



STATE OF DELAWARE  
**DEPARTMENT OF NATURAL RESOURCES AND  
ENVIRONMENTAL CONTROL**

ENVIRONMENTAL  
APPEALS BOARD

RICHARDSON & ROBBINS BUILDING  
89 KINGS HIGHWAY  
DOVER, DELAWARE 19901

PHONE  
(302) 739-9000

January 21, 2022

**VIA ELECTRONIC and US MAIL**

R. Eric Hacker, Esquire  
Morris, James, Wilson, Halbrook & Bayard, LLP  
PO BOX 690  
Georgetown, DE 19947

Devera B. Scott, Esquire  
Deputy Attorney General  
Delaware Department of Justice  
391 Lukens Drive  
New Castle, DE 19720

**RE: EAB Appeal No. 2018-07 *Upesh Vayas and Sitaram, Inc.***

Dear Mr. Hacker and Ms. Scott:

The Environmental Appeals Board was notified via email on January 21, 2022, of a fully executed Settlement Agreement, dated October 21, 2021, regarding this matter. In lieu of a Stipulation of Dismissal from the parties, this letter confirms the dismissal of EAB Appeal 2018-07.

Attachment:  
Executed Settlement Agreement

If you have any questions, please contact me at [Deana.Karpavage@delaware.gov](mailto:Deana.Karpavage@delaware.gov).

Sincerely,

ENVIRONMENTAL APPEALS BOARD

[/s/Deana Karpavage](#)

Deana Karpavage  
EAB Administrative Assistant  
89 Kings Highway  
Dover, DE 19901

cc: Dean Holden, EAB Chair  
Kevin Maloney, DAG

/enclosure



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RICHARDSON & ROBBINS BUILDING  
89 KINGS HIGHWAY  
DOVER, DELAWARE 19901

OFFICE OF THE  
SECRETARY

PHONE  
(302) 739-9000

**SETTLEMENT AGREEMENT**

This Settlement Agreement (“Agreement”) is made and entered into as of this \_\_\_\_<sup>th</sup> day of \_\_\_\_\_, 2021 (the “Effective Date”), by and between Sitaram, Inc. and Upesh Vyas (collectively referred to hereinafter as “Appellants”), and the State of Delaware Department of Natural Resources and Environmental Control (“DNREC” or the “Department”) (collectively the “Parties”) to resolve certain matters arising from Secretary’s Order 2018-WH-0064 that was signed and dated November 25, 2018.

**WHEREAS**, Appellants operate a discount retail store located at 24858 John J. Williams Highway in Millsboro, Delaware (hereinafter referred to as “Pep Up #8”). During the operation of Pep Up #8, Appellants, as Owners and Operators of UST Systems have at all times been required to comply with all applicable statutory and regulatory requirements of 7 *Del. C.* Chapters 60 and Chapter 74, 7 DE Admin. Code 1351 (the Delaware’s *Regulations Governing Underground Storage Tank Systems*) and 7 DE Admin. Code 1124 (Delaware’s *Regulations Governing the Control of Volatile Organic Compound Emissions*);

**WHEREAS**, the Appellants’ operations at Pep Up # 8 are governed by the Division of Waste and Hazardous Substances, Compliance and Permitting Section;

**WHEREAS**, the Department conducted a compliance inspection of Pep Up # 8 on July 26, 2017. At the time of the inspection, Pep Up # 8 was classified by the Department as out of compliance;

**WHEREAS**, the Department found Appellants to be in violation of applicable state statutes and regulations governing the operation of the petroleum facility, Pep Up #8;

**WHEREAS**, the Department notified Appellants of the violations identified on July 26, 2017, by issuing Notice of Violation (“NOV”) No. 18-UT-01 dated April 9, 2018;

**WHEREAS**, the NOV identified three (3) violations of 7 Del. Admin. Code §7402, Delaware’s *Regulations Governing Underground Storage Tank Systems* (“the UST Regulations”) and required Appellants to immediately comply with the NOV’s requirements;

**WHEREAS**, Appellants were to submit documentation demonstrating compliance within 30 days of receipt of the NOV;

**WHEREAS**, Appellants submitted documentation on behalf of Pep Up # 8 that demonstrated compliance with respect to the two (2) of the three (3) violations;

**WHEREAS**, Appellants received a Secretary’s Order 2018-WH-0064 signed and dated November 25, 2018, as a result of the issuance of the NOV;

