



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

DEC 29 2011

CERTIFIED MAIL: RETURN RECEIPT REQUESTED
Article Number: 7005 3110 0000 5950 4505

Honorable Eric K. Shinseki, Secretary
U.S. Department of Veterans Affairs
810 Vermont Avenue, NW
Washington, DC 20420

Philip Moschitta, Director
VA Medical Center
79 Middleville Rd.
Northport, NY 11768

Gerald Culliton, Director
HVVCS-Montrose
2094 Albany Post Rd
Montrose, NY 10548

Kenneth Mizrach, Director
NJHCS - EO Campus
385 Tremont Ave.
East Orange, NJ 07018

Re: **In the Matter of U.S. Department of Veterans Affairs**
Docket No. RCRA-02-2012-7502

Dear Messrs. Shinseki, Moschitta, Culliton, and Mizrach:

Enclosed is a Complaint, Compliance Order and Opportunity for Hearing in the above-referenced proceeding. The Complaint alleges violations of the Solid Waste Disposal Act, as amended, 42 U.S.C. § 6901 *et seq.*, related to underground storage tanks in operation at Veterans Affairs facilities located in Northport and Montrose, NY and Lyons, NJ.

You have the right to a formal hearing to contest any of the allegations in the Complaint and/or to contest the penalty proposed in the Complaint. If you wish to contest the allegations and/or the penalty proposed in the Complaint, you must file an Answer within **thirty (30)** days of your receipt of the enclosed Complaint with the Regional Hearing Clerk of the Environmental Protection Agency ("EPA"), Region 2, at the following address:

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REGION 2
JAN -5 P 2:41
REGIONAL HEARING
CLERK

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, New York 10007-1866

If you do not file an Answer within thirty (30) days of receipt of this Complaint and have not obtained a formal extension for filing an Answer from the Regional Judicial Officer of Region 2, a default order may be entered against the Respondent and the entire proposed penalty may be assessed.

Whether or not you request a formal hearing, you may request an informal conference with EPA to discuss any issue relating to the alleged violations and the amount of the proposed penalty.

EPA encourages all parties against whom it files a Complaint to pursue the possibility of settlement and to have an informal conference with EPA. However, a request for an informal conference *does not* substitute for a written Answer, affect what you may choose to say in an Answer, or extend the thirty (30) days by which you must file an Answer requesting a hearing.

You will find enclosed a copy of the "Consolidated Rules of Practice," which govern this proceeding. (A brief discussion of some of these rules appears in the latter part of the Complaint).

EPA encourages the use of Supplemental Environmental Projects, where appropriate, as part of any settlement. I am enclosing a brochure on "EPA's Supplemental Environmental Projects Policy." Please note that these are only available as part of a negotiated settlement and are not available if this case has to be resolved by a formal adjudication.

If you have any questions or wish to schedule an informal conference, please contact the attorney whose name is listed in the Complaint.

Sincerely,



Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

In the Matter of

U.S. Department of Veterans Affairs

COMPLAINT, COMPLIANCE ORDER
AND NOTICE OF OPPORTUNITY
FOR HEARING

Respondent.

Docket No. RCRA-02-2012-7502

Proceeding Under Section 9006
of the Solid Waste Disposal Act,
as amended

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2012 JAN -5 P 2:41
REGIONAL HEARING
CLERK

COMPLAINT

Complainant hereby alleges as follows:

1. This is a civil administrative proceeding instituted pursuant to Section 9006 of the Solid Waste Disposal Act, as amended, 42 U.S.C. § 6901 et seq. (collectively referred to as the "Act").
2. Complainant in this proceeding, Dore LaPosta, Director, Division of Enforcement and Compliance Assistance of the United States Environmental Protection Agency, Region 2 (EPA), has been duly delegated the authority to institute this action.
3. This Tribunal has jurisdiction over the subject matter of this administrative proceeding pursuant to Section 9006(a) of the Act, 42 U.S.C. § 6991e(a), and 40 C.F.R. § 22.1(a)(4).
4. Respondent is the U.S. Department of Veterans Affairs (hereinafter "Respondent").
5. Respondent is a department, agency or instrumentality of the executive branch of the Federal government.
6. Respondent is a "person" within the meaning of Section 9001(5) of the Act, 42 U.S.C. § 6991(5) and 40 C.F.R. § 280.12.

7. Section 9001 of the Act, 42 U.S.C. § 6991 and 40 C.F.R. § 280.12 define “underground storage tank” or “UST” as one or combination of tanks (including underground pipes connected thereto) that is used to contain an accumulation of regulated substances, and the volume of which (including the volume of underground pipes connected thereto) is 10 percent or more beneath the surface of the ground.
8. A new tank is defined in 40 C.F.R. § 280.12 as a tank system used to contain an accumulation of regulated substances and for which installation has commenced after December 22, 1988.
9. Respondent, for all relevant times in this complaint, has been the “owner” and/or “operator” as those terms are defined in 40 C.F.R. § 280.12, of USTs at various facilities as described in the paragraphs below.
10. Respondent, for all relevant times in this complaint, has owned and operated, inter alia, four new USTs at the Northport, NY Medical Center (“Northport Facility”), located at 79 Middleville Road, Northport, NY 11768. The three UST systems at Buildings 210, 212 and 215 at the Northport Facility included 1,000-gallon tanks used to store diesel fuel for emergency generators only and were installed in 1990. The UST system at Building T-127 is a 1,000-gallon tank used to store gasoline for vehicles and was installed in 1990. On or about January 13, 2009, an EPA Representative inspected the UST systems at the Northport Facility (“January 2009 Inspection”). The purpose of the inspection was in part to determine the Respondent’s compliance with the Act.
11. Respondent, for all relevant times in this complaint, has owned and operated, and continues to own and operate, inter alia, one new UST at the Hudson Valley Health Care System (hereinafter “HVVHCS”), located at 2094 Albany Post Road, Montrose, NY 10548. UST System 2A at HVVHCS included a 1,000-gallon tank used to store gasoline for use in vehicles and was installed in December 1998. On or about February 12, 2009, an EPA Representative inspected the UST system at HVVHCS (“February 2009 Inspection”). The purpose of the inspection was in part to determine the Respondent’s compliance with the Act.
12. Respondent, for all relevant times in this complaint, has owned and operated, and continues to own and operate, inter alia, three new USTs at the Department of Veterans Affairs Medical Center in Lyons, New Jersey (hereinafter “Lyons Facility”), located at 151 Knollcroft Road, Lyons, NJ 07939. UST Systems E11A, E16A and E22A at the Lyons Facility included 1,500-gallon tanks used to store diesel fuel and were installed in March, 1993. On or about May 4, 6 and 7, 2009, an EPA Representative inspected the UST systems at the Lyons Facility (“May 2009 Inspection”). The purpose of the inspection was in part to determine the Respondent’s compliance with the Act.

13. In 2004, EPA and the Respondent entered into a facility Audit Agreement (“Audit Agreement”) pursuant to which Respondent conducted an audit of its compliance with federal environmental requirements, including the UST rules codified at 40 C.F.R. Part 280, at numerous of its facilities in the State of New York and New Jersey (including the facilities which are the subject of this complaint). The Audit Agreement provided that Respondent would disclose to EPA and correct identified violations at its facilities. In exchange for Respondent taking these actions, EPA agreed not to seek gravity based penalties for these violations. Under the Audit Agreement, Respondent also committed to develop and implement an Environmental Management Agreement and to take the steps necessary to prevent violations in the future.
14. On March 31, 2008, EPA issued Respondent a Complaint, Compliance Order and Notice of Opportunity for Hearing (“March 2008 Complaint”) alleging that Respondent failed to maintain release detection records as required by 40 C.F.R. § 280.45(b) at its facility in Canandaigua, New York.
15. On September 15, 2008, EPA and Respondent entered into a Consent Agreement and Final Order (“September 2008 CA/FO”) resolving the March 2008 Complaint. The September 2008 CA/FO required Respondent to pay a civil penalty and to comply with the requirements to maintain release detection records in accordance with 40 C.F.R. § 280.45(b). See September 2008 CA/FO- Docket No. RCRA-02-2008-7504, pages 4-5.
16. On September 29, 2008, EPA issued Respondent a Complaint, Compliance Order and Notice of Opportunity for Hearing (“September 2008 Complaint”) including, inter alia, 2 counts alleging that Respondent failed to maintain release detection records as required by Rule 406 of the Puerto Rico Underground Storage Tank Regulations (“PRUSTR,” which is the authorized regulation that replaced 40 C.F.R. § 280.45 in the Commonwealth of Puerto Rico). The facility that was the subject of the September 2008 Complaint is located in San Juan, Puerto Rico
17. On January 22, 2010, EPA and Respondent entered into a Consent Agreement and Final Order (“January 2010 CA/FO”) resolving the September 2008 Complaint. The January 2010 CA/FO required Respondent to pay a civil penalty and to comply, inter alia, with the requirements to maintain release detection records in accordance with Rule 406 of PRUSTR. See January 2010 CA/FO- Docket No. RCRA-02-2008-7507, pages 4-5.
18. Pursuant to § 9003 of the Act, 42 U.S.C. § 6991b, EPA promulgated rules setting forth requirements for owners and operators of UST systems, set forth at 40 C.F.R. Part 280.
19. Neither New York State nor New Jersey has received State Program Approval under federal regulations for the Underground Storage Tank Program but each State serves as the “implementing agency,” as defined in 40 C.F.R. § 280.12, for certain functions under the federal program.

