



STATE OF DELAWARE  
DEPARTMENT OF NATURAL RESOURCES  
AND ENVIRONMENTAL CONTROL

OFFICE OF THE  
SECRETARY

89 KINGS HIGHWAY  
DOVER, DELAWARE 19901

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

*Issued Pursuant to 7 Del. C. §6005*

**Order No. 2016 -WH-0007**

**CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

**PERSONALLY SERVED BY AN  
ENVIRONMENTAL PROTECTION  
OFFICER**

**Issued To:**

Mr. Sal Dellomo  
Owner and Operator  
Hylton's Market Inc.  
Camden Delaware Realty, LLC  
3301 Route 66 – Suite B201  
Neptune, NJ 07753

**Registered Agents:**

David T. Pryor, Esquire  
Hylton's Market, Inc.  
18 South State Street  
Dover, DE 19901

Vance A. Funk, Esquire  
Camden Delaware Realty, LLC  
273 East Main Street  
Newark, DE 19711

The Secretary of the Department of Natural Resources and Environmental Control (“the Department”) has found Sal Dellomo / Hylton’s Market 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* (“the UST Regulations”) and 7 DE Admin. Code 1124, Delaware *Regulations Governing the Control of Volatile Organic Compound Emissions* (“the VR Regulations”). Accordingly, the Department is issuing this Notice of Administrative Penalty Assessment, pursuant to 7 Del. C. §6005(b) (3).

**BACKGROUND**

The Department’s Tank Management Section (the “TMS”) conducted a compliance inspection of the underground storage tank (the “UST”) systems at the above-referenced facility on June 4, 2014. During the inspection, the Department recorded seventeen (17) violations and

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noted that Respondent was doing nothing to maintain the UST System and Facility as a whole. A certified *request for information* (the "RFI") letter was issued on June 11, 2014 requesting proof of compliance for the seventeen (17) violations be produced to TMS within thirty (30) days of receipt. Respondent submitted documentation satisfying seven (7) of the original seventeen violations, with ten (10) violations remaining.

A Notice of Intent to Tag – Non-Imminent Threat Exists (NOIT) letter was issued to the Respondent on October 22, 2014. Respondent was required to appear for an Expedited Evidentiary Hearing and/or submit the required documentation for the remaining ten (10) violations to the Department by November 25, 2014. The Respondent did not appear for the hearing and the required documentation was not submitted. Subsequently, on November 25, 2014, an Expedited Evidentiary Hearing letter was issued classifying the UST System as ineligible to receive product deliveries. The Department issued a Delivery Prohibition (Red Tag) for the UST system on December 1, 2014.

Prior to the June 4, 2014 inspection, the Department conducted a compliance inspection on June 29, 2011 with a total of eleven (11) violations found during the assessment. This inspection resulted in the Department issuing a Delivery Prohibition (Red Tag). Respondent took approximately nine months to correct the violations and the inspection was closed on April 27, 2012. The violations found in 2011 were similar to those found during the most recent inspection.

Only after Respondent was issued a Delivery Prohibition for a second time on December 1, 2014 did Respondent reach out to the Department to try and correct numerous violations at the facility. Once three spill buckets were replaced and the Vapor Recovery re-testing was successfully completed, the Department removed the red tags from the UST system on March 25, 2015 and informed the Respondent that the remaining seven (7) violations would be addressed under a Notice of Violation.

On March 26, 2015, a Notice of Violation (NOV) letter was issued to the Respondent for the remaining seven (7) violations. Since that time, three (3) of the seven (7) violations have been corrected. Currently, there are four (4) outstanding violations that the Respondent has not addressed:

1. Failure to produce tank release detection records as described in the UST Regulations;
2. Failure to produce monthly reconciled inventory records for the four (4) UST's;
3. Failure to provide monthly routine inspection records;
4. Failure to provide daily vapor recovery inspection and maintenance records.

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

As noted in the March 26, 2015 NOV, Respondents were in violation of the following provisions of 7 *Del. C.* Chapters 60 and 74, the UST Regulations, and the VR Regulations. Each day of violation is a separate violation for each UST System:

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

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

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

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

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

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

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

2.9.1.3: Failure by Owners and Operators to maintain records of required Release Detection monitoring and inspection may be cause for the Department to require Tank tightness test(s) and inspection(s) of the UST Facility and a Release investigation in accordance with Part E of these Regulations at the expense of Owners and Operators.

#### **Observation:**

At the time of the Department's compliance inspection, tank release detection records were not available for review

### **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 four (4) USTs were not available for review

**3. 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.

**4. The VR Regulations: 1124: Sec.36.3.3, Standards**

36.3.3: Each day personnel trained pursuant to 36.3.2 of this regulation shall perform routine maintenance inspections and record the inspection results.

