

BEFORE THE UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 7

2012 AUG 17 AM 11:22

In the matter of:

B & A Petroleum Corporation  
d/b/a Infinite Oil  
1349 Park Avenue  
Omaha, Nebraska 68105

Respondent

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U.S. EPA Docket No.:  
RCRA-07-2010-0019

**MEMORANDUM IN SUPPORT OF MOTION FOR  
DEFAULT ORDER AS TO LIABILITY AND PENALTY ON AMENDED COMPLAINT**

B & A Petroleum Corporation, d/b/a Infinite Oil (Respondent) has failed to submit an Answer and Request for a Hearing in response to the First Amended Administrative Complaint, Compliance Order and Notice of Opportunity for Hearing ("Amended Complaint") filed by the Director of the Air and Waste Management Division of U.S. EPA Region 7 (Complainant) on April 30, 2012. The Amended Complaint was issued under Section 9006 of the Solid Waste Disposal Act, commonly referred to as the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984 (collectively "Subtitle I of RCRA"), 42 U.S.C. § 6991e, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22 ("Consolidated Rules of Practice").

Due to Respondent's failure to submit an Answer pursuant to 40 C.F.R. § 22.17, Complainant files this motion requesting the issuance of a Default Order against Respondent. In addition to seeking a judgment of liability for violations of Subtitle I of RCRA, Complainant is seeking civil monetary penalties in the amount of \$118,365 for these violations. Previous EPA administrative tribunals support waiving a respondent's rights and assessing the proposed penalty amount in situations where a respondent does not file an answer and presents no evidence to contradict the alleged violations. *In re Gaskey Construction Corp*, CWA Appeal No. 06-07 (EAB unpublished opinion, December 14, 2006); *In re Pyramid Chemical Company*, 11 E.A.D. 657 (September 16, 2004); *In the Matter of James Bond, Owner, Bond's Body Shop*, Docket Nos. CWA-08-2004-0047 and RCRA-08-2004-0004 (January 11, 2005. Chief ALJ Susan L. Biro).

In support of this motion, Complainant states and argues as follows:

**I. PROCEDURAL BACKGROUND**

1. This proceeding is governed by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of

Permits, 40 C.F.R. Part 22 ("Consolidated Rules of Practice").

2. In accordance with 40 C.F.R. §§ 22.5(a) and 22.14, on April 2, 2010, the original Complaint in this matter, and one copy thereof, was filed with the Regional Hearing Clerk, EPA Region 7.
3. In accordance with 40 C.F.R. § 22.5(b)(1), on April 21, 2010, Complainant delivered a copy of the original Complaint, via UPS, with proof of service requested, to the personal residence of Respondent's registered agent and president, Mohammed Ali.
4. Mohammed Ali, registered agent and president of Respondent, and a person who is authorized to receive a copy of a complaint under 40 C.F.R. § 22.5(b)(1)(ii)(a), received a copy of the original Complaint on April 21, 2010 and, as proof of his receipt signed the UPS receipt form. Said form is attached hereto and marked "Exhibit 1."
5. As per 40 C.F.R. § 22.15, Respondent must file an answer to the complaint with the Regional Hearing Clerk, EPA Region 7, within thirty (30) days after service of the complaint. As of March 29, 2012, Respondent had not filed an answer, nor requested an extension of time within which to file an answer to the original Complaint, with the Regional Hearing Clerk, EPA Region 7.
6. As per 40 C.F.R. § 22.14(c), the complainant may amend the complaint once as a matter of right at any time before the answer is filed. On March 29, 2012, Complainant filed the Amended Complaint in this matter, and one copy thereof, with the Regional Hearing Clerk, EPA Region 7.
7. Mohammed Ali, registered agent and president of Respondent, and a person who is authorized to receive a copy of an amended complaint under 40 C.F.R. § 22.5(b)(1)(ii)(a), received a copy of the Amended Complaint on July 5, 2012 and, as proof of this receipt, an adult member of his household signed the UPS receipt form at Mohammed Ali's residence. Said form is attached hereto and marked "Exhibit 2."
8. As per 40 C.F.R. § 22.14(c), Respondent must file an answer to an amended complaint with the Regional Hearing Clerk, EPA Region 7, within twenty (20) days after service of the amended complaint. Within the Amended Complaint filed herein, Complainant agreed that Respondent could have up to thirty (30) days after service of the Amended Complaint to file an answer. As of the date of this filing, Respondent has not filed an answer to the original Complaint or the Amended Complaint, nor requested an extension of time within which to file such an answer.
9. The Regional Judicial Officer of EPA Region 7 presently has jurisdiction over this matter as the Presiding Officer pursuant to 40 C.F.R. § 22.4(b) and Regional Delegation R7-1-038, in that Respondent has not yet filed an Answer in this case to the Original Complaint or to the Amended Complaint, as required under the Consolidated Rules of Practice.
10. Complainant has notified Respondent of Complainant's intention to request a default

judgment in this matter by way of numerous pleadings and notices filed in this matter, the most recent being a letter sent to the Respondent's Registered Agent on August 3, 2012, a copy of which was filed with the Regional Hearing Clerk, EPA Region 7 and delivered to the Presiding Officer.

11. Complainant respectfully requests the Presiding Officer admit "Exhibit 1" and "Exhibit 2" into evidence to demonstrate proof of service of the Original Complaint and Amended Complaint upon Respondent and take notice, through numerous filings herein, that Complainant has given Respondent notice of its intention to file this Motion.

## II. RESPONDENT'S LIABILITY

12. Section 9006 of RCRA, 42 U.S.C. § 6991e, authorizes EPA to assess a civil penalty against any owner or operator of a Underground Storage Tank system who fails to comply with any requirement or standard promulgated under Section 9003 of RCRA, 42 U.S.C. § 6991b (40 C.F.R. Part 280) or any requirement or standard of a state UST program that has been approved by EPA pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c.

13. Effective September 18, 2002, pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c, and 40 C.F.R. Part 281, Subpart A, the state of Nebraska was granted final authorization to administer a state UST management program in lieu of the federal UST management program. The provisions of the Nebraska UST management program, through this final authorization, have become requirements of Subtitle I of RCRA and are, accordingly, enforceable by EPA pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e. Nebraska's authorized UST program is implemented jointly and regulations are set forth in the Nebraska Revised Statute Section 81-1575-77, 118, which designates the Nebraska State Fire Marshal as the agency responsible for conducting preventative activities and these regulations can be found at Title 159 of Nebraska's State Fire Marshal's Rules and Regulations (hereinafter "159 Neb. Admin. Code," followed by the applicable section of the regulations).

14. As per 40 C.F.R. § 22.15(d), failure of the Respondent to admit, deny or explain any material factual allegation contained in the Amended Complaint constitutes an admission of each factual allegation. As per 40 C.F.R. § 22.17(a), a party may be found in default after failure to file a timely answer to a complaint; and default by the Respondent constitutes, for purposes of the pending proceedings, an admission of all facts in the complaint and a waiver of Respondent's right to contest such factual allegations. Respondent's failure to admit, deny or explain any of the material factual allegations contained in the Amended Complaint, constitutes Respondent's admission of the factual allegations in the Amended Complaint. Respondent has never answered nor responded to the Original Complaint nor the Amended Complaint filed herein.

15. According to the factual allegations set forth in the Complaint filed herein, the Respondent has violated Section 9006(d)(2) of RCRA, 42 U.S.C. § 6991e(d)(2), which provides that any owner or operator of an underground storage tank who fails to comply with any requirement or standard promulgated by EPA under Section 9003 of RCRA, 42 U.S.C. § 6991c, or that is part of an authorized state underground storage tank program shall be liable for a civil penalty not to exceed \$10,000 for each tank for each day of violation. Pursuant to the Civil

Monetary Penalty Inflation Adjustment Rule, violations of RCRA Section 9006(d)(2), 42 U.S.C. § 6991e(d)(2) which occur subsequent to January 30, 1997 are subject to a new statutory maximum civil penalty of \$11,000 for each day of violation, and those violations occurring after January 12, 2009 are subject to a statutory maximum civil penalty of \$16,000 for each day of violation.

For the above and foregoing reasons, and in accordance with the regulations set forth in 40 C.F.R. § 22.1, et seq., based upon the aforementioned law and facts, Complainant requests the Presiding Officer issue a Default Order against Respondent, finding said Respondent liable for violations of Section 9006(d)(2) of RCRA, 42 U.S.C. § 6991e(d)(2), as set forth in the Amended Complaint filed in the matter herein.

### III. CIVIL PENALTY ASSESSMENT

16. In addition to liability, Complainant is seeking the assessment of a civil penalty against Respondent in the amount of \$118,365.45 for the violations set forth in the Amended Complaint filed in the matter herein. This represents a reduction of the civil penalty to \$118,365.45 from \$125,216, which Complainant originally sought in the Amended Complaint.

17. The legal authority for assessing a penalty for alleged violations of RCRA Subtitle I, and the regulations promulgated thereunder, is set forth at RCRA § 9006(d)(2), 40 U.S.C. § 6991e(d)(2), and the "Adjustment of Civil Monetary Penalties for Inflation" section found at 40 C.F.R. § 19.4. RCRA § 9006(d)(2), 40 U.S.C. § 6991e(d)(2), and 40 C.F.R. § 19.4 authorize the assessment of a civil administrative penalty not to exceed \$16,000 per day for non-compliance with any requirement or standard promulgated by the Administrator under RCRA § 9003, 42 U.S.C. § 6991b that occurred after January 12, 2009. All violations set forth in the Amended Complaint, filed herein, are alleged to have occurred after January 12, 2009.

18. Section 9006(e) of RCRA, 42 U.S.C. § 6991e(e), sets forth the applicable statutory penalty factors to consider in assessing a penalty, including the compliance history of the facility operator and any other factor the Administrator considers appropriate. EPA uses the U.S. EPA Penalty Guidance for Violations of UST Regulations" (Penalty Policy) to apply the statutory penalty factors in a fair and consistent manner.

