

MARYLAND DEPARTMENT  
OF THE ENVIRONMENT  
1800 Washington Boulevard  
Baltimore, Maryland 21230-1701,

*Plaintiff,*

v.

D.M. BOWMAN, INC.  
10228 Governor Lane Boulevard,  
Williamsport, Maryland 21795

SERVE ON:  
Donald M. Bowman, Jr.  
Resident Agent  
10228 Governor Lane Boulevard,  
Williamsport, Maryland 21795

AND

DAY AND SONS, INC.  
230 Jumpers Hole Road,  
Millersville, Maryland 21108

SERVE ON:  
Kevin Day  
Resident Agent  
230 Jumpers Hole Road,  
Millersville, Maryland 21108

*Defendants.*

\* IN THE  
\*  
\* CIRCUIT COURT  
\*  
\* FOR  
\*  
\* FREDERICK COUNTY,  
\*  
\* Civil Action No.: C-10-CV-23-000393

\*\*\*\*\*

**COMPLAINT**

The State of Maryland, Department of the Environment (“Department”), by and through its attorneys, Anthony G. Brown, Attorney General, and Julie Kuspa, Assistant Attorney General, files this Complaint for Injunctive Relief and Civil Penalties against

D.M. Bowman, Inc. (“Bowman”) and Day and Sons, Inc. (“Day and Sons”), collectively (“Defendants”).

## **INTRODUCTION**

1. This is an action for injunctive relief and civil penalties against the Defendants for violations of Maryland’s oil control pollution laws and regulations set forth in Title 4, Subtitle 4 of the Environment Article of the Annotated Code of Maryland (“Environment Article”) and Code of Maryland Regulations (“COMAR”) 26.10.

## **JURISDICTION AND VENUE**

2. The State brings this action for penalties and for injunctive relief under § 4-416 and § 4-417 of the Environment Article and Maryland Rules 15-501 and 15-502.

3. This Court has jurisdiction over the Defendants under § 6-102 and § 6-103 of the Courts and Judicial Proceedings Article because both Defendants are organized under the laws of Maryland, maintain their principal places of business in the State, and transact business in the State. In addition, Bowman owns real property in the State.

4. Venue is proper in this Court pursuant to § 6-201 of the Courts and Judicial Proceedings Article because the Defendants carry on a regular business in Frederick County.

## **PARTIES**

5. The Department is responsible for administering and enforcing State laws regarding oil-related facilities, oil-related activities, and oil pollution in and on the land and waters of the State. The Department's authority is set forth in statutes that include § 1-301,

§ 1-404, and § 4-401 through § 4-708 of the Environment Article. Implementing Regulations are codified in COMAR 26.10.01 through 26.10.18.

6. Bowman is a Maryland corporation formed on or about November 17, 1970 with its principal place of business located in Williamsport, Maryland.

7. Bowman owns and operates the facility located at 6816 English Muffin Way, Frederick, Maryland 21703 (the “Facility” or “Site”).

8. Day & Sons is a Maryland corporation formed on or about February 20, 2004.

9. Day & Sons is a drilling and utility construction company with its principal place of business in Millersville, Maryland.

## **REGULATORY AUTHORITY**

### **A. The Department’s Authority**

10. Pursuant to its statutory powers, duties, and responsibilities, the Department has adopted regulations codified in COMAR 26.10.01 through 26.10.18 which, address the methods, standards, and devices for storage of oil to prevent pollution of the waters of the State. Md. Code Ann., Envir. § 4-405.

11. The Department enforces Title 4, Subtitle 4, of the Environment Article, the rules and regulations adopted under it, and the orders and permits issued under it, through various provisions authorizing civil, administrative, and criminal enforcement actions, corrective orders and injunctive relief, and damages, fees, fines, and penalties located throughout Title 4, Subtitles 4 through 7 of the Environment Article and COMAR 26.10.01 through 26.10.18.

12. Civil Penalties and Injunctive Relief. Any person who violates any provision of Title 4, Subtitle 4, of the Environment Article, or any rule, regulation, order, or permit issued pursuant to Subtitle 4 shall be liable for a civil penalty of up to \$25,000 for each violation, and each day upon which a violation occurs is a separate offense. Envir. § 4-417(a).