Count 1
**Failure to Immediately Investigate and Report
a Suspected Release at the Northport Facility**
UST System at Building T-127

20. Paragraphs 1 through 19 are realleged and incorporated herein.
21. Pursuant to 40 C.F.R. § 280.52, unless corrective action is initiated in accordance with Subpart F, owners and operators of UST systems must immediately investigate and confirm all suspected releases using either a system test or site check.
22. Pursuant to 40 C.F.R. § 280.50 owners and operators of UST systems must report to the implementing agency within 24 hours monitoring results from a release detection method required under §§ 280.41 and 280.42 that indicate a release may have occurred unless the monitoring device is found to be defective and it is immediately repaired, recalibrated or replaced, and additional monitoring does not confirm the initial result.
23. During the January 2009 Inspection, the EPA Representative observed that UST System at Building T-127 was in alarm status, with the automatic tank gauge warning “Liquid.”
24. At the time of the January 2009 Inspection, the EPA Representative inquired about the alarm but Respondent’s representative at the facility did not know the cause of the alarm.
25. At the time of the January 2009 Inspection, the Respondent had taken no steps to address the alarm status indicating a suspected release.
26. On March 19, 2009 EPA sent Respondent a Notice of Violation (“NOV”) and Information Request Letter (“IRL”), which cited as a violation the failure to immediately investigate a suspected release and report to the implementing agency the suspected release at the UST system at Building T-127. EPA also requested that Respondent provide any information refuting EPA’s allegation that a violation existed and a description of the steps taken to correct the violation.
27. In its April 23 and May 22, 2009 Responses, Respondent reported that an opening in the side of the tank-top sump for UST System at Building T-127 was discovered and repaired on April 3, 2009.
28. Respondent failed to immediately investigate a suspected release and to report to the implementing agency the suspected release at the UST system at Building T-127, and this failure constitutes violations of 40 C.F.R. § 280.50 and § 280.52.

Count 2
Failure to Maintain Records of Tank Release Detection
for the Northport Facility
Tank of UST System at Building T-127

29. Paragraphs 1 through 28 are realleged and incorporated herein.
30. Pursuant to 40 C.F.R. § 280.41(a) owners and operators must ensure that tanks must be monitored for releases at least every 30 days using one of the methods listed in 40 C.F.R. § 280.43(d) through (h).
31. Pursuant to 40 C.F.R. § 280.45(b) and in accordance with 40 C.F.R. § 280.34, owners and operators must maintain the results of any release detection monitoring for at least one year.
32. During the January 2009 Inspection, the EPA Representative made an oral request for release detection records for the tank of the UST System at Building T-127 for the previous twelve months.
33. During the January 2009 Inspection, in response to the oral request for release detection records as described in paragraph 32 above, Respondent's representative informed the EPA Representative that the facility did not have release detection records for the tank of the UST System at Building T-127.
34. On March 19, 2009 EPA sent Respondent a NOV/IRL, which cited as a violation the failure to maintain release detection records for the tank of the UST System at Building T-127. EPA also requested that Respondent provide any information refuting EPA's allegation that a violation existed, a description of the steps taken to correct the violation and documentation of the facility's compliance with all requirements of 40 C.F.R. §280.40 to § 280.45, including "documentation demonstrating that the leak detection was implemented during the last 12 months."
35. In its April 23 and May 22, 2009 Responses, Respondent only provided valid release detection results for the tank of the UST System at Building T-127 for November and December 2008.
36. The Respondent failed to maintain complete records of release detection for the tank of UST System at Building T-127 for the twelve-month period prior to the March 19, 2009 NOV/IRL, and this failure constitutes a violation of 40 C.F.R. § 280.45(b).

Count 3
**Failure to Perform or Maintain Records of an Annual Line Tightness Test
or Release Detection Monitoring for the Northport Facility**
Piping of UST System at Building T-127

37. Paragraphs 1 through 36 are realleged and incorporated herein.
38. Pursuant to 40 C.F.R. § 280.41b(1)(ii) owners and operators of underground piping that conveys regulated substances under pressure must have an annual line tightness test conducted in accordance with §280.44(b), or have monthly monitoring conducted in accordance with §280.44(c).
39. Pursuant to 40 C.F.R. § 280.45(b) and in accordance with 40 C.F.R. § 280.34, owners and operators must maintain the results of any release detection monitoring for at least one year.
40. During the January 2009 Inspection, the EPA Representative made an oral request for records of release detection monitoring for the piping of the UST System at Building T-127 for the previous twelve months.
41. During the January 2009 Inspection, in response to the oral request for the piping release detection records as described in paragraph 40, above, Respondent's representative informed the EPA Representative that the facility did not have release detection monitoring for the piping of the UST system at Building T-127 for the previous twelve months.
42. On March 19, 2009 EPA sent Respondent an NOV/IRL which cited as a violation the failure to maintain release detection records. EPA also requested that Respondent provide any information refuting EPA's allegation that a violation existed, a description of the steps taken to correct the violation and documentation of the facility's compliance with all requirements of 40 C.F.R. §280.40 to § 280.45, including "documentation demonstrating that the leak detection was implemented during the last 12 months."
43. In its April 23 and May 22, 2009 Responses, Respondent provided no documentation of either an annual line tightness test, or monthly monitoring detection for the piping of the UST System at Building T-127.
44. The Respondent failed to either perform an annual line tightness test or monthly release detection monitoring for the piping of the UST System at Building T-127 for the twelve-month period prior to the NOV/IRL or to maintain records of said testing/monitoring, and this failure constitutes a violation of 40 C.F.R. §§ 280.41(b)(1)(ii) and 280.45(b).

Count 4

**Failure to Equip the Pressurized Piping System for the Northport Facility with an Automatic Line Leak Detector and to Test it Annually
UST System at Building T-127**

45. Paragraphs 1 through 44 are realleged and incorporated herein.
46. Pursuant to 40 C.F.R. §§ 280.41(b)(1)(i) and 280.44(a), a pressurized piping system must be equipped with an automatic line leak detector, which must be tested annually.
47. During the January 2009 Inspection, the EPA Representative asked Respondent representative what type of pipe monitoring, if any, the facility was using for the UST System at Building T-127.
48. During the January 2009 Inspection, Respondent representative was unable to provide any information on what type of pipe monitoring, if any, the facility was using for the UST System at Building T-127.
49. On March 19, 2009 EPA sent Respondent an NOV/IRL which requested documentation of the facility's compliance with all requirements of 40 C.F.R. §280.40 to § 280.45, which include the release monitoring requirements for the piping.
50. In its NOV/IRL Responses dated April 23 and May 22, 2009, Respondent provided no information regarding the facility's compliance with the release monitoring requirements for the piping of the UST System at Building T-127.
51. Upon information and belief, as of the time of the January 2009 Inspection, the piping system for the UST System at Building T-127 was pressurized but Respondent had not installed an automatic line leak detector as required by 40 C.F.R. § 280.41(b)(1)(i) and was not conducting annual testing of the operation of the leak detector as required by 40 C.F.R. § 280.44(a).
52. Upon information and belief, as of the day of its NOV/IRL Response dated May 22, 2009, Respondent had not installed an automatic line leak detector for the piping of the UST System at Building T-127 as required by 40 C.F.R. § 280. 41(b)(1)(i) and was not conducting annual testing of the operation of the leak detector as required by 40 C.F.R. § 280.44(a).
53. The failure of Respondent to have an automatic line leak detector for the piping of the UST System at Building T-127 at the Northport Facility, or to conduct an annual tests of its operation constitutes a violation of 40 C.F.R. § 280. 41(b)(1)(i) and § 280.44(a).