**WHEREAS**, Secretary’s Order 2018-WH-0064 signed and dated November 25, 2018, resulted in the issuance of an administrative penalty and cost recovery as Respondent was not able to provide the annual automatic tank gauging equipment inspection results for 2015 and 2016, which left Respondent in violation of UST Regulation Part B, Section 2.9.5, Automatic Tank Gauging Release Detection Requirements for Tanks;

**WHEREAS**, the Appellants filed an appeal to the Environmental Appeals Board of the State of Delaware;

**WHEREAS**, in full and final resolution of their mutual claims against each other it has been established between the Parties that Appellants agree to pay DNREC’s administrative costs (\$2,950.00) within 10 days of execution of this Agreement and the penalty (\$32,550.00) in equal installments over a term of three (3) years commencing thirty (30) days after the effective date of this Agreement.

**I. APPLICATION AND SCOPE**

It is the intent of the Parties that this Agreement shall resolve their respective claims arising from Secretary’s Order 2018-WH-0064 signed and dated November 25, 2018.

**II. EFFECTIVE DATE**

This agreement shall be effective immediately upon its signature by the Secretary of the Department of Natural Resources and Environmental Control.

**III. ADMINISTRATIVE COSTS**

In full and final resolution of all claims available to DNREC or the State of Delaware

concerning the matters addressed in the Order, Appellants agree to pay DNREC’s administrative costs of \$2,950.00 within 10 days of the execution of this agreement.

**IV. ADMINISTRATIVE PENALTIES- INSTALLMENT PLAN**

Appellants remain obligated to pay to the Department in equal installments the penalty assessment ordered in Secretary’s Order No. 2018-WH-0064 within thirty- six (36) months of the effective date of this Agreement.

**WHEREAS**, Appellants desire to pay the costs for which it is responsible to DNREC in (36) installment payments over the next thirty-six months, Appellants agree to the following terms and conditions.

**RECITATIONS:**

Date: \_\_\_\_\_, 2021

Debtors: **Sitaram, Inc and Upesh Vyas**

Debtor's Address: **Pep Up #8 | Sitaram, Inc  
P.O. Box 510  
Millsboro, Delaware 19966  
Attn: Upesh Vyas, Owner and Operator**

Payee: **State of Delaware**

Place for Payment: **Delaware Department of Justice  
Attn: Emily Gabriellini  
  
Environmental Unit  
102 W. Water Street 3<sup>rd</sup> Floor  
Dover, Delaware 19904**

Principal Amount: **Thirty- two Thousand Five Hundred and Fifty- Five Dollars and 00/100 (\$32,550.00)**

Term: **Thirty-six (36) Months at Zero Percent (0%) Interest**

Monthly Payments: **Thirty-five Payments (35) of Nine Hundred and Four Dollars and 20/100 (\$904.20.)**

**One (1) Payment of Nine Hundred and Three Dollars and 00/100 (\$903.00)**

**PAYMENT TERMS:** Payments per this Agreement are due as follows, to-wit: thirty-five (35) monthly installment of \$904.20, then one (1) monthly installment of \$903.00. The first such installment is due and payable by the thirtieth (30<sup>th</sup>) day after the effective date of this Agreement and a like installment shall be due and payable on the same day of each succeeding month thereafter until the total principal of \$32,550.00 is paid in full. If each installment is not paid within fifteen (15) days of its due date, a stipulated penalty of \$100 dollars per day will be imposed on the 16<sup>th</sup> day. Payment of any installment, along with any corresponding penalty, within twenty (20) days of the installment's due date shall not be a basis for default or acceleration.

**DEBTORS' PRE-PAYMENT RIGHT:** Appellants-Debtors reserve the right to prepay this agreement in whole or in part, prior to maturity, without penalty.

**PLACE FOR PAYMENT:** Appellants-Debtors promise to pay to the order of DNREC at the place for payment and according to the terms for payment the principal, including any possible stipulated penalties accrued for missed or non-payment. All unpaid amounts shall be due by the final scheduled payment date.

**DEFAULT AND ACCELERATION CLAUSE:** If Appellants-Debtors default in the payment of this Agreement or in the performance of any obligation, and the default continues after Department-Payee gives Appellants-Debtors notice of the default and a reasonable time within which it must be cured, as may be required by law or written agreement, then Department-Payee may declare the unpaid principal balance and any possible stipulated penalties accrued for missed or non-payment on this Agreement immediately due. Appellants-Debtors and each surety, endorser, and guarantor waive all demands for payment, presentation for payment, notices of intentions to accelerate maturity, notices of acceleration of maturity, protests, and notices of protest, to the extent permitted by law.

