type="checkbox"/> Adult Signature Restricted Delivery	<input type="checkbox"/> Registered Mail™												
<input type="checkbox"/> Certified Mail®	<input type="checkbox"/> Registered Mail Restricted Delivery												
<input type="checkbox"/> Certified Mail Restricted Delivery	<input type="checkbox"/> Return Receipt for Merchandise												
<input type="checkbox"/> Collect on Delivery	<input type="checkbox"/> Signature Confirmation™												
<input type="checkbox"/> Collect on Delivery Restricted Delivery	<input type="checkbox"/> Signature Confirmation Restricted Delivery												
<p>2. Article Number (Transfer from service label)</p> <p>7016 3010 0001 1115 5871</p>	<p>(over 2500)</p>												

EXHIBIT 4



December 22, 2017

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
7016 3010 0001 1115 8797

Upesh Vyas
Sitaram, Inc. T/A Pep-Up
P.O. Box 510
Millsboro, DE 19966

FILE COPY

FACILITY: Pep Up #8 Facility ID#: 5-000160
24858 John J Williams Highway File Code: 23C
Millsboro, DE 19966

SUBJECT: **NOTICE OF INTENT TO TAG - NON-IMMINENT THREAT**

Dear Mr. Vyas:

Pursuant to the provisions of 7 Del.C. Chapter 60, *Environmental Control*, and Chapter 74, *Delaware Underground Storage Tank Act*, the Department of Natural Resources and Environmental Control (the Department) has been empowered to enact regulations to protect human health, safety and the environment. In furtherance of its authority, the Department has promulgated regulations applicable to the installation, operation, maintenance and closure of Underground Storage Tanks (USTs) and Underground Storage Tank Systems (UST Systems). Owners and Operators of UST Systems must comply with all applicable statutory and regulatory requirements.

As defined by 7 Del.C. §7402 and 7 DE Admin. Code 1351, *Regulations Governing Underground Storage Tank Systems* (the UST Regulations) Part A., Section 2 Definitions, Sitaram, Inc T/A Pep-Up is the Owner and Operator of the above referenced Facility.

The purpose of this **Notice of Intent to Tag - Non-Imminent Threat** letter is to advise Sitaram, Inc T/A Pep-Up that the Tank Management Section (TMS) of the Department has information that leads it to conclude that violations of the UST Regulations have occurred and continue to occur with respect to the above referenced UST Systems at the Facility. The factual background and the specific violations are detailed in the **Request for Information (RFI)** letter dated August 10, 2017. A copy of the RFI is attached. As of this date, seven (7) deficiencies remain. Specifically, Sitaram, Inc T/A Pep-Up remains in violation of paragraphs 4, 5, 6, 11, 13, 16 and 20 of the RFI. As a result of these continuing violations and pursuant to the authority provided in Part A., §9.1., *Requirements for Delivery Prohibition*, of the UST Regulations, the Department intends to classify the following USTs as ineligible to receive product deliveries.

One (1) 8,000 gallon Gasoline – Regular UST
One (1) 8,000 gallon Gasoline – Midgrade UST
One (1) 8,000 gallon Gasoline – Premium UST

One (1) 2,000 gallon Diesel UST
One (1) 700 gallon Kerosene UST

Prior to prohibiting product deliveries to the specified UST(s), the TMS will conduct an Expedited Evidentiary Hearing (Hearing) to consider this matter. The Hearing will be conducted by the head of the TMS, or his designee (Hearing Officer), and will be held on **January 22, 2018, 10:00 am** at the DNREC-TMS office, 391 Lukens Drive, New Castle, Delaware.

Upesh Vyas may appear and present evidence and provide relevant documentation at the Hearing. Subject to consideration of the evidence presented and, as soon as practicable after the Hearing, a Delivery Prohibition Tag will be affixed to the fill pipe of each of the USTs referenced above, thereby prohibiting the acceptance or delivery of product. Within five (5) business days after the Hearing, the Hearing Officer will issue his written decision. In the event the Hearing Officer determines that the Facility is ineligible to receive product deliveries, Upesh Vyas is responsible for contacting the Facility's supplier and delivery company to advise them of the delivery prohibition.

When the required actions set forth in the RFI have been accomplished to the satisfaction of the Department, and the violations which rendered the Facility ineligible to receive product deliveries no longer exists, the TMS will cause the Delivery Prohibition Tags to be removed from the USTs.

