



NEVADA DIVISION OF
**ENVIRONMENTAL
PROTECTION**

STATE OF NEVADA
Department of Conservation & Natural Resources

Steve Sisolak, *Governor*
Bradley Crowell, *Director*
Greg Lovato, *Administrator*

January 25, 2019

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Mr. James Puzey, Esq.
Holley, Driggs, Walch
800 South Meadows Parkway, Suite 800
Reno, NV 89521
Counsel for Nicholas and David Willden

Subject: Finding of Alleged Violations and Order

Reference: Payless Car Rental (a.k.a. Allstate Car Rental) Facility
5175 Rent-A-Car Road, Las Vegas, Nevada
State Facility ID #8-000006

Dear Mr. Puzey,

Your clients, Nicholas and David Willden (Willdens), have abandoned corrective action activities required as a result of releases of petroleum hydrocarbons from the on-site underground storage tank systems at the former Payless/Allstate Car Rental (Allstate). The Willdens ceased these monitoring and remediation activities in and around Allstate on December 29, 2017 and have been out of compliance since that date. Letters from the Nevada Division of Environmental Protection (NDEP) and the Nevada Attorney General's Office between November 27, 2017 and July 20, 2018 described in detail the Willden's continuing legal responsibility for site clean-up. While you have responded to these letters on behalf of Willdens, NDEP finds your responses wanting in legal and factual merit. Due to the Willden's continued non-compliance, NDEP is issuing a Finding of Alleged Violations and Order.

Any violation of the terms of this Order could subject the Willdens to an action for injunctive relief, civil penalties, and damages under NRS 445A.695, 445A.700, 459.854, and 459.856. The enclosed Order requires the Willdens to meet with NDEP and develop a schedule to comply with this Order.

Pursuant to NRS 445A.690, this Order is final and not subject to review unless, within thirty (30) days after the date the Order is served, the Willdens request, by written petition (Form #3, enclosed), a hearing before the State Environmental Commission (SEC). If the Willdens choose to appeal to the SEC, send the required documents to Valerie King, Executive Secretary, 901 South

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Stewart, Suite #4001, Carson City, Nevada 89701, or by telefax (775) 687-5856. Please provide the undersigned with copies of any correspondence that you provide to the SEC.

If you have any questions or require additional information, you may contact me at (702) 486-2850, extension 230.

Sincerely,



Todd J. Croft, Supervisor
Remediation & Leaking UST Branch
Bureau of Corrective Actions

Enclosures (3)

Finding of Alleged Violations
Order
SEC Form #3

cc: Greg Lovato, Administrator, NDEP, 901 South Stewart Street, Suite 4001, Carson City, NV 89701-5249
glovato@ndep.nv.gov
Jeffrey Kinder, Deputy Administrator, NDEP, 901 South Stewart Street, Suite 4001, Carson City, NV 89701-5249
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Jeff Collins, Bureau Chief, NDEP Bureau Corrective Actions, 901 South Stewart Street, Suite 4001, Carson City, NV 89701
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Valerie King, Executive Secretary, Nevada State Environmental Commission, 901 South Stewart Street, Suite 4001, Carson City, NV 89701-5249
vking@ndep.nv.gov
Ben Moan, Regulatory Case Officer, Remediation and Leaking UST Branch, NDEP Bureau of Corrective Actions, 2030 East Flamingo Road, Suite 230, Las Vegas, NV 89119-5163
bmoan@ndep.nv.gov
Frederick Perdomo, State of Nevada, Office of the Attorney General, 100 North Carson Street, Carson City, Nevada 89701
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Nick Willden, Willden Automotive Group, 1354 Rossini Circle, Henderson, NV 89052 willdens@cox.net
James Puzey, Holley·Driggs·Walch·Fine·Wray·Puzey·Thompson, 800 South Meadows Parkway, Suite 800, Reno, NV 89521 jpuzey@nevadafirm.com

cc: Clark County Emergency Management, 500 South Grand Central Parkway, 6th Floor, P.O. Box 551713, Las Vegas, NV 89155-1713
Nick and David Willden, Willden Automotive Group, 1354 Rossini Circle, Henderson, NV 89052-5552
Adjoining Property Owners
Paradise Gardens, LLC, c/o Tina Walls, Walls Law Firm, 8861 West Sahara Avenue, Suite 220, Las Vegas, NV 89117

Petroleum Fund Case File #1998000046

File Copy (8-000006)

Certified Mail: 9171 9690 0935 0011 0722 53

FINDING OF ALLEGED VIOLATIONS

The Nevada Division of Environmental Protection (NDEP) is issuing this Finding of Alleged Violations (FOAV) under the State of Nevada's Water Pollution Control Laws and Underground Storage Tank Program. NDEP finds that Nicholas and David Willden, individually and collectively, as owner and/or operator of the former Payless/Allstate Car Rental Facility, located at 5175 Rent-A-Car Road, Las Vegas, Nevada are in violation of these laws and regulations as specified below.