Count 5
**Failure to Have Required Overfill Prevention
at the Northport Facility**
UST Systems at Buildings 210, 212 and 215

54. Paragraphs 1 through 53 are realleged and incorporated herein.
55. Pursuant to 40 CFR §280.20(c)(1)(ii), to prevent overfilling associated with transfer of the regulated substance to the UST system, owners and operators must use overfill prevention equipment that will: (A) Automatically shut off flow into the tank when the tank is no more than 95 percent full; or (B) Alert the transfer operator when the tank is no more than 90 percent full by restricting the flow into the tank or triggering a high-level alarm; or (C) Restrict flow 30 minutes prior to overfilling, alert the operator with a high level alarm one minute before overfilling, or automatically shut off flow into the tank.
56. During the January 2009 Inspection, the overfill alarm for the 1,000-gallon UST storing diesel fuel for an emergency generator near the sewage treatment plant at Building 210 was not functioning when the EPA Representative tested it.
57. According to facility records reviewed by the EPA Representative at the facility at the time of the January 2009 Inspection, the overfill alarm for the 1,000-gallon UST storing diesel fuel for an emergency generator near the sewage treatment plant at Building 210 had not been functioning since at least April 13, 2005.
58. During the January 2009 Inspection, the overfill alarm for the 1,000-gallon diesel fuel UST at Building 212 did not sound when the EPA Representative tested it.
59. During the January 2009 Inspection, the overfill alarm for the 1,000-gallon diesel fuel UST at Building 215 sounded when the EPA Representative tested it, but it would not shut off.
60. On March 19, 2009 EPA sent Respondent an NOV/IRL which cited as violations the problems with the overfill alarms for the UST systems at Buildings 210, 212 and 215. EPA also requested that Respondent provide any information refuting EPA's allegation that those violations existed and describing the steps taken to correct the violations.
61. In its March 19, 2009 NOV/IRL EPA also asked Respondent to "[p]rovide information on the overfill and spill protection procedures and/or equipment used to ensure that overfilling and spilling do not occur."
62. In its April 23 and May 22, 2009 NOV/IRL Responses, Respondent, in response to the question described in paragraph 60 above, stated that the leak detection system for the Building 210 UST would be monitored weekly until the task was contracted out and that

the other two overfill prevention systems functioned properly as of April 2009.

63. In its April 23 and May 22, 2009 NOV/IRL Responses, Respondent, in response to the question described in paragraph 61 above, stated that it had “[o]verfill alarms in place.”
64. During the January 2009 Inspection Respondent did not have overfill prevention for the UST systems at Buildings 210, 212 and 215 that satisfied the requirements in 40 CFR §280.20(c)(1)(ii).
65. Respondent's failure to have required overfill prevention for the UST systems at Buildings 210, 212 and 215 constitutes violations of 40 CFR §280.20(c)(1)(ii).

Count 6
Failure to Provide Release Detection
for the Piping at HVHCS
UST System 2A

66. Paragraphs 1 through 65 are realleged and incorporated herein.
67. Pursuant to 40 C.F.R. § 280.41(b)(2) underground piping that conveys regulated substances under suction must (unless it meets the standards in 40 C.F.R. § 280.41(b)(2)(i) through (v), described in paragraph 68 below), either have a line tightness test conducted at least every 3 years and in accordance with §280.44(b), or use a monthly monitoring method conducted in accordance with §280.44(c).
68. Pursuant to 40 C.F.R. § 280.41(b)(2)(i) through (v) no release detection is required for suction piping that meets the following standards: (i) The below-grade piping operates at less than atmospheric pressure; (ii) The below-grade piping is sloped so that the contents of the pipe will drain back into the tank if the suction is released; (iii) Only one check valve is included in each suction line; (iv) The check valve is located directly below and as close as practical to the suction pipe; and (v) A method is provided that allows compliance with the standards (ii) - (iv) to be readily determined.
69. During the February 2009 Inspection, the EPA Representative observed that UST System 2A used suction pumping and upon inquiry, Respondent’s Representative stated that the system did not need release detection because it met the regulatory standards described in paragraph 68 above.
70. During the February 2009 Inspection, the EPA Representative observed that the piping for UST System 2A did not seem to have the necessary slope as required by 40 C.F.R. § 280.41(b)(2)(ii).
71. During the February 2009 Inspection, the EPA Representative made an oral request for

- documentation showing that the piping met the standards in 40 C.F.R. § 280.41(b)(2)(i) through (v) but Respondent representative did not provide any documentation.
72. On March 19, 2009 EPA sent Respondent an NOV/IRL which cited as a possible violation the failure to provide release detection for piping for UST System 2A. EPA also requested that Respondent provide any information refuting EPA's allegation that a violation existed and describing the steps taken to correct the violation.
 73. In its NOV/IRL Response, dated April 15, 2009, Respondent maintained that there was no violation because the system used "safe suction," (meaning it met the standards in 40 C.F.R. § 280.41(b)(2)(i) through (v)), and promised to provide documentation of its claim to EPA by July 31, 2009.
 74. In its NOV/IRL Response, dated July 31, 2009, Respondent reported that a check valve was found at the tank end of the piping of UST System 2A. Respondent also stated that it was going to remove the check valve but it did not provide a date for doing this work.
 75. On August 24, 2009, the EPA Representative sent an e-mail to Respondent representative inquiring whether Respondent had set up a time to remove the check valve.
 76. On September 18, 2009, Respondent representative responded via e-mail stating that the removal of the check valve "will be completed by 12-15-09."
 77. As of December 15, 2009 a check valve was located at the tank end of the piping of UST System 2A and was not located directly below and as close as practical to the suction pipe.
 78. As of December 15, 2009 the piping of UST System 2A did not meet the standard in 40 C.F.R. § 280.41(b)(2)(ii) and consequently, it required release detection pursuant to 40 C.F.R. § 280.41(b)(2).
 79. In its NOV/IRL Responses, dated April 15, 2009 and July 31, 2009, Respondent provided no documentation of conducting a line tightness test every three years or using a monthly monitoring method for the piping of UST System 2A.
 80. Respondent failed to conduct a line tightness test every three years, or use a monthly monitoring method for the piping of UST System 2A from December 31, 2006 to December 15, 2009, and this failure constitutes a violation of 40 C.F.R. § 280.41(b)(2).

Count 7
**Failure to Immediately Investigate and Report A
a Suspected Release at the Lyons Facility**
UST System E16A

81. Paragraphs 1 through 80 are realleged and incorporated herein.
82. Pursuant to 40 C.F.R. § 280.52, unless corrective action is initiated in accordance with Subpart F, owners and operators of UST systems must immediately investigate and confirm all suspected releases using either a system test or site check.
83. Pursuant to 40 C.F.R. § 280.50 owners and operators must report to the implementing agency within 24 hours suspected releases of regulated substances arising from unusual operating conditions observed by owners and operators, unless system equipment is found to be defective but not leaking and is immediately repaired or replaced.
84. During the May 2009 Inspection, the EPA Representative observed that the Veeder Root TLS-350 gauge for UST System E-16A was in alarm status with the readout: "Fuel Alarm on L1." The Veeder Root setup identified L1 as the tank interstice.
85. At the time of the May 2009 Inspection, the EPA Representative inquired about the alarm but Respondent representative at the facility did not know the cause of the alarm.
86. At the time of the May 2009 Inspection the facility had taken no steps to address the alarm status indicating a suspected release.
87. On May 19, 2009 EPA sent Respondent a NOV/IRL which cited as a violation the failure to immediately investigate a suspected release and to report to the implementing agency a suspected release at UST System E-16A. EPA also requested that Respondent provide any information refuting EPA's allegation a violation existed and describing the steps taken to correct the violation.
88. In its June 22, 2009 Response, Respondent reported that tank monitoring indicates that there have been no releases of regulated substances into the environment, but that the source of the leak into the interstice had not been identified.
89. In its September 23, 2009 Response update, Respondent stated that the UST will be replaced with an above-ground tank since "[t]his appears to be a chronic problem that we have not been able to correct."
90. Respondent's failures to immediately investigate a suspected release and to report to the implementing agency a suspected release at the UST systems for E-16A are violations of 40 C.F.R. §§ 280.52 and 280.50.

PROPOSED CIVIL PENALTY

Section 9007 of the Act and Section 9006(d)(2)(A) of the Act, 42 U.S.C. § 6991e (d)(2)(A), authorizes the assessment of a civil penalty against a federal department or agency of up to \$10,000 for each tank for each day of violation of any requirement or standard promulgated by the Administrator. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection and Improvement Act of 1996, Pub. L. No. 104-34, 110 Stat. 1321 (1996), required EPA to adjust its penalties for inflation on a periodic basis. EPA issued a Civil Monetary Penalty Inflation Adjustment Rule on December 31, 1996, 61 Fed. Reg. 69360 on February 13, 2004, 69 Fed. Reg. 7121 and on December 11, 2008, 73 Fed. Reg. 75340, codified at 40 C.F.R. Part 19.

Under Table I of the Civil Monetary Penalty Inflation Adjustment Rule, the maximum civil penalty under 42 U.S.C. § 6991e(d)(2) for each tank for each day of violation occurring after March 15, 2004 and before January 13, 2009 is \$11,000. The maximum penalty for violations occurring after January 12, 2009 is \$16,000.

The penalties are proposed pursuant to the “U.S. EPA Penalty Guidance for Violations of UST Requirements” dated November 1990 (“UST Guidance”). The penalty amounts in this guidance were amended by a September 21, 2004 document entitled, “Modifications to EPA Penalty Policies to implement the Civil Monetary Penalty Inflation Rule (pursuant to the Debt Collection Improvement Act of 1996, Effective on October 1, 2004)” and a December 29, 2008 document entitled “Amendments to EPA’s Civil Penalty Policies to Implement the 2008 Civil Monetary Penalty Inflation Adjustment Rule (Effective January 12, 2009).” A more specific guidance entitled “Revision to Adjusted Penalty Policy Matrices Issued on November 16, 2009” was issued on April 6, 2012. (These documents are available upon request.) This UST guidance provides a rational, consistent, and equitable calculation methodology for applying the statutory penalty factors to particular cases.