Please also be aware that in addition to prohibiting product deliveries to the Facility, the Department may pursue additional enforcement actions against Upesh Vyas/Sitaram, Inc T/A Pep-Up as a result of the violations referenced in the RFI. Such enforcement actions may include, but are not limited to, seeking the imposition of civil penalties up to \$25,000.00 for each violation for each day that such violation continues as provided for in 7 Del.C. §7411.

If you have any questions, please contact your project officer, John Francis Sunkler at (302) 395-2500 or by email at John.Sunkler@state.de.us.

Sincerely,



Alex Rittberg
Environmental Program Administrator
Tank Management Section

Enclosure

EAR:SG/jmv
SG2017-023

pc: John Francis Sunkler, DNREC-TMS
Barbara Fawcett, DNREC-TMS
Sara Golladay, DNREC-TMS

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Upesh Vyas
Sitaram, Inc. T/A Pep-Up
PO Box 510
Millsboro, DE 19966
SG2017-023; 5-160; 23C



9590 9402 2552 6306 2791 88

2. Article Number (Transfer from service label)

7016 3010 0001 1115 8797

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

U. Vyas

- Agent
- Addressee

B. Received By (Printed Name)

UPESH

C. Date of Delivery

12-26

D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No

DEC 27 2017

✓ DNREC-TMS

3. Service Type

- Adult Signature
- Adult Signature Restricted Delivery
- Certified Mail®
- Certified Mail Restricted Delivery
- Collect on Delivery
- Collect on Delivery Restricted Delivery
- Collect on Delivery Restricted Delivery (Signature Confirmation)
- Priority Mail Express®
- Registered Mail™
- Registered Mail Restricted Delivery
- Return Receipt for Merchandise
- Signature Confirmation™
- Signature Confirmation Restricted Delivery

Domestic Return Receipt

EXHIBIT 5



January 25, 2018

FILE COPY

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
7016 3010 0001 1115 8827

SCANNED
2/7/18

Mr. Upesh Vyas
Sitaram, Inc. T/A Pep Up
P.O. Box 510
Millsboro, DE 19966

FACILITY: Pep Up #8.
24858 John J. Williams Highway
Millsboro, DE 19966

Facility ID#: 5-000160
File Code: 23C

SUBJECT: EXPEDITED EVIDENTIARY HEARING RULING

Dear Mr. Vyas:

As defined by 7 Del.C. §7402 and 7 DE Admin. Code 1351, *Regulations Governing Underground Storage Tank Systems* (the UST Regulations) Part A, Section 2, Definitions, Upesh Vyas is the Owner of the UST System located at Pep Up #8, 24858 John J. Williams Highway, Millsboro, DE (the Facility).

On January 22, 2018, an Expedited Evidentiary Hearing (Hearing) was held in the conference room of the Department of Natural Resources and Environmental Control Tank Management Section (DNREC-TMS) to address the continuing violation of the UST Regulations at the Facility. Mr. Upesh Vyas did attend the Hearing and submitted some of the required documentation. Pursuant to the authority provided by Part A. §9.1 of the UST Regulations, *Requirements for Delivery Prohibition*, the DNREC-TMS will allow Upesh Vyas/Pep Up #8 an additional 30 days to correct the remaining violations of the UST Regulations as listed in the NOIT letter dated December 22, 2017.

Violation #1: Within 30 days, submit tank release detection records from the previous thirty-six (36) months for each of the five (5) USTs at the facility. The following monthly records have not been submitted: 09/2014, 10/2014, 1-12/2015, 1/2016, 2/2016, 3/2016, and 4/2016.

Violation #2: Within 30 days, submit the last thirty-six (36) months of daily inventory control records for each of the USTs at the facility, including daily inventory, daily loss and gains, daily/weekly water checks and monthly reconciliation. (reports from 2014 – 2017 were received, however many were not properly reconciled and were unclear)

Violation #3: Within 30 days, submit proof that all ATG equipment has been inspected and programmed three (3) times within the last thirty-six (36) months by a certified technician. (Test records from 2014 and 2017 were received, however not the test results from 2015 and 2016.)

Violation #4 – Within 30 days, submit proof of the Financial Responsibility requirements for the Underground Storage Tank Systems – specifically, submit completed Forms D and R.

Upesh Vyas
January 25, 2018
Page 2

If these violations are not corrected by February 28, 2018, the Department may classify the referenced USTs as ineligible to receive product deliveries:

- One (1) 8,000 gallon Gasoline – Regular UST
- One (1) 8,000 gallon Gasoline – Midgrade UST
- One (1) 8,000 gallon Gasoline – Premium UST
- One (1) 2,000 gallon Diesel UST
- One (1) 700 gallon Kerosene UST

SCANNED


A delivery prohibition tag shall be affixed to the fill pipes of the USTs at the Facility sometime on or after February 28, 2018 if some or all of the violations discussed above are not corrected. If the delivery prohibition tag is affixed, it will remain in place until such time as the USTs are brought into compliance with all applicable UST Regulations and all necessary documentation has been submitted and approved by DNREC-TMS.