I. Statutory and Regulatory Background

A. Definitions

1. "Action Level" means the level of concentration of a hazardous substance, hazardous waste or a regulated substance in soil, groundwater or surface water that is established pursuant to NAC 445A.2272, 445A.22735 and 445A.2275 and for which corrective action may be required by the Director. NAC 445A.22605.

2. "Commission" means the State Environmental Commission. NRS 445A.320, 459.802.

3. "Contaminant" means any physical, chemical, biological or radiological substance or matter, which is added to water. NRS 445A.325

4. "Department" means the State Department of Conservation and Natural Resources. NRS 445A.330, 459.804; NAC 459.9925.

5. "Director" means the Director of the Department. NRS 445A.345, 459.806; NAC 445A.22625.

6. "Discharge"

1. As used in NRS 445A.300 to 445A.730, "Discharge" means any addition of a pollutant or pollutants to water. NRS 445A.345.

2. As used in NRS 445C.150 to 445C.410, "Discharge" means any release, leaking or spilling from a storage tank into water or soil, unless the discharge is authorized by state or federal law.

7. "Division" means the Division of Environmental Protection of the Department (also referred to as NDEP in this FOAV). NRS 445A.350 459.806; NAC 445A.2263, 459.9927.

8. "Facility" means any: 1. [b]uilding, structure, installation, equipment, pipe, including the pipe into a sanitary or storm sewer or publicly owned treatment works, pipeline, well,

pit, pond, lagoon, impoundment, ditch, landfill, container for storage, tank or underground tank for storage; 2. [s]ite or area where a hazardous substance, pollutant or contaminant has been deposited, stored, disposed of, placed or otherwise located; . . . NAC 445A.3452.

9. “Hazardous Substance” includes, without limitation, hazardous material, a regulated substance, a pollutant and a contaminant. NRS 459.429; NAC 445A.2264.

10. “Owner”

1. As used in NAC 445A.226 to 445A.22755, “Owner” means a person who owns property where a hazardous substance, hazardous waste or a regulated substance is disposed of, used or stored. NAC 445A.22655.

2. As used in NRS 459.800 to 459.856, NAC 459.9921 to 459.999, and 40 C.F.R. Part 280, “Owner” means any person who owns [a]n underground storage tank used to store or dispense regulated substances after November 8, 1984 . . . NRS 459.812, 40 C.F.R. 280.12

11. “Operator”

1. As used in NAC 445A.226 to 445A.22755, “Operator” means a person in control of or having responsibility for the daily operation of a site, business or other operation where a hazardous substance, hazardous waste or a regulated substance is disposed of, used or stored. NAC 445A.2265.

2. As used in NRS 459.800 to 459.856, NAC 459.9921 to 459.999, and 40 C.F.R. Part 280, “Operator” means any person in control of, or having responsibility for, the daily operation of a storage tank. NRS 459.810, 40 C.F.R. 280.12

12. “Point Source” means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. The term does not include return flows from irrigated agriculture. NRS 445A.395.

13. “Person” means a natural person, any form of business or social organization and any other nongovernmental legal entity including, but not limited to, a corporation, partnership, association, trust or unincorporated organization. The term also includes the United States, to the extent authorized by federal law, the State or any agency or institution thereof, any municipality or other political subdivision of this State or any interstate body. NRS 0.039, 445A.390, 459.814.

14. “Pollutant” means dredged soil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal and agricultural waste discharged into water. NRS 445A.400(1).

15. “Regulated Substance” means: (1) [a]ny petroleum substance or chemical regulated by the federal Resource Conservation and Recovery Act of 1976 (42 U.S.C. §§ 6901 et seq.), that is contained in a storage tank, except that the term does not include any substance subject to

regulation under Subtitle C of that act as hazardous waste; and (2) [a]ny petroleum, including crude oil or any fraction thereof that is liquid at standard condition of temperature and pressure, 60 degrees Fahrenheit and 14.7 pounds per square inch absolute. The term includes, but is not limited to, petroleum and petroleum-based substances comprised of a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading and finishing, such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, solvents and used oils. NRS 459.448(1), (2), 459.816(1), (2); NAC 445A.22665.