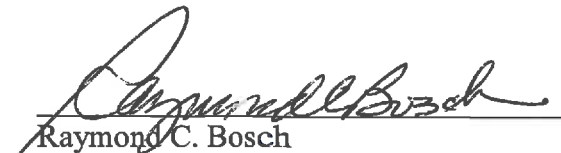
19. Attached to this motion, and marked "Exhibit 3", is the "Declaration of Wilfredo Rosado-Chaparro", a compliance officer for the Storage Tank and Oil Pollution Branch of the U.S. EPA Region 7. This declaration outlines in detail how the Respondent calculated the civil penalty set forth in the Amended Complaint filed in the matter herein and requested in this motion. Complainant requests the Presiding Officer to admit "Exhibit 3", as evidence in support of Complainant's request for the penalty assessment set forth in the Amended Complaint and this motion.

For the above and for reasons, and in accordance with the regulations set forth in 40 C.F.R. § 22.1, et seq., Complainant requests that, based upon the aforementioned law and facts, the Presiding Officer issue a Default Order against Respondent, finding said Respondent liable for violations of Section 9006(d)(2) of RCRA, 42 U.S.C. § 6991e(d)(2), and ordering said

Respondent to pay the proposed penalty of \$118,365, as set forth in the Amended Complaint filed in the matter herein.


Respectfully submitted,

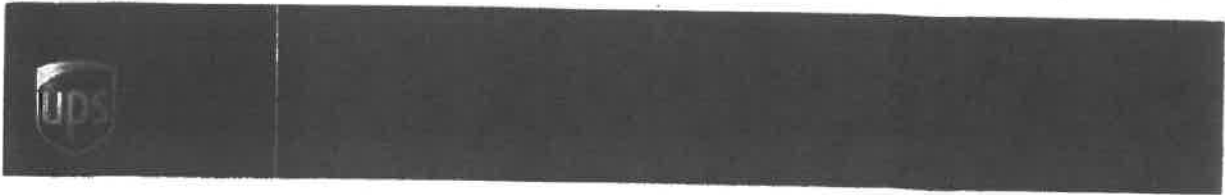
August 17, 2012  
Date

  
Raymond C. Bosch  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region 7  
901 North Fifth Street  
Kansas City, Kansas 66101  
[Bosch.Raymond@epa.gov](mailto:Bosch.Raymond@epa.gov)  
(913) 551-7501 Voice  
(913) 551-7925 FAX

CERTIFICATE OF SERVICE

I hereby certify that the original and one true and correct copy of the foregoing MEMORANDUM IN SUPPORT OF MOTION FOR DEFAULT ORDER AS TO LIABILITY AND PENALTY ON AMENDED COMPLAINT were hand delivered to the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 7, 901 North Fifth Street, Kansas City, Kansas 66101; and a true and correct copy were sent by certified mail, return receipt requested, to Mohammed Ali, Registered Agent, B & A Corporation, on this 17<sup>th</sup> day of August 2012.

  
Raymond C. Bosch  
Assistant Regional Counsel



This message was sent to you at the request of ENVIRONMENTAL PROTECTION to notify you that the electronic shipment information below has been transmitted to UPS. The physical package(s) may or may not have actually been tendered to UPS for shipment. To verify the actual transit status of your shipment, click on the tracking link below or contact ENVIRONMENTAL PROTECTION directly.

### Important Delivery Information

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#### Signature Required

Scheduled Delivery: 21-April-2010

#### Shipment Detail

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##### Ship To:

Mohammed Ali  
B&K, B& A, M&A Petroleum Corp.  
215 N. Prospect Ave  
STREAMWOOD  
IL  
601074103  
US

##### Number of Packages 1

UPS Service: NEXT DAY AIR SAVER

Weight: 4.0 LBS

Tracking Number: 1Z6952072996726916

Click here to track if UPS has received your shipment or visit  
<http://www.ups.com/WebTracking/track?loc=en> US on the Internet.

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## Proof of Delivery

[Close Window](#)

Dear Customer,

This notice serves as proof of delivery for the shipment listed below.

Tracking Number: 1Z6952072996726916

Service: NDA SAVER DEL CONF

Special Instructions: Signature Required

Delivered On: 04/21/2010 11:47 A.M.

Delivered To: STREAMWOOD, IL, US

Signed By: ALI

Left At: Residential

Thank you for giving us this opportunity to serve you.

Sincerely,

UPS

Tracking results provided by UPS: 05/26/2011 1:24 P.M. ET

[Print This Page](#)

[Close Window](#)

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Exhibit 2

\*\*\*Do not reply to this e-mail. UPS and ENVIRONMENTAL PROTECTION will not receive your reply.

**At the request of ENVIRONMENTAL PROTECTION, this notice is to confirm that the following shipment has been delivered.**

**Important Delivery Information**

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**Tracking Number:** 1ZW0R3772499343812

**Delivery Date / Time:** 05-July-2012 / 9:48 AM

**Delivery Location:** RESIDENTIAL

**Signed by:** ALI

**Shipment Detail**

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**Ship To:**

Mohammed Ali, Registered Agent

B&A Petroleum Corp.

215 N PROSPECT AVE

STREAMWOOD

IL

60107

US

**Number of Packages:** 1

**UPS Service:** NEXT DAY AIR

**Shipment Type:** Letter





## Proof of Delivery

Dear Customer,

This notice serves as proof of delivery for the shipment listed below.

Tracking Number: 1ZW0R3772499343812

Service: UPS Next Day Air®

Special Instructions: Signature Required

Shipped/Billed On: 07/02/2012

Delivered On: 07/05/2012 9:48 A.M.

Delivered To: STREAMWOOD, IL, US

Signed By: ALI

Left At: Residential

Thank you for giving us this opportunity to serve you.

Sincerely,

UPS

Tracking results provided by UPS: 07/05/2012 11:11 A.M. ET

**Declaration of Wilfredo Rosado-Chaparro**

Wilfredo Rosado-Chaparro, U.S. Environmental Protection Agency (EPA) Region 7, Storage Tank and Oil Pollution Branch (STOP), hereby submits the following declaration with regard to the penalty calculated in this matter.

I, Wilfredo Rosado-Chaparro, declare as follows:

1. I am employed as a compliance officer within the EPA Region 7 STOP Branch, and in the course of my employment, I am responsible for the enforcement of regulations regarding the EPA Region 7 Underground Storage Tank Program (UST Program). My responsibilities as a compliance officer include calculating penalties for administrative complaints brought by EPA Region 7 for UST violations.
2. As the EPA representative responsible for calculating the proposed penalty in this matter, I have personal knowledge of the matters set forth in this Declaration.
3. EPA filed an Amended Complaint and Notice of Opportunity for Hearing (Amended Complaint) in this matter on March 29, 2012, citing alleged violations of the Resource Conservation and Recovery Act (RCRA) Subtitle I, 42 U.S.C. § 6991, *et seq.*, and the UST regulations set forth at 40 C.F.R. Part 280. The violations were identified during an UST inspection conducted by EPA on November 5, 2009, at the facilities located at:
  - a. 1349 Park Avenue in Omaha, Nebraska, and
  - b. 2302 South 13th Street in Omaha, Nebraska
4. The Amended Complaint proposes a penalty of \$125,216, which has since been recalculated to a lower figure of \$118,365.45. These calculations are fully set forth herein and are based on the Respondent's alleged violations listed as follows:

a. 1349 Park Avenue in Omaha, Nebraska:

(a) 159 Neb. Admin. Code 6-002.04 and §40 CFR 280.31(d) - Failure to maintain records of corrosion protection (CP) inspections for tank #1.

(b) 159 Neb. Admin. Code 6-002.01 and §40 CFR 280.31(a) - Failure to operate and maintain corrosion protection (CP) system. EPA inspector performed test on the system and it did not meet the negative potential of at least 850 mV, therefore the CP system was not operational and was not providing corrosion protection to tank #1 system.

(c) 159 Neb. Admin. Code 7-005.01 and §40 CFR 280.44(a) - Failure to provide adequate testing for piping system. The required annual function test (FT) has not been performed in the past year.

(d) 159 Neb. Admin. Code 7-002.02A and §40 CFR 280.41(b)(1)(ii) - Failure to perform monitoring of pressurized piping. The required annual line tightness test (LTT) has not been performed in the past year.

(e) 159 Neb. Admin Code 7-002.01 and §40 CFR 280.41(a) - Failure to monitor tanks at least every 30 days. Tanks must be monitored at least every 30 days for releases using one of the methods listed in § 280.43.

(f) 159 Neb. Admin Code 7-006 and §40 CFR 280.45 - Failure to maintain records of release detection monitoring. UST system owners and operators must maintain records in accordance with 7-006 and § 280.34 demonstrating compliance with all applicable requirements of this subpart.

(g) 159 Neb. Admin. Code 6-002.02 and §40 CFR 280.31(b) - Failure to ensure proper operation of CP system. Pursuant to Nebraska regulations the

annual (every three years under §40 CFR 280.31(b)) CP test has not been performed on tank #1.

(h) 159 Neb. Admin. Code 6-002.03 and §40 CFR 280.31(c) - Failure to inspect impressed current system every 60 days on tank #1.

b. 2302 South 13th Street in Omaha, Nebraska:

(a) 159 Neb. Admin Code 7-006 and §40 CFR 280.45 - Failure to maintain records of release detection monitoring. UST system owners and operators must maintain records in accordance with § 280.34 demonstrating compliance with all applicable requirements of this subpart.

(b) 159 Neb. Admin. Code 5-003 and §40 CFR 280.21(c) – Failure to install any cathodic protection for metal piping upgrade requirement. EPA inspector observed that there was no corrosion protection installed on the pipe's metal flex connectors.

(c) 159 Neb. Admin. Code 7-005.01 and §40 CFR 280.44(a) - Failure to provide adequate testing for piping system. The required annual function test (FT) has not been performed in the past year.

(d) 159 Neb. Admin. Code 7-002.02A and §40 CFR 280.41(b)(1)(ii) - Failure to perform monitoring of pressurized piping. The required annual line tightness test (LTT) has not been performed in the past year.

5. The UST inspections were performed by EPA lead inspector Bjorn Brinkman, who was accompanied by EPA inspector Wayne Bartel, Omaha Fire Prevention Bureau Chief, Chuck Circo and the Nebraska State Fire Marshall Deputy, Kirk Negus.

6. On October 29, 2009, Mr. Brinkman sent correspondence to Respondent's president informing him that UST compliance inspections on these two facilities would be taking place between November 2, 2009, through November 27, 2010, and instructing him to have available at the time of inspection a list of documents including, but not limited to, the last 12-months of leak detection records. The actual inspections were performed on November 4 and 5, 2009.

