

STATE OF VERMONT

ENVIRONMENTAL COURT
DOCKET NO.

SECRETARY, VERMONT AGENCY
OF NATURAL RESOURCES,
Plaintiff

v.

PREMIUM PETROLEUM, INC.,
ODESSA CORPORATION,
TIMBERLAKE ASSOCIATES
WESCO INC.
Respondents

ADMINISTRATIVE ORDER

Having found that Premium Petroleum, Inc., Odessa Corporation, Timberlake Associates, and Wesco Inc. (Respondents) have committed violations as defined in 10 V.S.A. §8002(9), the Secretary (Secretary) of the Agency of Natural Resources (Agency), pursuant to the authority set forth in 10 V.S.A. §8008, hereby issues the following Administrative Order:

VIOLATIONS

1. APCR § 5-253.7(e)(1)(iii): Failure to test Stage II vapor recovery system.
2. APCR § 5-253.5(c)(1): Failure to use submerged fill (i.e., install drop tubes) in two underground storage tanks (USTs).

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

1. Respondents Premium Petroleum, Inc., Odessa Corporation, and Wesco Inc. are Vermont registered corporations with principal offices located at 32 San Remo Drive in South Burlington, Vermont. Timberlake Associates is registered as a tradename with principal offices located at 32 San Remo Drive in South Burlington, Vermont.

2. Mountain Valley Marketing, Inc owns the Underground Storage tanks at Champlain Farms Exxon, UST ID# 1478, located in Waitsfield, Vermont. Mountain Valley Marketing leases the premises to Respondent, Wesco, Inc. Wesco, Inc. distributes gasoline to the dispensing station at Champlain Farms Exxon, UST ID # 1478, located in Waitsfield, Vermont and leases the premises to Odessa Corporation. Odessa Corporation operates the gasoline dispensing station at Champlain Farms Exxon UST ID # 1478, located in Waitsfield, Vermont.
3. Respondent Premium Petroleum, Inc., owns the Champlain Farms trademark and operates convenience stores at the following gasoline dispensing facilities: Champlain Farms Exxon UST ID # 1478, located in Waitsfield, Vermont: Champlain Farms, UST ID# 1098, located on Railroad Street in St. Johnsbury: and Champlain Farms Texaco, UST ID# 4533000, is located at 3 West Street in Bristol, Vermont.
4. Champlain Farms, UST ID# 1098, is located on Railroad Street in St. Johnsbury, Vermont. According to the Notification of Regulated Waste Activity form, received by the Waste Management Division (WMD) of the Agency of Natural Resources from Respondents on January 26, 1998, the property is owned by Wesco, Inc. However, according to the Vermont Underground Storage Tank forms, the property is owned by Timberlake Associates, the USTs are owned by Wesco, Inc., and the tank operator is Odessa Corporation.
5. Champlain Farms Texaco, UST ID# 4533000, is located at 3 West Street in Bristol, Vermont. Wesco, Inc., is the landowner and the UST owner.
6. Dave's Mini Mart, UST ID# 1922, is located at 15 South Main Street in Barre, Vermont.

According to the Notification of Regulated Waste Activity form, received by the WMD from Respondents on January 26, 1998, the property is owned by Wesco, Inc. However, according to the Vermont Underground Storage Tank forms, the property is owned by Walter and JoAnn Simendinger, the USTs are owned by Wesco, Inc., and the tank operator is Odessa Corporation.

7. The annual gasoline throughput of Champlain Farms (UST ID# 1098) in St. Johnsbury, Champlain Farms Texaco (UST ID# 4533000) in Bristol, and Dave's Mini Mart (UST ID# 1922) in Barre have each exceeded 400,000 gallons since 1994. Facilities with an annual gasoline throughput of 400,000 gallons per year or greater were required to be in compliance with APCR §5-253.7 (*Stage II Vapor Recovery Controls at Gasoline Dispensing Facilities*) by December 31, 2000. Specifically, Stage II vapor recovery controls were required to be installed and tested for compliance by December 31, 2000.
8. The required Stage II compliance tests were performed and passed at the Champlain Farms (UST ID# 1098) on August 22, 2001, at Champlain Farms Texaco (UST ID# 4533000) on August 14, 2001, and at Dave's Mini Mart (UST ID# 1922) on July 18, 2001. Respondents are in violation of APCR §5-253.7 in that Respondents failed to test the Stage Vapor Recovery systems at said stations prior to the compliance date of December 31, 2000.
9. On July 19, 2001, Dave Shepard of the APCD conducted a compliance inspection at the Champlain Farms Texaco (UST ID# 4533000) facility in Bristol. Mr. Shepard observed that drop tubes (i.e., submerged fill) were not installed in two (2) of the three (3) USTs at the facility. Respondents violated APCR §5-253.5(c)(1) in that Wesco, Inc., failed to

equip two of its USTs at its Champlain Farms Texaco (UST ID# 4533000) facility with drop tubes enabling submerged fill of said tanks.