16. “Release”

1. As used in NAC 445A.226 to 445A.22755, “Release” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injection, escaping, leaching, dumping or disposing into the environment. NAC 445A.3456

2. As used in NRS 459.800 to 459.856 and NAC 459.9921 to 459.999, “Release” means the spilling, leaking, emitting, discharging, escaping, leaching or disposing from a storage tank into groundwater, surface water or surface or subsurface soils. NRS 459.816

3. As used in 40 C.F.R. Part 280, “Release” means any spilling, leaking, emitting, discharging, escaping, leaching or disposing from an UST into groundwater, surface water or subsurface soils. 40 C.F.R. 280.12.

17. “Remediation Standard” means the level of concentration of a hazardous substance, hazardous material or a regulated substance in soil, groundwater or surface water which corrective action is designed to achieve. NAC 445A.22675.

18. “Waters of the State” means all waters situated wholly or partly within or bordering upon this State, including but not limited to: . . . (2) [a]ll bodies or accumulations of water, surface and underground, natural or artificial. NRS 445A.415(2).

B. Enforcement Authority

19. NRS 445A.445 (1), 445A.450(10) and 459.824 (1) and (8) grant the Department and the Division, as the Department’s delegatee, authority to administer and enforce the provisions of NRS 445A.300 to 445A.730 and NRS 459.800 to 459.856 inclusive, and all rules, regulations and standards adopted by the Commission to administer and enforce those statutory sections.

20. Pursuant to NRS 445A.675, 445A.690 and 459.852, the Division may issue an order to any person who is engaged or is about to engage in any act or practice which constitutes a violation of the statutory sections identified in paragraph 19 or any rule, regulation or standard adopted by the Commission to administer and enforce those sections.

C. Water Pollution Control: NRS and NAC Chapter 445A

21. NRS 445A.465(1) makes it unlawful for any person to: (a) [d]ischarge from any point source any pollutant into any waters of the State or any treatment works, . . . (c) [a]llow a

pollutant discharged from a point source or fluids injected through a well to remain in a place where the pollutant or fluids could be carried into waters of the State by any means.

22. The [Division] may require an owner or operator to take corrective action if the release of a hazardous substance, hazardous waste or a regulated substance contaminates groundwater and the level of contamination exceeds the action level established for the groundwater pursuant to NAC 445A.22735. NAC 445A.22725(1).

23. NAC 445A.22735, states, in relevant part, that for purposes of NAC 445A.22725 the action level for groundwater must be established at an appropriate level of concentration that is based on the protection of public health and safety and the environment, if a maximum contaminant level has not been established for a hazardous substance, hazardous waste, or a regulated substance. The appropriate level of concentration must be determined by the Division using the Integrated Risk Information System, adopted by reference in NAC 445A.2272, or an equivalent method approved by the Division. NAC 445A.22375(1)(d).

24. NDEP's October 1998 Oxygenated Fuel Corrective Action Guidance, provides, in relevant part, that the state action level for MTBE is 20 ug/L if water wells or sensitive environments are within 1000 feet of the groundwater contamination plume and 200 ug/L, if these conditions are not met or there is an incomplete exposure pathway.

25. An owner or operator may, before initiating corrective action or after termination of remediation pursuant to NAC 445A.22745, submit a written request to the [Division] for an exemption from the provisions of [NAC 445A.22725(1)]. The request must be accompanied by such supporting information as the [Administrator] may require and the exemption may only be granted on demonstration that each of the conditions specified in this section are satisfied. NAC 445A.22725(2).

26. NAC 445A.22745(1) states that after any corrective action required by NAC 445A.22725 involving the treatment of groundwater is begun, the owner or operator may terminate remediation of the release after submitting written documentation and receiving written concurrence from the Division . . .

27. After any remediation is terminated pursuant to NAC 445A.22745(1), the owner or operator shall ensure that any contaminated groundwater is monitored for not less than 1 year to determine the level of contamination in the groundwater. The Division shall determine the frequency of any monitoring required pursuant to this subsection, except that the Division shall not require monitoring more frequently than once each month. NAC 445A.22745(2)

28. The Division may require an owner or operator of a facility to submit and carry out a plan and schedule for an additional characterization of a site to collect any information that is not submitted as part of an assessment of the conditions of a site pursuant to NAC 445A.2269 if the information is required to . . . [s]upport the issuance of an exemption, waiver or determination that corrective action is not required pursuant to NAC 445A.227 or 445A.22725. NAC 445A.22691(3).

