



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

U.S. ENVIRONMENTAL PROTECTION AGENCY
2011 JUN 13 P 14:23
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JUN 30 2011

CERTIFIED MAIL— RETURN RECEIPT REQUESTED

Article Number:

Maureen T. Schmitt, Owner/CEO
Schmitt Sales, Inc.
2101 St. Rita's Lane
Buffalo, New York 14221

Re: **In the Matter of: Schmitt Sales, Inc.**
Docket No. RCRA-02-2011-7508

Dear Ms. Schmitt:

Enclosed is the 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.*

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) calendar** 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:

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 you 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.

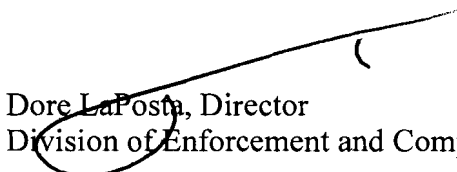
You will find enclosed a copy of the "Consolidated Rules of Practice," which govern this

proceeding. (A brief discussion of some of these rules appears in the later part of the Complaint.) For your general information and use, I also enclosed both an "Information Sheet for U.S. EPA Small Business Resources" and a "Notice of SEC Registrants' Duty to Disclose Environmental Legal Proceedings" which may apply to you depending on the size of the proposed penalty and nature of your company.

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

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

Russ Brauksieck, Chief
Facility Compliance Section
New York State Department of Environmental Conservation
625 Broadway, 11th Floor
Albany, New York 12233-7250

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 2

U.S. ENVIRONMENTAL PROTECTION AGENCY
REGIONAL OFFICE
2011 JUN 13 P 7:41
COMMUNICATIONS SECTION

IN THE MATTER OF:

Schmitt Sales, Inc.,
d.b.a. Brooks Super Duper;
Dutch Hollow Market;
Echoes on the Lake;
Parkview Market;
Pine Valley Busy Mart;
Tubby's Corner Quick Stop;
T-Burg Foodline, Inc.;
Cassadaga Supermarket;
Schmitt's Robo Mart;
Ducky's

Respondent

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

COMPLAINT, COMPLIANCE ORDER
AND
NOTICE OF OPPORTUNITY FOR HEARING

DOCKET NO. RCRA-02-2011-7508

COMPLAINT

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 "RCRA" or 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. Respondent is Schmitt Sales, Inc., hereinafter "Respondent" or "Respondent Schmitt."
4. Respondent is a domestic business corporation and a "person" within the meaning of Section 9001(5) of the Act, 42 U.S.C. § 6991(6) and 40 C.F.R. § 280.12.
5. Pursuant to Section 9001(10), 42 U.S.C. § 6991(10) and 40 C.F.R. § 280.12, an "underground storage tank" or "UST" is "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 percent or more beneath the surface of the ground."

6. Respondent is the “owner” and “operator,” as those terms are defined in 40 C.F.R. § 280.12, of underground storage tanks at various facilities identified in the paragraphs below.
7. Respondent was and continues to be an “owner” and “operator” of three UST’s, which are located at Brooks Super Duper, 1 Third Street, Cattaraugus, New York 14719, storing diesel fuel or kerosene for retail sale. The facility is registered with the New York State Petroleum Bulk Storage program with the following number: 9-382841.
8. Brooks Super Duper, UST System number 1 is a 6,000 gallon steel UST storing diesel fuel; UST System number 2 is an 8,000 gallon steel UST storing diesel fuel; and UST System number 3 is a 1,000 gallon steel UST storing kerosene. These three USTs were installed in February 1985. The tank construction and pipe construction are comprised of galvanized steel equipped with sacrificial anodes for cathodic protection.
9. Respondent was and continues to be an “owner” and “operator” of three UST’s, which are located at Dutch Hollow Market, 6107 East Avon-Lima Road, Avon, New York 14414, storing gasoline or diesel fuel for retail sale. The facility is registered with the New York State Petroleum Bulk Storage program with the following number: 8-231975.
10. Dutch Hollow Market UST System number 001 is a 6,000 gallon steel UST storing gasoline; UST System number 002 is a 6,000 gallon steel UST storing gasoline; and, UST System number 003 is a 6,000 gallon steel UST storing diesel fuel. These three USTs were installed in November 1972. The tank construction and pipe construction are comprised of steel and are protected from corrosion by impressed current cathodic protection.
11. Respondent was and continues to be an “owner” and “operator” of two USTs for Echoes on the Lake, that are located at 3301 County Route 6, Black Lake Road, Hammond, New York 13646, storing gasoline/ethanol for retail sale. The facility is registered with the New York State Petroleum Bulk Storage program with the following number: 6-495107.
12. Echoes on the Lake, UST Systems numbers 001 and 002 are 8,000 gallon steel USTs which were installed in August 1983. The tank construction and pipe construction are steel and are protected from corrosion by impressed current cathodic protection.
13. Respondent was and continues to be an “owner” and “operator” of three USTs, for Parkview Market, that are located at West Lake Road, Mayville, New York 14757, storing gasoline or diesel fuel for retail sale. The facility is registered with the New York State Petroleum Bulk Storage program with the following number: 9-382833.
14. Parkview Market, UST Systems numbers 1 and 2 are 10,000 gallon steel USTs, and UST System number 3 is a 4,000 gallon steel UST. All of these USTs were installed in June