Based upon the facts alleged in this Complaint and taking into account factors such as the seriousness of the violations and any good faith efforts by the Respondent to comply with the applicable requirements, the Complainant proposes, subject to receipt and evaluation of further relevant information, to assess the following civil penalties:

- Count 1: Failure to Immediately Investigate and Report
a Suspected Release at the UST System at Building T-127 at the Northport
Facility \$3,498.00**

- Count 2: Failure to Maintain Records of Release Detection
for the Tank of UST System at Building T-127 at the Northport
Facility..... \$11,070.00**

Count 3: Failure to Perform or Maintain Records of an Annual Line Tightness Test or Release Detection Monitoring of the Piping of UST System at Building T-127 at the Northport Facility	\$11,070.00
Count 4: Failure to Equip the Pressurized Piping System of UST System at Building T-127 at the Northport Facility with an Automatic Line Leak Detector and to Test it Annually	\$17,370.00
Count 5: Failure to Have Required Overfill Prevention on the UST Systems at Buildings 210, 212 and 215 at the Northport Facility	\$7,155.00
Count 6: Failure to Provide Release Detection for the Piping of UST System 2A at HVHCS	\$13,170.00
Count 7: Failure to Immediately Investigate and Report a Suspected Release from UST System E16A at the Lyons Facility	\$3,180.00
<u>Total Proposed Penalty</u>	\$66,513.00

Penalty Computation Worksheets explaining the rationale for the proposed civil penalties in this specific case are attached to this Complaint.

COMPLIANCE ORDER

Based on the foregoing, and pursuant to the authority of Sections 9006 and 9007 of the Act, 42 U.S.C. § 6991e and 6991f, Complainant issues the following Compliance Order against Respondent, which shall take effect thirty (30) days after service of this Order (i.e., the effective date), unless by that date, the Respondent has requested a hearing pursuant to 40 C.F.R. § 22.15. See 42 U.S.C. § 6991(e)(b) and 40 C.F.R. §§ 22.37(b) and 22.7(c):

1. Respondent shall, within thirty (30) days after the effective date of this Order, comply with all applicable UST system standards under 40 C.F.R. Section 280 for the UST systems at the Respondent’s Facilities in this Order; including the requirements specifically cited in Counts 1 through 7, above.

3. Respondent shall, within forty-five (45) calendar days after the effective date of this Order, submit to EPA written notice of its compliance (accompanied by a copy of all appropriate supporting documentation) or noncompliance for each of the requirements set forth herein. If the Respondent is in noncompliance with a particular requirement, the notice shall state the reasons for noncompliance and shall provide a schedule for achieving expeditious compliance with the requirement. Such written notice shall contain the following certification:

I certify that the information contained in this written notice and the accompanying documents is true, accurate and complete. As to the identified portions of this response for which I cannot personally verify their accuracy, I certify under penalty of law that this response and all attachments were prepared in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those person directly responsibility for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

Signature: _____
Name: _____
Title: _____

Respondent shall submit the documents specified above to:

**Charles Zafonte
Enforcement Officer
U.S. EPA Region 2
Compliance and Program Support Branch
290 Broadway, 21st Floor
New York, NY 10007-1866**

NOTICE OF LIABILITY FOR ADDITIONAL CIVIL PENALTIES

Pursuant to Sections 9006(a)(3) and 9007 of the Act, 42 U.S.C. §6991e(a)(3) and 6991(f), and in accordance with the Debt Collection and Improvement Act of 1996, Pub. L. No. 104-34, 110 Stat. 1321 (1996) and the regulations promulgated thereunder (see the Civil Monetary Inflation Rule, 61 Fed. Reg. 69630 (December 31, 1996), 69 Fed. Reg. 7121 (February 13, 2004) and 73 Fed. Reg. 75340-46 (December 11, 2008), codified at 40 C.F.R. Part 19), a violator failing to comply with a Compliance Order (once it has taken effect) within the time specified in the Order is liable for a civil penalty up to \$37,500 for each day of noncompliance.

PROCEDURES GOVERNING THIS ADMINISTRATIVE LITIGATION

The rules of procedure governing this civil administrative litigation have been set forth in 40 C.F.R. Part 22, entitled, "CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENTS OF CIVIL PENALTIES, ISSUANCE OF COMPLIANCE OR CORRECTIVE ACTION ORDERS, AND THE REVOCATION, TERMINATION OR SUSPENSION OF PERMITS" (hereinafter "Consolidated Rules"). A copy of these rules accompanies this "Complaint, Compliance Order, and Notice of Opportunity for Hearing" (hereinafter the "Complaint").

A. Answering the Complaint

Where Respondent intends to contest any material fact upon which the Complaint is based, to contend that the proposed penalty and/or the compliance order is inappropriate or to contend that Respondent is entitled to judgment as a matter of law, Respondent must file with the Regional Hearing Clerk of EPA, Region 2, both an original and one copy of a written answer to the Complaint, and such Answer must be filed within 30 days after service of the Complaint. 40 C.F.R. §§ 22.15(a) and 22.7(c). The address of the Regional Hearing Clerk of EPA, Region 2, is:

**Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, New York 10007-1866**

Respondent shall also then serve one copy of the Answer to the Complaint upon Complainant and any other party to the action. 40 C.F.R. § 22.15(a).

Respondent's Answer to the Complaint must clearly and directly admit, deny, or explain each of the factual allegations that are contained in the Complaint and with regard to which Respondent has any knowledge. 40 C.F.R. § 22.15(b). Where Respondent lacks knowledge of a particular factual allegation and so states in its Answer, the allegation is deemed denied. 40 C.F.R. § 22.15(b). The Answer shall also set forth: (1) the circumstances or arguments that are alleged to constitute the grounds of defense; (2) the facts that Respondent disputes (and thus intends to place at issue in the proceeding); and (3) whether Respondent requests a hearing. 40 C.F.R. § 22.15(b).

Respondent's failure to affirmatively raise in the Answer facts that constitute or that might constitute the grounds of its defense may preclude Respondent, at a subsequent stage in this proceeding, from raising such facts and/or from having such facts admitted into evidence at a hearing.

B. Opportunity to Request a Hearing

If requested by Respondent in its Answer, a hearing upon the issues raised by the Complaint and Answer may be held. 40 C.F.R. § 22.15(c). If, however, Respondent does not request a hearing, the Presiding Officer (as defined in 40 C.F.R. § 22.3) may hold a hearing if the Answer raises issues appropriate for adjudication. 40 C.F.R. § 22.15(c). With regard to the Compliance Order in the Complaint, unless Respondent requests a hearing pursuant to 40 C.F.R. § 22.15 within 30 days after such Order is served, such Order shall automatically become final. 40 C.F.R. § 22.37.

Any hearing in this proceeding will be held at a location determined in accordance with 40 C.F.R. § 22.21(d). A hearing of this matter will be conducted in accordance with the provisions of the Administrative Procedure Act, 5 U.S.C. §§ 551-59, and the procedures set forth in Subpart D of 40 C.F.R. Part 22.

C. Failure to Answer

If Respondent fails in its Answer to admit, deny, or explain any material factual allegation contained in the Complaint, such failure constitutes an admission of the allegation. 40 C.F.R. § 22.15(d). If Respondent fails to file a timely [*i.e.* in accordance with the 30-day period set forth in 40 C.F.R. § 22.15(a)] Answer to the Complaint, Respondent may be found in default upon motion. 40 C.F.R. § 22.17(a). Default by Respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations. 40 C.F.R. § 22.17(a). Following a default by Respondent for a failure to timely file an Answer to the Complaint, any order issued therefor shall be issued pursuant to 40 C.F.R. § 22.17(c).

Any penalty assessed in the default order shall become due and payable by Respondent without further proceedings 30 days after the default order becomes final pursuant to 40 C.F.R. § 22.27(c). 40 C.F.R. § 22.17(d). If necessary, EPA may then seek to enforce such final order of default against Respondent, and to collect the assessed penalty amount. Any default order requiring compliance action shall be effective and enforceable against Respondent without further proceedings on the date the default order becomes final under 40 C.F.R. § 22.27(c). 40 C.F.R. § 22.17(d).

D. Exhaustion of Administrative Remedies

Where Respondent fails to appeal an adverse initial decision to the Environmental Appeals Board pursuant to 40 C.F.R. § 22.30, and that initial decision thereby becomes a final order pursuant to the terms of 40 C.F.R. § 22.27(c), Respondent waives its right to confer with the Administrator. 40 C.F.R. § 22.31(e).