D. Underground Storage Tank Program: NRS and NAC Chapter 459

29. NAC 459.993(1) adopts by reference, 40 C.F.R. 280.65, among other sections not pertinent to this FOAV.

30. NAC 459.993(2) requires each owner and operator to comply with the requirements of the regulatory sections adopted in NAC 459.993(1).

31. 40 C.F.R. 280.65(a) states that in order to determine the full extent and location of soils contaminated by the release and the presence and concentrations of dissolved product contamination in the ground water, owners and operators must conduct investigations of the release, the release site, and the surrounding area possibly affected by the release if any of the following conditions exist: . . . (4) [t]he implementing agency requests an investigation, based on the potential effects of contaminated soil or groundwater on nearby surface water and ground-water resources.

32. 40 C.F.R. 280.65(b) requires owners and operators to submit the information collected under 40 C.F.R. 280.65(a) as soon as practicable or in accordance with a schedule established by the [Division].

33. NAC 459.9988(1) states that an owner or operator of a storage tank who submits a report pursuant to NAC 459.996 or a notice pursuant to NAC 459.9972 shall comply with the provisions of NAC 445A.226 to 445A.22755, inclusive.

34. NAC 459.9988(2) states that if the report or notice indicates that a regulated substance has been released, the Division may require the owner or operator to assess any soil or water contaminated by the release to determine whether the presence of any hazardous waste was created by the release.

II. Factual Background

35. The former Payless/Allstate Car Rental (Allstate) was located at 5175 Rent-A-Car Road, Las Vegas, Nevada. The property on which Allstate sat (APN: 162-27-201-004) was at all relevant times to this FOAV owned by County of Clark (Aviation) (*Clark County Assessor's website: <http://gisgate.co.clark.nv.us/openweb/>*).

36. On April 17, 1986, January 21, 1987, March 11, 1994, and May 1, 1998 respectively, Nicholas and/or David Willden submitted Notifications for Underground Storage Tanks (USTs, U.S. EPA Form 7530-1). In these UST Notifications, Allstate is identified as the owner of the UST systems, Nick Willden is identified as either the Vice President or General Manager of Allstate and the contact person in charge of the tanks, and David Willden, in at least one UST Notification, is identified as the owner of Allstate and contact person at the tank location. (*NDEP Case File, 7530-1 forms*).

37. In March 1997, NDEP received a report that petroleum hydrocarbons were detected above state action levels in the groundwater immediately down-gradient of Allstate. In a letter dated July 22, 1997, addressed to Nick Willden of Allstate Rental Car [sic], NDEP indicated that petroleum hydrocarbon contamination in groundwater was reported in the vicinity of the Allstate facility. The letter requested further assessment to determine whether the USTs operated by Allstate were leaking and contributing to groundwater contamination in the vicinity and urged Allstate “to assess [the] situation and, if necessary, conduct a cleanup as quickly as possible.” (*July 22, 1997 NDEP Letter Re: Petroleum Hydrocarbon Release at Rent-A-Car Road, Las Vegas, NV. Allstate Facility I.D. #8-000006*).

38. On January 30, 1998, Nicholas and David Willden submitted an Application for Petroleum Fund Coverage. In that application, Nicholas and David Willden are identified as the owner/operator of Allstate and the owners or authorized agents for all LUST (leaking underground storage tank) regulated activities on the property. In a response to an inquiry about the status of the application, NDEP sent a letter to Allstate’s attorney, Gregory Walsh, on April 19, 1999, which stated that the application was pending due to a lack of information showing that the discovered site contamination emanated from Allstate’s UST systems. (*January 30, 1998 Application for Coverage; April 19, 1999, NDEP Letter Re: Copy of Board Resolutions, Pending Coverage under the State Petroleum Fund for the Allstate Car Rental Facility. . .*).

39. In a subsequent Application for Coverage to the Nevada State Petroleum Fund, dated July 30, 1999 and signed by Nick Willden, on August 2, 1999, Allstate Car Rental is identified as the owner/operator of the facility and owner of the UST systems and Nick Willden as the contact person representing the owner/operator and the contact person at the facility. The Application for Coverage lists September 16, 1998 as the date that the discharge (i.e., release) was discovered. Subsequent investigations confirmed that releases from Allstate’s underground storage tank systems contributed to groundwater contamination. (*July 30, 1999 Application for Coverage, included as part of a package submitted by Dames & Moore on August 2, 1999. The package included investigative reports*).