7. At the time of the inspection at 1349 Park Avenue in Omaha, Nebraska, the inspectors observed that:

- a. The cathodic protection (CP) system on tank #1 was not operating properly and that no test and inspection records were available.
- b. The annual function test on the mechanical line leak detectors (MLLD) on all three of the facility's USTs had not been performed.
- c. The required annual line tightness test (LTT) on the pressurized product lines for the three USTs had not been performed.
- d. The automatic tank gauging (ATG) used as the release detection method for this facility appeared not to be functioning properly. The inspectors were unable to obtain any monitoring information from the ATG. Additionally, the required 12 months of passing ATG (release detection) results were not available.

8. At the time of the inspection at the 2302 South 13th Street in Omaha, Nebraska, the inspectors observed that:

- a. The annual function test on the mechanical line leak detectors (MLLD) of the two facility's USTs had not been performed.
- b. The required annual line tightness test (LTT) on the pressurized product lines for the two USTs had not been performed.

c. The metal flex connectors on the pressurized product lines were not cathodically protected against corrosion.

d. ATG records for the last 12 months of release detection were not available for inspection.

9. Based on the inspection at the 1349 Park Avenue, EPA determined that the

Respondent had failed to:

a. Perform monthly monitoring or have an annual LTT on the pressurized piping for the three tanks at the facility since March 17, 2009, constituting a violation of 159 Neb. Admin. Code 7-002.02A, Section 9003(c) of RCRA, 42 U.S.C. §§ 6991-6991i; and 40 C.F.R. § 280.41 (b)(1)(ii), for the period of March 17, 2009, through April 1, 2010.

b. Perform annual function test on the MLLD for the three tanks at the facility since March 17, 2009, constituting a violation of 159 Neb. Admin. Code 7-005.01, Section 9003(c) of RCRA, 42 U.S.C. §§ 6991-6991i; and 40 C.F.R. § 280.44 (a) for the period of March 17, 2009, through April 1, 2010.

c. Properly operate and maintain the corrosion protection system for tank #1 since November 5, 2009, a violation of 159 Neb. Admin. Code 6-002.01, Section 9003(c) of RCRA, 42 U.S.C. §§ 6991-6991i, and 40 C.F.R. § 280.31 (a), for the period of November 5, 2009, through April 1, 2010.

d. To ensure proper operation of CP system for tank #1 since March 17, 2009, constituting a violation of 159 Neb. Admin. Code 6-002.02, Section 9003(c) of RCRA, 42 U.S.C. §§ 6991-6991i; and 40 C.F.R. § 280.31(b) for the period of March 17, 2009, through April 1, 2010.

e. To inspect impressed current system every 60 days on tank #1 since March 17, 2009, constituting a violation of 159 Neb. Admin. Code 6-002.03, Section 9003(c) of RCRA, 42 U.S.C. §§ 6991-6991i; and 40 C.F.R. § 280.31(c) for the period of March 17, 2009, through April 1, 2010.

f. To maintain records of corrosion protection (CP) inspections for tank #1 since March 17, 2009, constituting a violation of 159 Neb. Admin. Code 6-002.04, Section 9003(c) of RCRA, 42 U.S.C. §§ 6991-6991i; and 40 CFR § 280.31(d) for the period of March 17, 2009, through April 1, 2010.

g. To monitor tanks for release detection at least every 30 days on the three USTs at the facility since March 17, 2009, constituting a violation of 159 Neb. Admin Code 7-002.01, Section 9003(c) of RCRA, 42 U.S.C. §§ 6991-6991i; and 40 C.F.R. § 280.41 (a), for the period of March 17, 2009, through April 1, 2010.

h. To maintain records of release detection monitoring for at least the last 12 months for all tanks at the facility since March 17, 2009, constituting a violation of 159 Neb. Admin Code 7-006, Section 9003(c) of RCRA, 42 U.S.C. §§ 6991-6991i; and 40 C.F.R. § 280.45, for the period of March 17, 2009, through April 1, 2010.

10. Based on the inspection at the 2302 South 13th Street facility, EPA determined that the Respondent had failed to:

a. To maintain records of release detection monitoring for at least the last 12 months for all tanks at the facility since March 17, 2009, constituting a violation of 159 Neb. Admin Code 7-006, Section 9003(c) of RCRA, 42 U.S.C. §§ 6991-6991i; and 40 C.F.R. § 280.45, for the period of March 17, 2009, through April 1, 2010



- b. Perform monthly monitoring or have an annual LTT on the pressurized piping for the three tanks at the facility since March 17, 2009, constituting a violation of 159 Neb. Admin. Code 7-002.02A, Section 9003(c) of RCRA, 42 U.S.C. §§ 6991-6991i; and 40 C.F.R. § 280.41 (b)(1)(ii), for the period of March 17, 2009, through April 1, 2010.
- c. Perform annual function test on the MLLD for the three tanks at the facility since March 17, 2009, constituting a violation of 159 Neb. Admin. Code 7-005.01, Section 9003(c) of RCRA, 42 U.S.C. §§ 6991-6991i; and 40 C.F.R. § 280.44 (a) for the period of March 17, 2009, through April 1, 2010.
- d. To install any cathodic protection for metal piping upgrade requirement on the facility's pressurized line metal flex connectors since November 5, 2009, a violation of 159 Neb. Admin. Code 5-003, Section 9003(c) of RCRA, 42 U.S.C. §§ 6991-6991i, and 40 C.F.R. § 280.21 (c), for the period of November 5, 2009, through April 1, 2010.

#### **Calculation of Penalties**

11. Based on the inflationary adjustment rule in effect at the time of filing the Amended Complaint, RCRA § 9006(d)(2), 42 U.S.C. § 6991e(d)(2), authorizes the assessment of a civil penalty of up to \$16,000 for each UST for each day of violation for non-compliance with any requirement or standard promulgated by the Administrator under RCRA § 9003, 42 U.S.C. § 6991 b.

12. RCRA § 9006(c), 42 U.S.C. § 6991e(c), provides that any penalty assessed shall take into account the seriousness of the violations and any good faith efforts to comply with the applicable requirements. II. RCRA § 9006(e), 42 U.S.C. § 6991e(e), sets forth the following additional factors that may be taken into account in determining the terms of a civil penalty

under subsection (d): compliance history of a facility owner or operator, and any other factor the Administrator considers appropriate.

13. To rationally and consistently apply the statutory factors set forth at RCRA §§ 9006(c) and (e), 42 U.S.C. §§ 6991e(c) and (e), to the facts and circumstances of each case, EPA adopted the *U.S. EPA Penalty Guidance for Violations of UST Regulations* (Penalty Policy) in November 1990. The Penalty Policy was delivered to Respondent with the Amended Complaint and can be on at the EPA website at <http://www.epa.gov/oust/directiv/od961012.htm>.

14. The Penalty Policy includes both a “Gravity” component and an “Economic Benefit” component. These components are added together to determine an appropriate penalty amount.

15. I personally calculated the proposed penalty in this matter consistent with the RCRA § 9006 statutory factors described above and the Penalty Policy.

#### **Gravity Component**

16. The “Gravity” component is a monetary value that reflects the seriousness of the violations and the population at risk. The Gravity component is determined by 1) taking an initial Matrix Value; 2) adding in any Violator Specific Adjustments (degree of cooperation, degree of willingness or negligence, history of prior violations, or other unique factors); 3) then adding in any Environmental Sensitivity Multiplier, and finally; 4) enhancing this total by a multiplier which is based upon the number of Days of Noncompliance.

17. The initial “Matrix Value” is determined by the position on a chart in which a violation falls. The chart (see “Exhibit 4” of the Penalty Policy) contains two axes, one being “Extent of Deviation from Requirement” and the other “Potential for Harm”. Where a violation falls on this matrix is determined by the seriousness of the violation, which is defined in terms of one of three terms: “Major”, “Moderate” or “Minor”. Whether a violation is “Major”,

“Moderate” or “Minor” is solely determined by the regulation that is violated. Based on the type of violation, the initial “Matrix Value” will be assessed on a per tank basis if the violation is associated with one tank. However, if the requirement addresses the entire facility, then the initial “Matrix Value” will be assessed on a per-facility basis. “Appendix A” of the Penalty Policy lists various violations of the UST regulations found within 40 C.F.R. § 280, and the whether they are “Major”, “Moderate” or “Minor”, as well as whether they should be assessed on a per tank or per facility basis.

18. A common “Violator Specific Adjustment” is an assessment for a history of non-compliance. According to Section 3.2.3 of the Penalty Policy of the Penalty Policy, entitled *History of Non-Compliance*, “a ‘prior violation’ includes any act or omission for which an accountable enforcement action has occurred (e.g., an inspection that found a violation, a notice of violation, an administrative or judicial complaint, or a consent order). A prior violation of the same or a related requirement would constitute a similar violation.”

19. The “Environmental Sensitivity Multiplier” is discussed in Section 3.3 of the Penalty Policy. In that section, it states, “The environmental sensitivity multiplier takes into account the adverse environmental effects that the violation may have had, given the sensitivity of the local area to damage posed by a potential or actual release.” There were no Environmental Sensitivity Multipliers assessed in this particular action.

20. The “Days of Noncompliance” portion of the Gravity component is multiplier which is based upon the number of days in which the violation is known to have occurred. The chart describing the multiplier to be used is found in the Penalty Policy at Section 3.4.

### **Economic Benefit Component**

21. Under the Penalty Policy, the "Economic Benefit" component of a penalty calculation "represents the economic advantage that a violator has gained by delaying capital and/or non-depreciable costs and by avoiding operational and maintenance costs associated with compliance. The total economic benefit component is based on the benefit from two sources: (1) avoided costs; and (2) delayed costs. All penalties assessed must include the full economic benefit unless the benefit is determined to be "incidental" (*i.e.*, less than \$100)." See Penalty Policy, Chapter 2, Section 2.1 *Definition of Economic Benefit*.