1984. The tank construction and pipe construction are comprised of steel equipped with sacrificial anodes for cathodic protection.
15. Respondent was and continues to be an “owner” and “operator” of three USTs, for Pine Valley Busy Mart, that are located at 4520 Watkins Road, Pine Valley, New York 14872, storing gasoline and kerosene for retail sale. The facility is registered with the New York State Petroleum Bulk Storage program with the following number: 8-097594.
 16. Pine Valley BusyMart, UST System 004, is a 3,000 gallon steel UST, installed in March 1987, cathodically protected by a sacrificial anode. Pine Valley Busy Mart UST System 007 is an 8,000 gallon double-walled fiberglass coated steel UST; UST System 008 is a 4,000 gallon double-walled fiberglass coated steel UST. UST systems 007 and 008 were installed in October of 1992. The piping for UST System 004 is constructed of steel and cathodically protected by a sacrificial anode. The piping for UST Systems numbers 007 and 008 is constructed of double-walled fiberglass.
 17. Respondent was and continues to be an “owner” and “operator” of three USTs, for Tubby’s Corner Quick Stop, that are located at 9299 Erie Road, Angola, New York 14006, storing gasoline or kerosene for retail sale. The facility is registered with the New York State Petroleum Bulk Storage program with the following number: 9-382922.
 18. Tubby’s Corner Quick Stop, UST System number 4 is a 6,000 gallon steel UST, installed in December 1980; UST System number 6 is a 10,000 gallon double-walled fiberglass UST installed in December 1996; and UST System 7 is a 1,000 gallon fiberglass UST installed in December 1996.
 19. Respondent was and continues to be an “owner” and “operator” of four USTs, which are located at T-Burg Foodline, Inc., Route 96, Trumansburg, New York 14886, and which store diesel fuel, gasoline and kerosene for retail sale. The facility is registered with the New York State Petroleum Bulk Storage program with the following number: 7-600097.
 20. T-Burg Foodline, Inc., UST System number 001 is a 10,000 gallon diesel fuel UST; UST System number 002 is a 6,000 gallon gasoline UST; UST System number 003 is a 1,000 gallon kerosene UST; and UST System number 004 is a 12,000 gallon UST. UST Systems 001, 002 and 003 are constructed of double-walled jacketed steel tanks, and the pipes for these UST Systems are double-walled fiberglass. UST System number 004 is a fiberglass double-walled tank, and the pipe for this UST System is double-walled fiberglass. UST Systems 001, 002 and 003 were installed in February 1992. UST System 004 was installed in February 2002.
 21. Respondent was and continues to be an “owner” and “operator” of five USTs which are located at Cassadaga Supermarket, Route 60, Cassadaga, New York 14718, storing gasoline for retail sale. The facility is registered with the New York State Petroleum Bulk Storage program with the following number: 9-466458.

