

BEFORE THE UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 7

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<b>In the matter of:</b>	)	<b>First Amended Administrative Complaint,</b>
	)	<b>Compliance Order and Notice of</b>
	)	<b>Opportunity for Hearing</b>
<b>B &amp; K Petroleum Corporation</b>	)	
<b>d/b/a Infinite Oil</b>	)	
<b>3824 Hamilton Street</b>	)	
<b>Omaha, Nebraska 68131</b>	)	<b>U.S. EPA Docket No.:</b>
	)	<b>RCRA-07-2010-0020</b>
<b>Respondent</b>	)	
	)	
	)	<b>Proceeding under Section 9006</b>
	)	<b>of the Resource Conservation and</b>
	)	<b>Recovery Act, as amended,</b>
	)	<b>42 U.S.C. § 6991e</b>

**I. INTRODUCTION**

This First Amended Administrative Complaint, Compliance Order and Notice of Opportunity for Hearing ("Complaint") is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA" or the "Agency") by 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 "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"), a copy of which is enclosed with this First Amended Complaint.

Complainant, the Director of the Air and Waste Management Division of U.S. EPA Region 7, hereby notifies B & K Petroleum Corporation ("Respondent") that EPA has reason to believe that Respondent has violated Subtitle I of RCRA, 42 U.S.C. §§ 6991-6991i, the regulations promulgated thereunder set forth at 40 C.F.R. Part 280 and the authorized regulations of the State of Nebraska's Department of Environmental Quality and State Fire Marshal concerning Underground Storage Tanks (UST) at Respondent's facilities located at 2411 North 30th Street in Omaha, Nebraska, 3874 Hamilton Street in Omaha, Nebraska and 5188 Leavenworth Street in Omaha, Nebraska (collectively, "Facilities"). Section 9006 of RCRA, 42 U.S.C. § 6991e, authorizes EPA to take enforcement action, including issuing a compliance order and the assessing a civil penalty, whenever it is determined that a person is in violation of any requirement of RCRA Subtitle I, EPA's regulations thereunder, or any regulation of a state UST program which has been authorized by EPA.

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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).

Because these allegations and conclusions set forth in this First Amended Complaint refer or relate to facts that arose on or after September 18, 2002, the provisions of the state of Nebraska's authorized UST regulations are cited as the basis for EPA's complaint, and the analogous provisions of the federal UST regulations are also cited.

EPA has given the state of Nebraska prior notice of the issuance of this First Amended Complaint in accordance with Section 9006(a) of RCRA, 42 U.S.C. § 6991e(a).

Section 9006 of RCRA, 42 U.S.C. § 6991e, authorizes EPA to assess a civil penalty against any owner or operator of a UST who fails to comply with, inter alia, 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.

In support of this First Amended Complaint, the Complainant makes the following allegations, findings of fact and conclusions of law:

## **II. FIRST AMENDED COMPLAINT**

### **Findings of Facts and Conclusions of Law**

1. EPA, Region 7 ("Region") and EPA's Office of Administrative Law Judges have jurisdiction over this matter pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e, 40 C.F.R. Part 280 and 40 C.F.R. § 22.
2. At all times relevant to this First Amended Complaint, including, but not limited to, March of 2009 through the filing date of the original Complaint, B & K Petroleum Corporation ("Respondent") has been a Nebraska corporation doing business in the state of Nebraska.

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3. As a corporation, Respondent is, and at all times herein, has been a "person" within the meaning of that term as provided in 159 Neb. Admin. Code 1-003.37, Section 9001(6) of RCRA, 42 U.S.C. § 6991(6), and 40 C.F.R. § 280.12.
4. Pursuant to 159 Neb. Admin. Code 1-003.49 and 40 C.F.R. § 280.12, the term "tank" means a stationary device designed to contain an accumulation of regulated substances and constructed of non-earthen materials (e.g., concrete, steel, plastic) that provide structural support.
5. Pursuant to 159 Neb. Admin. Code 1-003.49, the term "tank" shall mean any tank or combination of tanks, including underground pipes connected to such tank or tanks, which is used to contain an accumulation of regulated substances, and the volume of which is ten percent or more beneath the surface of the ground.
6. Pursuant to 40 C.F.R. 280.12, the term "Pipe or Piping" means a hollow cylinder or tubular conduit that is constructed of non-earthen materials. Pursuant to 159 Neb. Admin. Code 1-003.10, the term "Connected piping" means all underground piping including valves, elbows, joints, flanges, and flexible connectors attached to a tank system through which regulated substances flow. Pursuant to 159 Neb. Admin. Code 1-003.52 and 40 C.F.R. § 280.12, the term "UST system" or "tank system" means an UST, connected underground piping, underground ancillary equipment, and containment system, if any. Pursuant to 40 C.F.R. § 280.12, the term "petroleum UST system" means an UST system that contains petroleum or a mixture of petroleum with de minimis quantities of other regulated substances. Such systems include those containing motor fuels, residual fuel oils, lubricants, petroleum solvents, and used oils. Pursuant to Section 9001(1) of RCRA, 42 U.S.C. § 6991(1), and 40 C.F.R. § 280.12, the terms "UST" and "UST" mean, with exceptions not relevant hereto, any 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% or more beneath the surface of the ground.
7. Pursuant to 159 Neb. Admin. Code 1-003.39(B) the term "regulated substance" means any petroleum product including, but not limited to, petroleum-based motor or vehicle fuels, gasoline, kerosene, and other products used for the purposes of generating power, lubrication, illumination, heating, or cleaning, but shall not include propane or liquified natural gas. Pursuant to Section 9001(2) of RCRA, 42 U.S.C. § 6991(2), and 40 C.F.R. § 280.12, "regulated substance" means, among other things, petroleum, including petroleum-based substances such as motor fuels, residual fuel oils, lubricants, and used oils.
8. Pursuant to 159 Neb. Admin. Code 1-003.34, the term "owner" means, in the case of a tank in use on or after July 17, 1986, any person who owns a tank used for the storage or

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dispensing of regulated substances. Pursuant to 40 C.F.R. § 280.12, the term "owner" means, in the case of a UST in use on November 8, 1984, or brought into use after that date, any person who owns a UST system used for the storage, use, or dispensing of regulated substances.