36.3.3.1: Such inspections shall consist of, but not limited to, inspection of the Stage II system for the following defects:

36.3.3.1.1: A faceplate or face cone of a balance or assist system nozzle that does not make a good seal with a vehicle fill tube, or the accumulated damage to the faceplate or face cone is over 25% of its' surface.

36.3.3.1.2: A vapor assist system nozzle fitted with an efficiency compliance device that is damaged over 25% of its' surface.

36.3.3.1.3: A nozzle bellows with a triangular tear measuring ½ inch or more to a side, a hole measuring ½ inch or more in diameter, or a slit or tear measuring one inch or more in length.

36.3.3.1.3: A nozzle bellows or efficiency compliance device that is loosely attached to the nozzle body, not attached by a manufacturer approved method, or a vapor check valve frozen in the open position.

36.3.3.1.4: A nozzle liquid shutoff mechanism that malfunctions in any manner, where the spring or latching knurl is damaged or missing.

36.3.3.1.5: A nozzle with a vapor check valve that is defective, or a hose with a disconnected or damaged breakaway.

36.3.3.1.6: A vapor assist system nozzle spout that is damaged and the vapor collection holes are obstructed.

36.3.3.1.7: A dispenser mounted vacuum pump that is not functioning.

36.3.3.1.8: A vacuum assist system with a central vacuum unit or vapor processing unit that is inoperative.

36.3.3.1.9: A hose retractor that does not fully retract.

36.3.3.1.10: Any other component required by the Department for use in the system that is missing, disconnected, or malfunctioning.

36.3.3.2: The owner or operator shall post "Out of Order" signs and "Bag-out" the nozzle associated with any part of the defective vapor recovery system until said system has been repaired or replaced.

**Observation:**

At the time of the Department's compliance inspection, daily vapor recovery inspection and maintenance records were not available for review.

**CONCLUSIONS**

Based on the foregoing, the Department has concluded that Sal Dellomo / Hylton's Market, Inc. has violated each of the above cited regulatory provisions.

**ASSESSMENT OF PENALTY AND COSTS**

Pursuant to the provisions of 7 Del. C. §6005(b)(3), this is written notice to Respondent that on the basis of its findings, the Department is assessing Respondent an administrative penalty of \$85,000.00 for the violations identified in this Assessment and Order.

In addition to the penalty assessment, Respondent is hereby assessed estimated costs in the amount of \$3,489.00 pursuant to 7 Del. C. §6005(c), which were incurred by the Department in the investigation of the noted violations.

Respondent shall submit one check to the Department in the amount of \$85,000.00 to pay the penalty and one check to the Department in the amount of \$ 3,489.00 to pay the estimated costs within 30 days from the receipt of this Assessment and Order. The checks shall be made payable to the "State of Delaware" and shall be directed to: Robert F. Phillips, Deputy Attorney General, 391 Lukens Drive, New Castle, Delaware 19720.

The Department reserves the right to take additional enforcement actions regarding these and other violations at Hylton's Market, 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 Notice of Administrative Penalty Assessment and Order shall become effective and final unless the Department receives from Respondent, no later than thirty (30) days from the receipt of this Notice, a written request for a public hearing on these matters as provided in 7 Del. C. §6005(b)(3) and (c). The Department does not otherwise intend to convene a public hearing on these matters, but reserves the right to do so at its discretion. If no public hearing is requested within thirty days, this Order shall become final.

Any person whose interest is substantially affected by an action of the Secretary may appeal to the Environmental Appeals Board, pursuant to 7 Del. C. §6008(a), within twenty (20) days of the receipt or publication of the Secretary's final order.

If no hearing is requested and no appeal is filed, the administrative penalty of \$85,000.00 and costs in the amount of \$3,489.00 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 \$85,000.00 and \$3,489.00 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: \_\_\_\_\_

3/24/16



\_\_\_\_\_

David S. Small, Secretary

cc: Robert Phillips, Deputy Attorney General  
Marjorie A. Crofts, WHS Director  
Alex Rittberg, TMS Program Administrator  
Barbara Fawcett-Kirkland, TMS Program Manager II  
John Francis Sunkler, Environmental Scientist  
Jennifer Bothell, Enforcement Coordinator  
Sara Golladay, Paralegal

**WAIVER OF STATUTORY RIGHT TO A HEARING**

**Sal Dellomo / Hylton's Market, Inc.** hereby waives its right to a hearing and its opportunity to appeal or contest this Assessment and Order and agrees to the following:

**Sal Dellomo / Hylton's Market, Inc.** will pay the administrative penalty in the amount of \$85,000 by sending a check payable to the "State of Delaware" within thirty (30) days of receipt of this Assessment and Order. The check shall be directed to Robert Phillips, Deputy Attorney General, 391 Lukens Drive, New Castle, Delaware 19720; and

**Sal Dellomo / Hylton's Market, Inc.** will reimburse the Department in the amount of \$3,489.00 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.

**Sal Dellomo**  
**Hylton's Market, Inc.**

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

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

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