22. Cassadaga Supermarket UST System numbers 1, 2, 3 and 4 are each 4,000 gallon double walled STI-P3 UST's, installed in July 1988; UST System number 5 is a 1,000 double walled STI-P3 UST. The pipes on UST System numbers 1, 2, 3, 4 and 5 are constructed of fiberglass reinforced plastic.
23. Respondent was and continues to be an "owner" and "operator" of four USTs located at Schmitt's Robo Mart, 5095 Main Street and Royal Parkway, Williamsville, New York 14221, storing gasoline, diesel fuel and kerosene for retail sale. The facility is registered with the New York State Petroleum Bulk Storage program with the following number: 9-497762.
24. Schmitt's Robo Mart UST System number 1 is a 10,000 gallon double walled STI-P3 UST; UST system number 2 is an 8,000 gallon double walled STI-P3 UST; UST System number 3 is a 6,000 gallon double walled STI-P3 UST, and UST System number 4 is a 1,000 gallon double walled STI-P3 UST. The pipes on UST Systems 1, 2, 3 and 4 are constructed of double-walled fiberglass. These UST Systems were installed in November 1989.
25. Respondent was and continues to be an "owner" and "operator" of two USTs located at Ducky's, 28 Main Street, Friendship, New York 14739, storing gasoline for retail sale. The facility is registered with the New York State Petroleum Bulk Storage program with the following number: 9-490105.
26. Ducky's UST Systems numbers 1 and 2 are each double-walled steel tanks equipped with sacrificial anodes, each with double-walled fiberglass pipes. UST System number 1 is 8,000 gallons, and UST System number 2 is 8,000 gallons. The USTs were installed in May 1989.
27. Pursuant to §§ 2002, 9002, and 9003 of the Act, 42 U.S.C. §§ 6912, 6991a, and 6991b, EPA promulgated rules setting forth requirements for owners and operators of UST systems, set forth at 40 C.F.R. Part 280.
28. On or about February 25, 2009, April 21, 2009, June 23, 2009, June 24, 2009, August 18, 2009, August 31, 2009, September 1, 2009, April 20, 2010 and April 21, 2010, pursuant to Section 9005 of the Act, 42 U.S.C. § 6991d, an authorized representative(s) of EPA ("Representative") inspected Brooks Super Duper, Dutch Hollow Market, Echoes on the Lake, Parkview Market, Pine Valley Busy Mart, Tubby's Corner Quick Stop, T-Burg Foodline, Inc., Cassadaga Supermarket, Schmitt's Robo Mart (Williamsville), and Ducky's. The purpose of the inspections was to determine the Respondent Schmitt's compliance with the Act (hereinafter referred to as the "February 2009 Inspection," "April 2009 Inspection," June 2009 Inspections," "August 2009 Inspections," "September 2009 Inspection," and "April 2010 Inspections" and collectively referred to as "The Inspections").

29. On or about December 23, 2009, and August 27, 2010, EPA sent Notice of Violations (“NOV”) and Information Request Letters (“IRL”) to Peter Glor, President of Schmitt Sales, Inc.. The NOV/IRLs were issued pursuant to Sections 9006 and 9005(a) of the Act, 42 U.S.C. §6991e and 42 U.S.C. §6991d(a), respectively. The IRLs were also issued pursuant to 40 C.F.R. § 280.34.
30. The NOV/IRLs cited UST violations that were identified by the EPA Representatives during the Inspections. The IRLs sought further information about these violations.
31. In correspondence dated January 18, 2010, and September 14, 2010, Respondent provided responses to the NOV/IRL (“IRL Responses”) with information about the USTs at Brooks Super Duper, Dutch Hollow Market, Echoes on the Lake, Parkview Market, Pine Valley Busy Mart, Tubby’s Corner Quick Stop, T-Burg Foodline, Inc., Cassadaga Supermarket, Schmitt’s Robo Mart, Ducky’s, and other facilities.
32. Pursuant to 40 C.F.R. § 280.12, EPA is the “implementing agency” responsible for enforcing the requirements of the Act and the regulations promulgated pursuant thereto which are the subject of this Complaint.