### **The 1349 Park Avenue Facility**

22. For the 1349 Park Avenue facility the Penalty Policy's initial gravity component for noncompliance with:

- a. 159 Neb. Admin. Code 7-002.02A [40 C.F.R. § 280.41 (b)(1)(ii)], 159 Neb. Admin. Code 7-005.01 [40 C.F.R. § 280.44 (a)], 159 Neb. Admin. Code 6-002.01 [40 C.F.R. § 280.31 (a)], 159 Neb. Admin Code 7-002.01 [40 C.F.R. § 280.41 (a)], 159 Neb. Admin Code 7-006 [40 C.F.R. § 280.45] and 159 Neb. Admin. Code 6-002.03 [40 C.F.R. § 280.31(c)] classifies the Potential for Harm and Extent of Deviation as "Major".
- b. 159 Neb. Admin. Code 6-002.02 [40 C.F.R. § 280.31(b)], and 159 Neb. Admin. Code 6-002.04 [40 C.F.R. § 280.31(d)] classifies the Potential for Harm and Extent of Deviation as "Moderate".

23. The initial Matrix Value was assessed on a per-facility basis for the following violations:

- a. 159 Neb. Admin. Code 6-002.01 [40 C.F.R. § 280.31 (a)], 159 Neb. Admin Code 7-006 [40 C.F.R. § 280.45], 159 Neb. Admin. Code 6-002.03 [40 C.F.R. § 280.31(c)],

159 Neb. Admin. Code 6-002.02 [40 C.F.R. § 280.31(b)], and 159 Neb. Admin. Code 6-002.04 [40 C.F.R. § 280.31(d)]

24. The initial Matrix Value was assessed on a per-tank basis for the following violations:

a. 159 Neb. Admin. Code 7-002.02A [40 C.F.R. § 280.41 (b)(1)(ii)], 159 Neb. Admin. Code 7-005.01 [40 C.F.R. § 280.44 (a)] and 159 Neb. Admin Code 7-002.01 [40 C.F.R. § 280.41 (a)].

25. As stated above, EPA typically increases the initial Matrix Value of the Gravity component in accordance with the Penalty Policy by adding in any “Violator Specific Adjustments”, such as history of prior violations. In this particular matter, I deemed that the Respondent's receipt of an Enforcement Compliance Order from the City of Omaha Fire Department UST inspector, for the very same violation in March 17, 2009, warranted an increase of 5% under history of noncompliance consistent with the Penalty Policy, except for the 159 Neb. Admin. Code 6-002.01 [§40 CFR 280.31(a)] violation, which had not been identified before EPA's November 5, 2009, inspection.

26. As also stated above, EPA typically increases the Matrix Value by any Environmental Sensitivity. There was no increased penalty assessed for Environmental Sensitivity at this Facility.

27. I determined that all but one of the violations for this facility lasted 380 days and, thus, increased the Days of Noncompliance Multiplier of 3.0 in accordance with Section 3.4 of the Penalty Policy, starting at 2.5 for one year and adding 0.5 for each additional 6 months of noncompliance. The violation cited for 159 Neb. Admin. Code 6-002.01 [40 C.F.R. § 280.31

(a)] was determined to last only 147 days, so it received a Days of Noncompliance multiplier of 1.5 in accordance with Section 3.4 of the Penalty Policy.

28. Based on careful consideration of all of the factors set forth in the gravity component of the Penalty Policy, I calculated the initial gravity component of the penalty for each violation at:

- a. 159 Neb. Admin. Code 7-002.02A [40 C.F.R. § 280.41 (b)(1)(ii)] - \$20,076.05
- b. 159 Neb. Admin. Code 7-005.01 [40 C.F.R. § 280.44 (a)] - \$20,076.05
- c. 159 Neb. Admin. Code 6-002.01 [40 C.F.R. § 280.31 (a)] - \$3,186.68
- d. 159 Neb. Admin Code 7-002.01 [40 C.F.R. § 280.41 (a)] - \$20,076.05
- e. 159 Neb. Admin Code 7-006 [40 C.F.R. § 280.45] - \$6,692.02
- f. 159 Neb. Admin. Code 6-002.03 [40 C.F.R. § 280.31(c)] - \$3,346.01
- g. 159 Neb. Admin. Code 6-002.04 [40 C.F.R. § 280.31(d)] - \$446.13
- h. 159 Neb. Admin. Code 6-002.02 [40 C.F.R. § 280.31(b)] - \$3,346.01

These add to a total initial gravity component of the penalties for the 1349 Park Avenue facility of \$77,245.00.

29. In addition, I calculated an economic benefit component which consists of the operation and maintenance costs the Respondent would have incurred had it performed the requirements for the cited violations. The penalty calculated for the economic benefit component will eliminate any savings enjoyed by the Respondent for not complying with the regulations.

The initial economic benefit component of the penalty for each violation:

- a. 159 Neb. Admin. Code 7-002.02A [40 C.F.R. § 280.41 (b)(1)(ii)] - \$146.00
- b. 159 Neb. Admin. Code 7-005.01 [40 C.F.R. § 280.44 (a)] - \$130.00
- c. 159 Neb. Admin. Code 6-002.01 [40 C.F.R. § 280.31 (a)] - \$141.00

- d. 159 Neb. Admin Code 7-002.01 [40 C.F.R. § 280.41 (a)] - \$0.00, In accordance with the Penalty Policy, economic benefit components of less than \$100.00 are considered negligible.
- e. 159 Neb. Admin Code 7-006 [40 C.F.R. § 280.45] - \$0.00, In accordance with the Penalty Policy, economic benefit components of less than \$100.00 are considered negligible
- f. 159 Neb. Admin. Code 6-002.03 [40 C.F.R. § 280.31(c)] - \$511.00
- g. 159 Neb. Admin. Code 6-002.04 [40 C.F.R. § 280.31(d)] - \$255.00
- h. 159 Neb. Admin. Code 6-002.02 [40 C.F.R. § 280.31(b)] - \$0.00, In accordance with the Penalty Policy, economic benefit components of less than \$100.00 are considered negligible

The total Economic Benefit component of the penalties for the 1349 Park Avenue facility amount to \$1,182.00.

30. The gravity and economic benefit components calculated in accordance with the Penalty Policy for the 1349 Park Avenue facility totaled \$78,428.00.

#### **The 2302 South 13th Street Facility**

31. For the 2302 South 13th Street facility the Penalty Policy's initial gravity component for noncompliance with 159 Neb. Admin. Code 7-002.02A [40 C.F.R. § 280.41 (b)(1)(ii)], 159 Neb. Admin. Code 7-005.01 [40 C.F.R. § 280.44 (a)], 159 Neb. Admin Code 7-006 [40 C.F.R. § 280.45] and 159 Neb. Admin. Code 5-003 [40 C.F.R. § 280.21(c)] classifies the Potential for Harm and Extent of Deviation as "Major".



32. The initial Matrix Value was assessed on a per-facility basis for the following violations:

- a. 159 Neb. Admin Code 7-006 [40 C.F.R. § 280.45].

33. The initial Matrix Value was assessed on a per-tank basis for the following violations:

- a. 159 Neb. Admin. Code 7-002.02A [40 C.F.R. § 280.41 (b)(1)(ii)], 159 Neb. Admin. Code 7-005.01 [40 C.F.R. § 280.44 (a)] and 159 Neb. Admin. Code 5-003 [40 C.F.R. § 280.21(c)]

34. As stated above, EPA typically increases the initial Matrix Value of the Gravity component in accordance with the Penalty Policy by adding in any “Violator Specific Adjustments”, such as history of prior violations. In this particular matter, I deemed that the Respondent's receipt of an Enforcement Compliance Order from the City of Omaha Fire Department UST inspector, for the very same violation in March 17, 2009, warranted an increase of 5% under history of noncompliance consistent with the Penalty Policy, except for the 159 Neb. Admin. Code 5-003 [40 C.F.R. § 280.21(c)] violation, which had not been identified before EPA's November 5, 2009, inspection.

35. As also stated above, EPA typically increases the Matrix Value by any Environmental Sensitivity. There was no increased penalty assessed for Environmental Sensitivity at this Facility.

36. I determined that all but one of the violations for this facility lasted 380 days and, thus, increased the Days of Noncompliance Multiplier of 3.0 in accordance with Section 3.4 of the Penalty Policy, starting at 2.5 for one year and adding 0.5 for each additional 6 months of noncompliance. The violation cited for 159 Neb. Admin. Code 5-003 [40 C.F.R. § 280.21 (c)]

was determined to last only 147 days, so it received a Days of Noncompliance multiplier of 1.5 in accordance with Section 3.4 of the Penalty Policy.

37. Based on careful consideration of all of the factors set forth in the gravity component of the Penalty Policy, I calculated the initial gravity component of the penalty for each violation at:

- a. 159 Neb. Admin. Code 7-002.02A [40 C.F.R. § 280.41 (b)(1)(ii)] - \$13,384.04
- b. 159 Neb. Admin. Code 7-005.01 [40 C.F.R. § 280.44 (a)] - \$13,384.04
- c. 159 Neb. Admin Code 7-006 [40 C.F.R. § 280.45] - \$6,692.02
- d. 159 Neb. Admin. Code 5-003 [40 C.F.R. § 280.21(c)] - \$6,373.35

These add to a total initial gravity component of the penalties for the 2302 South 13th Street facility of \$39,833.45.

38. In addition, I calculated an economic benefit component which consists of the operation and maintenance costs the Respondent would have incurred had it performed the requirements for the cited violations. The penalty calculated for the economic benefit component will eliminate any savings enjoyed by the Respondent for not complying with the regulations.

The initial economic benefit component of the penalty for each violation:

- a. 159 Neb. Admin. Code 7-002.02A [40 C.F.R. § 280.41 (b)(1)(ii)] - \$0.00, In accordance with the Penalty Policy, economic benefit components of less than \$100.00 are considered negligible.
- b. 159 Neb. Admin. Code 7-005.01 [40 C.F.R. § 280.44 (a)] - \$0.00, In accordance with the Penalty Policy, economic benefit components of less than \$100.00 are considered negligible

c. 159 Neb. Admin Code 7-006 [40 C.F.R. § 280.45] - \$0.00, In accordance with the Penalty Policy, economic benefit components of less than \$100.00 are considered negligible

d. 159 Neb. Admin. Code 5-003 [40 C.F.R. § 280.21(c)] - \$104.00

The total Economic Benefit component of the penalties for the 2302 South 13th Street facility amount to \$104.00.