ORDER

Upon receipt of this Administrative Order, the Respondents shall:

- A. Pay a total penalty of \$6,500.00 within thirty (30) consecutive calendar days of the effective date of this order. Payment shall be by check made payable to the "Treasurer, State of Vermont" and forwarded to:

Becky Buchanan, Administrative Assistant
Environmental Enforcement Division
Agency of Natural Resources
103 South Main Street, 2 South
Waterbury, VT 05681-0401

The above penalty amount does not necessarily include all the costs incurred by the Secretary for the enforcement of the above-described violation(s) or the full amount of economic benefit gained by the Respondents from the violation(s). The Secretary reserves the right to augment the above stated penalty through evidence presented at hearing. In accordance with 10 V.S.A. §8010, the penalty may be increased by the costs incurred by the Secretary for the enforcement of this matter and by the amount of economic benefit gained by the Respondents from the violation(s), each according to proof at the hearing.

- B. No later than thirty (30) consecutive calendar days following the effective date of this Order, Respondents shall provide documentation to the APCD regarding the Champlain

Farms Texaco (UST ID# 4533000), including physical measurements and photographs, that verifies that drop tubes of the proper length are installed in all USTs at said facility in compliance with APCR §5-253.5(c)(1).

**RESPONDENT'S RIGHT TO A HEARING
BEFORE THE ENVIRONMENTAL COURT**

The Respondents have the right to request a hearing on this Administrative Order before the Environmental Court under 10 V.S.A. §8012 by filing a Notice of Request for Hearing within fifteen (15) days of the date the Respondents receive this Administrative Order. The Respondents must timely file a Notice of Request for Hearing with both the Secretary and the Environmental Court at the following addresses:

1. Secretary, Agency of Natural Resources
c/o: Enforcement Division, 2 South
103 South Main Street
Waterbury, Vermont 05671-0411

2. Clerk, Environmental Court
225 North Main Street
Barre, Vermont 05641

EFFECTIVE DATE OF THIS ADMINISTRATIVE ORDER

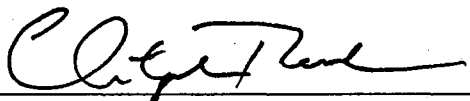
This Administrative Order shall become effective on the date it is received by the Respondent unless the Respondents file a Notice of Request for Hearing within fifteen (15) days of receipt as provided for in the previous section hereof. The timely filing of a Notice of Request for Hearing by the Respondent shall stay the provisions (including any penalty provisions) of this Administrative Order pending a hearing by the Environmental Court. If the Respondents do not make a timely filing of a Notice of Request for Hearing, this Administrative Order shall become a final Administrative Order.

COMPLIANCE WITH THIS ADMINISTRATIVE ORDER

If the Respondents fail or refuse to comply with the conditions of a final Administrative Order, the Secretary shall have cause to initiate an enforcement action against the Respondents pursuant to the provisions of 10 V.S.A. Chapters 201 and 211.

Dated at Waterbury, Vermont this 31st day of July, 2002.

SECRETARY, VERMONT AGENCY OF NATURAL RESOURCES

By: 
Christopher Recchia, Commissioner
Department of Environmental Conservation

STATE OF VERMONT

ENVIRONMENTAL COURT
Docket No. _____

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v.

PREMIUM PETROLEUM, INC.
ODESSA CORPORATION,
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WESCO INC.
Respondents

Affidavit of David Shepard

I, David Shepard, being duly sworn do attest:

1. I am of legal age and a resident of Vermont.
2. I am employed as an Environmental Analyst with the Air Pollution Control Division of the Agency of Natural Resources.
3. Based upon personal observations, review of Agency files, and conversations with witnesses, the violations described in Administrative Order occurred on or about the dates set forth therein.

Dated at Waterbury, Vermont this 30 day of July 2002.

David Shepard
Dave Shepard - Affiant

Subscribed and sworn before me on the 30 day of July 2002.

Lecia A. Wilson
Notary Public

My Commission Expires: February 2003