



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

OFFICE OF THE
SECRETARY

RICHARDSON & ROBBINS BUILDING
89 KINGS HIGHWAY
DOVER, DELAWARE 19901

PHONE
(302) 739-9000

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

Pursuant to 7 *Del. C* §6005

Order No. 2023-WH-0003

Via Personal Service¹:

Facility Location/Operator:

STTCPL LLC, and
Service Energy LLC
PO Box 1000
Cheswold, DE 19936

**Registered Agent c/o
Service Energy LLC:**

Michael Steiner
3799 N. DuPont Hwy
Dover, DE 19901

Property Owner:

Robert M. Duncan
555 Pennsylvania Ave
Dover DE 19901

Registered Agent:

STTCPL, LLC
715 S. Washington Street
Milford, DE 19963

Ralph V. Estep
Trustee of the Ralph V. Estep Irrevocable Family Trust
508 Main Street
Wilmington DE 19804

Richard L. Abbot, Esq.
Abbot Law Firm, LLC
724 Yorklyn Road
Suite 240
Hockessin, DE 19707

Via Certified Mail:

Robert M. Duncan
3936 Aloha Lane
Bonita Springs, FL 34134

FACILITY: Super Soda Center Stanton
512 Main Street
Stanton, DE 19804 US

Facility ID: 3-000212
Project: N1703030
File Code: 20 & 34

¹ All service made in person by a DNREC Environmental Crimes Unit Officer.

This Assessment and Secretary's Order serves to notify STTCPL LLC, Service Energy LLC, Robert M. Duncan, and Ralph V. Estep, Trustee of the Ralph V. Estep Irrevocable Family Trust the ("Respondents") that the Secretary of the Department of Natural Resources and Environmental Control ("Department") has found that Respondents have violated 7 *Del. C* § 7402 and 7 *Del. Admin. C* § 1351, Regulations Governing Underground Storage Tank Systems (the UST Regulations). Accordingly, the Department is issuing this Notice of Administrative Penalty Assessment and Secretary's Order pursuant to 7 *Del. C* § 6005(b)(3).

BACKGROUND

On November 6, 2020, a Notice of Violation (20-UT-01) was sent to the Respondents that outlined the statutory and regulatory requirements which have not been met at the facility located at 512 Main Street, Stanton., DE 19804 ("Facility")².

On July 14, 2021, a final Notice of Intent to Investigate Release and Perform Corrective Actions was issued to the Respondents. To date the Respondents have not complied with the Notice of Violation and Notice of Intent to Investigate Release and Perform Corrective Actions.

Mr. Robert M. Duncan ("Duncan") filed a land development plan with New Castle County in June 1985, that depicted a gasoline station on the premises. Duncan and his wife bought the property in their individual capacities on October 23, 1985. Four USTs were installed at the Facility in 1986. Duncan took sole title to the property on June 2, 1995, and held it until November 15, 2005, when he sold it to Mr. Ralph V. Estep ("Estep").

² Under the terms of 7 *Del. C* § 7402 (6) "'Facility' means any location or part thereof that contains or had previously contained 1 or more underground storage tanks."

After purchasing the land from Duncan in November 2005, Estep held title in his individual capacity until January 2, 2007, where the property was transferred to Brackenville Properties LLC ("Brackenville"), an entity he controlled or controls. On February 3, 2016, Brackenville conveyed the property to Ralph V. Estep as Trustee for the Ralph V. Estep Irrevocable Family Trust (the "Trust"), which is the current owner of the land.

STTCPL LLC ("STTCPL") aka Service Energy LLC ("Service") owned and operated the gasoline dispensing equipment, including USTs used for storing and dispensing gasoline at the Facility for 16-17 years, during 2000-2017, under a lease agreement with Duncan. Financial responsibility and insurance documents in the Department's possession identify Service as the owner of the USTs during that time period.

On March 15, 2019, the Department's Remediation Section ("DNREC-RS") issued a letter of warning to STTCPL to complete the past-due hydrogeologic investigation initially required by DNREC-RS in a letter dated March 16, 2017. In an email dated August 15, 2018, DNREC-RS approved a work plan submitted on August 13, 2018, on behalf of STTCPL to continue the hydrogeologic investigation, which was started by consultants, Duffield Associates. To date, DNREC-RS has not received the report of the additional hydrogeologic activities.