13. The Department may seek injunctive relief for violations of Title 4 of the Environment Article for violations of any valid order or permit issued by the Department and to enjoin continuing violations. Envir. §§ 4-416 and 4-417(a).

**B. It is Unlawful to Discharge Oil into Waters of the State**

14. Section 4-410(a) of the Environment Article states that “... except in case of emergency imperiling life or property, unavoidable accident, collision, or stranding, or as authorized by a permit issued under § 9-323 of this article, it is unlawful for any person to discharge or permit the discharge of oil in any manner into or on waters of this State.”

15. COMAR 26.10.01.04D(2)(a) provides that a person may not pump, spill, release, discharge, throw, drain, deposit, or cause to be deposited, oil or other matter containing oil, into, near, or in an area likely to pollute waters of the State.

16. “Waters of the State” includes “both surface and underground water within the boundaries of the State subject to its jurisdiction, including that portion of the Atlantic Ocean within the boundaries of the State, the Chesapeake Bay and its tributaries, all ponds, lakes, rivers, streams, public ditches, tax ditches, and public drainage systems within the State, other than those designed and used to collect, convey, or dispose of sanitary sewage,

and the floodplain of free-flowing waters determined by the Department on the basis of the 100-year flood frequency.” Envir. § 4-101.1(e); *see also* COMAR 26.10.01.02B(96).

17. Section 4-401(d) of the Environment Article and COMAR 26.10.01.02 B(22) define “discharge” as the addition, introduction, leaking, spilling, or emitting of oil to waters of the State or the placement of oil in a location where it is likely to reach or pollute waters of the State.

18. Section 4-401(j)(1) of the Environment Article defines “person responsible for the discharge” as:

- a. The owner of the discharged oil;
- b. The owner, operator, or person in charge of the oil storage facility, vessel, barge, or vehicle involved in the discharge at the time of or immediately before the discharge; and
- c. Any other person who through act or omission causes the discharge.

### **C. Duties of a Responsible Party**

19. Any person involved in the discharge or spillage of oil shall report the incident to the Department immediately, but not later than two hours after detection of the spill. Envir. § 4-410(b); COMAR 26.10.01.05A and 26.10.08.01A.

20. A person responsible for the discharge must “immediately clean up and abate the effects of the spillage and restore the natural resources of the State.” Envir. § 4-405(c). A person’s responsibility for the prompt control and removal shall continue until removal of the spill, release, or discharge or threat of a spill, release, or discharge has been accomplished to the satisfaction of the Department. COMAR 26.10.01.06B.

21. The costs of investigating and remediating oil pollution are to be paid by the party responsible for the discharge. Envir. § 4-405(c) and § 4-411(f). If the State is forced to undertake the obligations of the person responsible for the discharge, “[t]he cost of containment, clean-up, removal, and restoration, including attorneys' fees and litigation costs, shall be reimbursed to the State by the person responsible for the discharge.” Envir. § 4-411(f).

22. “An owner and an operator of a storage tank system and a responsible party shall continue any required abatement, investigation, removal, remediation, mitigation, monitoring, corrective action, or product recovery activities required under this chapter in response to a spill, release, or discharge of a regulated substance until the required activities are completed to the satisfaction of the Department.” COMAR 26.10.09.01B.

23. An owner and an operator of a storage tank system and a responsible party shall prepare a written site characterization report that assembles information about the site and nature of the spill, release or discharge. COMAR 26.10.09.04.

24. A responsible party shall conduct investigations of the spill, release, or discharge, the site, and the surrounding area potentially affected in order to determine the full extent and location of soils contamination by the spill, release, or discharge and the presence and concentrations of dissolved product contamination in the groundwater. COMAR 26.10.09.06A.

**D. Owners and Operators of Underground Storage Tanks Must Comply with COMAR 26.10.01 - 26.10.16**

25. In order to prevent pollution of the waters of the State by oil discharges from underground storage tank (“UST”) systems, the regulations promulgated in COMAR 26.10.01 through 26.10.16 impose requirements on UST owners, UST operators, and persons who work on UST systems that address methods, standards, and devices for UST systems.