39. The gravity and economic benefit components calculated in accordance with the Penalty Policy for the 2302 South 13th Street facility totaled \$39,937.45.

**Total Penalty**


40. The proposed penalty for both the 1349 Park Avenue and 2302 South 13th Street facilities totaled \$118,365.45.

41. There was no reduction to the proposed penalty amount based on ability to pay absent notice or information from the Respondent indicating that it was otherwise unable to pay the proposed penalty amount.

42. The penalty calculation worksheets for the alleged violations in this matter were prepared by myself, with oversight from UST Program manager Margaret Stockdale, and are attached hereto.

I declare the foregoing to be true and correct to the best of my knowledge, information and belief under penalty of perjury.

8/16/2012  
Date

  
\_\_\_\_\_  
Wilfredo Rosado-Chaparro  
Storage Tank and Oil Pollution Branch  
U.S. Environmental Protection Agency, Region 7

## UST Penalty Policy Calculation

Based on 1990 UST Penalty Policy (per UST)

**Company Name:** B&A Petroleum Corp. - 1349 Park Ave. facility

**Date of Inspection:** 11/05/2009

**Case Handler:** Wilfredo Rosado-Chaparro

**Penalty Calculation prepared by:** Wilfredo Rosado-Chaparro

**Regulations Violated:** \$40 CFR 280.31(d) - Failure to maintain records of corrosion protection (CP) inspections for tank #1

Line Item	Citation	Matrix Value
1 UST Violation Penalty	280.31(d)	100.00
2 # of USTs	1	100.00
Start of Violation	3/17/2009	
End of Violation	4/1/2010	
3 Days of Gravity Matrix Value - Extent	380	3.00
4 of Deviation	Moderate	
5 TOTAL Matrix Value	Moderate	100.00
6 Degree of cooperation or non cooperation	0%	0.00
7 Degree of willfulness or negligence	0%	0.00
8 History of noncompliance	5%	5.00
9 Unique factors	0%	0.00
10 Sum of Specific Adjustments		5.00
11 Adjustment Matrix Value		105.00

Environmental  
Sensitivity (ESM)

Multiplier

1.0

\$105.00

Days of Noncompliance Multiplier

3

\$315.00

Inflation Adjustments (see other worksheet)

1.4163

\$446.13

TOTAL Gravity Based Component

\$446.13

Economic Benefit (BEN) calculation

\$255.00

**TOTAL PENALTY**

**\$701.13**

**Comments/Basis**

**Days of Gravity** - Given the lack of documentation and compliance history at the site it has been decided to use the statute of limitation (5 years) for the days of gravity calculation

**Degree of cooperation or non cooperation** - Not enough information from the owner to justify adjustment

**History of non-compliance** - This is the first time the facility has been inspected by EPA

**Environmental Sensitivity** - Low - There are no surface water bodies nearby, no drinking water wells and site geology consists mostly of clay like material.

**Economic Benefit calculation (BEN)** - Annually recurring cost of \$300 for inspection of the CP system. Non-compliance period starts on December 28, 2007 (date when current owner acquired the property) and goes through April 1, 2010

Gravity Based Component (GBC)				
Adjusted Matrix Value	x Enviro Sensitivity	x Days of NonCompliance	x 2009 Adjustment	GBPenalty
\$105	1.00	3.00	1.4163	\$446.13

**Violator Specific Adjustment to the Matrix Value**

Adjustment Factor	Range of Percentage Adjustment
Degree of Cooperation/Noncooperation	Between 50% increase and 25% decrease
Degree of Willfulness or Negligence	Between 50% increase and 25% decrease
History of Noncompliance	Up to 50% increase only
Other Unique Factors	Between 50% increase and 25% decrease

1.0 =LOW  
1.5 =Medium  
2.0 =HIGH

Major  
Moderate  
Minor

-25%  
-20%  
-15%  
-10%  
-5%  
0%

5%  
10%  
15%  
20%  
25%  
30%  
35%  
40%  
45%

50% Inflation adjustment

1.1  
1.2895  
1.4163

# UST Penalty Policy Calculation

Based on 1990 UST Penalty Policy (per UST)

Company Name: **B&A Petroleum Corp. - 1349 Park Ave. facility**

Date of Inspection: 11/05/2009

Case Handler: Wilfredo Rosado-Chaparro

Penalty Calculation prepared by: Wilfredo Rosado-Chaparro

Regulations Violated: \$40 CFR 280.31(a) - Failure to operate and maintain corrosion protection(CP) system, CP system not operational on tank #1 system

Line Item	Citation	Matrix Value	Comments/Basis
1 UST Violation Penalty.	280.31(a)	Major-Major	
2 # of USTs	1	1500.00	
Start of Violation	11/5/2009		
End of Violation	4/1/2010		
3 Days of Gravity	147	1.50	
Matrix Value - Extent			
4 of Deviation	Major	Major	
5 TOTAL Matrix Value	Major	1500.00	
6 Degree of cooperation or non cooperation		0.00	
7 Degree of willfulness or negligence		0.00	
8 History of noncompliance		0.00	
9 Unique factors		0.00	
10 Sum of Specific Adjustments		0.00	
11 Adjustment Matrix Value		1500.00	
Environmental			
Sensitivity (ESM)			
Multiplier	1.5	\$2,250.00	
Days of Noncompliance Multiplier	3	\$6,750.00	
Inflation Adjustments (see other worksheet)		\$9,560.03	
TOTAL Gravity Based Component		\$9,560.03	
Economic Benefit (BEN) calculation		\$141.00	
<b>TOTAL PENALTY</b>		<b>\$9,701.03</b>	

**Comments/Basis**  
**Days of Gravity** - Given the lack of documentation and compliance history at the site it has been decided to use the statute of limitation (5 years) for the days of gravity calculation  
**Degree of cooperation or non cooperation** - Not enough information from the owner to justify adjustment  
**History of non-compliance** - This is the first time the facility has been inspected by EPA  
**Environmental Sensitivity** - Low - There are no surface water bodies nearby, no drinking water wells and site geology consists mostly of clay like material.  
**Economic Benefit calculation (BEN)** - One time capital cost of \$2,361.00 to repair or replace CP system and an Annually recurring cost of \$300 for inspection of the CP system. Non-compliance period starts on December 28, 2007 (date when current owner acquired the property) and goes through April 1, 2010.

Gravity Based Component (GBC)			
Adjusted Matrix Value	x Enviro Sensitivity	x Days of NonCompliance	x 2009 Adjustment
\$1,500	1.00	1.50	1.4163
			\$3,186.53

Adjustment Factor	Violator Specific Adjustment to the Matrix Value
Degree of Cooperation/Noncooperation	Range of Percentage Adjustment Between 50% increase and 25% decrease
Degree of Willfulness or Negligence	Between 50% increase and 25% decrease
History of Noncompliance	Up to 50% increase only
Other Unique Factors	Between 50% increase and 25% decrease



1.0 =LOW  
1.5 =Medium  
2.0 =HIGH

Major  
Moderate  
Minor

-25%  
-20%  
-15%  
-10%  
-5%  
0%

5%  
10%  
15%  
20%  
25%  
30%  
35%  
40%  
45%

50% Inflation adjustment

1.1  
1.2895  
1.4163

## UST Penalty Policy Calculation

Based on 1990 UST Penalty Policy (per UST)

**Company Name: B&A Petroleum Corp. - 1349 Park Ave. facility**

Date of Inspection: 11/05/2009

Case Handler: Wilfredo Rosado-Chaparro

Penalty Calculation prepared by: Wilfredo Rosado-Chaparro

Regulations Violated: \$40 CFR 280.44(a) - Failure to provide adequate testing for piping system, no annual function test (FT)

Line Item	Citation	Matrix Value	Comments/Basis
1 UST Violation Penalty	280.44(a)	1500.00	<b>Days of Gravity</b> - Given the lack of documentation and compliance history at the site it has been decided to use the statute of limitation (5 years) for the days of gravity calculation
2 # of USTs	3	4500.00	
Start of Violation	3/17/2009		
End of Violation	4/1/2010		<b>Degree of cooperation or non cooperation</b> - Not enough information from the owner to justify adjustment
3 Days of Gravity	380	3.00	
Matrix Value - Extent			<b>History of non-compliance</b> - This is the first time the facility has been inspected by EPA
4 of Deviation	Major		
5 TOTAL Matrix Value	Major	4500.00	<b>Environmental Sensitivity</b> - Low - There are no surface water bodies nearby, no drinking water wells and site geology consists mostly of clay like material.
6 Degree of cooperation or non cooperation	0%	0.00	
7 Degree of willfulness or negligence	0%	0.00	<b>Economic Benefit calculation (BEN)</b> - Annually recurring cost of \$50 for an annual function test. Non-compliance period starts on December 28, 2007 (date when current owner acquired the property) and goes through April 1, 2010
8 History of noncompliance	5%	225.00	
9 Unique factors	0%	0.00	
10 Sum of Specific Adjustments		225.00	
11 Adjustment Matrix Value		4725.00	
Environmental			
Sensitivity (ESM)			
Multiplier	1.0	\$4,725.00	
Days of Noncompliance Multiplier	3	\$14,175.00	
Inflation Adjustments (see other worksheet)		\$20,076.05	
TOTAL Gravity Based Component		\$20,076.05	
Economic Benefit (BEN) calculation		\$130.00	
<b>TOTAL PENALTY</b>		<b>\$20,206.05</b>	

Gravity Based Component (GBC)				
Adjusted Matrix Value	x Enviro Sensitivity	x Days of NonCompliance	x 2009 Adjustment	GBPenalty
\$4,725	1.00	3.00	1.4163	\$20,076.05

Violator Specific Adjustment to the Matrix Value	
Adjustment Factor	Range of Percentage Adjustment
Degree of Cooperation/Noncooperation	Between 50% Increase and 25% decrease
Degree of Willfulness or Negligence	Between 50% Increase and 25% decrease
History of Noncompliance	Up to 50% increase only
Other Unique Factors	Between 50% Increase and 25% decrease