The proposed work was intended to partially fulfill requirements set forth by DNREC-RS in the letter dated March 16, 2017. DNREC-RS confirmed its authority to assume control of a release, such as the petroleum release at the above referenced facility, as regulated by 7 Del. C § 7406(c): *The Department may assume control of any release situation when it is determined that the responsible parties are not responding promptly. However, all liability will remain with the responsible party.*"

On March 26, 2019, DNREC-RS received a letter from STTCPL to confirm their inability to pay for any additional work at the property. They also included the Assignment and Lease Modification Agreement between New Dawn Enterprises, Inc., and STTCPL and Duncan which stated that the Landlord (Duncan), *"shall be responsible for and shall hold harmless STTCPL, L.L.C., from any claims for environmental damage which has occurred prior to the time that they have become a tenant on the property."* STTCPL claims it has been unable to convince Estep and Duncan to assume responsibility for the Hydrogeologic Investigation.

On October 22, 2019, DNREC-RS sent Letters of Warning to Duncan and Estep, which required them to complete the hydrogeologic investigation and provide documentation regarding ownership of the USTs. On October 30, 2019, DNREC-RS received a letter from Duncan stating the liability agreement mentioned by STTCPL in the March 26, 2019, letter refers to another facility in Harrington and the claim for the above-referenced Facility is incorrect.

On October 22, 2019, DNREC-RS sent a Letter of Warning to STTCPL. This required additional documentation to complete the Ability to Pay Determination Form (for Business) and UST Ownership Questions and Ownership Statement within thirty (30) days. On November 12, 2019, DNREC-RS emailed STTCPL a reminder to submit the documentation. The letter also indicated that if no action was taken, the Department would issue a Notice of Intent to conduct the investigation and cleanup the Facility. This action would lead to a Cost Recovery action.

On November 5, 2019, DNREC-RS received a letter from the Abbott Law Firm on behalf of Estep which stated that Estep purchased the property in 2005 and subsequently transferred the title of the land to a family trust identified as the Ralph V. Estep Irrevocable Family Trust. The letter asserts that Duncan was the owner/operator of the parcel from 1985 to 2000 and STTCPL was the operator of the UST system from 1985 to 2017.

On December 9, 2019, DNREC-RS received a letter from STTCPL, which stated without any documentation that STTCPL is not responsible for the environmental problems at the Facility. To date, the required documentation and hydrogeologic investigation report has not been submitted to DNREC-RS.

On January 24, 2020, the Department's Counsel, on behalf of DNREC-RS, sent letters to Estep, Duncan, and STTPL to request documentation and establish responsibility for the release of regulated substances. On March 6, 2020, Estep responded with documentation providing a 2008 Phase I report, a 2005 Agreement of Sale, a February 26, 2020, letter to both STTCPL and Duncan requesting them to respond to the requirements for a hydrogeologic investigation, correspondence about a liability lease agreement, and the January 24, 2020, letter from the Department's Counsel.

On February 24, 2020, the Department's Counsel granted an extension to STTCPL to respond to the January 24, 2020, letter requesting information about their involvement at the Facility. On March 2, 2020, STTCPL responded with documentation including UST Inspection sheets, Vapor Recovery permits, Operating Permit, the ARFA Enterprise Inc. aka New Dawn Enterprises Inc. Documentation for compliance issues from 1991-1992, and the No Further Action letter issued by DNREC in 1997 for the UST system retrofit/upgrades.

In its written response, STTCPL highlighted detections of lead and lack of detected ethanol in soil to pinpoint the timing of the petroleum release to the time of Duncan's ownership or operation of the Facility. A leaded-gasoline release occurred in approximately the 1980s and 1990s but there is also evidence of more recent gasoline releases. This is reflected in the recent 2017 UST removal samples for soil and groundwater for benzene, toluene, ethylbenzene, xylenes

(BTEX), methyl-tert-butyl-ether (MTBE), and petroleum chemicals of concern, indicating multiple releases through time.

On March 18, 2020, after the February 26, 2020, deadline, DNREC-RS received a letter from Duncan stating that he was not the owner or operator without providing any supporting documentation. On November 6, 2020, a Notice of Violation (20-UT-01) was sent to the Respondents outlining the statutory and regulatory requirements that have not been met at the facility. On July 7, 2021, a final Notice of Intent was issued to the Respondents as a final warning letter.