Count 1: Failure to Monitor, Properly Test and Maintain Records of Testing for Cathodic Protection Systems

UST Systems numbers 1, 2 and 3 at Brooks Super Duper

UST Systems numbers 001, 002 and 003 at Dutch Hollow Market

UST Systems numbers 001 and 002 at Echoes on the Lake

UST Systems numbers 1, 2 and 3 at Parkview Market

UST System number 004 at Pine Valley Busy Mart

33. Complainant realleges each allegation contained in Paragraphs “1” through “32” with the same force and effect as if fully set forth herein.
34. Pursuant to 40 C.F.R. § 280.31(a), all corrosion protection systems must be operated and maintained to continuously provide corrosion protection for the metal components of that portion of the tank and piping that routinely contains regulated substances and are in contact with the ground.
35. Pursuant to 40 C.F.R. § 280.31(b) all owners and operators of UST systems equipped with cathodic protection systems must have them inspected for proper operation by a qualified cathodic protection tester within six months of installation and at least every three years thereafter (triennially), and the criteria that are used to determine that cathodic protection is adequate must be in accordance with a code of practice developed by a nationally recognized association, , e.g., the National Association of Corrosion Engineers Standard RP-02-85, “Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems.”

36. Pursuant to 40 C.F.R. § 280.31(d), the results of the last two triennial cathodic protection tests must be maintained to demonstrate compliance with performance standards.

Brooks Super Duper

37. Respondent's UST Systems numbers 1, 2 and 3 at Brooks Super Duper are steel tanks with steel piping that have been equipped with cathodic protection since their installation in February 1985.
38. During the February 2009 Inspection of Brooks Super, Respondent's representatives could not produce the results of any triennial cathodic protection tests for the piping of UST Systems numbers 1, 2 and 3.
39. In the August 27, 2010 IRL for Brooks Super Duper, EPA requested the results of the two most recent cathodic protection tests for piping for UST Systems numbers 1, 2 and 3. The documentation that Schmitt provided to EPA in its January 18, 2010, and September 14, 2010, IRL responses did not provide evidence of cathodic testing of pipes.
40. Upon information and belief, prior to September 14, 2010, Respondent failed to conduct triennial cathodic protection tests for the piping for UST Systems 1, 2 and 3 for at least the previous four years.
41. Prior to September 14, 2010, Respondent failed to maintain records of the two most recent triennial cathodic protection tests for the piping for UST Systems 1, 2 and 3.
42. Respondent's failures to test triennially the piping on cathodic protection systems and to maintain records of the results of the two most recent tests for the piping at Brooks Super Duper for UST Systems 1, 2 and 3, constitute violations of 40 C.F.R. § 280.31(a),(b), and (d).

Dutch Hollow Market

43. Respondent's UST Systems numbers 001, 002 and 003 at Dutch Hollow Market are steel tanks with steel piping that have been equipped with cathodic protection since their installation in 1972.
44. During the April 2009 Inspection of Dutch Hollow Market, Respondent's representatives produced results of triennial cathodic protection tests for UST Systems numbers 001, 002 and 003, dated October 2007 and April 2009.
45. The criteria that were used for the cathodic protection test results from April 2009 were not in accordance with a code of practice developed by a nationally recognized association. The April 2009 test results did not provide instant off/100 millivolt polarization decay measurements for tanks and piping. Respondent has not provided EPA with any later conducted test.
46. Respondent's failure to properly test the cathodic protection systems in accordance with a code of practice developed by a nationally recognized association for the Dutch Hollow Market UST Systems numbers 001, 002 and 003 is a violation of 40 C.F.R. § 280.31(a) and (b).