9. Pursuant to 159 Neb. Admin. Code 1-003.32, the term "operator" shall mean any person in control of, or having responsibility for, the daily operation of a tank but shall not include a person who, without participating in the management of a tank and otherwise not engaged in petroleum production, refining and marketing holds an indicia property interest of ownership primarily to protect his/her property interest. Pursuant to Section 9001(4) of RCRA, 42 U.S.C. § 6991(4), and 40 C.F.R. § 280.12, the term "operator" means any person in control of, or having responsibility for, the daily operation of a UST and/or UST system.
10. Pursuant to 40 C.F.R. § 280.92, the term "owner or operator," when the owner or operator are separate parties, means the party that is obtaining or has obtained financial assurances.
11. From at least March 2009 and continuing through the filing date of the original Complaint, Respondent owned and or operated the USTs at the 30th Street Facility and Hamilton Street Facility, and the Leavenworth Street Facility.
12. On December 22, 2008 and March 17, 2009, pursuant to RCRA Subtitle I, 42 U.S.C. §§ 6991-6991i, and the 159 Neb. Admin. Code 12, representatives of the Nebraska State Fire Marshal's conducted a UST Compliance Inspection ("March Inspection") of the Facilities.
13. On November 4<sup>th</sup> and 5<sup>th</sup>, 2009, pursuant to RCRA Subtitle I, 42 U.S.C. §§ 6991-6991i, and the 159 Neb. Admin. Code 12, representatives of the United States Environmental Protection Agency - Region 7 conducted a UST Compliance Inspection ("December Inspection") of the Facilities.

#### 30th Street Facility

14. At the time of Inspections, the following two USTs containing petroleum were located at the 30th Street Facility:
  - a. A steel underground storage tank used for the storage of gasoline, with an 8,000 gallon capacity (UST No. 1), with pressurized metal steel piping. Petroleum regularly flowed through this piping system. The piping system meets the definition of "Pipe", "Piping" and "Connected Piping", under 40 C.F.R. 280.12 and 159 Neb. Admin. Code 1-003.10. Pursuant to 159 Neb. Admin. Code 6-002.02, all UST systems equipped with cathodic protection systems must be inspected for proper operation by a qualified cathodic

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protection tester annually for impressed current cathodic protection systems using the National Association of Corrosion Engineers Standard, RP-02-85. From at least the time of the March Inspection until the date of this First Amended Complaint, the USTs at the 30<sup>th</sup> Street Facility were constructed of steel and utilized an impressed cathodic protection system.;

- b. A steel underground storage tank used for the storage of gasoline, with a 10,000 gallon capacity (UST No. 2), with pressurized metal steel piping. Petroleum regularly flowed through this piping system. The piping system meets the definition of "Pipe", "Piping" and "Connected Piping", under 40 C.F.R. 280.12 and 159 Neb. Admin. Code 1-003.10. Pursuant to 159 Neb. Admin. Code 6-002.02, all UST systems equipped with cathodic protection systems must be inspected for proper operation by a qualified cathodic protection tester annually for impressed current cathodic protection systems using the National Association of Corrosion Engineers Standard, RP-02-85. From at least the time of the March Inspection until the date of this First Amended Complaint, the USTs at the 30<sup>th</sup> Street Facility were constructed of steel and utilized an impressed cathodic protection system.
15. At all times relevant to the violations alleged in this First Amended Complaint, USTs Nos. 1 and 2 at the 30th Street Facility routinely contained and were used to store petroleum, a "regulated substance" within the meaning of that term as provided by 159 Neb. Admin Code 1-003.39(B), Section 9001(2) of RCRA, 42 U.S.C. § 6991(2), and 40 C.F.R. § 280.12.
16. At all times relevant to the violations alleged in this First Amended Complaint, USTs Nos. 1 and 2 at the 30th Street Facility were "USTs" within the meaning of those terms as provided by, Section 9001(1) of RCRA, 42 U.S.C. § 6991(1), and 40 C.F.R. § 280.12.
17. At all times relevant to the violations alleged in this First Amended Complaint, USTs Nos. 1 and 2 at the 30th Street Facility were "UST systems" or "tank systems" within the meaning of those terms as provided by 159 Neb. Admin Code 1-003.52 and 40 C.F.R. § 280.12.
18. At all times relevant to the violations alleged in this First Amended Complaint, USTs Nos. 1 and 2 at the 30th Street Facility were "petroleum systems" and "petroleum UST systems" within the meaning of those terms as provided by 40 C.F.R. § 280.12.
19. USTs Nos. 1 and 2 were installed and brought into use at the 30th Street Facility in 1985, and are "existing UST systems" and "existing tank systems," as those terms are defined at 159 Neb. Admin Code 1-003.17 and 40 C.F.R. § 280.12.



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20. At all times relevant to the violations alleged in this First Amended Complaint, Respondent has been the "owner" and/or "operator" of USTs Nos. 1 and 2 at the 30th Street Facility within the meaning of those terms as provided by 159 Neb. Admin Code 1-003.32, .34, Section 9001(3) and (4) of RCRA, 42 U.S.C. § 6991(3) and (4), and 40 C.F.R. § 280.12.