26. Owners and operators of a UST system shall provide release detection for USTs and piping as described in COMAR 26.1.05.02.

27. COMAR 26.10.05.02B requires that release detection for petroleum USTs be done by (1) conducting daily inventory and (2) monitoring the USTs at least monthly for releases using one of the methods listed in COMAR 26.10.05.05B through H, as follows:

- (a) Statistical Inventory Reconciliation (COMAR 26.10.05.05B);
- (b) Manual Tank Gauging – limited maximum capacity (COMAR 26.10.05.05C);
- (c) Precision Tightness Testing (COMAR 26.10.05.05D);
- (d) Automatic Tank Gauging (COMAR 26.10.05.05E);
- (e) Ground Water Monitoring (COMAR 26.10.05.05F);
- (f) Interstitial Monitoring (COMAR 26.10.05.05G); or
- (g) Other Methods if Approved by the Department (COMAR 26.10.05.05H).

28. An owner and an operator of a UST system shall maintain records demonstrating compliance for 5 years at a location designated by the owner of the UST system. 26.10.05.06A.

29. According to COMAR 26.10.04.01C, an owner and operated of a metered UST system shall each day of operation, measure the liquid level of the UST using a

gauging stick or an electronic method and reconcile the results with (1) pump meter readings of the UST, and (2) regulated substance delivery receipts for the USTs. The owner and operator shall perform inventory in accordance with “USEPA Doing Inventory Control Right for Underground Storage Tanks” and review and reconcile inventory records in accordance with inventory control requirements in COMAR 26.10.05.04.

30. COMAR 26.10.05.04 requires an owner and an operator of a UST system to review the reconciled inventory records required by COMAR 26.10.04.01 for inventory variations and daily inventory records showing seven consecutive days of shortage totaling 80 gallons or more.

31. UST systems designed with an impressed current system for corrosion protection, such as those at the Bowman Site, have operation and maintenance requirements outlined in COMAR 26.10.04.02.

32. COMAR 26.10.03.10 requires periodic inspections of UST systems by a Department certified UST system inspector. Owners of UST systems are required to correct all deficiencies found within 30 days or within another time approved by the Department and to maintain records of all inspections.

33. An important component of the Department’s enforcement of UST system regulatory compliance is the Third-Party Inspection Program, as set out in COMAR 26.10.03.10. This program requires that UST owners and operators have their UST systems inspected by a Department Certified UST System Inspector (a/k/a “a Third-Party Inspector”) when notified to do so by the Department, usually on a three-year cycle or upon a change in ownership of UST systems.



34. When a Third Party Inspection report is submitted to the Department's Oil Control Program, the report is reviewed and findings are made about what compliance violations exist at the UST facility, if any. The Department then directs the owner or operator of the UST system to correct any violations, and the Department's Oil Control Program Inspectors often perform follow-up inspections of facilities to verify corrections and compliance. The Department's on-site inspections may identify additional compliance violations.

35. Additional definitions and provisions that are pertinent to oil control statutes and regulations can be found throughout § 4-401 through § 4-708 of the Environment Article and COMAR 26.10.

## **FACTUAL ALLEGATIONS**

### **A. Background**

36. On or about September 10, 2019, Bowman entered into a consent agreement with the United States Environmental Protection Agency ("EPA") for violations found by the EPA during compliance evaluation inspections conducted in May of 2018 (the "Consent Agreement").

37. The Consent Agreement alleged violations of COMAR, including failure to perform release detection on USTs, failure to perform automatic line leak detector testing annually on USTs, failure to test cathodic protection system on USTs, and failure to perform line tightness testing or monthly monitoring on piping.

38. As a result of the Consent Agreement, Bowman paid a penalty of \$66,0380.00.

39. On October 2, 2019, the Department received a Third-Party Inspection report for the Site that noted multiple items in “fail” status.

40. On February 28, 2020, the Department sent a notice to Bowman requiring that the failed items be corrected within 30 days.