In order to appeal an initial decision to the Agency's Environmental Appeals Board [EAB; see 40 C.F.R. § 1.25(e)], Respondent must do so "Within thirty (30) days after the initial decision is served" upon the parties. 40 C.F.R. § 22.30(a). Pursuant to 40 C.F.R. § 22.7(c), where service is effected by mail, "...5 days shall be added to the time allowed by these Consolidated Rules of Practice for the filing of a responsive document". Note that the 45-day period provided for in 40 C.F.R. § 22.27(c) [discussing when an initial decision becomes a final order] does not pertain to or extend the time period prescribed in 40 C.F.R. § 22.30(a) for a party to file an appeal to the EAB of an adverse initial decision.

INFORMAL SETTLEMENT CONFERENCE

Whether or not Respondent requests a formal hearing, EPA encourages settlement of this proceeding consistent with the provisions of the Act and its applicable regulations. 40 C.F.R. § 22.18(b). At an informal conference with a representative(s) of Complainant, Respondent may comment on the charges made in this Complaint, and Respondent may also provide whatever additional information that it believes is relevant to the disposition of this matter, including: (1) actions Respondent has taken to correct any or all of the violations herein alleged; (2) any information relevant to Complainant's calculation of the proposed penalty; (3) the effect the proposed penalty would have on Respondent's ability to continue in business; and/or (4) any other special facts or circumstances Respondent wishes to raise.

Complainant has the authority to modify the amount of the proposed penalty, where appropriate, to reflect any settlement agreement reached with Respondent, to reflect any relevant information previously not known to Complainant, or to dismiss any or all of the charges, if Respondent can demonstrate that the relevant allegations are without merit and that no cause of action as herein alleged exists. Respondent is referred to 40 C.F.R. § 22.18.

Any request for an informal conference or any questions that Respondent may have regarding this Complaint should be directed to:

Rudolph Perez
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, New York 10007-1866
(212) 637- 3220 (phone)
(212) 637-3199 (fax)

The parties may engage in settlement discussions irrespective of whether Respondent has requested a hearing. 40 C.F.R. § 22.18(b)(1). Respondent's requesting a formal hearing does not prevent it from also requesting an informal settlement conference; the informal conference procedure may be pursued simultaneously with the formal adjudicatory hearing procedure. A request for an informal settlement conference constitutes neither an admission nor a denial of any of the matters alleged in the Complaint. Complainant does not deem a request for an informal settlement conference as a request for a hearing as specified in 40 C.F.R. § 22.15(c).

A request for an informal settlement conference does not affect Respondent's obligation to file a timely Answer to the Complaint pursuant to 40 C.F.R. § 22.15. No penalty reduction, however, will be made simply because an informal settlement conference is held.

Any settlement that may be reached as a result of an informal settlement conference shall be embodied in a written consent agreement. 40 C.F.R. § 22.18(b)(2). In accepting the consent

agreement, Respondent waives its right to contest the allegations in the Complaint and waives its right to appeal the final order that is to accompany the consent agreement. 40 C.F.R. § 22.18(b)(2). In order to conclude the proceeding, a final order ratifying the parties' agreement to settle will be executed. 40 C.F.R. § 22.18(b)(3).

Respondent's entering into a settlement through the signing of such Consent Agreement and its complying with the terms and conditions set forth in the such Consent Agreement terminates this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint. Respondent's entering into a settlement does not extinguish, waive, satisfy or otherwise affect its obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

RESOLUTION OF THIS PROCEEDING WITHOUT HEARING OR CONFERENCE

If, instead of filing an Answer, Respondent wishes not to contest the Compliance Order in the Complaint and wants to pay the total amount of the proposed penalty within thirty (30) days after receipt of the Complaint, Respondent should promptly contact the Assistant Regional Counsel identified above.

Dated: 12/29/11

Dore LaPosta

Dore LaPosta, Director
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency -Region 2
290 Broadway
New York, NY 10007-1866

To: The Honorable Eric K. Shinseki
Secretary
U.S. Department of Veterans Affairs
810 Vermont Avenue NW
Washington, DC 20420

Philip Moschitta, Director
VA Medical Center
79 Middleville Rd.
Northport, NY 11768

Gerald Culliton, Director
HVHCS-Montrose
2094 Albany Post Rd
Montrose, NY 10548

Kenneth Mizrach, Director
NJHCS - EO Campus
385 Tremont Ave.
East Orange, NJ 07018

cc: Karen Maples, Regional Hearing Clerk (without enclosures)

Russ Brauksieck, Chief
Facility Compliance Section
NYSDEC
625 Broadway, 11th Floor
Albany, N.Y. 12233

Peter A. Scully, Regional Director
NYSDEC
SUNY @ Stony Brook
50 Circle Road
Stony Brook, NY 11790-3409

Michael Hastry, Manager
Bureau of Hazardous Waste and UST Compliance and Enforcement
NJDEP
Mail Code 09-03
9 Ewing St.
PO BOx 420
Trenton, NJ 08625-0420

Jonathan Berg, Program Support
Bureau of Hazardous Waste and UST Compliance and Enforcement
NJDEP
Mail Code 09-03
9 Ewing St.
PO BOx 420
Trenton, NJ 08625-0420

CERTIFICATE OF SERVICE

This is to certify that I have this day caused to be mailed a copy of the foregoing Complaint, Compliance Order, and Notice of Opportunity for Hearing, bearing docket number RCRA-02-2012-7502, and a copy of the Consolidated Rules of Practice, 40 C.F.R. Part 22, by certified mail, return receipt requested, to:

The Honorable Eric K. Shinseki
Secretary
U.S. Department of Veterans Affairs
810 Vermont Avenue NW
Washington, DC 20420

Philip Moschitta, Director
VA Medical Center
79 Middleville Rd.
Northport, NY 11768

Gerald Culliton, Director
HVVCS-Montrose
2094 Albany Post Rd
Montrose, NY 10548

Kenneth Mizrach, Director
NJHCS - EO Campus
385 Tremont Ave.
East Orange, NJ 07018

I hand-carried the original and a copy of the foregoing Complaint to the Office of Regional Hearing Clerk, United States Environmental Protection Agency, Region 2.

Dated: JAN 5 2012
New York, New York


Mildred N. Bay

PENALTY CALCULATION: COUNT 1

Site: **VA Northport, 79 Middleville Road, Northport, NY**
 Violation: **§280.50 & §280.52 - Failure to Immediately Investigate and Report
 a Suspected Release at the Northport Facility**

- 1. Days of noncompliance: **13-Jan-09 3-Apr-09**
- 2. Number of facilities, tanks or pipes: **1**
- 3. Total number of days: **81**

Part 2 - Economic Benefit Component (See BEN computer model v. 4.3): Not assessed at this time.

- 4. One Time Capital & Time Costs:
- 5. Delay Capital & Avoided Costs:
- 6. Avoided Annually Recurring Costs:
- 7. Initial Economic Benefit (4-5+6): **\$ -**
- 8. Final Economic Benefit at Penalty Payment Date:

Part 3 - Matrix Value For The Gravity-Based Component:

9. Matrix Value (MV): **1,500**

Inflation Adjustment Rules:

	Value	Start Date	End Date	Inflation	Value+Inflation	Round To	Matrix	Total
10a.	1,500	1/13/2009	4/3/2009	1.4163	\$ 2,124.45	10	\$ 2,120.00	\$ 2,120.00

Note: Inflation adjustments are defined as:
 a. **9.83% increase effective Jan 13,2009**

Potential for Harm: **Major** Extent of Deviation: **Major**

Justifications for Potential for Harm and Extent of Deviation: **See OSWER Directive 9610.12, Appendix A.**

Part 4 - Violator-Specific Adjustments To Matrix Value:

	% Change	Matrix Value	Total Dollar Adjustment
11a. Degree of cooperation or noncooperation:	0%	\$2,120.00	-
12a. Degree of willfulness or negligence:	10%	\$2,120.00	212.00
13a. History of noncompliance:	0%	\$2,120.00	-
14a. Unique factors:	0%	\$2,120.00	-
15a. Adjusted Matrix Value, (line 10a + Dollar Adjustments in lines 11.a to 14a)			\$2,332.00

Justification for Degree of Cooperation/ Noncooperation: **no adjustment** · No adjustment was made.

Justification for Degree of Willfulness or Negligence: 10%

It was evident during the January 13, 2009 EPA inspection from the advanced state of corrosion on the submersible pump that the cause of the alarm had persisted for an extended period of time. However, for purposes of this penalty, the violation was treated as if it had started on the date of the inspection. The EPA representative apprised the VA of the problem during the inspection and during a close-out meeting with VA management. Nevertheless, the VA did not correct the problem until April 3, 2009. In addition, Respondent and EPA entered into an Audit Agreement under which the Respondent had the opportunity to identify and correct violations without being subject to gravity-based penalties. Under the Audit Agreement Respondent was also required to implement an Environmental Management Agreement and to take the steps necessary to prevent violations in the future. Accordingly, the penalty is increased by 10%.

Justification for History of Noncompliance: **no adjustment** · No adjustment was made.

Justification for Unique Factors: **no adjustment** · No adjustment was made.