1.0 =LOW  
1.5 =Medium  
2.0 =HIGH

Major  
Moderate  
Minor

-25%  
-20%  
-15%  
-10%  
-5%  
0%

5%  
10%  
15%  
20%  
25%  
30%  
35%  
40%  
45%

50% Inflation adjustment

1.1  
1.2895  
1.4163

## UST Penalty Policy Calculation

Based on 1990 UST Penalty Policy (per UST)

**Company Name: B&A Petroleum Corp. - 1349 Park Ave. facility**

Date of Inspection: 11/05/2009

Case Handler: Wilfredo Rosado-Chaparro

Penalty Calculation prepared by: Wilfredo Rosado-Chaparro

Regulations Violated: \$40 CFR 280.41(b)(1)(ii) - Failure to perform monitoring of pressurized piping, no annual line tightness test (LTT)

Line Item	Citation	Matrix Value	Comments/Basis
1 UST Violation Penalty	280.41(b)(1)(ii)	1500.00	<p><b>Days of Gravity</b> - Given the lack of documentation and compliance history at the site it has been decided to use the statute of limitation (5 years) for the days of gravity calculation</p> <p><b>Degree of cooperation or non cooperation</b> - Not enough information from the owner to justify adjustment</p> <p><b>History of non-compliance</b> - This is the first time the facility has been inspected by EPA</p> <p><b>Environmental Sensitivity</b> - Low - There are no surface water bodies nearby, no drinking water wells and site geology consists mostly of clay like material.</p> <p><b>Economic Benefit calculation (BEN)</b> - Annually recurring cost of \$75 for an annual line tightness test. Non-compliance period starts on December 28, 2007 (date when current owner acquired the property) and goes through April 1, 2010</p>
2 # of USTs	3	4500.00	
Start of Violation	3/17/2009		
3 End of Violation	4/1/2010		
3 Days of Gravity	380	3.00	
4 Matrix Value - Extent of Deviation			
5 TOTAL Matrix Value		4500.00	
6 Degree of cooperation or non cooperation		0.00	
7 Degree of willfulness or negligence		0.00	
8 History of noncompliance		225.00	
9 Unique factors		0.00	
10 Sum of Specific Adjustments		225.00	
11 Adjustment Matrix Value		4725.00	
<b>Environmental Sensitivity (ESM)</b>			
Multiplier	1.0	\$4,725.00	
Days of Noncompliance Multiplier	3	\$14,175.00	
Inflation Adjustments (see other worksheet)		\$20,076.05	
TOTAL Gravity Based Component		\$20,076.05	
Economic Benefit (BEN) calculation		\$146.00	
<b>TOTAL PENALTY</b>		<b>\$20,222.05</b>	

Gravity Based Component (GBC)				
Adjusted Matrix Value	X Enviro Sensitivity	X Days of NonCompliance	X 2009 Adjustment	GBCPenalty
\$4,725	1.00	3.00	1.4163	\$20,076.05

Violator Specific Adjustment to the Matrix Value	
Adjustment Factor	Range of Percentage Adjustment
Degree of Cooperation/Noncooperation	Between 50% increase and 25% decrease
Degree of Willfulness or Negligence	Between 50% increase and 25% decrease
History of Noncompliance	Up to 50% increase only
Other Unique Factors	Between 50% increase and 25% decrease

1.0 =LOW  
1.5 =Medium  
2.0 =HIGH



Major  
Moderate  
Minor

-25%  
-20%  
-15%  
-10%  
-5%  
0%

5%  
10%  
15%  
20%  
25%  
30%  
35%  
40%  
45%

50% Inflatons adjustment

1.1  
1.2895  
1.4163

## UST Penalty Policy Calculation

Based on 1990 UST Penalty Policy (per UST)

**Company Name:** B&A Petroleum Corp. - 1349 Park Ave. facility

**Date of Inspection:** 11/05/2009

**Case Handler:** Wilfredo Rosado-Chaparro

**Penalty Calculation prepared by:** Wilfredo Rosado-Chaparro

**Regulations Violated:** \$40 CFR 280.41(a) - Failure to monitor tanks at least every 30 days

Line Item	Citation	Matrix Value
1 UST Violation Penalty	280.41(a)	1500.00
2 # of USTs	3	4500.00
Start of Violation	3/17/2009	
End of Violation	4/1/2010	
3 Days of Gravity Matrix Value - Extent	380	3.00
4 of Deviation	Major Harm	Potential for Major
5 TOTAL Matrix Value	Major	4500.00
6 Degree of cooperation or non cooperation		0.00
7 Degree of willfulness or negligence		0.00
8 History of noncompliance		225.00
9 Unique factors		0.00
10 Sum of Specific Adjustments		225.00
11 Adjustment Matrix Value		4725.00

### Environmental

#### Sensitivity (ESM)

Multiplier	1.0	\$4,725.00
Days of Noncompliance Multiplier	3	\$14,175.00
Inflation Adjustments (see other worksheet)		\$20,076.05
<b>TOTAL Gravity Based Component</b>		\$20,076.05
Economic Benefit (BEN) calculation		\$0.00
<b>TOTAL PENALTY</b>		<b>\$20,076.05</b>

### Gravity Based Component (GBC)

Adjusted Matrix Value	x Enviro Sensitivity	x Days of NonCompliance	x 2009 Adjustment	GBCPenalty
\$4,725	1.00	3.00	1.4163	\$20,076.05

#### Comments/Basis

**Days of Gravity** - Given the lack of documentation and compliance history at the site it has been decided to use the statute of limitation (5 years) for the days of gravity calculation

**Degree of cooperation or non cooperation** - Not enough information from the owner to justify adjustment

**History of non-compliance** - This is the first time the facility has been inspected by EPA

**Environmental Sensitivity** - Low - There are no surface water bodies nearby, no drinking water wells and site geology consists mostly of clay like material.

**Economic Benefit calculation (BEN)** - Annually recurring cost of \$75 for an annual line tightness test. Non-compliance period starts on December 28, 2007 (date when current owner acquired the property) and goes through April 1, 2010

#### Violator Specific Adjustment to the Matrix Value

Adjustment Factor	Range of Percentage Adjustment
Degree of Cooperation/Noncooperation	Between 50% increase and 25% decrease
Degree of Willfulness or Negligence	Between 50% increase and 25% decrease
History of Noncompliance	Up to 50% increase only
Other Unique Factors	Between 50% increase and 25% decrease

1.0 =LOW  
1.5 =Medium  
2.0 =HIGH

Major  
Moderate  
Minor

-25%  
-20%  
-15%  
-10%  
-5%  
0%

5%  
10%  
15%  
20%  
25%  
30%  
35%  
40%  
45%

50% Inflation adjustment

1.1  
1.2895  
1.4163

# UST Penalty Policy Calculation

Based on 1990 UST Penalty Policy (per UST)

**Company Name: B&A Petroleum Corp. - 1349 Park Ave. facility**

**Date of Inspection: 11/05/2009**

**Case Handler: Wilfredo Rosado-Chaparro**

**Penalty Calculation prepared by: Wilfredo Rosado-Chaparro**

**Regulations Violated: \$40 CFR 280.45 - Failure to maintain records of release detection monitoring**

Line Item	Citation	Matrix Value
1 UST Violation Penalty	280.45	1500.00
2 # of USTs	1	1500.00
Start of Violation	3/17/2009	
End of Violation	4/1/2010	
3 Days of Gravity	380	3.00
Matrix Value - Extent of Deviation		
4 of Deviation	Major	Major
5 TOTAL Matrix Value		1500.00
6 Degree of cooperation or non cooperation		0.00
7 Degree of willfulness or negligence		0.00
8 History of noncompliance		75.00
9 Unique factors		0.00
10 Sum of Specific Adjustments		75.00
11 Adjustment Matrix Value		1575.00
Environmental Sensitivity (ESM)		
Multiplier	1.0	\$1,575.00
Days of Noncompliance Multiplier	3	\$4,725.00
Inflation Adjustments (see other worksheet)		\$6,692.02
TOTAL Gravity Based Component		\$6,692.02
Economic Benefit (BEN) calculation		\$0.00
<b>TOTAL PENALTY</b>		<b>\$6,692.02</b>

Gravity Based Component (GBC)				
Adjusted Matrix Value	X Enviro Sensitivity	X Days of NonCompliance	X 2009 Adjustment	GBP Penalty
\$1,575	1.00	3.00	1.4163	\$6,692.02

**Comments/Basis**  
**Days of Gravity** - Given the lack of documentation and compliance history at the site it has been decided to use the statute of limitation (5 years) for the days of gravity calculation  
**Degree of cooperation or non cooperation** - Not enough information from the owner to justify adjustment  
**History of non-compliance** - This is the first time the facility has been inspected by EPA  
**Environmental Sensitivity** - Low - There are no surface water bodies nearby, no drinking water wells and site geology consists mostly of clay like material.  
**Economic Benefit calculation (BEN)** - Annually recurring cost of \$75 for an annual line tightness test. Non-compliance period starts on December 28, 2007 (date when current owner acquired the property) and goes through April 1, 2010

Adjustment Factor	Violator Specific Adjustment to the Matrix Value
Degree of Cooperation/Noncooperation	Range of Percentage Adjustment Between 50% increase and 25% decrease
Degree of Willfulness or Negligence	Between 50% increase and 25% decrease
History of Noncompliance	Up to 50% increase only
Other Unique Factors	Between 50% increase and 25% decrease

1.0 = LOW  
1.5 = Medium  
2.0 = HIGH

Major  
Moderate  
Minor

-25%  
-20%  
-15%  
-10%  
-5%  
0%

5%  
10%  
15%  
20%  
25%  
30%  
35%  
40%  
45%

50% Inflation adjustment

1.1  
1.2895  
1.4163

## UST Penalty Policy Calculation

Based on 1990 UST Penalty Policy (per UST)

**Company Name:** B&A Petroleum Corp. - 1349 Park Ave. facility

**Date of Inspection:** 11/05/2009

**Case Handler:** Wilfredo Rosado-Chaparro

**Penalty Calculation prepared by:** Wilfredo Rosado-Chaparro

**Regulations Violated:** \$40 CFR 280.31(b) - Failure to ensure proper operation of corrosion protection system, no three year CP test on tanks #1 and #2