FINDINGS OF FACT

1. On August 15, 2018, DNREC-RS approved a work plan submitted on August 13, 2018, by Duffield Associates on behalf of STTCPL to continue the hydrogeologic investigation. To date, DNREC-RS has not received the report of the additional hydrogeologic activities.

Accordingly, Respondents are in violation of Section 4.2.2 of the UST Regulations:

Responsible Parties shall submit the results of the hydrogeologic investigation to the Department no later than one hundred twenty (120) days after a Release is confirmed or other Department approved schedule. The hydrogeologic investigation report shall include recommendations for further action or a request for a no further action determination in accordance with Part E, subsection 6.1.

2. Respondents were notified on March 15, 2019, by DNREC-RS to complete a past-due hydrogeologic investigation as required by the UST Regulations:

4.2.1. After a Release is confirmed, Responsible Parties shall conduct a hydrogeologic investigation as the first step in the Corrective Action process unless directed to do otherwise by the Department.

4.2.5. The Responsible Parties may submit hydrogeologic investigation reports for a site separately or as part of a proposed long-term Remedial Action work plan in accordance with the requirements of §5 of this Part.

3. Respondents were notified by the Department's Counsel on January 24, 2009, to provide documentation to establish responsibility for the release of regulated substances within 30 days of receipt of the letter. Estep provided a 2008 Phase I report, 2005 Agreement of Sale, and a written request to STTCPL and Duncan for their response to the Department's Counsel. Further, STTCPL provided additional documents in response to the request of the Department's Counsel for information about their involvement with the Facility, such as UST Inspections sheets, Vapor Recovery permits, Operating Permit, the ARFA Enterprise, Inc. aka. New Dawn Enterprises Inc.

4. DNREC-RS issued a Notice of Violation (NOV) to the Respondents on November 6, 2020, in response to their failure to resolve the violations outlined in the Notice, which results in a violation of 7 Del. C § 7406 (e) which states:

Responsible parties who own, owned, operate, or operated, a facility or an underground storage tank located at a facility, on or after January 1, 2016, shall be liable for remediation and corrective action, in accordance with this chapter and the regulations promulgated under it, for all released regulated substances on or under the facility, or on or under other real property but which originated or emanated from the facility, regardless of whether any responsible party proximately caused any release or not, and regardless of when and how the regulated substances were released. The ownership or operational association with the facility establishes the nexus for liability under this section to attach to these responsible parties.

CONCLUSIONS

Based on the above, the Department has concluded that Respondents are liable for a release of hazardous substances as owner/operators of the Facility pursuant to 7 Del. C § 7406 (e) which states:

Responsible parties who own, owned, operate, or operated, a facility or an underground storage tank located at a facility, on or after January 1, 2016, shall be liable for remediation and corrective action, in accordance with this chapter and the regulations promulgated under it, for all released regulated substances on or under the facility, or on or under other real property but which originated or emanated from the facility, regardless of whether any responsible party proximately caused any release or not, and regardless of when and how the regulated substances were released. The ownership or operational association with the facility establishes the nexus for liability under this section to attach to these responsible parties.

Furthermore, the Department has determined that Respondents have violated 7 *Del. C* § 7402 and the UST Regulations. Actions required to cure the violations are set forth below.

SECRETARY'S ORDER

In accordance with 7 *Del. C* § 7402 and 7 *Del. Admin. C* § 1351, Regulations Governing Underground Storage Tank Systems (the UST Regulations) within thirty (30) days following receipt of this correspondence, STTCPL, Service, Duncan, and Estep as Trustee of the Trust are required to complete the following steps of the required hydrogeologic investigation. The hydrogeologic investigation must be conducted according to the *Delaware Risk-Based Corrective Action Program (DERBCAP) Guide* and the *Hydrogeologic Investigation Guide (2012)*. Specifically, the following steps must be performed:

- Installation of additional onsite monitoring wells for complete site characterization.
- Installation of offsite monitoring wells for complete site characterization.
- Installation of a downgradient and offsite point of compliance monitoring well.
- Implementation of quarterly monitoring well sampling and gauging.
- Submittal of groundwater monitoring and sampling and report.