Calculations for Gravity Based Components (GBC) with Inflation Adjustments:

16. Environmental Sensitivity:	Moderate
17. Environmental Sensitivity Multiplier (ESM):	1.5

PENALTY CALCULATION: COUNT 1

Justification for Environmental Sensitivity Multiplier: The Environmental Sensitivity Multiplier for this violation was determined to be "moderate," corresponding to a sensitivity level of 1.5 because the facility lies over the Nassau Coastal Plain Sole Source Aquifer.

18. Days of Noncompliance Multiplier (DNM):	1			
	Start	End	Days	DNM
18a.	1/13/2009	4/3/2009	81	1

Calculations for Gravity Based Components:

	Start	End	(AMV)	(ESM)	(DNM)	TOTAL
19a.	1/13/2009	4/3/2009	\$2,332.00	1.5	1	\$ 3,498.00

20. Total Gravity-Based Component = **\$ 3,498.00**

21. Economic Benefit Component (from line 8): **\$ -**

22. Gravity-Based Component (from line 20): **\$ 3,498.00**

23. Initial Penalty Target Figure: (line 21 plus line 22): **\$ 3,498.00**

PENALTY CALCULATION: COUNT 2

Site: **VA Northport, 79 Middleville Road, Northport, NY**
 Violation: **§280.45(b) - Failure to Maintain Records of Tank Release Detection for the Northport Facility**

- 1. Days of noncompliance*: **20-Mar-08** **19-Mar-09**
- 2. Number of facilities, tanks or pipes: **1**
- 3. Total number of days: **304**

* Note that the March 20, 2008 start date was advanced 61 days to May 20, 2008 to reflect the two months of available records in October and November of 2008.

Part 2 - Economic Benefit Component (See BEN computer model v. 4.3): Not assessed at this time.

- 4. One Time Capital & Time Costs:
- 5. Delay Capital & Avoided Costs:
- 6. Avoided Annually Recurring Costs:
- 7. Initial Economic Benefit (4-5+6): **\$** **-**
- 8. Final Economic Benefit at Penalty Payment Date:

Part 3 - Matrix Value For The Gravity-Based Component:

9. Matrix Value (MV): **1,500**

Inflation Adjustment Rules:

	Value	Start Date	End Date	Inflation	Value+Inflation	Round To	Matrix	Total
10a.*	1,500	5/20/2008	1/12/2009		1.2895 \$		1,934.25	10 \$1,930.00 \$ 1,930.00
10b.	1,500	1/13/2009	3/19/2009		1.4163 \$		2,124.45	10 \$2,120.00 \$ 2,120.00

* Note that the March 20, 2008 start date was advanced 61 days to May 20, 2008 to reflect the two months of available records in October and November of 2008.

Note: Inflation adjustments are defined as:

- a. 17.23% increase effective Oct 1, 2004 - see Debt Collection Act of 1996**
- b. 9.83% increase effective Jan 13,2009**

Potential for Harm: **Major** Extent of Deviation: **Major**

Justifications for Potential for Harm and Extent of Deviation: **See OSWER Directive 9610.12, Appendix A.**

Part 4 - Violator-Specific Adjustments To Matrix Value:

PENALTY CALCULATION: COUNT 2

% Change

	% Change	Matrix Value	Total Dollar Adjustment
11a. Degree of cooperation or noncooperation:	0%	\$1,930.00	-
11b. Degree of cooperation or noncooperation:	0%	\$2,120.00	-
12a. Degree of willfulness or negligence:	50%	\$1,930.00	965.00
12b. Degree of willfulness or negligence:	50%	\$2,120.00	1,060.00
13a. History of noncompliance:	0%	\$1,930.00	-
13b. History of noncompliance:	0%	\$2,120.00	-
14a. Unique factors:	0%	\$1,930.00	-
14b. Unique factors:	0%	\$2,120.00	-
15a. Adjusted Matrix Value, (line 10a + Dollar Adjustments in lines 11.a to 14a)			\$2,895.00
15b. Adjusted Matrix Value, (line 10b + Dollar Adjustments in lines 11.b to 14b)			\$3,180.00

Justification for Degree of Cooperation/ Noncooperation: **no adjustment was made.** No adjustment was made.

Justification for Degree of Willfulness or Negligence: **50%** A fifty percent upward adjustment was made, because: (1) Respondent and EPA entered into an Audit Agreement under which the Respondent had the opportunity to identify and correct violations without being subject to gravity-based penalties. Under the Audit Agreement Respondent was also required to implement an Environmental Management System and to take the steps necessary to prevent violations in the future; (2) In March 2008, EPA issued an administrative complaint for failing to maintain release detection records at its facility in Canandaigua, New York; (3) In September 2008, EPA issued Respondent another administrative complaint which included 2 counts for failing to maintain release detection records at its facility in San Juan, Puerto Rico; (4) Release detection for UST systems has been a longstanding requirement of the program; (5) In the fall of 1998, EPA conducted an outreach program for federal agencies, including the Respondent, to discuss the December 22, 1998 UST regulation deadline and the UST requirements in general. In November 1998, EPA met with VA and other federal agencies in furtherance of this outreach effort. As a follow-up to the meeting, EPA issued a letter, dated December 2, 1998, requesting that federal agencies submit UST compliance information. Therefore, the maximum 50% increase in penalty is appropriate.

PENALTY CALCULATION: COUNT 2

Justification for History of Noncompliance: **no adjustment was made.** No adjustment was made.
 Justification for Unique Factors: **no adjustment was made.** No adjustment was made.

Calculations for Gravity Based Components (GBC) with Inflation Adjustments:

16. Environmental Sensitivity: **Moderate**
 17. Environmental Sensitivity Multiplier (ESM): **1.5**

Justification for Environmental Sensitivity Multiplier: The Environmental Sensitivity Multiplier for this violation was determined to be "moderate," corresponding to a sensitivity level of 1.5 because the facility lies over the Nassau Coastal Plain Sole Source Aquifer.

18. Days of Noncompliance Multiplier (DNM): **2.5**

	Start	End	Days	DNM
18a.*	5/20/2008	1/12/2009	238	2
18b.	1/13/2009	3/19/2009	66	0.5

* Note that the March 20, 2008 start date was advanced 61 days to May 20, 2008 to reflect the two months of available records in October and November of 2008.

Calculations for Gravity Based Components:

	Start	End	(AMV)	(ESM)	(DNM)	TOTAL
19a.	5/20/2008	1/12/2009	\$2,895.00	1.5	2	\$ 8,685.00
19b.	1/13/2009	3/19/2009	\$3,180.00	1.5	0.5	\$ 2,385.00

20. Total Gravity-Based Component = **\$ 11,070.00**

21. Economic Benefit Component (from line 8): **\$ -**

22. Gravity-Based Component (from line 20): **\$ 11,070.00**

23. Initial Penalty Target Figure: (line 21 plus line 22): **\$ 11,070.00**

PENALTY CALCULATION: COUNT 3

		Matrix Value	Total Dollar Adjustment
11a. Degree of cooperation or noncooperation:	0%	\$1,930.00	-
11b. Degree of cooperation or noncooperation:	0%	\$2,120.00	-
12a. Degree of willfulness or negligence:	50%	\$1,930.00	965.00
12b. Degree of willfulness or negligence:	50%	\$2,120.00	1,060.00
13a. History of noncompliance:	0%	\$1,930.00	-
13b. History of noncompliance:	0%	\$2,120.00	-
14a. Unique factors:	0%	\$1,930.00	-
14b. Unique factors:	0%	\$2,120.00	-
15a. Adjusted Matrix Value, (line 10a + Dollar Adjustments in lines 11.a to 14a)			\$2,895.00
15b. Adjusted Matrix Value, (line 10b + Dollar Adjustments in lines 11.b to 14b)			\$3,180.00

Justification for Degree of Cooperation/ Noncooperation: **no adjustment was made.** No adjustment was made.

Justification for Degree of Willfulness or Negligence: **50%** A fifty percent upward adjustment was made, because: (1) Respondent and EPA entered into an Audit Agreement under which the Respondent had the opportunity to identify and correct violations without being subject to gravity-based penalties. Under the Audit Agreement Respondent was also required to implement an Environmental Management System and to take the steps necessary to prevent violations in the future; (2) In March 2008, EPA issued an administrative complaint for failing to maintain release detection records at its facility in Canandaigua, New York; (3) In September 2008, EPA issued Respondent another administrative complaint which included 2 counts for failing to maintain release detection records at its facility in San Juan, Puerto Rico; (4) Release detection for UST systems has been a longstanding requirement of the program; (5) In the fall of 1998, EPA conducted an outreach program for federal agencies, including the Respondent, to discuss the December 22, 1998 UST regulation deadline and the UST requirements in general. In November 1998, EPA met with VA and other federal agencies in furtherance of this outreach effort. As a follow-up to the meeting, EPA issued a letter, dated December 2, 1998, requesting that federal agencies submit UST compliance information. Therefore, the maximum 50% increase in penalty is appropriate.