Echoes on the Lake

47. Respondent's UST Systems numbers 001 and 002 at Echoes on the Lake are steel tanks with steel piping that have been equipped with cathodic protection since their installation in 1983.
48. During the June 2009 Inspections of Echoes on the Lake, Respondent's representatives could not produce any evidence that the cathodic protection system for UST Systems numbers 001 and 002 at Echoes on the Lake had been inspected by a qualified cathodic protection tester at any time.
49. In the December 23, 2009, IRL for Echoes on the Lake, EPA requested the results of the two most recent cathodic protection tests preceding the June 2009 Inspection for UST Systems numbers 001 and 002.
50. In its January 18, 2010 IRL response for Echoes on the Lake, Respondent Schmitt provided a cathodic protection result for UST Systems numbers 001 and 002 at Echoes on the Lake, dated October 7, 2009. The results of two triennial cathodic protection tests preceding the June 2009 Inspection for UST Systems numbers 001 and 002 were not provided.
51. Upon information and belief, prior to June 2009, Respondent had failed to conduct triennial cathodic protection tests for UST Systems 001 and 002 for at least the previous four years.
52. Prior to June 2009, Respondent failed to maintain records of the two most recent triennial cathodic protection tests for UST Systems 001 and 002.
53. For the October 2009 cathodic protection test results, the criteria that were used for the cathodic protection test results were not in accordance with a code of practice developed by a nationally recognized association. The results from October 2009 test did not provide instant off/100 millivolt polarization decay measurements for tanks and piping.
54. Respondent's failures to triennially test the cathodic protection systems and to maintain records of the results of the last two triennial tests for UST Systems numbers 001 and 002 at Echoes on the Lake and to use a method in accordance with a code of practice developed by a nationally recognized association, constitute violations of 40 C.F.R. § 280.31(a), (b) and (d).

Parkview Market

55. Respondent's UST Systems numbers 1, 2 and 3 at Parkview Market are steel tanks with steel piping that have been equipped with cathodic protection since their installation in June 1984.
56. During the February 2009 Inspection of Parkview Market, Respondent's representatives could not produce any evidence that the cathodic protection system for UST Systems

numbers 1, 2, and 3 at Parkview Market had been inspected by a qualified cathodic protection tester at any time.

57. In the December 23, 2009, IRL for Parkview Market, EPA requested the results of the two most recent cathodic protection tests preceding the February 2009 Inspection for UST Systems numbers 1, 2 and 3. In its January 18, 2010, response for Parkview Market, Respondent Schmitt provided a cathodic protection test record dated July 28, 2009 for tanks for UST Systems numbers 1, 2 and 3, but no test records were provided for the time period prior to the February 2009 Inspection. In the August 27, 2010 IRL for Parkview Market, EPA again requested records from the last two triennial cathodic protection tests of UST Systems numbers 1, 2 and 3, prior to the February 2009 Inspection. In its September 14, 2010, response, Respondent Schmitt provided cathodic protection test records dated September 8, 2010, for tanks and pipes of UST Systems numbers 1, 2 and 3. No records of cathodic protection testing were provided for the time period prior to the February 2009 Inspection.
58. Upon information and belief, prior to the February 2009 Inspection and through at least September 7, 2010, Respondent had failed to conduct triennial cathodic protection tests for UST Systems 1, 2 and 3 for at least the previous four years.
59. Prior to the February 2009 Inspection, Respondent failed to maintain records of the two most recent triennial cathodic protection tests for the piping for UST Systems 1, 2 and 3.
60. Respondent's failures to test triennially the cathodic protection systems and to maintain records of the results of the last two triennial tests of the cathodic protection system for UST Systems 1, 2 and 3 at Parkview Market constitute violations of 40 C.F.R. § 280.31(a),(b) and (d).

Pine Valley Busymart

61. Respondent's UST System number 004 at Pine Valley Busymart is a steel tank with steel piping that have been equipped with cathodic protection since its installation in March 1987.
62. During the April 2010 Inspection of Pine Valley Busymart, Respondent's representatives, upon request by the EPA Inspector for records of the two most recent triennial tests of the cathodic protection system, provided records of the two tests of the cathodic protection for the tank, but not the piping for UST System number 004 dated May 15, 2009, and April 12, 2010.
63. In the August 27, 2010 IRL for Pine Valley Busymart, EPA requested the results of the two most recent triennial cathodic protection tests for the piping. Respondent Schmitt stated in the September 14, 2010, response, that the "line" which is another word for piping "was not being tested previously" and enclosed a September 2, 2010, cathodic protection test of the piping.
64. Respondent's failure to test triennially the cathodic protection systems for the piping for UST System 004 prior to September 2, 2010 at the Pine Valley Busymart constitutes a violation of 40 C.F.R. § 280.31(a) and (b).

