



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

RICHARDSON & ROBBINS BUILDING
89 KINGS HIGHWAY
DOVER, DELAWARE 19901

OFFICE OF THE
SECRETARY

PHONE
(302) 739-9000

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

Pursuant to 7 *Del. C.* § 6005

Order No. 2022-WH-0003

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Issued To:

NAI Saturn Eastern LLC, Owner
Mr. Timothy Stubbs
P.O. Box 29096
Phoenix, AZ 85038

The Secretary of the Department of Natural Resources and Environmental Control ("Department") has found NAI Saturn Eastern LLC ("Respondent") in violation of 7 *Del. C.* Chapters 60 and 74, 7 *Del. Admin. C.* § 1351, Delaware's *Regulations Governing Underground Storage Tank Systems* ("UST Regulations"), and 7 *Del. Admin. C.* § 1124 Delaware's *Regulations Governing the Control of Volatile Organic Compound Emissions* ("VOCE 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

Respondent is the owner of Safeway Store #2706 located at 19266 Coastal Highway, Rehoboth Beach, Delaware, 19971 ("Facility"). On August 31, 2021, the Department's Tanks Compliance Branch ("TCB") reached out via email to alert the Respondent of the upcoming compliance inspection at the Facility. On September 7, 2021, a compliance inspection of the Underground Storage Tank ("UST") systems was conducted at the above-referenced facility. During the inspection, the Department recorded ten (10) violations, including the necessity of additional Class A/B UST Operator training pursuant to Section 10.1 of the UST Regulations. On October 12, 2021, the Department issued a Notice of Violation ("NOV") letter to Respondent for the ten (10) violations giving Respondent fourteen (14) days to submit certain documents responsive to the violations.

On November 9, 2021, Respondent emailed the TCB documents responsive to one (1) of the violations. On November 18, 2021, Respondent emailed the TCB documents responsive to an additional three (3) of the violations. As of the date of this Secretary's Order, Respondent has not addressed the following six (6) outstanding violations:

1. Failure to submit verification that the Stage I Vapor Recovery Operating Permit is always readily available onsite.
2. Failure to submit proof of passing tightness tests for the spill containment devices.
3. Failure to submit passing Line leak detector function test results for Mid-grade and Premium product lines.
4. Failure to submit the annual Automatic Tank Gauge ("ATG") certification.
5. Failure to submit twelve (12) months of Daily inspections.
6. Class A/B UST Operator additional training required and not completed.

FINDINGS OF FACT AND VIOLATION INCLUDING REGULATORY REQUIREMENTS

As noted in the September 28, 2021, NOV, Respondent was in violation of the following provisions of 7 Del. C. Chapters 60 and 74, the UST Regulations, and the Vapor Recovery (“VR”) Regulations. Each day of non-compliance is a separate violation for each UST System:

1. Section 36.7.1 of the VOCE Regulations:

36.7.1 The owner or operator of a gasoline dispensing facility subject to the requirements of Section 36.0 shall keep on the facility premises and in a form acceptable to the Department, all the following information. This information shall be retained for at least five (5) years, unless otherwise specified by the Department, from the date of record and shall be made immediately available to the Department upon request.

36.7.1.1 Permits and Applications. Copies of all GDF permit applications and the current Construction and Operation Permits shall be permanently maintained.

Observation: At the time of the Department's September 7, 2021 compliance inspection, the Stage I Vapor Recovery Operating Permit was not immediately available. Thus, the Department has concluded that Respondent is in continuing violation of the above cited provisions of the VOCE Regulations.

2. Part B Section 2.22 of the UST Regulations:

2.22.6 Spill containment devices of single wall design, including devices with replaceable inner buckets, shall be tested once every twelve (12) months for tightness in accordance with Part B, subsection 2.22.8.

Part A Section 5.1 of the UST Regulations:

5.1.1 Owners and Operators of UST System Facilities shall maintain records in an orderly permanent form. To demonstrate recent UST Facility compliance status, Owners and Operators shall maintain records of monitoring, testing, Repairs, Retrofits, Upgrades, Removal, or Closure In Place, Change In Service or Change in Substance Stored.

5.1.2 Owners and Operators of UST System Facilities shall make all records available for inspection upon request by the Department within fourteen (14) Days of the request.

Observation: At the time of the Department's September 7, 2021 compliance inspection, passing tightness test results for the spill containment devices were not available for review. When those tests were requested by the Department, Respondent failed to submit them. Thus, the Department has concluded that Respondent is in continuing violation of the above cited provisions of the UST Regulations.

3. Part B Section 2.20 of the UST Regulations:

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.