Justification for History of Noncompliance: **no adjustment was made.** No adjustment was made.

PENALTY CALCULATION: COUNT 3

Justification for Unique Factors: **no adjustment was made.** No adjustment was made.

Calculations for Gravity Based Components (GBC) with Inflation Adjustments:

16. Environmental Sensitivity: **Moderate**
 17. Environmental Sensitivity Multiplier (ESM): **1.5**

Justification for Environmental Sensitivity Multiplier: The Environmental Sensitivity Multiplier for this violation was determined to be "moderate," corresponding to a sensitivity level of 1.5 because the facility lies over the Nassau Coastal Plain Sole Source Aquifer.

18. Days of Noncompliance Multiplier (DNM):			2.5	
	Start	End	Days	DNM
18a.	3/20/2008	1/12/2009	299	2
18b.	1/13/2009	3/19/2009	66	0.5

Calculations for Gravity Based Components:

	Start	End	(AMV)	(ESM)	(DNM)	TOTAL
19a.	3/20/2008	1/12/2009	\$2,895.00	1.5	2	\$ 8,685.00
19b.	1/13/2009	3/19/2009	\$3,180.00	1.5	0.5	\$ 2,385.00

20. Total Gravity-Based Component = **\$ 11,070.00**

21. Economic Benefit Component (from line 8): **\$ -**

22. Gravity-Based Component (from line 20): **\$ 11,070.00**

23. Initial Penalty Target Figure: (line 21 plus line 22): **\$ 11,070.00**

PENALTY CALCULATION: COUNT 4

Site: **VA Northport, 79 Middleville Road, Northport, NY**
 Violation: **§280.41(b)(1)(i) and §280.44(a)- LLD for pressurized piping**

- 1. Days of noncompliance: **31-Dec-06 22-May-09**
- 2. Number of facilities, tanks or pipes: **1**
- 3. Total number of days: **874**

Part 2 - Economic Benefit Component (See BEN computer model v. 4.3): Not assessed at this time.

- 4. One Time Capital & Time Costs:
- 5. Delay Capital & Avoided Costs:
- 6. Avoided Annually Recurring Costs:
- 7. Initial Economic Benefit (4-5+6): **\$ -**
- 8. Final Economic Benefit at Penalty Payment Date:

Part 3 - Matrix Value For The Gravity-Based Component:

9. Matrix Value (MV): **1,500**

Inflation Adjustment Rules:

	Value	Start Date	End Date	Inflation	Value+Inflation	Round To	Matrix	Total
10a.	1,500	12/31/2006	1/12/2009	1.2895	\$ 1,934.25	10	\$ 1,930.00	\$ 1,930.00
10b.	1,500	1/13/2009	5/22/2009	1.4163	\$ 2,124.45	10	\$ 2,120.00	\$ 2,120.00

Note: Inflation adjustments are defined as:

- a. **17.23% increase effective Oct 1, 2004 - see Debt Collection Act of 1996**
- b. **9.83% increase effective Jan 13,2009**

Potential for Harm: **Major** Extent of Deviation: **Major**

Justifications for Potential for Harm and Extent of Deviation: **See OSWER Directive 9610.12, Appendix A.**

Part 4 - Violator-Specific Adjustments To Matrix Value:

% Change

PENALTY CALCULATION: COUNT 4

	Matrix Value	Total Dollar Adjustment
11a. Degree of cooperation or noncooperation:	0% \$1,930.00	
11b. Degree of cooperation or noncooperation:	0% \$2,120.00	
12a. Degree of willfulness or negligence:	50% \$1,930.00	\$965.00
12b. Degree of willfulness or negligence:	50% \$2,120.00	\$1,060.00
13a. History of noncompliance:	0% \$1,930.00	-
13b. History of noncompliance:	0% \$2,120.00	-
14a. Unique factors:	0% \$1,930.00	-
14b. Unique factors:	0% \$2,120.00	-
15a. Adjusted Matrix Value, (line 10a + Dollar Adjustments in lines 11.a to 14a)		\$2,895.00
15b. Adjusted Matrix Value, (line 10b + Dollar Adjustments in lines 11.b to 14b)		\$3,180.00

Justification for Degree of Cooperation/ Noncoope

50% A fifty percent upward adjustment was made, because: (1) Respondent and EPA entered into an Audit Agreement under which the Respondent had the opportunity to identify and correct violations without being subject to gravity-based penalties. Under the Audit Agreement Respondent was also required to implement an Environmental Management System and to take the steps necessary to prevent violations in the future; (2) In March 2008, EPA issued an administrative complaint for failing to maintain release detection records at its facility in Canandaigua, New York; (3) In September 2008, EPA issued Respondent another administrative complaint which included 2 counts for failing to maintain release detection records at its facility in San Juan, Puerto Rico; (4) Release detection for UST systems has been a longstanding requirement of the program; (5) In the fall of 1998, EPA conducted an outreach program for federal agencies, including the Respondent, to discuss the December 22, 1998 UST regulation deadline and the UST requirements in general. In November 1998, EPA met with VA and other federal agencies in furtherance of this outreach effort. As a follow-up to the meeting, EPA issued a letter, dated December 2, 1998, requesting that federal agencies submit UST compliance information. Therefore, the maximum 50% increase in penalty is appropriate.

Justification for Degree of Willfulness or Negligenc **no adjustment was** No adjustment was made.

Justification for History of Noncompliance: **no adjustment was** No adjustment was made.

Justification for Unique Factors: **no adjustment was** No adjustment was made.

PENALTY CALCULATION: COUNT 4

Calculations for Gravity Based Components (GBC) with Inflation Adjustments:

16. Environmental Sensitivity: **Moderate**
 17. Environmental Sensitivity Multiplier (ESM): **1.5**

Justification for Environmental Sensitivity Multiplier: The Environmental Sensitivity Multiplier for this violation was determined to be "moderate," corresponding to a sensitivity level of 1.5 because the facility lies over the Nassau Coastal Plain Sole Source Aquifer.

18. Days of Noncompliance Multiplier (DNM):	4			
	Start	End	Days	DNM
18a.	12/31/2006	1/12/2009	744	4
18b.	1/13/2009	5/22/2009	130	0

Calculations for Gravity Based Components:

	Start	End	(AMV)	(ESM)	(DNM)	TOTAL
19a.	12/31/2006	1/12/2009	\$2,895.00	1.5	4	\$ 17,370.00
19b.	1/13/2009	5/22/2009	\$3,180.00	1.5	0	\$ -

20. Total Gravity-Based Component = **\$ 17,370.00**

21. Economic Benefit Component (from line 8): **\$ -**

22. Gravity-Based Component (from line 20): **\$ 17,370.00**

23. Initial Penalty Target Figure: (line 21 plus line 22): **\$ 17,370.00**

PENALTY CALCULATION: COUNT 5

Site: **VA Northport, 79 Middleville Road, Northport, NY**
 Violation: **§280.20(c)(1)(ii) - Failure to Have Required Overfill Prevention at the Northport Facility**

- 1. Days of noncompliance: **13-Jan-09** **15-Apr-09**
- 2. Number of facilities, tanks or pipes: **3**
- 3. Total number of days: **93**

Part 2 - Economic Benefit Component (See BEN computer model v. 4.3): Not assessed at this time.

- 4. One Time Capital & Time Costs:
- 5. Delay Capital & Avoided Costs:
- 6. Avoided Annually Recurring Costs:
- 7. Initial Economic Benefit (4-5+6): **\$ -**
- 8. Final Economic Benefit at Penalty Payment Date:

Part 3 - Matrix Value For The Gravity-Based Component:

9. Matrix Value (MV): **750**

Inflation Adjustment Rules:

	Value	Start Date	End Date	Inflation	Value+Inflatio Round To	Matrix	Total
10a.	750	1/13/2009	4/15/2009	1.4163	\$ 1,062.23	10 \$1,060.00	\$ 3,180.00

Note: Inflation adjustments are defined as:

a. 9.83% increase effective Jan 13,2009

Potential for Harm: **Moderate**

Extent of Deviation: **Major**

Justifications for Potential for Harm and Extent of Deviation: **See OSWER Directive 9610.12, Appendix A.**

Part 4 - Violator-Specific Adjustments To Matrix Value:

	% Change	Matrix Value	Total Dollar Adjustment
11a. Degree of cooperation or noncooperation:	0%	\$3,180.00	-

PENALTY CALCULATION: COUNT 5

12a. Degree of willfulness or negligence:	0%	\$3,180.00	-
13a. History of noncompliance:	0%	\$3,180.00	-
14a. Unique factors:	0%	\$3,180.00	-
15a. Adjusted Matrix Value, (line 10a + Dollar Adjustments in lines 11.a to 14a)			\$3,180.00

Justification for Degree of Cooperation/ Noncooperation: **no adjustment was made.** No adjustment was made.
 Justification for Degree of Willfulness or Negligence: **no adjustment was made.** No adjustment was made.
 Justification for History of Noncompliance: **no adjustment was made.** No adjustment was made.
 Justification for Unique Factors: **no adjustment was made.** No adjustment was made.