40. On January 27, 2000, NDEP sent a letter addressed to Nicholas and David Willden of Allstate Rent A Car, Inc., informing them that NDEP had recommended their case be considered for complete fund eligibility, or \$1 million for each leaking UST system minus a 10% copay. In that letter, the Willdens were notified “as the [o]wner/[o]perator of record, [they were] responsible for the management of the cleanup project and the associated costs.” (*January 27, 2000 NDEP Letter Re: Application for Coverage under the State Petroleum Fund for the Allstate Rent A Car Facility, 5175 Rent A Car Road, Las Vegas, Nevada*).

41. From approximately 1997 through 2017, numerous characterization, remediation, and monitoring activities were conducted for Allstate. NDEP correspondence regarding requirements, approvals, and management of these activities was consistently addressed to Nicholas (or Nick) Willden. Throughout this timeframe, David Willden was sometimes also included as an addressee. Early correspondence was addressed to “Allstate” or “Payless/Allstate Car Rental” at 5175 Rent-A-Car Road in Las Vegas, NV. Later correspondence addressed

Nicholas and David Willden of Willden's Automotive Holdings, LLC at 1354 Rossini Circle in Henderson, NV. (*NDEP Correspondence in the Case File*).

42. Beginning in January 2003, Not-to-Exceed Proposals (NTEPs) were signed by Nick Willden, as facility owner/operator (Claimant). From approximately January 2008 through January 2018, Nick Willden signed NTEPs and claims for reimbursement from the Petroleum Fund as Manager of Willden's Automotive Holdings, LLC. However, there is no mention of Willden's Automotive Holdings, LLC in the UST Notifications nor in the Application for Coverage to the Nevada State Petroleum Fund. (*Not-to-Exceed Proposals and claims to the Petroleum Fund in the NDEP Case File. Examples include: NTEP 28, dated January 15, 2003; NTEP-2010 Offsite Drilling2, dated August 5, 2010; NTEP 2017 GW, dated January 11, 2017; and Claim 78898, dated January 30, 2018*).

43. From 2007 to 2017, Nick Willden's Certified Environmental Manager (CEM) representatives attended meetings, at a frequency of approximately three per year, with NDEP and representatives of two nearby car rental companies with Leaking Underground Storage Tank cases (Avis/Budget, Facility I.D. 8-000217; and National, Facility I.D. 8-000416). It was established that groundwater plumes of methyl tertiary butyl ether (MTBE) emanating from the Allstate and Avis/Budget sites had commingled and migrated offsite and beneath a residential area down-gradient and to the east. Monitoring and remediation efforts were coordinated for the sites at these Rent-A-Car facilities (RAC) meetings (*Multiple RAC meeting summaries in the NDEP Case File*).

44. In RAC meetings, NDEP indicated to Nick Willden's CEM representatives that a groundwater exemption closure could be considered for the Allstate facility according to the provisions in NAC 445A.22725(2). NDEP also provided direction regarding requirements for requesting an exemption closure and provided timeframes for document submittals (*Examples include the summary of the June 2, 2015 RAC meeting and other RAC meeting summaries in the NDEP Case File*).

45. NDEP records indicate that Allstate, with Nicholas Willden listed as the owner/operator contact, was granted up to \$3,600,000.00 (\$4,000,000 minus a 10% copay) in Fund Coverage. This total is for releases from two regulated UST systems, and includes Third Party Coverage, which was granted at the December 8, 2011 Board Meeting at the request of Nicholas Willden, Managing Partner of Willden's Automotive Holdings, LLC. As of the date of this FOAV, the total amount of Fund Coverage paid is \$3,568,824.37, leaving \$31,175.66 in remaining coverage for eligible cleanup activities. (*November 16, 2011 NDEP letter Re: Transmittal of Proposed Board Resolution to Provide Third Party Liability Coverage, Former Allstate Rent A Car, 5175 Rent A Car Road, Las Vegas, Nevada, Facility ID No. 8-000046 [sic], Petroleum Fund Case ID No. 1998000046; and December 27, 2018 Site Summary Report*).

46. In a RAC meeting on November 14, 2017, the consultant representing Allstate, Robert Thompson of OGI Environmental, LLC (OGI), informed NDEP that Nick Willden, due to the lack of remaining Petroleum Fund coverage, had not renewed a contract with OGI for 2018 and would not continue paying for remediation. (*Summary of the November 14, 2017 All Facilities Meeting*).