Upesh Vyas may appeal this Ruling by requesting a public hearing (Appeal) in writing in accordance with the procedures set forth in 7 Del. C., Chapters 60 and 74. Any request for an Appeal must be submitted to the Office of the Secretary of DNREC-TMS within thirty (30) days of receipt of this Ruling. In the event Upesh Vyas requests a hearing, DNREC-TMS reserves the right to maintain the delivery prohibition at the Facility until such time as the hearing is held and a decision on the Appeal is rendered.

In addition, as you have previously been advised, Upesh Vyas/Pep Up # 8 remains subject to further enforcement actions by DNREC-TMS under 7 Del. C., Chapters 60 and 74. In that regard, pursuant to 7 Del. C. §7411, Upesh Vyas may be liable for civil penalties up to \$25,000.00 for each violation for each day that the violation occurs.

If you have any questions, please contact your project officer John Sunkler at (302) 395-2500 or by email at John.Sunkler@state.de.us.

Sincerely,


Alex Rittberg
Program Administrator
Tank Management Section

EAR:SG\jmv
SG2018-002

Pc: Barbara Fawcett, DNREC-TMS
John Sunkler, DNREC-TMS
Sara Golladay, DNREC-TMS

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Upesh Vyas
Sitaram, Inc., T/A Pep Up
PO Box 510
Millsboro, DE 19966
SG2018-002; 5-160; 23C



9590 9402 2552 6306 2791 19

2. Article Number (Transfer from carrier label)

7016 3010 0001 1115 8827

Restricted Delivery

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

- Age
- Adc

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No

JAN 3 0 2018

DNREC-TMS

3. Service Type

- Adult Signature
- Adult Signature Restricted Delivery
- Certified Mail®
- Certified Mail Restricted Delivery
- Collect on Delivery
- Collect on Delivery Restricted Delivery
- Priority Mail Express®
- Registered Mail™
- Registered Mail Restricted Delivery
- Return Receipt for Merchandise
- Signature Confirmation™
- Signature Confirmation Restricted Delivery

EXHIBIT 6



NOTICE OF VIOLATION

18-UT-01

FILE COPY

April 9, 2018

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
7016 3010 0001 1115 9060

Upesh Vyas
Sitaram, Inc T/A Pep -Up
PO Box 510
Millsboro, DE 19966



FACILITY: Pep-Up #8
24858 John J. Williams Highway
Millsboro, DE 19966

Facility ID#: 5-000160
File Code: 21

TANKS: One (1) 8,000 gallon Gasoline – Regular UST
One (1) 8,000 gallon Gasoline – Midgrade UST
One (1) 8,000 gallon Gasoline – Premium UST
One (1) 2,000 gallon Diesel UST
One (1) 700 gallon Kerosene UST

SUBJECT: NOTICE OF VIOLATION

Dear Mr. Vyas:

Pursuant to the provisions of 7 Del. C. Chapter 60, *Environmental Control* and Chapter 74, *Delaware Underground Storage Tank Act*, the Department of Natural Resources and Environmental Control (the Department) has been empowered to enact regulations to protect human health, safety and the environment. In furtherance of its authority, the Department has promulgated regulations applicable to the installation, operation, maintenance and closure of Underground Storage Tank Systems (UST Systems). Owners and operators of UST Systems must comply with all applicable statutory and regulatory requirements.

As defined by 7 Del. C. § 7402 and 7 DE Admin. Code 1351, *Regulations Governing Underground Storage Tank Systems* (the UST Regulations) Part A, Section 2, *Definitions*, Upesh Vyas/Sitaram, Inc. is the Owner and Operator of the above referenced Facility. The purpose of this **Notice of Violation** is to advise Upesh Vyas that he is in violation of various provisions of the UST Regulations. The specific regulatory violations are detailed below.

Delaware's good nature depends on you!

DNREC-TMS conducted a compliance inspection of the UST systems at the above referenced facility on July 26, 2017. As a result of the inspection, a **Request for Information (RFI)** letter was issued to Mr. Vyas on August 10, 2017 which specifically outlined twenty (20) alleged violations. As of December 22, 2017, seven (7) violations remained and a Notice of Intent to Tag (NOIT) letter was issued to Mr. Vyas requiring him to appear for an Expedited Evidentiary Hearing on January 22, 2018. Mr. Vyas did attend the hearing and submitted requested documentation for four (4) of the seven (7) violations.