41. The Department inspected the Site on March 31, 2020, and found that four items from the October, 2019 Third-Party Inspection still had not been corrected.

42. The Department conducted another follow-up inspection on June 23, 2020, and found the Site to still be in “fail” status because the required corrective actions had not been performed.

43. The Department requested in a report dated June 23, 2020, that among other things, Bowman provide records for the operation and testing of its impressed current corrosion protection system.

## **B. The Spill**

44. On or about November 30, 2021, Day and Sons mobilized equipment to the Site to conduct subgrade horizontal drilling.

45. On December 3, 2021, Day and Sons began drilling in the direction of the Bowman office building and two underground diesel fuel lines.

46. Also on December 3, 2021, Bowman personnel noted that one diesel dispenser system was in slow flow, meaning that it was dispensing product at a slower rate than normal. However, the UST systems remained in use and the diesel dispensers were available for Bowman drivers to fuel vehicles.

47. Bowman failed to investigate this unusual operating circumstance and continued to dispense fuel.

48. On December 6, 2021, Bowman hired Dark Horse Enterprises, Inc. (“Dark Horse”) to investigate the report of slow flow from the diesel dispensers at the Site. Dark Horse then subcontracted to Atlas Fuel Solutions, Inc. to troubleshoot the slow flow issue. As of December 6, 2021, both diesel dispensers remained available and in use for the Bowman drivers under slow flow conditions.

49. On December 7, 2021, the Maryland Department of the Environment’s Oil Control Program (“OCP”) received a report from Atlas Fuel Solutions, Inc. of diesel line precision tightness test failures and a discharge of diesel fuel from the Bowman UST systems. The report stated that an unknown amount of oil had been lost.

50. According to information received by the Department, the diesel line test failures were attributed to the lines being compromised during subgrade horizontal drilling conducted by Day & Sons.

51. A review of inventory records provided by Bowman showed that 575 gallons of diesel fuel were dispensed to vehicles on December 6, 2021, and 233 gallons were dispensed to vehicles on December 7, 2021.

52. Upon information and belief, the dispensers were closed on December 7, 2021.

53. OCP personnel responded to the Site on December 8, 2021. Inventory records provided by Bowman for the period of December 1 through December 7, 2021, did not reveal a loss of oil.

54. On December 8, 2021 OCP personnel provided a report to Bowman and required corrective action to comply with COMAR, including the submittal of a work plan to investigate the soil and groundwater conditions. Additionally, the report noted that the satellite dispenser containment sumps contained about an inch of liquid.

55. OCP again requested that Bowman submit a copy of the most recent complete assessment of the impressed current cathodic protection system.

56. On December 16, 2021, Dark Horse sent an email to OCP summarizing its investigation along with a statistical inventory reconciliation report, which showed a sudden loss of approximately 8,688 gallons of oil on December 8, 2021.

57. OCP personnel arrived at the Site on December 17, 2021, to witness the excavation of two diesel pipes. OCP observed that both diesel pipes were severed at about 4.5 feet below the surface. Soil below the damaged pipes had petroleum odors and exhibited greater than 1,200-meter units using a photoionization detector instrument.

58. On December 18, 2021, borings were installed around the severed piping.

59. On January 4, 2022, an OCP inspector emailed a representative of Bowman asking for a number of documents including (once again) the most recent assessment of the impressed current cathodic protection system. The October 26, 2021, assessment was emailed to OCP on January 4, 2022.

60. On January 12, 2022, liquid phase hydrocarbons were detected in three of the five groundwater monitoring wells on the Site.

61. On January 18, 2022, OCP staff interviewed Bowman personnel and reviewed the inventory records that had been provided. OCP determined that Bowman

was not using the correct tank chart when conducting inventory control. Using the correct tank charts, OCP calculated a loss of 7,687.7 gallons of oil.

62. The geology of the Site consists primarily of limestone and karst, making it difficult to locate and recover the released oil because it has been widely dispersed throughout the subsurface.

63. On April 5, 2022, the Department sent a work plan approval letter to Bowman requiring Bowman to complete certain remediation work including the preparation and submittal of a site characterization report no later than May 15, 2022.