47. In a letter dated November 27, 2017 addressed to Nicholas and David Willden of Willden Automotive Holdings, LLC and regarding Allstate, NDEP notified the Willdens that they remained responsible “to complete the cleanup, monitoring, and related activities for the above referenced facility, pursuant to NAC 445A.22725, regardless of the availability of Fund coverage.” The letter required a written response by December 14, 2017 indicating the Willdens’ intentions regarding continuing cleanup of the Allstate facility. *(November 27, 2017 NDEP Letter Re: Continuing Responsibility for Site Clean-up; Response Required within 14 Days).*

48. In a letter dated December 13, 2017 addressed to Ben Moan, Environmental Scientist III at NDEP, Mr. James Puzey, Esq., counsel for Nick and Dave Willden, asserted that Willden Automotive Holdings, LLC (“WAH”) divested all of its assets approximately a decade prior, was no longer a going concern, and would not be funding cleanup efforts if Petroleum Funds were exhausted. *(December 13, 2017 Letter Re: Payless/Allstate Car Rental Facility).*

49. On December 29, 2017, OGI, who had been operating the PulseOx® remediation system at the Allstate facility on behalf of the Willdens, reportedly turned the system off and disconnected power. In the fourth quarter 2017 groundwater monitoring report, OGI indicated that the system would remain off and that OGI would no longer be providing consulting services because Nick Willden would not continue paying for remediation costs. *(Fourth Quarter (2017) Ground Water Monitoring and Remediation Status Report – Former Payless Car Rental, dated January 10, 2018).*

50. Nick Willden and Dave Willden did not request and receive written concurrence from NDEP to terminate remediation activities.

51. Prior to terminating operation of Allstate’s remediation system on December 29, 2017, NDEP worked with Nick Willden’s CEM representatives to characterize and remediate contamination in the Payless/Allstate Car Rental source area, and in the down-gradient commingled Avis/Payless MTBE plume. Remedial activities included excavation of contaminated soils, air sparge/soil vapor extraction, and hydrogen peroxide/ozone injection. Concentrations of benzene, toluene, ethylbenzene, and xylenes (BTEX) in groundwater have been reduced to below maximum contaminant levels *(2018 Third Quarter Database Submittal).*

52. In a letter dated January 17, 2018, addressed to Nicholas and David Willden of Willden Automotive Holdings, LLC (WAH) and Michael Nelson of the Clark County Department of Aviation (DOA), NDEP notified the Willdens that they continue to be responsible for cleanup activities at the Allstate facility and that the dissolution of WAH has no bearing on their responsibility. The letter further informed the Willdens and DOA that NDEP would consider expending money from the State Account for the Management of Hazardous Waste, provided for under NRS 459.537, and that NDEP would seek cost recovery from the Willdens and DOA. The letter required a response within 14 days if the Willdens and/or DOA elected to directly fund cleanup operations. *(January 17, 2018 NDEP Letter Re: Action Required; Notification of potential expenditures subject to cost recovery authority; Response Required within 14 Days).*

53. In a letter dated January 30, 2018, addressed to Ben Moan, Mr. Puzey, Esq., on behalf of Nick and Dave Willden, asserted that the Willdens are not personally liable for petroleum releases from the Payless/Allstate Car Rental facility (*January 30, 2018 Letter Re: Payless/Allstate Car Rental Facility*).

54. In a letter dated June 28, 2018, addressed to Joseph McGinley, NDEP approved a task order for NDEP's contractor McGinley and Associates, Inc. to conduct groundwater sampling and reporting for the Allstate facility. (*June 28, 2018 NDEP Letter Re: Task Order Approval – Task MA 15-009-07-13-PA-01 – Groundwater Sampling*).

55. In a letter dated July 20, 2018, addressed to Mr. Puzey and to John Witucki, Esq., counsel for Clark County DOA, NDEP's counsel, Frederick Perdomo, outlined the evidence that Nicholas and David Willden, as UST owner/operator, and DOA, as landowner, are responsible for cleanup of the Allstate facility. The letter stated that NDEP would prefer to meet with the above parties to reach a resolution rather than seek court intervention. (*July 20, 2018 Nevada Attorney General Office Letter Re: Payless/Allstate Car Rental Facility*).

56. In a letter dated September 21, 2018, and addressed to Mr. Perdomo, Mr. Puzey, on behalf of Nick and Dave Willden, disputed that his clients are individually responsible for cleanup of the Allstate facility and indicated that they would not be willing to meet with NDEP until it can be shown that the Willdens have individual liability (*September 21, 2018 Letter Re: Payless/Allstate Car Rental Facility*).