Line Item	Citation	Matrix Value
1 UST Violation Penalty	280.31(b)	Major-Moderate
2 # of USTs	1	750.00
Start of Violation	3/17/2009	750.00
End of Violation	4/1/2010	
3 Days of Gravity Matrix Value - Extent	380	Potential for Harm Moderate
4 of Deviation		
5 TOTAL Matrix Value		750.00
6 Degree of cooperation or non cooperation		0.00
7 Degree of willfulness or negligence		0.00
8 History of noncompliance		37.50
9 Unique factors		0.00
10 Sum of Specific Adjustments		37.50
11 Adjustment Matrix Value		787.50

**Environmental Sensitivity (ESM)**

Multiplier	1.0	\$787.50
Days of Noncompliance Multiplier	3	\$2,362.50
Inflation Adjustments (see other worksheet)		\$3,346.01
<b>TOTAL Gravity Based Component</b>		<b>\$3,346.01</b>
Economic Benefit (BEN) calculation		\$0.00
<b>TOTAL PENALTY</b>		<b>\$3,346.01</b>

**Comments/Basis**  
**Days of Gravity** - Given the lack of documentation and compliance history at the site it has been decided to use the statute of limitation (5 years) for the days of gravity calculation  
**Degree of cooperation or non cooperation** - Not enough information from the owner to justify adjustment

**History of non-compliance** - This is the first time the facility has been inspected by EPA  
**Environmental Sensitivity** - Low - There are no surface water bodies nearby, no drinking water wells and site geology consists mostly of clay like material.  
**Economic Benefit calculation (BEN)** - One time capital cost of \$2,361.00 to repair or replace CP system and an Annually recurring cost of \$300 for inspection of the CP system. Non-compliance period starts on December 28, 2007 (date when current owner acquired the property) and goes through April 1, 2010.

Gravity Based Component (GBC)			
Adjusted Matrix Value	x Enviro Sensitivity	x Days of NonCompliance	x 2009 Adjustment
\$788	1.00	3.00	1.4163
			\$3,346.01

Adjustment Factor	Violator Specific Adjustment to the Matrix Value
Degree of Cooperation/Noncooperation	Range of Percentage Adjustment Between 50% increase and 25% decrease
Degree of Willfulness or Negligence	Between 50% increase and 25% decrease
History of Noncompliance	Up to 50% increase only
Other Unique Factors	Between 50% increase and 25% decrease



1.0 =LOW  
1.5 =Medium  
2.0 =HIGH

Major  
Moderate  
Minor

-25%  
-20%  
-15%  
-10%  
-5%  
0%

5%  
10%  
15%  
20%  
25%  
30%  
35%  
40%  
45%

50% Inflation adjustment

1.1  
1.2895  
1.4163

## UST Penalty Policy Calculation

Based on 1990 UST Penalty Policy (per UST)

**Company Name:** B&A Petroleum Corp. - 1349 Park Ave. facility

**Date of Inspection:** 11/05/2009

**Case Handler:** Wilfredo Rosado-Chaparro

**Penalty Calculation prepared by:** Wilfredo Rosado-Chaparro

**Regulations Violated:** \$40 CFR 280.31(c) - Failure to inspect impressed current system every 60 days

Line Item	Citation	Matrix Value
1 UST Violation Penalty	280.31 (c)	750.00
2 # of USTs	1	750.00
Start of Violation	3/17/2009	
End of Violation	4/1/2010	
3 Days of Gravity Matrix Value - Extent	380	3.00
4 of Deviation	Major Harm	Potential for Major
5 TOTAL Matrix Value	Major	750.00
6 Degree of cooperation or non cooperation		0.00
7 Degree of willfulness or negligence		0.00
8 History of noncompliance		37.50
9 Unique factors		0.00
10 Sum of Specific Adjustments		37.50
11 Adjustment Matrix Value		787.50
<b>Environmental</b>		
Sensitivity (ESM)		
Multiplier	1.0	\$787.50
Days of Noncompliance Multiplier	3	\$2,362.50
Inflation Adjustments (see other worksheet)		\$3,346.01
<b>TOTAL Gravity Based Component</b>		\$3,346.01
Economic Benefit (BEN) calculation		\$511.00
<b>TOTAL PENALTY</b>		<b>\$3,857.01</b>

Gravity Based Component (GBC)				
Adjusted Matrix Value	x Enviro Sensitivity	x Days of NonCompliance	x 2009 Adjustment	GBCPenalty
\$788	1.00	3.00	1.4163	\$3,346.01

Violator Specific Adjustment to the Matrix Value	
Adjustment Factor	Range of Percentage Adjustment
Degree of Cooperation/Noncooperation	Between 50% increase and 25% decrease
Degree of Willfulness or Negligence	Between 50% increase and 25% decrease
History of Noncompliance	Up to 50% increase only
Other Unique Factors	Between 50% increase and 25% decrease

**Comments/Basis**  
**Days of Gravity** - Given the lack of documentation and compliance history at the site it has been decided to use the statute of limitation (5 years) for the days of gravity calculation  
**Degree of cooperation or non cooperation** - Not enough information from the owner to justify adjustment  
**History of non-compliance** - This is the first time the facility has been inspected by EPA  
**Environmental Sensitivity - Low** - There are no surface water bodies nearby, no drinking water wells and site geology consists mostly of clay like material.  
**Economic Benefit calculation (BEN)** - Annually recurring cost of \$75 for an annual line tightness test. Non-compliance period starts on December 28, 2007 (date when current owner acquired the property) and goes through April 1, 2010

1.0 = LOW  
1.5 = Medium  
2.0 = HIGH

Major  
Moderate  
Minor

-25%  
-20%  
-15%  
-10%  
-5%  
0%

5%  
10%  
15%  
20%  
25%  
30%  
35%  
40%  
45%

50% Inflation adjustment

1.1  
1.2895  
1.4163

Days of Gravity	
0-90	1.0
91-180	1.5
181-270	2.0
271-365	2.5
Each additional 6 months or fraction thereof	0.5

Each Additional Year Multiplier	
Year 2	1
Year 3	1
Year 4	1
Year 5	1

From and including: Start date 3/17/2005 to 4/01/2010

Total number of days of Non-compliance: 380

<http://www.timeanddate.com/date/durationresult.html?m1=08&d1=26&y1=1993&m2=08&d2=26&y2=2009&ti=on>

**Potential for  
Harm**

Extent of Deviation from Requirement	
Major	1500
	750
	200
Moderate	1000
	500
	100
Minor	500 Major
	250 Moderate
	50 Minor

EPA's Civil Penalty Policy Inflation Adjustments

UST Penalty Policy issued 11/14/1990

2009 Inflation Adjustment Policy

- 1 Calculate Gravity Component
- 2 For violations after 1/30/1997 through 3/15/2004
- 3 For violations after 3/15/2004 through 1/12/2009
- 4 For violations after 1/12/2009

Factor      Explanation

- 1.1 Initial Inflation rate
- 1.2895 base Inflation rate 1.1 + 17.23% increase
- 1.4163 Base Inflation rate + 17.23% + 9.83% increase



## UST Penalty Policy Calculation

Based on 1990 UST Penalty Policy (per UST)

**Company Name: B&A Petroleum Corp. - 2302 South 13th St. facility**

Date of Inspection: 11/05/2009

Case Handler: Wilfredo Rosado-Chaparro

Penalty Calculation prepared by: Wilfredo Rosado-Chaparro

Regulations Violated: §40 CFR 280.45 - Failure to maintain records of release detection monitoring

Line Item	Citation	Matrix Value
1 UST Violation Penalty	280.45	1500.00
2 # of USTs	1	1500.00
Start of Violation	3/17/2009	
End of Violation	4/1/2010	
3 Days of Gravity Matrix Value - Extent	380	3.00
4 of Deviation	Major Harm	Major
5 TOTAL Matrix Value		1500.00
6 Degree of cooperation or non cooperation		0.00
7 Degree of willfulness or negligence		0.00
8 History of noncompliance		5%
9 Unique factors		0.00
10 Sum of Specific Adjustments		75.00
11 Adjustment Matrix Value		1575.00
Environmental		
Sensitivity (ESM)		
Multiplier	1.0	\$1,575.00
Days of Noncompliance Multiplier	3	\$4,725.00
Inflation Adjustments (see other worksheet)		\$6,692.02
TOTAL Gravity Based Component		\$6,692.02
Economic Benefit (BEN) calculation		\$0.00
<b>TOTAL PENALTY</b>		<b>\$6,692.02</b>

Gravity Based Component (GBC)				
Adjusted Matrix Value	x Enviro Sensitivity	x Days of NonCompliance	x 2009 Adjustment	GBPENALTY
\$1,575	1.00	3.00	1.4163	\$6,692.02

Adjustment Factor	Violator Specific Adjustment to the Matrix Value
Degree of Cooperation/Noncooperation	Range of Percentage Adjustment Between 50% increase and 25% decrease
Degree of Willfulness or Negligence	Between 50% increase and 25% decrease
History of Noncompliance	Up to 50% increase only
Other Unique Factors	Between 50% increase and 25% decrease

**Comments/Basis**  
**Days of Gravity** - Given the lack of documentation and compliance history at the site it has been decided to use the statute of limitation (5 years) for the days of gravity calculation  
**Degree of cooperation or non cooperation** - Not enough information from the owner to justify adjustment

**History of non-compliance** - This is the first time the facility has been inspected by EPA  
**Environmental Sensitivity - Low** - There are no surface water bodies nearby, no drinking water wells and site geology consists mostly of clay like material.  
**Economic Benefit calculation (BEN)** - Annually recurring cost of \$300 for inspection of the CP system. Non-compliance period starts on December 28, 2007 (date when current owner acquired the property) and goes through April 1, 2010

1.0 =LOW  
1.5 =Medium  
2.0 =HIGH

Major  
Moderate  
Minor

-25%  
-20%  
-15%  
-10%  
-5%  
0%

5%  
10%  
15%  
20%  
25%  
30%  
35%  
40%  
45%

50% Inflation adjustment  
1.1  
1.2895  
1.4163

## UST Penalty Policy Calculation

Based on 1990 UST Penalty Policy (per UST)

**Company Name: B&A Petroleum Corp. - 2302 South 13th St. facility**

Date of Inspection: 11/05/2009

Case Handler: Wilfredo Rosado-Chaparro

Penalty Calculation prepared by: Wilfredo Rosado-Chaparro

Regulations Violated: §40 CFR 280.21(c) – Failure to install any cathodic protection for metal piping upgrade requirement, no corrosion protection on flex connectors.