64. Bowman failed to submit the site characterization report as directed by the Department.

65. On June 3, 2022, the Department sent a notice to inspect letter directing Bowman to conduct a certified inspection of the four UST systems at the Site and submit a signed inspection report to the Department by September 3, 2022.

66. The inspection report was not received by the due date and on October 28, 2022, a final notice to inspect was issued to Bowman requiring it to submit the inspection report to the Department within 10 days.

67. On November 30, 2022, Bowman submitted a Sampling and Analyses Plan that detailed its use of passive soil gas samplers to identify areas where diesel fuel may be present in the subsurface.

68. On January 10, 2023, the Department issued Bowman a notice of delivery ban for failure to submit the required Third-Party Inspection.

69. The gasohol and diesel UST systems at the Site were removed from the ground and properly abandoned on January 12, 2023 and the lube oil and used oil UST systems at the Site were removed from the ground and properly abandoned on January 18, 2023.

70. On January 20, 2023, OCP sent Bowman a sampling and analysis plan approval letter, which required the submittal of a report of results for the approved work and a proposal for the installation of monitoring wells no later than March 1, 2023.

71. Bowman failed to submit the report of results as directed by the Department.

**COUNT I**  
**Discharge of Oil in an Area Likely to Pollute Waters of the State**  
**(All Defendants)**

72. The Department hereby incorporates by reference each of the allegations as set forth above into this count, as if each was fully set forth herein.

73. Pursuant to § 4-410(a) of the Environment Article, it is unlawful to discharge or allow the discharge of oil into or on any waters of the State.

74. COMAR 26.10.01.04D(2) prohibits a person from spilling, releasing, discharging, depositing, or causing oil to be deposited into an area likely to pollute waters of the State.

75. Persons responsible for the discharge of oil include: (1) the owner of the discharged oil; (2) the owner, operator or person-in-charge of the oil storage facility, vessel, barge, or vehicle involved in the discharge at the time of, or immediately before, the discharge; and (3) any other person who through act or omission causes the discharge. Envir. § 4-401(j)(1).

76. On December 3, 2021, Day & Sons began drilling at the Site in the direction of two underground diesel lines.

77. Upon information and belief, beginning on December 3, 2021, one of the diesel dispenser systems was in slow flow.

78. On December 6, 2021, Day & Sons conducted reaming in the direction of the building and diesel lines.

79. On December 6, 2021, both diesel dispensers remained in slow flow.

80. On December 16, 2021, an email received from contractor Dark Horse indicated that the statistical inventory reconciliation report showed a sudden loss of approximately 8,688 gallons of oil on December 8, 2021.

81. Based on dispenser totalizer readings and the tank chart for the diesel underground storage tank from the Site, the Department calculated that the total loss of oil from December 1 through 9, 2021 was 7,687.7 gallons.

82. Upon information and belief, oil discharged from the Bowman site from at least December 3, through December 7, 2021.

83. As the owner, operator, and person in charge of the oil storage facility, Bowman is a person responsible for the discharge of oil.

84. As a person who, through act or omission, caused the discharge, Day & Sons is a person responsible for the discharge of oil.

85. The Defendants are subject to a civil penalty for up to \$25,000 for each day of violation for the period of December 3, 2021, through December 7, 2021.

86. Section 4-417 of the Environment Article vests this Court with the authority to enjoin the Defendants from continuing to violate any provision of Title 4, Subtitle 4, of the Environment Article or any rule, regulation, order or permit issued pursuant thereto.

**COUNT II**  
**Failure to Promptly Control, Contain, and Remove an Oil Discharge**  
**(All Defendants)**

87. The Department hereby incorporates by reference each of the allegations as set forth above into this count, as if each was fully set forth herein.

88. Upon information and belief, oil was discharged from the Bowman site from at least December 3, through December 7, 2021.

89. COMAR 26.10.01.06A provides that the responsibility for the prompt control and removal of any oil spill, release, or discharge or threat of a spill, release, or discharge shall be with the person responsible for the discharge.