57. As of the third quarter 2018 sampling event, concentrations of MTBE in groundwater near the Allstate source area are as high as 1,000 micrograms per liter ($\mu\text{g/L}$), exceeding the Site Specific Action Level of 200 $\mu\text{g/L}$. As of the second quarter 2018 sampling event, groundwater MTBE concentrations in the down-gradient commingled Avis/Payless MTBE plume are as high as 1,700 $\mu\text{g/L}$. It should be noted that the petroleum hydrocarbon releases from the Allstate UST systems included several gasoline components including benzene, toluene, ethylbenzene, total xylenes, (BTEX) and MTBE. BTEX compounds have been remediated to concentrations in groundwater that are less than applicable action levels. MTBE is the primary contaminant that remains in groundwater near the Allstate source area and in the down-gradient commingled Avis/Payless MTBE plume. Tertiary butyl alcohol (TBA) can be found in groundwater as a breakdown component from the remediation of MTBE and is used to track the remediation process although NDEP has not established an action level for TBA at this time. (*2018 Third Quarter Database Submittal*).

III. Finding of Alleged Violations

A. Alleged Violations of Water Pollution Control Laws

58. Nicholas Willden and David Willden, individually and collectively, violated NRS 445A.465(1) when Allstate's UST systems, Nicholas and David Willden owned and/or operated, discharged the pollutant petroleum, which includes MTBE, into the waters of the State.

59. Nicholas Willden and David Willden, individually and collectively, violated NRS 445A.465(2) by allowing the pollutant MTBE, a component of the petroleum discharged from Allstate's UST systems, which Nicholas and David Willden owned and/or operated, to remain in the waters of the State when they ceased remediation activities on December 29, 2017 without submitting written documentation to and receiving written concurrence from NDEP for that action pursuant to NAC 445A.22745(1) .

60. Nicholas Willden and David Willden, individually and collectively, violated NAC 445A.22725(1) by starting corrective action activities on the groundwater contamination in and around Allstate caused by the release of petroleum from Allstate's UST systems, which Nicholas and David Willden owned and/or operated, and thereafter terminating those corrective action activities on December 29, 2017 without submitting written documentation to and receiving written concurrence from NDEP for that action pursuant to NAC 445A.22745(1) and, subsequently not submitting a written request for and receiving NDEP approval of an exemption from further corrective action activities pursuant to NAC 445A.22725(2) and 445A.22691.

61. Nicholas Willden and David Willden, individually and collectively, violated NAC 445A.22745(1) by starting corrective action activities on the groundwater contamination in and around Allstate caused by the release of petroleum from Allstate's UST systems, which Nicholas and David Willden owned and/or operated, and thereafter terminating those corrective action activities on December 29, 2017 without submitting written documentation to and receiving written concurrence from NDEP for that action.

62. Nicholas Willden and David Willden, individually and collectively, violated NAC 445A.22745(2) by starting corrective action activities on the groundwater contamination in and around Allstate caused by the release of petroleum from Allstate's UST systems, which Nicholas and David Willden owned and/or operated, and thereafter terminating those corrective action activities on December 29, 2017 and, subsequently, failing monitoring groundwater for at least 1 year after that action.

B. Alleged Violations of the Underground Storage Tank Program

63. Nicholas Willden and David Willden, individually and collectively, violated NAC 459.993 and 40 C.F.R. 280.65(a)(4) by starting corrective action activities on the groundwater contamination in and around Allstate caused by the release of petroleum from Allstate's UST systems, which Nicholas and David Willden owned and/or operated, and subsequently terminating the investigation of the release, the release site, and the surrounding area possibly affected by the release on December 29, 2017 before it was complete.

64. Nicholas Willden and David Willden, individually and collectively, violated NAC 459.993 and 40 C.F.R. 280.65(b) by failing to complete the investigation of the release, the release site, and the surrounding area possibly affected by the release on December 29, 2017, as described more fully above in paragraph 63, and thereby failing to submit information collected from the investigation as soon as practicable or in accordance with the schedule established by the Division.

IN THE MATTER OF)
Nicholas Willden and David Willden, individually)
January 25, 2019)
Page 11 of 11)

65. Nicholas Willden and David Willden, individually and collectively, violated NAC 459.9988 by violating NAC 445A.22725(1) and NAC 445A.22745(1), (2) as described more fully above in paragraphs 60 to 62 of this FOAV.

1/25/19
Date

Todd J. Croft for
Todd J. Croft, Supervisor
Remediation & Leaking UST Branch
Bureau of Corrective Actions

ORDER

This Order is issued in accordance with NRS 445A.675, 445A.690 and 459.852 and under the authority vested in the Director of the Department of Conservation and Natural Resources (DCNR) by Nevada Revised Statutes (NRS) 445A.445(1), 445A.450(9) and 459.824(1) and delegated to the Division of Environmental Protection (NDEP) by NRS 445A.450(10) and 459.824(8).