Line Item	Citation	Matrix Value
1 UST Violation Penalty	280.21(c)	1500.00
2 # of USTs	2	3000.00
Start of Violation	11/5/2009	
End of Violation	4/1/2010	
3 Days of Gravity Matrix Value - Extent	147	1.50
4 of Deviation	Major	Major
5 TOTAL Matrix Value	Major	3000.00
6 Degree of cooperation or non cooperation		0.00
7 Degree of willfulness or negligence		0.00
8 History of noncompliance		0.00
9 Unique factors		0.00
10 Sum of Specific Adjustments		0.00
11 Adjustment Matrix Value		3000.00
<b>Environmental</b>		
Sensitivity (ESM)		
Multiplier	1.0	\$3,000.00
Days of Noncompliance Multiplier	1.5	\$4,500.00
Inflation Adjustments (see other worksheet)		\$6,373.35
TOTAL Gravity Based Component		\$6,373.35
Economic Benefit (BEN) calculation		\$104.00
<b>TOTAL PENALTY</b>		<b>\$6,477.35</b>

Gravity Based Component (GBC)			
Adjusted Matrix Value	x Enviro Sensitivity	x Days of NonCompliance	x 2009 Adjustment
\$3,000	1.00	1.50	1.4163
			<b>\$6,373.35</b>

Violator Specific Adjustment to the Matrix Value	
Adjustment Factor	Range of Percentage Adjustment
Degree of Cooperation/Noncooperation	Between 50% increase and 25% decrease
Degree of Willfulness or Negligence	Between 50% increase and 25% decrease
History of Noncompliance	Up to 50% increase only
Other Unique Factors	Between 50% increase and 25% decrease

**Comments/Basis**  
**Days of Gravity** - Given the lack of documentation and compliance history at the site it has been decided to use the statute of limitation (5 years) for the days of gravity calculation  
**Degree of cooperation or non cooperation** - Not enough information from the owner to justify adjustment  
**History of non-compliance** - This is the first time the facility has been inspected by EPA  
**Environmental Sensitivity** - Low - There are no surface water bodies nearby, no drinking water wells and site geology consists mostly of clay like material.  
**Economic Benefit calculation (BEN)** - One time capital cost of \$2,361.00 to repair or replace CP system and an Annually recurring cost of \$300 for inspection of the CP system. Non-compliance period starts on December 28, 2007 (date when current owner acquired the property) and goes through April 1, 2010.

1.0 =LOW  
1.5 =Medium  
2.0 =HIGH

Major  
Moderate  
Minor

-25%  
-20%  
-15%  
-10%  
-5%  
0%

5%  
10%  
15%  
20%  
25%  
30%  
35%  
40%  
45%

50% Inflation adjustment  
1.1  
1.2895  
1.4163

## UST Penalty Policy Calculation

Based on 1990 UST Penalty Policy (per UST)

**Company Name: B&A Petroleum Corp. - 2302 South 13th St. facility**

Date of Inspection: 11/05/2009

Case Handler: Wilfredo Rosado-Chaparro

Penalty Calculation prepared by: Wilfredo Rosado-Chaparro

Regulations Violated: §40 CFR 280.44(a) - Failure to provide adequate testing for piping system, no annual function test (FT)

Line Item	Citation	Matrix Value	Comments/Basis
1 UST Violation Penalty	280.44(a)	1500.00	<p><b>Comments/Basis</b>  <b>Days of Gravity</b> - Given the lack of documentation and compliance history at the site it has been decided to use the statute of limitation (5 years) for the days of gravity calculation  <b>Degree of cooperation or non cooperation</b> - Not enough information from the owner to justify adjustment</p>
2 # of USTs	2	3000.00	
3 Days of Violation	3/17/2009 4/1/2010	380	<p><b>History of non-compliance</b> - This is the first time the facility has been inspected by EPA  <b>Environmental Sensitivity</b> - Low - There are no surface water bodies nearby, no drinking water wells and site geology consists mostly of clay like material.  <b>Economic Benefit calculation (BEN)</b> - Annually recurring cost of \$50 for an annual function test. Non-compliance period starts on December 28, 2007 (date when current owner acquired the property) and goes through April 1, 2010</p>
4 of Deviation	Major	Major	
5 TOTAL Matrix Value		3000.00	
6 Degree of cooperation or non cooperation		0.00	
7 Degree of willfulness or negligence		0.00	
8 History of noncompliance		150.00	
9 Unique factors		0.00	
10 Sum of Specific Adjustments		150.00	
11 Adjustment Matrix Value		3150.00	

Environmental			
Sensitivity (ESM)			
Multiplier	1.0		\$3,150.00
Days of Noncompliance	3		\$9,450.00
Inflation Adjustments (see other worksheet)		1.4163	\$13,384.04
TOTAL Gravity Based Component			\$13,384.04
Economic Benefit (BEN) calculation			\$0.00
<b>TOTAL PENALTY</b>			<b>\$13,384.04</b>

Gravity Based Component (GBC)				
Adjusted Matrix Value	X Enviro Sensitivity	X Days of NonCompliance	X 2009 Adjustment	GBCPenalty
\$3,150	1.00	3.00	1.4163	\$13,384.04

Violator Specific Adjustment to the Matrix Value	
Adjustment Factor	Range of Percentage Adjustment
Degree of Cooperation/Noncooperation	Between 50% increase and 25% decrease
Degree of Willfulness or Negligence	Between 50% increase and 25% decrease
History of Noncompliance	Up to 50% increase only
Other Unique Factors	Between 50% increase and 25% decrease

Major  
Moderate  
Minor

-25%  
-20%  
-15%  
-10%  
-5%  
0%

5%  
10%  
15%  
20%  
25%  
30%  
35%  
40%  
45%

50% Inflation adjustment

1.1  
1.2895  
1.4163



## UST Penalty Policy Calculation

Based on 1990 UST Penalty Policy (per UST)

**Company Name: B&A Petroleum Corp. - 2302 South 13th St. facility**

**Date of Inspection: 11/05/2009**

**Case Handler: Wilfredo Rosado-Chaparro**

**Penalty Calculation prepared by: Wilfredo Rosado-Chaparro**

**Regulations Violated: \$40 CFR 280.41(b)(1)(ii) - Failure to perform monitoring of pressurized piping, no annual line tightness test (LTT)**

Line Item	Citation	Matrix Value
1 UST Violation Penalty	280.41(b)(1)(ii)	1500.00
2 # of USTs	2	3000.00
Start of Violation	3/17/2009	
End of Violation	4/1/2010	
3 Days of Gravity Matrix Value - Extent	380	3.00
4 of Deviation	Major	Potential for Major
5 TOTAL Matrix Value	Major	3000.00
6 Degree of cooperation or non cooperation		0.00
7 Degree of willfulness or negligence		0.00
8 History of noncompliance		150.00
9 Unique factors		0.00
10 Sum of Specific Adjustments		150.00
11 Adjustment Matrix Value		3150.00
Environmental		
Sensitivity (ESM)		
Multiplier	1.0	\$3,150.00
Days of Noncompliance Multiplier	3	\$9,450.00
Inflation Adjustments (see other worksheet)		\$13,384.04
TOTAL Gravity Based Component		\$13,384.04
Economic Benefit (BEN) calculation		\$0.00
<b>TOTAL PENALTY</b>		<b>\$13,384.04</b>

Gravity Based Component (GBC)				
Adjusted Matrix Value	X Enviro Sensitivity	X Days of NonCompliance	X 2009 Adjustment	GBC Penalty
\$3,150	1.00	3.00	1.4163	\$13,384.04

Violator Specific Adjustment to the Matrix Value	
Adjustment Factor	Range of Percentage Adjustment
Degree of Cooperation/Noncooperation	Between 50% increase and 25% decrease
Degree of Willfulness or Negligence	Between 50% increase and 25% decrease
History of Noncompliance	Up to 50% increase only
Other Unique Factors	Between 50% increase and 25% decrease

### Comments/Basis

**Days of Gravity** - Given the lack of documentation and compliance history at the site it has been decided to use the statute of limitation (5 years) for the days of gravity calculation

**Degree of cooperation or non cooperation** - Not enough information from the owner to justify adjustment

**History of non-compliance** - This is the first time the facility has been inspected by EPA

**Environmental Sensitivity** - Low - There are no surface water bodies nearby, no drinking water wells and site geology consists mostly of clay like material.

**Economic Benefit calculation (BEN)** - Annually recurring cost of \$75 for an annual line tightness test. Non-compliance period starts on December 28, 2007 (date when current owner acquired the property) and goes through April 1, 2010

1.0 = LOW  
1.5 = Medium  
2.0 = HIGH

Major  
Moderate  
Minor

-25%  
-20%  
-15%  
-10%  
-5%  
0%

5%  
10%  
15%  
20%  
25%  
30%  
35%  
40%  
45%

50% Inflation adjustment

1.1  
1.2895  
1.4163

Days of Gravity	
0-90	1.0
91-180	1.5
181-270	2.0
271-365	2.5
Each additional 6 months or fraction thereof	0.5

Each Additional Year Multiplier	
Year 2	1
Year 3	1
Year 4	1
Year 5	1

From and including: Start date 3/17/2009 to 4/01/2010

Total number of days of Non-compliance:380

<http://www.timeanddate.com/date/durationresult.html?m1=08&d1=26&y1=1993&m2=08&d2=26&y2=2009&ti=on>

**Potential for  
Harm**

Extent of Deviation from Requirement	
Major	1500
	750
	200
Moderate	1000
	500
	100
Minor	500 Major
	250 Moderate
	50 Minor

EPA's Civil Penalty Policy Inflation Adjustments

UST Penalty Policy issued 1/1/14/1990

2009 Inflation Adjustment Policy

- 1 Calculate Gravity Component
- 2 For violations after 1/30/1997 through 3/15/2004
- 3 For violations after 3/15/2004 through 1/12/2009
- 4 For violations after 1/12/2009

Factor      Explanation

- 1.1 Initial Inflation rate
- 1.2895 base Inflation rate 1.1 + 17.23% increase
- 1.4163 Base Inflation rate + 17.23% + 9.83% increase