90. COMAR 26.10.01.06B states that responsibility under Section A of the regulation shall continue until removal of the spill, release, or discharge or threat of a spill, release, or discharge has been accomplished to the satisfaction of the Department.

91. As the owner, operator, and person in charge of the oil storage facility, Bowman is a person responsible for the discharge of oil.

92. As a person who, through act or omission, caused the discharge, Day & Sons is a person responsible for the discharge of oil.

93. The Defendants violated COMAR 26.10.01.06 by failing to promptly control, contain, and remove an oil discharge.



94. The Defendants are subject to a civil penalty of up to \$25,000 for each day of violation for each diesel pipe from December 3, 2021, to December 7, 2021.

95. Section 4-417 of the Environment Article vests this Court with the authority to enjoin Defendants from continuing to violate any provision of Title 4, Subtitle 4 of the Environment Article or any rule, regulation, order, or permit issued pursuant thereto.

**COUNT III**  
**Failure to Maintain Inventory Records**  
**(Bowman)**

96. The Department hereby incorporates by reference each of the allegations as set forth above into this count, as if each was fully set forth herein.

97. Bowman violated COMAR 26.10.05.04, 26.10.04.01C and COMAR 26.10.01.03G by failing to properly maintain inventory records.

98. On December 8, 2021, Bowman provided inventory records to the Department that did not reflect a loss of oil despite the diesel pumps operating in slow flow since December 3, 2021, and December 6, 2021, respectively.

99. The Department's review of the inventory control documents revealed inaccuracies in the reporting.

100. On December 16, 2021, an email from contractor Dark Horse indicated inventory records and data collection for a statistical inventory reconciliation showed a sudden loss of product of approximately 8,688 gallons of oil on December 8, 2021.

101. Based on dispenser totalizer readings and the tank chart for the diesel underground storage tank from the Site, the Department calculated that the total loss from December 3 through 9, 2021 was 7,687.7 gallons of oil.

102. Bowman is subject to a penalty of \$25,000 for each day of violation from at least the period of December 3, through December 9, 2021.

103. Section 4-417 of the Environment Article vests this Court with the authority to enjoin Bowman from continuing to violate any provision of Title 4, Subtitle 4 of the Environment Article or any rule, regulation, order, or permit issued pursuant thereto.

**COUNT IV**  
**Failure to Notify the Department Within Two Hours of Evidence of Discharge**  
**(Bowman)**

104. The Department hereby incorporates by reference each of the allegations as set forth above into this count, as if each was fully set forth herein.

105. Bowman violated COMAR 26.10.08.01 and 26.10.01.05 by failing to notify the Department within two hours of evidence of a discharge: the erratic behavior of product-dispensing equipment and monitoring results from a release detection method that indicated a release may have occurred.

106. On December 3, 2021, Bowman had knowledge that one of the diesel pumps at the Site was operating in slow flow and continued to operate the diesel dispensers until December 7, 2021.

107. On December 7, 2021, two diesel lines at the Site failed precision tightness tests.

108. Bowman is subject to a civil penalty of up to \$25,000 for each day of violation from at least December 3, 2021, through December 7, 2021.

109. Section 4-417 of the Environment Article vests this Court with the authority to enjoin Bowman from continuing to violate any provision of Title 4, Subtitle 4 of the Environment Article or any rule, regulation, order, or permit issued pursuant thereto.

**COUNT V**  
**Failure to Immediately and Within 48 Hours Initiate Corrective Action**  
**(Bowman)**

110. The Department hereby incorporates by reference each of the allegations as set forth above into this count, as if each was fully set forth herein.

111. COMAR 26.10.08.03A provides that unless corrective action has been initiated, an owner and an operator of a storage tank system and a responsible party shall immediately but not later than 48 hours from the time of a suspected spill, release, or discharge, investigate the suspected spill, release, or discharge.

112. COMAR 26.10.08.03A(2) provides that within seven days of beginning this investigation, or another time period specified by the Department, an owner and an operator of a storage tank system and a responsible party shall confirm all suspected spills, releases, and discharges of regulated substances requiring reporting.