Count 2: Failure to maintain all records of release detection monitoring for underground storage tanks.

UST Systems numbers 1, 2 and 3 at Brooks Super Duper

UST Systems numbers 001, 002 and 003 at Dutch Hollow Market

UST Systems numbers 4, 6, and 7 at Tubby's Corner Quick Stop

65. Complainant realleges each allegation contained in Paragraphs "1" through "64" with the same force and effect as if fully set forth herein.
66. Pursuant to 40 C.F.R. § 280.41(a), owners and operators are required to ensure that UST system tanks must be monitored at least every thirty (30) days for releases from tanks using one of the methods listed in § 280.43(d) through (h).
67. Pursuant to 40 C.F.R. § 280.45(b), the results of any of release detection sampling, testing or monitoring must be maintained for at least 1 year.
68. Pursuant to 40 C.F.R. § 280.34, owners and operators of UST Systems must fully cooperate with requests from the implementing agency for document submission and must maintain records evidencing compliance with release detection requirements. These records must be immediately available or must be provided upon request for inspection.

Brooks Super Duper

69. In its Information Request Letter dated August 27, 2010, EPA requested, pursuant to Section 9005 of the Act and 40 C.F.R. § 280.34, records documenting that release detection had been conducted on UST Systems 1, 2, and 3 for the previous consecutive twelve month period from the time of its response which EPA requested be submitted within fifteen (15) days.
70. In the September 14, 2010, IRL response, Respondent provided release detection (ATG) records for UST Systems numbers 1, 2 and 3 for the months of May 2010, June 2010, July 2010, August 2010 and part of September 2010. In a previous IRL Response dated January 18, 2010 for Brooks Super Duper, Respondent provided ATG records for UST Systems numbers 1, 2 and 3 for the months of September 2009, October 2009, November 2009, December 2009 and part of January 2010.
71. Respondent did not provide in its September 14, 2010 IRL response and to date, has not provided any release detection records for the tanks for UST Systems numbers 1, 2 and 3 for Brooks Super Duper for the months of February 2010, March 2010 and April 2010.
72. Respondent's failure to maintain and provide to EPA the results of release detection monitoring for Brooks Super Duper, UST Systems numbers 1, 2 and 3, for the months of February 2010, March 2010 and April 2010, constitutes a violation of 40 C.F.R. §

280.45(b) and 40 C.F.R. § 280.34.

Dutch Hollow Market

73. In its Information Request Letter dated August 27, 2010, EPA requested, pursuant to Section 9005 of the Act and 40 C.F.R. § 280.34, records documenting that release detection had been conducted on UST systems numbers 001, 002 and 003 for the previous consecutive twelve month period from the time of its response which EPA requested be submitted within fifteen (15) days.
74. In the September 14, 2010, IRL response, Respondent provided release detection (ATG) records for the months of January, February, March, April, June, July, August and part of September of 2010. Respondent stated in the September 14, 2010, IRL response that the ATG record for May 2010 was misplaced. Respondent also stated in the September 14, 2010, IRL response, that the store was closed from November 30, 2009, through December 2009, during which time the building interior was being remodeled and all tank monitor printouts were lost during this time.
75. Respondent did not maintain and provide to EPA any tank release detection records for tanks of UST Systems numbers 001, 0002 and 003 for Dutch Hollow Market for October 2009, November 2009, December 2009, and May 2010.
76. Respondent's failure to maintain and to provide the results of release detection monitoring for the tanks at Dutch Hollow Market UST Systems numbers 001, 002 and 003, for the months of October 2009, November 2009, December 2009, and May 2010, constitutes a violation of 40 C.F.R. § 280.45(b) and 40 C.F.R. § 280.34.