On the basis of the attached Finding of Alleged Violations (FOAV), which is incorporated in and made part of this Order by reference, the Administrator of NDEP has determined that Nicholas Willden and David Willden are in violation of NRS 445A.465(1) and 445A.465(2), and Nevada Administrative Codes (NAC) 445A.22725(1), 445A.22745(1), 445A.22745(2), 459.993, and 459.9988 as more fully described in the FOAV.

IT IS HEREBY ORDERED:

That Nicholas Willden and David Willden complete the following tasks at the former Payless/Allstate Car Rental Facility by the dates specified.

1. No later than 14 calendar days from the date of this Order, submit to NDEP a written reply which states their intention to comply with this Order.
2. No later than 14 calendar days from the date of this Order, provide NDEP with a schedule for continuation of quarterly groundwater monitoring and status reporting activities. Nicholas Willden and David Willden shall implement quarterly monitoring and reporting in accordance with NDEP approval or approval with modifications.
3. No later than 14 calendar days from the date of this Order, contact NDEP to arrange a meeting in either Carson City or Las Vegas to discuss the requirements of this Order and develop a schedule to comply with this Order.
4. No later than 90 calendar days from the date of this Order, submit to NDEP a United States Environmental Protection Agency (EPA) BIOSCREEN model and fate and transport report for the remaining methyl tertiary butyl ether (MTBE) contamination in groundwater near the former Payless/Allstate Car Rental source area. Subsequently, revise the EPA BIOSCREEN model and fate and transport report as required by NDEP to enable NDEP approval of the model and report.
5. No later than 120 calendar days from the date of the Order, submit to NDEP a conceptual site model for the former Payless/Allstate Car Rental source area summarizing remedial activities to date, the site geology and hydrogeology, and depicting the extent of residual MTBE contamination in groundwater through maps and cross-sections. Subsequently, revise the conceptual site model as required by NDEP to enable NDEP approval of the conceptual site model.

6. No later than 30 calendar days from the date of an NDEP concurrence letter accepting final versions of the fate and transport report and conceptual site model, submit a letter requesting a no further action determination from NDEP for the site in accordance with NAC 445A.22725(2), submit a draft PowerPoint™ presentation supporting the closure request, and schedule a presentation date with the case officer in Las Vegas. Subsequently, revise the draft PowerPoint™ presentation as required by NDEP to enable NDEP approval of the PowerPoint™ presentation.
7. No later than 90 days from the date of an NDEP letter granting a preliminary no further action determination, plug and abandon all former Payless/Allstate Car Rental monitoring and remediation wells in coordination with NDEP; cancel all applicable permits; remove remediation equipment; restore the remediation area; submit to NDEP a report documenting these activities, which includes the well abandonment logs; and submit to NDEP a GIS shapefile delineating the lateral extent of residual MTBE groundwater contamination near the former Payless/Allstate Car Rental source area and within the down-gradient commingled Avis/Payless MTBE plume.

1/25/19
Date


Jeff Collins
Chief

Bureau of Corrective Actions
Nevada Division of Environmental Protection

FORM 3: FORM FOR REQUESTING AN APPEAL HEARING

(Provide attachments as needed)

1. Name, address, telephone number, and signature of appellant:

Name: _____

Physical Address: _____

E-mail Address: _____

Telephone Number: _____

Signature: _____

Representative capacity (if applicable): _____

2. Attach copy of Nevada Division of Environmental Protection final decision, such as permit or notice of alleged violation, being appealed.

3. Specify grounds of appeal: (check all that apply)

- ☐ Final decision in violation of constitutional or statutory provision;
- ☐ Final decision made upon unlawful procedure;
- ☐ Final decision was affected by other error of law;
- ☐ Final decision was clearly erroneous in view of the reliable, probative and substantial evidence on the whole record;
- ☐ Final decision was arbitrary or capricious or characterized by abuse of discretion;

4. For each ground of appeal checked above, please list the constitutional, Nevada Revised Statute (NRS), and/or Nevada Administrative Code (NAC) provision allegedly violated. Also list the statutes and/or or regulations that give the State Environmental Commission jurisdiction to hear the appeal.

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5. For each ground of appeal checked above, provide a brief and concise statement of the facts which provide the basis for the appeal.

Date of Request: _____.

Send Form to: Executive Secretary, State Environmental Commission, 901 South Stewart Street, Suite 4001, Carson City, NV 89701