113. COMAR 26.10.08.03B sets forth the system tests that an owner and an operator of a storage tank system and a responsible party shall conduct to determine whether a leak exists in the various components of the storage tank system.

114. COMAR 26.10.08.03C requires an owner and operator of a storage tank system and responsible party to measure for the presence of a spill, release, or discharge where contamination is most likely to be present.

115. On December 3, 2021, Bowman had knowledge that one of the diesel pumps at the Site was operating in slow flow, and that on December 6, 2021, a second diesel pump was operating in slow flow.

116. On December 7, 2021, two diesel lines failed precision tightness tests, but Bowman did not initiate an investigation or expose the leaking pipes until directed to do so on December 17, 2021.

117. Bowman is subject to a civil penalty of up to \$25,000 for each day of violation for each diesel pipe from December 7, 2021, to December 17, 2021.

118. Section 4-417 of the Environment Article vests this Court with the authority to enjoin Bowman from continuing to violate any provision of Title 4, Subtitle 4 of the Environment Article or any rule, regulation, order, or permit issued pursuant thereto.

**COUNT VI**  
**Failure to Complete an Assessment of the Impressed Current Corrosion Protection System**  
**(Bowman)**

119. The Department hereby incorporates by reference each of the allegations as set forth above into this count, as if each was fully set forth herein.

120. COMAR 26.10.04.02B(4)(b) requires that if a UST system is designed with an impressed current system, an owner and operator of that UST system must have a completed assessment of the impressed current system performed by a corrosion expert when the system reaches 5 years of age and at least every 5 years thereafter.

121. Bowman had an assessment completed on the four UST systems on August 3, 2015. Therefore, the next assessment was due no later than August 3, 2020.

122. Bowman failed to have an assessment of the impressed current corrosion protection system completed until October 26, 2021.

123. Bowman is subject to a civil penalty of up to \$25,000 for each day of violation from August 3, 2020, through October 26, 2021.

124. Section 4-417 of the Environment Article vests this Court with the authority to enjoin Bowman from continuing to violate any provision of Title 4, Subtitle 4 of the Environment Article or any rule, regulation, order, or permit issued pursuant thereto.

**COUNT VII**  
**Failure to Provide Records for Operation and Testing of the Impressed Current Corrosion Protection System**  
**(Bowman)**

125. The Department hereby incorporates by reference each of the allegations as set forth above into this count, as if each was fully set forth herein.

126. COMAR 26.10.04.05C provides that an owner and operator of a UST system shall maintain and make available to the Department records including records of the operation and maintenance of corrosion protection equipment.

127. The Department requested a copy of the most recent complete assessment of the impressed current cathodic protection system from Bowman on at least June 23, 2020, December 8, 2021, and January 4, 2022.

128. Bowman violated COMAR 26.10.04.05C by failing to provide records for operation and testing of the impressed current corrosion protection system from June 23, 2020, through January 4, 2022.

129. Bowman is subject to a civil penalty of up to \$25,000 for each day of violation from June 23, 2020, through January 4, 2022.

130. Section 4-417 of the Environment Article vests this Court with the authority to enjoin Bowman from continuing to violate any provision of Title 4, Subtitle 4 of the Environment Article or any rule, regulation, order, or permit issued pursuant thereto.

**COUNT VIII**  
**Failure to conduct a Certified UST System Inspection**  
**(Bowman)**

131. The Department hereby incorporates by reference each of the allegations as set forth above into this count, as if each was fully set forth herein.

132. The notice to inspect letter from the Department dated June 3, 2022, required Bowman to submit an inspection report by September 3, 2022.

133. A final notice letter was issued on October 28, 2022, requiring the UST inspection report be submitted within 10 days.

134. On November 23, 2022, counsel for Bowman acknowledged receipt of the inspection notices and stated that Bowman would respond within the next 7 to 10 days.

135. Bowman violated COMAR 26.10.03.10B(2) by failing to conduct a certified inspection of the four UST systems within three years following the most recent inspection and within 30 days of receiving notification from the Department to complete the inspection.

136. Bowman is subject to a civil penalty of up to \$25,000 for each UST for each day the UST inspection report was not submitted from September 3, 2022, through January

12, 2023 for the gasohol and diesel UST systems and January 18, 2023 for the used oil and lube oil UST systems.