**FORM OF PAYMENT:** Appellants-Debtors will pay the administrative penalty and costs set forth in this Agreement, by sending a check payable to the "State of Delaware". The check shall be directed to Emily Gabriellini, Department of Justice, Environmental Unit, 102 W. Water Street 3<sup>rd</sup> Floor, Dover, Delaware 19904.

**ATTORNEY'S FEES:** If this Agreement is given to an attorney for collection or enforcement, or if suit is brought for collection or enforcement, or if it is collected or enforced through probate, bankruptcy, or other judicial proceeding, then Appellants-Debtors shall pay

Department-Payee all costs of collection and enforcement, including reasonable attorney's fees and court costs in addition to other amounts due.

**SEVERABILITY:** If any provision of this Agreement or the application thereof shall, for any reason and to any extent, be invalid or unenforceable, neither the remainder of this Agreement nor the application of the provision to other persons, entities or circumstances shall be affected thereby, but instead shall be enforced to the maximum extent permitted by law.

**BINDING EFFECT:** The covenants, obligations and conditions herein contained shall be binding on and inure to the benefit of the heirs, legal representatives, and assigns of the parties hereto.

**DESCRIPTIVE HEADINGS:** The descriptive headings used herein are for convenience of reference only and they are not intended to have any effect whatsoever in determining the rights or obligations under this Agreement.

**CONSTRUCTION:** The pronouns used herein shall include, where appropriate, either gender or both, singular and plural.

**GOVERNING LAW:** This Agreement shall be governed, construed and interpreted by, through and under the Laws of the State of Delaware.

**DEBTORS' RESPONSIBILITIES:** Appellants-Debtors are responsible for all obligations represented by this Agreement.

## **V. EFFECT OF SETTLEMENT**

Appellants' satisfaction of the payment obligations under Paragraphs 2 and 3, and completion of all actions detailed in Sections III and IV shall resolve all civil and administrative liability of Sitaram, Inc and Upesh Vyas to DNREC or the State of Delaware for the matters addressed herein, including without limitation of the alleged factual findings or violations identified, claims asserted and relief sought in or through the Order.

## **VI. GENERAL PROVISIONS**

1. Appellants agree to the resolution of the claims without any admissions as to any matter of fact or law.

2. This Agreement shall be governed by, and interpreted under, the laws of the State of Delaware.

3. Nothing in this Agreement shall relieve Appellants of their obligations to comply with all applicable federal, state, and local laws and regulations. Other than as expressly provided for in Section IV, nothing contained in this Agreement shall be construed to prevent, alter, or limit DNREC's ability to seek or obtain other remedies or sanctions available under federal, state, or local statutes or regulations, in response to any violation by Appellants of applicable statutes and regulations, nor to limit any claims, rights, defenses otherwise available to Appellants, including with respect to any such alleged violations.

4. In consideration of the Parties' voluntary resolution through this Agreement of the issues governed by the Order, Sitaram, Inc shall submit the required payment for penalties and costs in full on or before thirty- six (36) months after the effective date of this Agreement.

5. This Agreement does not limit or affect the rights of Appellants, the State of Delaware, or DNREC against any person or entity not part of this Agreement.

6. This Agreement shall not be considered to create rights in, or grant any cause of action to, any third party not a party to this Agreement, nor does it limit the rights of any person or entity not party to this Agreement with Sitaram, Inc, except otherwise provided by law.

7. This Agreement shall be binding upon the Parties to this action, and their successors and assigns.

8. The undersigned representative of each Party to the Agreement is authorized by the Party whom he or she represents to enter into the terms of this Agreement and bind that Party to them.

9. This Agreement shall be effective when duly and fully executed on behalf of the Parties to this Agreement.

10. This Agreement may be modified only by the written consent of both Parties.

11. This Agreement is entered into notwithstanding any other agreement between the Parties and constitutes the entire Agreement and settlement between the Parties. This Agreement supersedes any prior provisions or agreements, to the extent there is an irreconcilable conflict.

12. To the extent of any irreconcilable conflict between this Agreement and the requirements of federal and state law, the latter controls.



13. To the extent that any portion of this Agreement is rendered unenforceable by operation of law, the balance of the Agreement is severable and remains enforceable.

**For Sitaram, Inc & Upesh Vyas**

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

Sitaram, Inc.

By: Upesh Vyas, Authorized Person

Date: 9/19/2021

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

Upesh Vyas

Date: 9/19/2021

**FOR THE STATE OF DELAWARE**

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

Shawn M. Garvin, Secretary

Department of Natural Resources and Environmental Control

Date: 10/12/21