Mr. Vyas remains in violation of the following three (3) UST Regulations:

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.

ACTION REQUIRED:

Within 30 days of the receipt of this letter, submit tank release detection records from the previous thirty-six (36) months for each of the five (5) USTs at the facility. The following monthly records have not been submitted: 09/2014, 10/2014, 1-12/2015, 01/2016, 03/2016 and 04/2016.

2. The UST Regulations: Part B, Sec.2.9.3, Inventory Control Requirements

2.9.3.1: Inventory control procedures shall meet the following requirements:

2.9.3.1.1: 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 every seven (7) calendar days, and shall include as a minimum:

2.9.3.1.1.1: Description and amount of Regulated Substance in the Tank measured in inches to the nearest one-eighth (1/8") of an inch. The equipment used shall be capable of measuring the level of Regulated Substance over the full range of the Tank's height to the nearest one eighth (1/8") of an inch. These measurements shall be converted from inches to gallons and these measurements and conversions shall be performed daily; and

2.9.3.1.1.2: Inputs and outputs of Regulated Substance in gallons recorded daily; and

2.9.3.1.1.3: All deliveries and measurements shall be made through a drop tube that extends to within 5.9 inches of the Tank bottom; and

2.9.3.1.1.4: Regulated Substance dispensing equipment is metered and recorded within the local standards for meter calibration or an accuracy of six (6) cubic inches for every five (5) gallons of substance withdrawn; and

2.9.3.1.1.5: Weekly assessment of the amount of water in UST Systems storing non-ethanol blended Regulated Substances excluding Consumptive Use Heating Fuel or Hazardous Substance or other UST Systems with prior Department approval. The measurement of the water level in the bottom of the Tank shall be made to the nearest one eighth (1/8") of an inch. If the measurement is two inches or more of water, the water shall be removed from the Tank within seven (7) days. Water shall be properly disposed in accordance with all local, state and federal requirements; and

2.9.3.1.1.6: Daily assessment of the amount of water in UST Systems storing ethanol blended Regulated Substance. The measurement of water level in the bottom of the Tank shall be made to the nearest one eighth (1/8") of an inch.

2.9.3.1.1.7: For UST Systems storing ethanol blended Regulated Substance with a storage capacity of eight thousand (8000) gallons or less, if the measurement is one (1) inch or more of water, the water shall be removed from the Tank within seven (7) days. Water shall be properly disposed in accordance with all local, state and federal requirements.

2.9.3.1.1.8: For UST Systems storing ethanol blended Regulated Substance with a storage capacity greater than eight thousand (8000) gallons, if the measurement is two (2) inches or more of water, the water shall be removed from the Tank within seven (7) days. Water shall be properly disposed in accordance with local, state and federal requirements.

2.9.3.1.1.9: 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:

2.9.3.1.1.9.1: Losses or gains from each day's inventory shall be reconciled at the end of each calendar month; and

2.9.3.1.1.9.2: For any day in which there is a loss of five percent or more of the calculated daily inventory in gallons, or for any month in which there is a significant loss or gain of Regulated Substance that meets or exceeds one percent plus one hundred and thirty (130) gallons of the total monthly throughput, or any month in which there is an unexplainable consistent negative trend, the Release investigation procedure in Part E of these Regulations shall be followed; and

2.9.3.1.1.9.3: Tanks equipped with automatic inventory control systems or continuously operating automatic in tank gauging systems may use these devices to perform inventory reconciliation procedures.

2.9.3.3: All automatic systems utilized for performing inventory procedures shall comply with the preventative maintenance program requirements of §2.9.5.1.5. of this Part.

2.9.3.4: The Department may, at its discretion, approve other types of inventory control methods or a combination of methods or devices not specified in this section upon a determination that the proposed method or combination of methods is no less protective of human health, safety or the environment than the above requirements.

2.9.3.5: Failure to maintain and reconcile inventory control records may be cause for the Department to require Tank tightness test(s) and inspection(s) of the UST Facility at the expense of Owners and Operators.

Observation:

At the time of the Department's compliance inspection, monthly reconciled inventory records for the five (5) USTs were not available for review.

ACTION REQUIRED:

Within thirty (30) days of receipt of this letter, please submit the last thirty-six (36) months of daily inventory control records for each of the USTs at the above referenced facility, including daily inventory, daily loss and gains, daily/weekly water checks, and monthly reconciliation. (reports from 2014-2017 were received, however many were not properly reconciled and were unclear).