137. Section 4-417 of the Environment Article vests this Court with the authority to enjoin Bowman from continuing to violate any provision of Title 4, Subtitle 4 of the Environment Article or any rule, regulation, order, or permit issued pursuant thereto.

**COUNT IX**  
**Failure to Prepare and Submit Site Characterization Report**  
**(Bowman)**

138. The Department hereby incorporates by reference each of the allegations as set forth above into this count, as if each was fully set forth herein.

139. COMAR 26.10.09.04B(2)(b) requires that an owner and operator of a storage tank system and a responsible party prepare a written site characterization report within a reasonable time period required by the Department.

140. On April 5, 2022, the Department sent Bowman a work plan approval letter which required submittal of a report of results (i.e., a site characterization report) that was due no later than May 15, 2022.

141. To date, Bowman has failed to submit the site characterization report.

142. Bowman is subject to a civil penalty of up to \$25,000 for each day of violation from May 15, 2022, to the present.

143. Section 4-417 of the Environment Article vests this Court with the authority to enjoin Bowman from continuing to violate any provision of Title 4, Subtitle 4 of the Environment Article or any rule, regulation, order, or permit issued pursuant thereto.

**COUNT X**  
**Failure to Delineate Extent and Location of Free Product**  
**(Bowman)**

144. The Department hereby incorporates by reference each of the allegations as set forth above into this count, as if each was fully set forth herein.

145. COMAR 26.10.09.06A(2) requires an owner and an operator of a storage tank system and a responsible party to conduct investigations of the spill, release, or discharge, the site, and the surrounding area potentially affected by the spill, release, or discharge if free product is present.

146. On January 20, 2023, the Oil Control Program sent Bowman a sampling and analysis plan approval letter which required the submittal of a report of results with a proposal for the installation of monitoring wells no later than March 1, 2023.

147. To date, Bowman has failed to submit the sampling report.

148. Bowman is subject to a civil penalty of up to \$25,000 for each day of violation from March 1, 2023, to the present.

149. Section 4-417 of the Environment Article vests this Court with the authority to enjoin Bowman from continuing to violate any provision of Title 4, Subtitle 4 of the Environment Article or any rule, regulation, order, or permit issued pursuant thereto.

**PRAYER FOR RELIEF**

150. WHEREFORE, the Department respectfully requests that this Court grant the following relief against the Defendants.

- a. Assess civil penalties against Defendant Day and Sons of up to \$25,000 per day each day of violation of the State's oil control and oil pollution laws



under Title 4 of the Environment Article and associated regulations pursuant to Counts I and II.

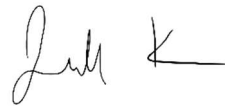
- b. Assess civil penalties against Defendant Bowman of up to \$25,000 per day each day of violation of the State's oil control and oil pollution laws under Title 4 of the Environment Article and associated regulations pursuant to Counts I through X.
- c. Enter an injunction pursuant to § 4-416 and § 4-417 of the Environment Article and traditional common law principles requiring the Defendant Bowman to submit a report of results for the sampling and analysis plan with recommendations for monitoring well installation to delineate the total extent of the liquid phase hydrocarbons;
- d. Enter an injunction pursuant to § 4-416 and § 4-417 of the Environment Article and traditional common law principles requiring the Defendant Bowman to submit a site characterization report;
- e. Enter an injunction pursuant to § 4-416 and § 4-417 of the Environment Article and traditional common law principles requiring the Defendants, jointly and severally, to remediate the damage to the land and waters of the State caused by oil discharges at the Site and comply with any conditions imposed by the Department to protect public health, safety, and the environment;
- f. Enter an injunction pursuant to § 4-416 and § 4-417 of the Environment Article and traditional common law principles ordering the Defendants to

stop violating Title 4 of the Environment Article, associated regulations, and applicable permits; and

- g. Grant any such other and further relief that this Court deems just and equitable.

Respectfully submitted,

ANTHONY G. BROWN  
Attorney General of Maryland



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