Calculations for Gravity Based Components (GBC) with Inflation Adjustments:

16. Environmental Sensitivity: **Moderate**
 17. Environmental Sensitivity Multiplier (ESM): **1.5**

Justification for Environmental Sensitivity Multiplier: The Environmental Sensitivity Multiplier for this violation was determined to be "moderate," corresponding to a sensitivity level of 1.5 because the facility lies over the Nassau Coastal Plain Sole Source Aquifer.

18. Days of Noncompliance Multiplier (DNM): **1.5**

	Start	End	Days	DNM
18a.	1/13/2009	4/15/2009	93	1.5

Calculations for Gravity Based Components:

	Start	End	(AMV)	(ESM)	(DNM)	TOTAL
19a.	1/13/2009	4/15/2009	\$3,180.00	1.5	1.5	\$ 7,155.00

20. Total Gravity-Based Component = **\$ 7,155.00**

PENALTY CALCULATION: COUNT 5

21. Economic Benefit Component (from line 8):	\$ -
22. Gravity-Based Component (from line 20):	\$ 7,155.00
23. Initial Penalty Target Figure: (line 21 plus line 22):	\$ 7,155.00

PENALTY CALCULATION: COUNT 6

Site: **Hudson Valley Health Care System, 2094 Albany Post Road, Montrose, NY**

Violation: **§280.41(b)(2) - Failure to Provide Release Detection
for the Piping at HVHCS**

- 1. Days of noncompliance: **31-Dec-06** **15-Dec-09**
- 2. Number of facilities, tanks or pipes: **1**
- 3. Total number of days: **1,081**

Part 2 - Economic Benefit Component (See BEN computer model v. 4.3): Not assessed at this time.

- 4. One Time Capital & Time Costs:
- 5. Delay Capital & Avoided Costs:
- 6. Avoided Annually Recurring Costs:
- 7. Initial Economic Benefit (4-5+6): **\$ -**
- 8. Final Economic Benefit at Penalty Payment Date:

Part 3 - Matrix Value For The Gravity-Based Component:

- 9. Matrix Value (MV): **1,500**

Inflation Adjustment Rules:

	Value	Start Date	End Date	Inflation	Value+Inflatio Round To	Matrix	Total
10a.	1,500	12/31/2006	1/12/2009		1.2895 \$ 1,934.25	10 \$1,930.00	\$ 1,930.00
10b.	1,500	1/13/2009	12/15/2009		1.4163 \$ 2,124.45	10 \$2,120.00	\$ 2,120.00

Note: Inflation adjustments are defined as:

- a. 17.23% increase effective Oct 1, 2004 - see Debt Collection Act of 1996**
- b. 9.83% increase effective Jan 13,2009**

Potential for Harm: **Major**

Extent of Deviation: **Major**

Justifications for Potential for Harm and Extent of Deviation: **See OSWER Directive 9610.12, Appendix A.**

Part 4 - Violator-Specific Adjustments To Matrix Value:

% Change

PENALTY CALCULATION: COUNT 6

		Matrix Value	Total Dollar Adjustment
11a. Degree of cooperation or noncooperation:	0%	\$1,930.00	-
11b. Degree of cooperation or noncooperation:	0%	\$2,120.00	-
12a. Degree of willfulness or negligence:	0%	\$1,930.00	-
12b. Degree of willfulness or negligence:	0%	\$2,120.00	-
13a. History of noncompliance:	0%	\$1,930.00	-
13b. History of noncompliance:	0%	\$2,120.00	-
14a. Unique factors:	0%	\$1,930.00	-
14b. Unique factors:	0%	\$2,120.00	-
15a. Adjusted Matrix Value, (line 10a + Dollar Adjustments in lines 11.a to 14a)			\$1,930.00
15b. Adjusted Matrix Value, (line 10b + Dollar Adjustments in lines 11.b to 14b)			\$2,120.00

Justification for Degree of Cooperation/ Noncooperation: **no adjustment was made.** No adjustment was made.
 Justification for Degree of Willfulness or Negligence: **no adjustment was made.** No adjustment was made.
 Justification for History of Noncompliance: **no adjustment was made.** No adjustment was made.
 Justification for Unique Factors: **no adjustment was made.** No adjustment was made.

Calculations for Gravity Based Components (GBC) with Inflation Adjustments:

16. Environmental Sensitivity: **Moderate**
 17. Environmental Sensitivity Multiplier (ESM): **1.5**

The Environmental Sensitivity Multiplier for this violation was determined to be "1.5", corresponding to a sensitivity level of Moderate. The facility is located directly on the east bank of the Hudson River.

18. Days of Noncompliance Multiplier (DNM): **4.5**

	Start	End	Days	DNM
18a.	12/31/2006	1/12/2009	744	4
18b.	1/13/2009	12/15/2009	337	0.5

PENALTY CALCULATION: COUNT 6

Calculations for Gravity Based Components:

	Start	End	(AMV)	(ESM)	(DNM)	TOTAL
19a.	12/31/2006	1/12/2009	\$1,930.00	1.5	4	\$ 11,580.00
19b.	1/13/2009	12/15/2009	\$2,120.00	1.5	0.5	\$ 1,590.00

20. Total Gravity-Based Component =						\$ 13,170.00
21. Economic Benefit Component (from line 8):						\$ -
22. Gravity-Based Component (from line 20):						\$ 13,170.00
23. Initial Penalty Target Figure: (line 21 plus line 22):						\$ 13,170.00

PENALTY CALCULATION: COUNT 7

Site: **VA Lyons, 151 Knollcroft Road, Lyons, NJ**
 Violation: **§280.52 and §280.50 - Failure to Immediately Investigate and Report
 a Suspected Release at the Lyons Facility**

- 1. Days of noncompliance: **7-May-09** **22-Jun-09**
- 2. Number of facilities, tanks or pipes: **1**
- 3. Total number of days: **47**

Part 2 - Economic Benefit Component (See BEN computer model v. 4.3): Not assessed at this time.

- 4. One Time Capital & Time Costs:
- 5. Delay Capital & Avoided Costs:
- 6. Avoided Annually Recurring Costs:
- 7. Initial Economic Benefit (4-5+6): **\$ -**
- 8. Final Economic Benefit at Penalty Payment Date:

Part 3 - Matrix Value For The Gravity-Based Component:

9. Matrix Value (MV): **1,500**

Inflation Adjustment Rules:

	Value	Start Date	End Date	Inflation	Value+Inflatio Round To	Matrix	Total
10a.	1,500	5/7/2009	6/22/2009		1.4163 \$ 2,124.45	10 \$2,120.00	\$ 2,120.00

Note: Inflation adjustments are defined as:

a. 9.83% increase effective Jan 13,2009

Potential for Harm: **Major**

Extent of Deviation: **Major**

Justifications for Potential for Harm and Extent of Deviation: **See OSWER Directive 9610.12, Appendix A.**

Part 4 - Violator-Specific Adjustments To Matrix Value:

	% Change	Matrix Value	Total Dollar Adjustment
11a. Degree of cooperation or noncooperation:	0%	\$2,120.00	-

PENALTY CALCULATION: COUNT 7

12a. Degree of willfulness or negligence:	0%	\$2,120.00	-
13a. History of noncompliance:	0%	\$2,120.00	-
14a. Unique factors:	0%	\$2,120.00	-

15a. Adjusted Matrix Value, (line 10a + Dollar Adjustments in lines 11.a to 14a) **\$2,120.00**

Justification for Degree of Cooperation/ Noncooperation: **no adjustment was made.** No adjustment was made.
 Justification for Degree of Willfulness or Negligence: **no adjustment was made.** No adjustment was made.
 Justification for History of Noncompliance: **no adjustment was made.** No adjustment was made.
 Justification for Unique Factors: **no adjustment was made.** No adjustment was made.

Calculations for Gravity Based Components (GBC) with Inflation Adjustments:

16. Environmental Sensitivity: **Moderate**
 17. Environmental Sensitivity Multiplier (ESM): **1.5**

Justification for Environmental Sensitivity Multiplier: The Environmental Sensitivity Multiplier for this violation was determined to be "1.5", corresponding to a sensitivity level of Moderate. The facility is situated over the Buried Valley Sole Source Aquifer.

18. Days of Noncompliance Multiplier (DNM): **1**

	Start	End	Days	DNM
18a.	5/7/2009	6/22/2009	47	1

Calculations for Gravity Based Components:

	Start	End	(AMV)	(ESM)	(DNM)	TOTAL
19a.	5/7/2009	6/22/2009	\$2,120.00	1.5	1	\$ 3,180.00

20. Total Gravity-Based Component = **\$ 3,180.00**

21. Economic Benefit Component (from line 8):	\$ -
22. Gravity-Based Component (from line 20):	\$ 3,180.00
23. Initial Penalty Target Figure: (line 21 plus line 22):	\$ 3,180.00