3. 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.

ACTION REQUIRED:

Within thirty (30) days of receipt of this letter, please submit proof that all ATG equipment has been inspected and programmed three (3) times within the last thirty-six (36) months by a certified technician. (Test records from 2014 and 2017 were received, however not the test results from 2015 and 2016).

Should Upesh Vyas refuse to submit the requested information and refuse to comply with Ch. 60, Ch.74, and the UST Regulations within the specified time periods, the Department may find it necessary to take enforcement actions to ensure compliance. Pursuant to 7 Del.C. . §7411, Upesh Vyas may be liable for civil penalties up to \$25,000.00 for each day that the violations continue.

If you have any questions regarding this Notice of Violation, please contact your project officer John Sunkler (302) 395-2500 or by email at John.Sunkler@state.de.us.

Sincerely,



Alex Rittberg

Environmental Program Administrator
Tank Management Section

EAR:SGjmv
SG2018-005

Pc: John Sunkler, DNREC-TMS
Barbara Fawcett, DNREC-TMS
Sara Golladay, DNREC-TMS

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Upesh Vyas
 Sitaram, Inc T/A Dept of
 PO Box 510
 Millsboro, DE 19966
 SG2018-005; 5-160; 21; **18-UT-01**



9590 9402 2552 6306 2788 15

2. Article Number (Transfer from service label)

7016 3010 0001 1115 9060

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *U. V. Vyas*

Agent

Addressee

B. Received by (Printed Name)

UPESH VYAS

C. Date of Delivery

4/16/18

Is delivery address different from item 1? Yes

If YES, enter delivery address below: No

RECEIVED
APR 17 2018

DNREC-1



3. Service Type

- Adult Signature
- Adult Signature Restricted Delivery
- Certified Mail®
- Certified Mail Restricted Delivery
- Collect on Delivery
- Collect on Delivery Restricted Delivery
- Registered Mail™
- Registered Mail Restricted Delivery
- Return Receipt for Merchandise
- Signature Confirmation™
- Signature Confirmation Restricted Delivery
- Priority Mail Express®

- Priority Mail Express®
- Registered Mail™
- Registered Mail Restricted Delivery
- Return Receipt for Merchandise
- Signature Confirmation™
- Signature Confirmation Restricted Delivery

EXHIBIT 7

Morris James Wilson Halbrook & Bayard LLP

R. Eric Hacker
302.856.0023
ehacker@morrisjames.com

December 17, 2018



BY FIRST-CLASS U.S. MAIL & HAND DELIVERY

Environmental Appeals Board
89 Kings Highway
Dover, DE 19901
ATTN: Administrative Assistant to the Board

**Re: Statement of Appeal / Order No. 2018-WH-0064
Upesh Vyas / Sitaram, Inc. t/a Pep Up #8**

To the Environmental Appeals Board:

Our office represents Upesh Vyas and Sitaram, Inc. (collectively "Respondent") in this matter. Please allow this letter to serve as Respondent's request for an appeal of Secretary's Order No. 2018-WH0064 (the "Order").

In support of this appeal, and pursuant to 7 *Del. Admin. C.* § 105-2.0, Respondent offers the following written statement in support of his appeal:

1. Respondent is directly affected by the Order because if the Order is upheld, Respondent will be responsible for paying a substantial fine as set forth in the Order.
2. Respondent believes the Order and the Secretary's decision to be improper.
3. Respondent's belief is based on the following reasons:
 - a. The alleged conduct or violation should not be ascribed to Respondent;
 - b. The alleged conduct or violation in question is not punishable by a fine of this nature;
 - c. The Order is arbitrary or capricious or both in that it sets forth no method by which the Secretary calculated the fine;
 - d. The amount of the fine does not reflect, and is disproportionate to, the alleged conduct or alleged violations;
 - e. Upon information and belief, the Order improperly calculates the amount of fine due;

Environmental Appeals Board

December 17, 2018

Page 2

- f. The Order rests upon factual errors regarding Respondent's alleged conduct or violations; and
- g. The Order rests upon other legal errors.

Respondent expects that his portion of the appeal will involve 3 witnesses on Respondent's behalf. Respondent lacks information to estimate the number of witnesses the Secretary's office may call.

Enclosed is the \$50.00 deposit for costs required under 7 *Del. Admin. C.* § 105-2.3.

Please contact me if you have further questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Eric Hacker", with a long horizontal flourish extending to the right.

R. Eric Hacker, Esquire

/enclosure

cc: Upesh Vyas