**Hamilton Street Facility**

21. At the time of the March and November Inspections, the following three USTs containing petroleum were located at the Hamilton Street Facility:
- a. A Fiberglass Reinforced Plastic UST used for the storage of gasoline, with a 10,000 gallon capacity (UST No. 1a), with safe suction Fiberglass Reinforced Plastic piping. Petroleum regularly flowed through this piping system. The piping system meets the definition of "Pipe", "Piping" and "Connected Piping", under 40 C.F.R. 280.12 and 159 Neb. Admin. Code 1-003.10.
  - b. Approximately 8,000 gallon capacity, Fiberglass Reinforced Plastic UST used for the storage of E-10 (UST No. 2a) with safe suction Fiberglass Reinforced Plastic piping. Petroleum regularly flowed through this piping system. The piping system meets the definition of "Pipe", "Piping" and "Connected Piping", under 40 C.F.R. 280.12 and 159 Neb. Admin. Code 1-003.10.
  - c. Approximately 8,000 gallon capacity, Fiberglass Reinforced Plastic UST used for the storage of gasoline (UST No. 3a) with safe suction Fiberglass Reinforced Plastic piping. Petroleum regularly flowed through this piping system. The piping system meets the definition of "Pipe", "Piping" and "Connected Piping", under 40 C.F.R. 280.12 and 159 Neb. Admin. Code 1-003.10.
22. At all times relevant to the violations alleged in this First Amended Complaint, USTs Nos. 1a-3a at the Hamilton Street Facility routinely contained and were used to store petroleum, a "regulated substance" within the meaning of that term as provided by 159 Neb. Admin Code 1-003.39(B), Section 9001(2) of RCRA, 42 U.S.C. § 6991(2), and 40 C.F.R. § 280.12. At all times relevant to the violations alleged in this First Amended Complaint, USTs Nos. 2a and 3a at the Hamilton Street Facility were in "temporary closure", as that term is used in 40 CFR § 280.70(a) and 159 Neb. Admin. Code 10-001.01. At all times relevant to the violations alleged in this First Amended Complaint, these UST systems contained more than 2.5 centimeters (one inch) of residue, or 0.3 percent by weight of the total capacity of the UST system. At all times relevant to the violations alleged in this First Amended Complaint, USTs No. 1a at the Hamilton Street Facility was in active use.

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23. At all times relevant to the violations alleged in this First Amended Complaint, USTs Nos. 1a-3a at the Hamilton Street Facility were "USTs" within the meaning of those terms as provided by, Section 9001(1) of RCRA, 42 U.S.C. § 6991(1), and 40 C.F.R. § 280.12.
24. At all times relevant to the violations alleged in this First Amended Complaint, USTs Nos. 1a-3a at the Hamilton Street Facility were "UST systems" or "tank systems" within the meaning of those terms as provided by 159 Neb. Admin Code 1-003.52 and 40 C.F.R. § 280.12.
25. At all times relevant to the violations alleged in this First Amended Complaint, USTs Nos. 1a-3a at the Hamilton Street Facility were "petroleum systems" and "petroleum UST systems" within the meaning of those terms as provided by 40 C.F.R. § 280.12.
26. USTs Nos. 1a-3a were installed and brought into use at the Hamilton Street Facility in 1984, and are "existing UST systems" and "existing tank systems," as those terms are defined at 159 Neb. Admin Code 1-003.17 and 40 C.F.R. § 280.12.
27. At all times relevant to the violations alleged in this First Amended Complaint, Respondent has been the "owner" and/or "operator" of USTs Nos. 1a-3a at the Hamilton Street Facility within the meaning of those terms as provided by 159 Neb. Admin Code 1-003.32, .34, Section 9001(3) and (4) of RCRA, 42 U.S.C. § 6991(3) and (4), and 40 C.F.R. § 280.12.

#### **Leavenworth Street Facility**

28. At the time of the inspection, the following two USTs containing petroleum were located at the Leavenworth Street Facility:
  - a. Approximately 10,000 gallon capacity Fiberglass Reinforced Plastic UST used for the storage of gasoline (UST No. 1b) with pressurized plastic flexible piping. Petroleum regularly flowed through this piping system. The piping system meets the definition of "Pipe", "Piping" and "Connected Piping", under 40 C.F.R. 280.12 and 159 Neb. Admin. Code 1-003.10.
  - b. Approximately 10,000 gallon capacity Fiberglass Reinforced Plastic UST used for the storage of gasoline (UST No. 2b) with pressurized plastic flexible piping. Petroleum regularly flowed through this piping system. The piping system meets the definition of "Pipe", "Piping" and "Connected Piping", under 40 C.F.R. 280.12 and 159 Neb. Admin. Code 1-003.10.
29. At all times relevant to the violations alleged in this First Amended Complaint, USTs Nos.

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1b and 2b at the Leavenworth Street Facility routinely contained and were used to store petroleum, a “regulated substance” within the meaning of that term as provided by 159 Neb. Admin Code 1-003.39(B), Section 9001(2) of RCRA, 42 U.S.C. § 6991(2), and 40 C.F.R. § 280.12. At all times relevant to the violations alleged in this First Amended Complaint, USTs Nos. 1b and 2b at the Leavenworth Street Facility were in “temporary closure”, as that term is used in 40 CFR § 280.70(a) and 159 Neb. Admin. Code 10-001.01. At all times relevant to the violations alleged in this First Amended Complaint, these USTs contained more than 2.5 centimeters (one inch) of residue, or 0.3 percent by weight of the total capacity of the UST system.