Part A Section 5.1 of the UST Regulations:

5.1.1 Owners and Operators of UST System Facilities shall maintain records in an orderly permanent form. To demonstrate recent UST Facility compliance status, Owners and Operators shall maintain records of monitoring, testing, repairs, retrofits, upgrades, removal, or closure in place, change in service or change in substance stored.

5.1.2 Owners and Operators of UST System Facilities shall make all records available for inspection upon request by the Department within fourteen (14) Days of the request.

Observation: Respondent has failed to submit passing test results for the Line leak detector function test for the Mid-grade and Premium product lines. When those tests were requested by the Department, Respondent failed to submit them. Thus, the Department has concluded that Respondent is in continuing violation of the above cited provisions of the UST Regulations.

4. Part B Section 2.9.5 of the UST Regulations:

2.9.5.2 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.

Part A Section 5.1 of the UST Regulations:

- 5.1.1 Owners and Operators of UST System Facilities shall maintain records in an orderly permanent form. To demonstrate recent UST Facility compliance status, Owners and Operators shall maintain records of monitoring, testing, Repairs, Retrofits, Upgrades, Removal, or Closure In Place, Change In Service or Change in Substance Stored.*
- 5.1.2 Owners and Operators of UST System Facilities shall make all records available for inspection upon request by the Department within fourteen (14) Days of the request.*

Observation: At the time of the Department's September 7, 2021 compliance inspection, the annual ATG equipment inspection results for 2021 were not available for review. That test was requested by the Department and Respondent failed to submit it. Thus, the Department has concluded that Respondent is in continuing violation of the above cited provisions of the UST Regulations.

5. Section 36.7 of the VOCE Regulations:

- 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.*

Observation: At the time of the Department's September 7, 2021 compliance inspection, Vapor Recovery daily inspections and maintenance records were not available for review. Thus, the Department has concluded that Respondent is in continuing violation of the above cited provision of the VOCE Regulations.

6. Section 10.1 of the UST Regulations:

- 10.1.9 In addition to successful completion of an initial training program as required in Part A, subsection 10.1.6, upon notification from the Department that an UST System is not in compliance with these Regulations, Owners and Operators shall ensure that the Class A and Class B Operators at the Facility successfully complete additional training as required within thirty (30) Days of receipt of written notice unless otherwise directed by the Department.*

Observation: The Department has determined that the UST facility was not in compliance with the UST Regulations during the time of inspection. The Owner and Operators shall ensure that the Class A and Class B Operators at the Facility successfully complete additional training.

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 \$16,000.00 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 \$648.36 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 \$16,000.00 to pay the penalty and one (1) check to the Department in the amount of \$648.36 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: Travis Groski, 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 NAI Eastern Saturn LLC, 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 \$16,000.00 and costs in the amount of \$648.36 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 \$16,000.00 and \$648.36 and mail to Travis Groski, 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 submit an appeal to the Environmental Appeals Board, there is a \$50.00 filing fee, with a check made payable to the: "Environmental Appeals Board" and sent to:

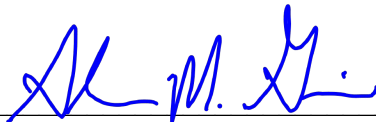
Department of Natural Resources and Environmental Control
Office of the Secretary
Attn: Assistant to the Environmental Appeals Board
89 Kings Highway
Dover, DE 19901
Phone: (302) 739-9000

If you want a hearing and opportunity to contest this Assessment and Order, you must submit your request, in writing, within 30 days of receipt of this Assessment and Order to:

Department of Natural Resources and Environmental Control
Office of the Secretary
89 Kings Highway
Dover, DE 19901
Phone: (302) 739-9000

If you have any questions, please contact Jason Sunde at (302) 739-9403.

4/5/22
Date


Shawn M. Garvin, Secretary
Department of Natural Resources
and Environmental Control

WAIVER OF STATUTORY RIGHT TO A HEARING

Timothy Stubbs / NAI Eastern Saturn LLC hereby waives its right to a hearing and its opportunity to appeal or contest this Assessment and Order and agrees to the following:

Timothy Stubbs / NAI Eastern Saturn LLC will pay the administrative penalty in the amount of \$16,000.00 by sending a check payable to the "State of Delaware" within thirty (30) days of receipt of this Assessment and Order. The check shall be directed to Travis Groski, Deputy Attorney General, 391 Lukens Drive, New Castle, Delaware 19720; and

Timothy Stubbs / NAI Eastern Saturn LLC will reimburse the Department in the amount of \$648.38 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 Travis Groski, Deputy Attorney General, 391 Lukens Drive, New Castle, Delaware 19720.

Timothy Stubbs
NAI Eastern Saturn
LLC

Date: _____

By: _____

Title: _____