Please be reminded that all quarterly monitoring events must continue throughout the process and that you shall implement site specific Quality Assurance/Quality Control and Health and Safety plans for all field activities.

ASSESSMENT OF PENALTY AND COSTS

Pursuant to the provisions of 7 *Del. C* § 6005(b)(3), this is written notice to Respondents that on the basis of its findings, the Department is assessing Respondents an administrative penalty of \$200,000.00 for the violations identified in this Notice and Order.

Pursuant to 7 Del. C §7411 (c) the “Department may assume control of any release situation when it is determined that responsible parties are not responding promptly. However, all liability will remain with the responsible party.” Additionally, Part E, §3.1 of the UST Regulations also provide the Department with the authority to assume control of releases:

3.1.1. The Department reserves the right to assume control of any Release situation when it is determined that the Responsible Parties are not responding promptly or effectively. In such cases all liability, including payment to the Department of response costs, will remain with the Responsible Parties.

3.1.2. To protect human health, safety and the environment, the Department reserves the right for the Department or its contractors to enter and take appropriate actions on affected properties to investigate, abate and remediate contamination.

If the work outlined above does not occur within the specified time frames, the Department will assume control of the release as provided by the referenced statute, proceed with all necessary release response activities, and begin cost recovery actions against STTCPL, Service, Duncan, and Estep, as Trustee of the Trust. Failure to complete these activities within the time allotted will result in enforcement action against STTCPL, Duncan, and the Trust by the Department. Enforcement action can include civil penalties of up to \$25,000 per day per violation. In addition, the Department requires the Respondents to meet the requirements of all State and Federal laws and regulations.

The Department anticipates that additional costs will be incurred in the future in monitoring testing, compliance, and remediation, and the Department reserves the right to recover any such additional costs.

Respondents shall submit one check to the Department in the amount of \$200,000.00 to pay the penalty to be tendered within 30 days from the receipt of this Notice and Order. The check shall be made payable to the “State of Delaware” and shall be directed to:

Kayli H. Spialter, Esq.
Deputy Attorney General
Department of Justice, Environmental Unit
391 Lukens Drive
New Castle, Delaware 19720

The Department reserves the right to take additional enforcement actions regarding these and other violations by Respondent, including but not limited to one or more of the following: an action under the authority vested in the Secretary by *7 Del. C* Ch. 60 and 74, *7 Del. Admin. C* § 1351; 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 Respondents. Pursuant to 7 *Del. C* § 6008, any person whose interest is substantially affected by this action of the Secretary may appeal to the Environmental Appeals Board within 20 days of the receipt of the Assessment and Order. In the alternative, Respondents may, pursuant to 7 *Del. C* § 6005(b)(3), request a public hearing on the penalty assessment and Order, within 30 days of receipt of the Assessment and Order. A hearing would be conducted pursuant to 7 *Del. C* § 6006, and the Secretary's Order following the hearing would be subject to appeal, pursuant to 7 *Del. C* § 6008, by any person substantially affected.

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

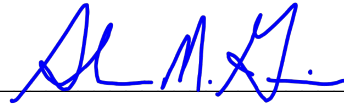
If you want a hearing and opportunity to contest this Assessment and Order, you must submit your request, in writing, within 30 days of receipt of this Assessment and Order to:

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

Respondents may waive its right to request a hearing or to file an appeal by signing the waiver attached herein and prepaying the penalty. If no hearing is requested or appeal filed as described above and the administrative penalty of \$200,000.00 is not paid within the time frame above, DNREC may immediately take action to collect the above amounts.

1/17/23

Date



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

WAIVER OF STATUTORY RIGHT TO A HEARING

Respondents hereby waives their right to a hearing and its opportunity to appeal or contest this Assessment and Order and agrees to the following:

1. **Respondents** will pay the administrative penalty in the amount of \$200,000.00 by sending a check payable to the "State of Delaware" within 30 days of receipt of this Assessment and Order. The check shall be directed to Kayli H. Spialter, Deputy Attorney General, Department of Justice, Environmental Unit, 391 Lukens Drive, New Castle, Delaware 19720; and
2. **Respondents** further agree to abide by all of the terms and conditions set out in this Assessment and Order and that a restart of the EO Plant is contingent upon the completion of some of the action items, as set forth herein, and Department approval.

Respondents

Date: _____

By: _____

Title: _____