30. At all times relevant to the violations alleged in this First Amended Complaint, USTs Nos. 1b and 2b at the Leavenworth Street Facility were “USTs” or “USTs” within the meaning of those terms as provided by Section 9001(1) of RCRA, 42 U.S.C. § 6991(1), and 40 C.F.R. § 280.12.
31. At all times relevant to the violations alleged in this First Amended Complaint, USTs Nos. 1b and 2b at the Leavenworth Street Facility were “UST systems” or “tank systems” within the meaning of those terms as provided by 159 Neb. Admin Code 1-003.52 and 40 C.F.R. § 280.12.
32. At all times relevant to the violations alleged in this First Amended Complaint, USTs Nos. 1b and 2b at the Leavenworth Street Facility were “petroleum systems” and “petroleum UST systems” within the meaning of those terms as provided by 40 C.F.R. § 280.12.
33. USTs Nos. 1b and 2b were installed and brought into use at the Leavenworth Street Facility in 1996 and are “existing UST systems” and “existing tank systems,” as those terms are defined at 159 Neb. Admin Code 1-003.17 and 40 C.F.R. § 280.12.
34. At all times relevant to the violations alleged in this First Amended Complaint, Respondent has been the “owner” and “operator” of USTs Nos. 1b and 2b at the Leavenworth Street Facility within the meaning of those terms as provided by 159 Neb. Admin Code 1-003.32, .34, Section 9001(3) of RCRA, 42 U.S.C. § 6991(3), and 40 C.F.R. § 280.12.

### **Count I**

#### **Failure to operate and maintain corrosion protection (CP) system – 30<sup>th</sup> Street Facility**

35. The allegations of Paragraphs 1 through 34 of the First Amended Complaint are incorporated herein by reference as though fully set forth at length.
36. Pursuant to 159 Neb. Admin. Code 6-002.01 and 40 C.F.R. § 280.31(a), all corrosion



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protection systems must be operated and maintained to continuously provide corrosion protection to the metal components of that portion of the tank and piping that routinely contains regulated substances and are in contact with the ground.

37. During the November Inspection EPA inspector performed test on the UST system at the 30th Street Facility and the corrosion protection system was not fully operational and was not providing corrosion protection to the UST system at the 30th Street Facility in violation of 159 Neb. Admin. Code 6-002.01 and 40 C.F.R. § 280.31(a).

### **Count II**

#### **Failure to conduct annual inspections of corrosion protection system – 30<sup>th</sup> Street Facility**

38. The allegations of Paragraphs 1 through 34 of the First Amended Complaint are incorporated herein by reference as though fully set forth at length.
39. Pursuant to 159 Neb. Admin. Code 6-002.02, all UST systems equipped with cathodic protection systems must be tested for proper operation by a qualified cathodic protection tester annually for impressed current cathodic protection systems using the National Association of Corrosion Engineers Standard, RP-02-85.
40. From at least the time of the March Inspection until the date of this First Amended Complaint, the USTs at the 30<sup>th</sup> Street Facility were constructed of steel and utilized an impressed cathodic protection system.
41. At the time of both the March and November Inspections, the USTs at the 30<sup>th</sup> Street Facility had not had their cathodic protection system tested since on or around August 22, 2005, in violation of the annual testing requirements of 159 Neb. Admin. Code 6-002.02. Respondent is not eligible for the other options to meet the requirements under 159 Neb. Admin. Code 5-002 and 40 C.F.R. §280.21 in that Respondent never internally lined the USTs at this facility.

### **Count III**

#### **Failure to inspect impressed current system every 60 days – 30<sup>th</sup> Street Facility**

42. The allegations of Paragraphs 1 through 34 of the First Amended Complaint are incorporated herein by reference as though fully set forth at length.
43. Pursuant to 159 Neb. Admin. Code 6-002.03 and 40 C.F.R. § 280.31(c), UST systems with impressed current cathodic protection systems must be inspected every 60 days to ensure the equipment is running properly.

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44. From at least the time of the March Inspection until the date of this First Amended Complaint, the USTs at the 30th Street Facility were constructed of steel and utilized an impressed cathodic protection system.
45. At the time of both the March and November Inspections, the UST systems at the 30th Street had not had their cathodic protection system inspected within the past 60 days, in violation of the 60 day inspection frequency requirements Facility of 159 Neb. Admin. Code 6-002.03 and 40 C.F.R. § 280.31(c).

**Count IV**  
**Failure to maintain records of corrosion protection (CP) inspections**  
**30<sup>th</sup> Street Facility**

46. The allegations of Paragraphs 1 through 27 of the First Amended Complaint are incorporated herein by reference as though fully set forth at length.
47. Pursuant to 159 Neb. Admin. Code 6-002.04 and 40 C.F.R. § 280.31(d), owners and operators must maintain documentation of operation of corrosion protection equipment.
48. Pursuant to 159 Neb. Admin. Code 6-002.04, owners or operators of an UST systems using cathodic protection, must maintain records of the last three inspections required in 6-002.03 and the last two inspections required in 6-002.02.
49. At the time of the November Inspection, Respondent failed to provide documentation for the 30<sup>th</sup> Street Facility of the last three inspections required by 159 Neb. Admin. Code 6-002.03 or results of testing from the last two inspections required by 159 Neb. Admin. Code 6-002.02.
50. At the time of the November Inspection, Respondent failed to maintain and failed to provide any records of the operation and maintenance of the facility's UST system's cathodic protection equipment in violation of 159 Neb. Admin. Code 6-002.04 and 40 C.F.R. § 280.31(d).

**Count V**  
**Failure to provide adequate testing for piping system – 30<sup>th</sup> Street Facility**

51. The allegations of Paragraphs 1 through 34 of the First Amended Complaint are incorporated herein by reference as though fully set forth at length.
52. Pursuant to 159 Neb. Admin. Code 7-002.02 and 40 C.F.R. § 280.41(b), underground piping that routinely contains regulated substances must be monitored for releases in a

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manner accepted by this section.

53. Pursuant to 159 Neb. Admin. Code 7-005 and 40 C.F.R. § 280.44, each method of release detection for piping used to meet the requirements of 159 Neb. Admin. Code 7-002.02 and 40 C.F.R. § 280.41 must meet the conditions of 159 Neb. Admin. Code 7-005 and 40.C.F.R. § 280.44.
54. Pursuant to 159 Neb. Admin. Code 7-005.01 and 40 C.F.R. § 280.44(a), Respondent must conduct an annual test of the operations of the leak detector in accordance with the manufacturer's requirements.
55. From at least the time of the March Inspection until the filing of the original Complaint, Respondent operated a UST system with underground pressurized piping subject to the requirements of 159 Neb. Admin. Code 7-002.02A and 40 C.F.R. § 280.41(b)(1).
56. From at least the time of the March Inspection until the filing of the original Complaint, Respondent's underground pressurized piping routinely contained petroleum, a regulated substance pursuant to 40 C.F.R. § 280.12.
57. At the time of the March and November Inspections, Respondent had failed to complete the required annual function test for the previous year for the 30th Street Facility in violation of 159 Neb. Admin. Code 7-002.02 and 40 C.F.R. § 280.44(a).

#### **Count VI**

#### **Failure to perform monitoring of pressurized piping – 30<sup>th</sup> Street Facility**

58. The allegations of Paragraphs 1 through 34 of the First Amended Complaint are incorporated herein by reference as though fully set forth at length.
59. Pursuant to 159 Neb. Admin. Code 7-002.02A and 40 C.F.R. § 280.41(b)(1) underground piping that conveys regulated substances under pressure must be equipped with an automatic line leak detector and undergo an annual line tightness test or have monthly monitoring conducted. At the time of the March and November Inspections, Respondent's underground piping system conveyed regulated substances under pressure.
60. At the time of the March and November Inspections, Respondent had failed to perform the annual line tightness test for the previous year, or have monthly monitoring conducted, at the 30th Street Facility in violation of 159 Neb. Admin. Code 7-002.02A and 40 C.F.R. § 280.41(b)(1).

**Count VII**

**Failure to maintain records of release detection monitoring – 30<sup>th</sup> Street Facility**

61. The allegations of Paragraphs 1 through 34 of the First Amended Complaint are incorporated herein by reference as though fully set forth at length.
62. Pursuant to 159 Neb. Admin Code 7-006 and 40 C.F.R. § 280.45, all 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.
63. At the time of the March and November Inspections, Respondent failed to maintain records of release detection monitoring at the 30th Street Facility in violation of 159 Neb. Admin Code 7-006 and 40 § C.F.R. 280.45.

**Count VIII**

**Failure to monitor tanks at least every 30 days - Hamilton Street Facility**

64. The allegations of Paragraphs 1 through 34 of the First Amended Complaint are incorporated herein by reference as though fully set forth at length.
65. Pursuant to 159 Neb. Admin Code 7-002.01 and 40 C.F.R. § 280.41(a) owners and operators of petroleum UST systems shall monitor tanks at least every 30 days for releases using one of the methods listed in 40 C.F.R. §§ 280.43(d)-(h).
66. Pursuant to 159 Neb. Admin. Code 7-002.01 and 40 C.F.R. § 280.41(a) owners and operators of petroleum UST systems shall monitor tanks at least every 30 days for releases unless the exceptions listed in 159 Neb. Admin. Code 7-002.01 and 40 C.F.R. § 280.41(a) apply to the tank. From at least the date of the March Inspection through the filing of the original Complaint, Respondent violated 159 Neb. Admin. Code 7-002.01 and 40 C.F.R. § 280.41(a) by failing to monitor UST 1a for releases at least every 30 days at the Hamilton Street Facility. None of the exceptions listed in 159 Neb. Admin. Code 7-002.01 and 40 C.F.R. § 280.41(a) applied to the tanks at this facility.
67. From at least the time of the March Inspection through the filing of the original Complaint, Respondent violated 159 Neb. Admin Code 7-002.01 and 40 C.F.R. § 280.41(a) by failing to monitor UST 1a for releases at least every 30 days at the Hamilton Street Facility.

**Count IX**

**Failure to maintain records of release detection monitoring – Hamilton Street Facility**

68. The allegations of Paragraphs 1 through 34 of the First Amended Complaint are

incorporated herein by reference as though fully set forth at length.

69. Pursuant to 159 Neb. Admin Code 7-006 and 40 C.F.R. § 280.45, all 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.
70. At the time of the March and November Inspections, Respondent failed to maintain records of release detection monitoring at the Hamilton Street Facility in violation of 159 Neb. Admin Code 7-006 and 40 § C.F.R. 280.45.

### **Count X**

#### **Failure to continue operation and maintenance of release detection in a temporarily closed tank system – Hamilton Street Facility**

71. The allegations of Paragraphs 1 through 34 of the First Amended Complaint are incorporated herein by reference as though fully set forth at length.
72. Pursuant to 159 Neb. Admin Code 10-001.01 and 40 C.F.R. § 280.70(a), when an UST system is temporarily closed, owners and operators must continue operation and maintenance of corrosion protection in accordance with 6-002 and §280.31 and any release detection in accordance with Neb. Admin Code 7 and subpart D. However, release detection is not required as long as the UST system is empty. The UST system is empty when all materials have been removed using commonly employed practices so that no more than 2.5 centimeters (one inch) of residue, or 0.3 percent by weight of the total capacity of the UST system, remain in the system.
73. At the time of the November Inspection, the EPA Inspector found USTs 2a and 3a at the Hamilton Street Facility were temporarily closed, as that term is used in 159 Neb. Admin. Code 10-001.01 and 40 C.F.R. § 280.70(a). This temporary closure was continual from at least March 2009 to the time of the November 2009 inspection.
74. At the time of the November Inspections, with more than one-inch of product in USTs Nos. 2a and 3a at the Hamilton Street Facility, the USTs were not empty according to 159 Neb. Admin Code 10-001.01 and 40 C.F.R. § 280.70(a) and therefore required Respondent to continue normal operation and maintenance on the USTs in question.
75. From at least the time of the March Inspection to the filing of the original Complaint, Respondent failed to continue operation maintenance of release detection, using any release detection method set forth in 40 CFR Subpart D, on USTs Nos. 2a and 3a at the Hamilton Street Facility in violation of 159 Neb. Admin Code 10-001.01 and 40 C.F.R. §280.70(a).



**Count XI**

**Failure to comply with temporary closure requirements for tank systems  
Hamilton Street Facility**

76. The allegations of Paragraphs 1 through 34 of the First Amended Complaint are incorporated herein by reference as though fully set forth at length.
77. Pursuant to 159 Neb. Admin Code 10-001.02 and 40 C.F.R. § 280.70(b)(2), when an UST system is temporarily closed for three months or more, owners and operators must cap and secure all lines, pumps, manways, and ancillary equipment. At the time of the November Inspection, the EPA Inspector found USTs 2a and 3a at the Hamilton Street Facility were temporarily closed, as that term is used in 159 Neb. Admin. Code 10-001.01 and 40 C.F.R. § 280.70(a). This temporary closure was continual from at least March 2009 to the time of the November 2009 inspection. At all times relevant to the violations alleged in this First Amended Complaint, these UST systems contained more than 2.5 centimeters (one inch) of residue, or 0.3 percent by weight of the total capacity of the UST system.
78. At the time of the November Inspection, the Hamilton Street Facility had failed to cap and secure all lines, pumps, manways, and ancillary equipment and properly secure the dispensers and fill pipes in violation of 159 Neb. Admin Code 10-001.02B and 40 C.F.R. §280.70(b)(2).

**Count XII**

**Failure to perform monitoring of pressurized piping – Leavenworth Street Facility**

79. The allegations of Paragraphs 1 through 34 of the Complaint are incorporated herein by reference as though fully set forth at length.
80. Pursuant to 159 Neb. Admin. Code 7-002.02A and 40 C.F.R. § 280.41(b)(1) underground piping that conveys regulated substances under pressure must be equipped with an automatic line leak detector and undergo an annual line tightness test or have monthly monitoring conducted.
81. At the time of the March and November Inspections, Respondent's underground pressurized piping system conveyed regulated substances under pressure.
82. At the time of the March and November Inspections, Respondent had failed to perform the annual line tightness test, or conduct monthly monitoring, for the previous year at the Leavenworth Street Facility in violation of 159 Neb. Admin. Code 7-002.02A and 40 C.F.R. § 280.41(b)(1).

**Count XIII**

**Failure to maintain records of release detection monitoring – Leavenworth Street Facility**

83. The allegations of Paragraphs 1 through 34 of the First Amended Complaint are incorporated herein by reference as though fully set forth at length.
84. Pursuant to 159 Neb. Admin Code 7-006 and 40 C.F.R. § 280.45, all 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.
85. At the time of the March and November Inspections, Respondent failed to maintain records of release detection monitoring at the Leavenworth Street Facility in violation of 159 Neb. Admin Code 7-006 and 40 § C.F.R. 280.45.

**Count XIV**

**Failure to provide adequate testing for piping system – Leavenworth Street Facility**

86. The allegations of Paragraphs 1 through 34 of the First Amended Complaint are incorporated herein by reference as though fully set forth at length.
87. Pursuant to 159 Neb. Admin. Code 7-005.01 and 40 C.F.R. § 280.44(a), Respondent must conduct an annual test of the operations of the leak detector in accordance with the manufacturer's requirements.
88. From at least the time of the March Inspection until the filing of the original Complaint, Respondent operated a UST system with underground pressurized piping subject to the requirements of 159 Neb. Admin. Code 7-002.02A and 40 C.F.R. § 280.41(b)(1).
89. From at least the time of the March Inspection until the filing of the original Complaint, Respondent's pressurized underground piping routinely contained petroleum, a regulated substance pursuant to 40 C.F.R. § 280.12.
90. At the time of the March and November Inspections, Respondent had failed to complete the required annual function test for the previous year for the Leavenworth Street Facility in violation of 159 Neb. Admin. Code 7-002.02 and 40 C.F.R. § 280.44(a).

**Count XV**

**Failure to continue operation and maintenance of  
release detection in a temporarily closed tank system – Leavenworth Street Facility**

91. The allegations of Paragraphs 1 through 34 of the First Amended Complaint are incorporated herein by reference as though fully set forth at length.
92. Pursuant to 159 Neb. Admin Code 10-001.01 and 40 C.F.R. § 280.70(a), when an UST system is temporarily closed, owners and operators must continue operation and maintenance of corrosion protection in accordance with 6-002 and §280.31 and any release detection in accordance with Neb. Admin Code 7 and subpart D. However, release detection is not required as long as the UST system is empty. The UST system is empty when all materials have been removed using commonly employed practices so that no more than 2.5 centimeters (one inch) of residue, or 0.3 percent by weight of the total capacity of the UST system, remain in the system.
93. At the time of the November Inspection, Respondent claimed that USTs Nos. 2a and 3a at the Leavenworth Street Facility were closed. This temporary closure was continual from at least March 2009 to the time of the November 2009 inspection.
94. At the time of the March and November Inspections, with more than one-inch of product in the USTs at the Leavenworth Street Facility, the USTs were not empty according to 159 Neb. Admin Code 10-001.01 and 40 C.F.R. § 280.70(a) and therefore required Respondent to continue normal operation and maintenance on the USTs in question.
95. From at least the time of the March Inspection to the filing of the original Complaint, Respondent failed to continue operation maintenance of release detection on the USTs, using any release detection method set forth in 40 CFR Subpart D, at the Leavenworth Street Facility in violation of 159 Neb. Admin Code 10-001.01 and 40 C.F.R. §280.70(a).

**Count XVI**

**Failure to comply with temporary closure requirements for tank systems  
Leavenworth Street Facility**

96. The allegations of Paragraphs 1 through 34 of the First Amended Complaint are incorporated herein by reference as though fully set forth at length.
97. Pursuant to 159 Neb. Admin Code 10-001.02 and 40 C.F.R. § 280.70(b)(2), when an UST system is temporarily closed for three months or more, owners and operators must cap and secure all lines, pumps, manways, and ancillary equipment. At the time of the March and November Inspection, the EPA Inspector found the USTs at the Leavenworth Street

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Facility were temporarily closed, as that term is used in 159 Neb. Admin. Code 10-001.01 and 40 C.F.R. § 280.70(a). This temporary closure was continual from at least March 2009 to the time of the November 2009 inspection.

98. At the time of the November Inspection, the Leavenworth Street Facility had failed to properly secure the dispensers and fill pipes and failed to cap and secure all lines, pumps, manways, and ancillary equipment in violation of 159 Neb. Admin Code 10-001.02B and 40 C.F.R. §280.70(b)(2).

### III. CIVIL PENALTY

99. Section 9006(d)(2) of RCRA, 42 U.S.C. § 6991e(d)(2), provides, in relevant part, 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 purposes of determining the amount of any penalty to be assessed, Section 9006(c) of RCRA, 42 U.S.C. § 6991e(c), requires EPA to take into account the seriousness of the violation and any good faith efforts to comply with the applicable requirements.
100. The total proposed penalty for Counts I through XVII is \$141,360. In developing this proposed penalty for the violations alleged in this First Amended Complaint, EPA has taken into account the particular facts and circumstances of this case with specific reference to EPA's November 1990 U.S. EPA Penalty Guidance for Violations of UST Regulations ("UST Penalty Guidance"), the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, and Modifications to EPA Penalty Policies to Implement the Civil Monetary Penalty Inflation Adjustment Rule (Pursuant to the Debt Collection Improvement Act of 1996, Effective October 1, 2004) (September 21, 2004), copies of which are enclosed with this First Amended Complaint. These policies provide a rational, consistent and equitable methodology for applying the statutory penalty factors enumerated above to particular cases. Complainant will consider Respondent's ability to pay a civil penalty. The burden of raising and demonstrating an inability to pay rests with the Respondent. In addition, to the extent that facts and circumstances unknown to Complainant at the time of issuance of this First Amended Complaint become known after the First Amended Complaint is issued, such facts and circumstances may also be considered as a basis for adjusting the civil penalty.

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#### IV. COMPLIANCE ORDER

Pursuant to Section 9006 RCRA, 42 U.S.C. § 6991e, the Respondent is hereby ordered to:

101. Within thirty days of the receipt of this Compliance Order, the Respondent shall pay a penalty of \$127,976 (One Hundred Twenty-Seven Thousand Nine Hundred Seventy Six Dollars); and
102. Payment of the penalty shall be by cashier or certified check made payable to "Treasurer of the United States" and remitted to:

US Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
PO Box 979077  
St. Louis, Missouri 63197-9000

or by wire transfer, directed to the Federal Reserve Bank of New York as follows:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, New York 10045

Field Tag 4200 of the Fedwire message should read "D 68010727  
Environmental Protection Agency"

The check must reference the EPA Docket Number of this First Amended Complaint and Compliance Order and the Respondent by name. A copy of the check or confirmation of the wire transfer shall also be mailed to EPA's representative, Wilfredo Rosado-Chaparro, identified in Section VI below, and to:

Regional Hearing Clerk  
U.S. EPA Region 7  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101.

103. Within sixty (60) days of the receipt of this Compliance Order, comply with the corrosion



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protection requirements of 159 Neb. Admin. Code 6 at the Facilities.

104. Within sixty (60) days of the receipt of this Compliance Order, provide required release detection for the USTs at the Facilities, as required by 159 Neb. Admin. Code 7 using the methods listed in that chapter, as applicable;
105. Within sixty (60) days of the receipt of this Compliance Order, provide all USTs at the Facilities with line leak detectors and conduct annual line tightness testing or monthly monitoring for such USTs, as required by 159 Neb. Admin. Code 7; or
106. Complete the closure procedures for such USTs as set forth in 159 Neb. Admin. Code 10.
107. If Respondent elects to close any or all of the USTs subject to this Compliance Order, it must submit to EPA, within thirty (30) calendar days after the receipt of this Compliance Order, a notice of intent to permanently close, identifying which UST(s) it intends to close.
108. Within seventy-five (75) days of the receipt of this Compliance Order, submit to EPA all records required to be kept under 159 Neb. Admin. Code for the Facilities.
109. Within seventy-five (75) days of the receipt of this Compliance Order, submit to EPA a report which documents and certifies Respondent's compliance with the terms of this Compliance Order;
110. Any notice, report, certification, data presentation, or other document submitted by Respondent pursuant to this Compliance Order which discusses, describes, demonstrates, supports any finding or makes any representation concerning Respondent's compliance or noncompliance with any requirement of this Compliance Order shall be certified by a responsible representative of Respondent.
111. If activities undertaken by the Respondent in connection with this Compliance Order or otherwise indicate that a release of a regulated substance from any UST at the Facilities may have occurred, Respondent may be required to undertake corrective action pursuant to applicable regulations in 159 Neb. Admin. Code 8.
112. Respondent is hereby notified that failure to comply with any of the terms of this Compliance Order may subject it to imposition of a civil penalty of up to \$32,500 for each day of continued noncompliance, pursuant to Section 9006(a)(3) of RCRA, 42 U.S.C. § 6991e(a)(3), and the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19 (Enclosure "C").
113. The term "days" as used herein shall mean calendar days unless specified otherwise.

#### **IV. NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

114. In accordance with Section 9006(b) of RCRA, 42 U.S.C. § 6991 (b), the Compliance Order shall become final unless the Respondent files an answer and requests a public hearing in writing no later than thirty (30) days after service of this First Amended Complaint, Compliance Order and Notice of Opportunity for Hearing.
115. A written answer to the First Amended Complaint and Compliance Order and the request for hearing must satisfy the requirements of 40 C.F.R. Section 22.15 (1980) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, a copy of which is attached hereto. The answer and request for hearing must be filed with the Regional Hearing Clerk, EPA, Region 7, 901 North Fifth Street, Kansas City, Kansas 66101. A copy of the answer and request for hearing and copies of any subsequent documents filed in this action should be sent to Raymond C. Bosch, Assistant Regional Counsel, Office of Regional Counsel, at the same address.
116. The Respondent's failure to file a written answer and request a hearing within thirty (30) days of service of this First Amended Complaint, Compliance Order, and Notice of Opportunity for Hearing will constitute a binding admission of all allegations contained in the First Amended Complaint and a waiver of the Respondent's right to a hearing. A Default Order may thereafter be issued by the Regional Judicial Officer, and the civil penalty proposed herein shall become due and payable without further proceedings.
117. The total proposed penalty for Counts I through XVII is \$127,976. This proposed penalty is based on the best information available to EPA at the time that the First Amended Complaint was issued. The penalty may be adjusted if the Respondent establishes bona fide issues of ability to pay or other defenses relevant to the appropriate amount of the proposed penalty.

#### **V. SETTLEMENT CONFERENCE**

118. Whether or not the Respondent requests a hearing, an informal conference may be requested in order to discuss the facts of this case in an attempt to arrive at settlement. To request a settlement conference, please write to: Raymond C. Bosch, Assistant Regional Counsel, Office of Regional Counsel, U.S. EPA, Region 7, 901 North Fifth Street, Kansas City, Kansas 66101; or call him at 913-551-7501.
119. Please note that a request for an informal settlement conference does not extend the thirty (30) day period during which a written answer and request for a hearing must be

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submitted. The informal conference procedure may be pursued simultaneously with the adjudicatory hearing procedure.

120. EPA encourages all parties against whom a civil penalty is proposed to pursue the possibility of settlement as a result of informal conference. However, no penalty reduction will be made simply because such a conference is held. Any settlement which may be reached as a result of such a conference shall be embodied in a written Consent Agreement and Consent Order which may be issued by the Regional Judicial Officer, EPA Region 7.
121. If the Respondent has neither effected a settlement by informal conference nor requested a hearing within the thirty (30) day time period allowed by the First Amended Complaint, Compliance Order and Notice of Opportunity for Hearing, the penalties will be assessed without further proceedings and the Respondent will be notified that the penalties have become due and payable.

#### **VI. SUBMITTALS**

122. All document required to be submitted pursuant to this First Amended Complaint, Compliance Order and Notice of Opportunity for Hearing shall be sent to:

Wilfredo Rosado-Chaparro,  
Storage Tank and Oil Pollution Branch /AWMD  
U.S. Environmental Protection Agency – Region 7  
901 North 5th Street  
Kansas City, Kansas 66101

and, a copy of all documents submitted to EPA shall also be sent by regular mail to the Nebraska State Fire Marshal's Office and to the Omaha Fire Prevention Bureau to the attention of:

Clark Conklin  
Nebraska State Fire Marshall Chief Deputy  
Fuels Safety Division  
246 South 14th Street  
Lincoln, Nebraska 68508-1804

and

FF Steve Morrissey  
City of Omaha Fire Department  
1516 Jackson Street  
Omaha, Nebraska 68102.

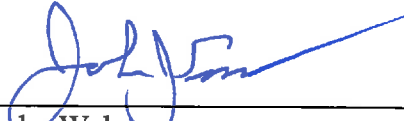
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**VII. EFFECTIVE DATE**

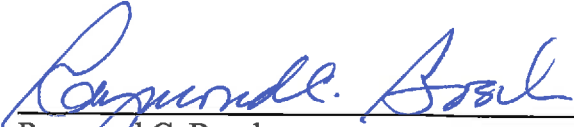
123. This First Amended Complaint, Compliance Order and Notice of Opportunity for Hearing shall become effective on the date signed by the Director of the Air and Waste Management Division, EPA Region 7.

IT IS SO ISSUED AND ORDERED:

4/30/12  
Date

  
\_\_\_\_\_  
Becky Weber  
Director  
Air and Waste Management Division

April 30, 2012  
Date

  
\_\_\_\_\_  
Raymond C. Bosch  
Assistant Regional Counsel

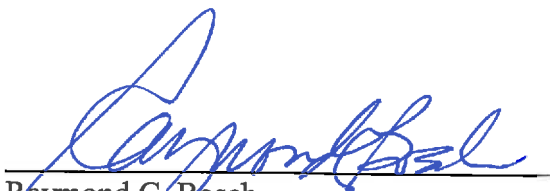
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CERTIFICATE OF SERVICE

I hereby certify that the original and one true and correct copy of the foregoing First Amended Complaint, Compliance Order, and Notice of Opportunity for Hearing 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 together with a copy of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits were sent by certified mail, return receipt requested, to:

Mohammed Ali  
Registered Agent  
B & K Petroleum Corporation

on this 2nd day of May, 2012.

  
\_\_\_\_\_  
Raymond C. Bosch  
Assistant Regional Counsel