Tubby's Corner Quick Stop

77. In its Information Request Letter dated August 27, 2010, EPA requested, pursuant to Section 9005 of the Act and 40 C.F.R. § 280.34, records documenting that release detection had been conducted on UST systems numbers 4, 6, and 7 for the previous consecutive twelve month period from the time of its response which EPA requested be submitted within fifteen (15) days.
78. In the September 14, 2010, IRL response for Tubby's Corner Quick Stop, Respondent provided release detection records for all three tanks for the following months, all in 2010: January, February, March, April, May, June, July, August and part of September. In an earlier January 18, 2010 IRL response for Tubby's Corner Quick Stop, Respondent provided release detection records for September 2009 and November 2009.
79. Respondent did not maintain and provide to EPA tank release detection records for tanks for UST Systems numbers 4, 6, and 7 at Tubby's Corner Quick Stop for the month of December 2009.
80. Respondent's failure to maintain and to provide to EPA the results of release detection monitoring for tanks for UST Systems numbers 4, 6 and 7 at Tubby's Corner Quick Stop

for the month of December 2009 constitutes a violation of 40 C.F.R. § 280.45(b) and 40 C.F.R. § 280.34.

Count 3: Failure to install overfill prevention equipment

UST System number 1 at Cassadaga Supermarket

UST Systems numbers 007 and 008 at Pine Valley Busymart

UST System number 4 at Schmitt's Robo Mart

UST System 003 at T-Burg Foodline, Inc.

81. Complainant realleges each allegation contained in Paragraphs "1" through "80" with the same force and effect as if fully set forth herein.
82. Pursuant to 40 C.F.R. § 280.21(d), to prevent overfill associated with transfer of product to an UST system, owners and operators of an "existing tank system" (defined in 40 C.F.R. § 280.12 as a tank system that will be used to contain regulated substances which was installed before December 22, 1988) must have installed overfill prevention equipment [as specified in 40 C.F.R. § 280.20(c)] by December 22, 1998.
83. Pursuant to 40 C.F.R. § 280.20(c), to prevent overfill associated with transfer of product to an UST system, owners and operators of a "new tank system" (defined in 40 C.F.R. § 280.12 as a tank system that will be used to contain regulated substances which is installed after December 22, 1988) must have overfill prevention equipment at the time of installation.
84. At the time of the Inspections, all of Respondent's UST Systems at Cassadaga Supermarket, Pine Valley Busymart, Schmitt's Robo Mart, and T-Burg Foodline, Inc. were either new or existing tank systems as defined by the regulations and, pursuant to 40 C.F.R. § 280.21(d) and 40 C.F.R. § 280.20(c), were required to have installed overfill prevention equipment at the time of installation or no later than December 22, 1998.

Cassadaga Supermarket

85. During the April 20, 2010 Inspection of Cassadaga Supermarket, an authorized representative for EPA found that UST System 1 did not have overfill prevention equipment.
86. In its August 27, 2010 IRL, EPA referenced the lack of overfill prevention equipment for UST System 1 and requested that Respondent Schmitt provide documentation that overfill prevention equipment had been installed.
87. In the September 14, 2010, IRL response for Cassadaga Supermarket, Respondent provided documentation that a drop tube was installed in UST System number 1 in May 2010, supported by a photocopy of a photograph. The drop tube in the photograph is consistent with proper overfill prevention equipment.

88. Respondent's failure to use overfill prevention equipment from at least April 20, 2010, until May 2010, at Cassadaga Supermarket UST system number 1, constitutes a violation of 40 C.F.R. § 280.20(c) and/or 40 C.F.R. § 280.21(d).

Pine Valley BusyMart

89. During the April 21, 2010 Inspection of Pine Valley BusyMart, an authorized representative for EPA found that UST Systems 007 and 008 did not have overfill prevention equipment.
90. In its August 27, 2010 IRL, EPA referenced the lack of overfill prevention equipment for UST System 007 and 008 and requested that Respondent Schmitt provide documentation that overfill prevention equipment had been installed.
91. In the September 14, 2010, IRL response for Pine Valley BusyMart, Respondent stated that drop tubes were installed in UST Systems numbers 007 and 008 on April 23, 2010 and provided documentation in the form of a photocopy of photographs. The drop tubes in the photographs are consistent with proper overfill prevention equipment.
92. Respondent's failure to use overfill prevention equipment from at least April 21, 2010, until April 23, 2010 at Pine Valley Busymart UST Systems numbers 007 and 008, constitutes a violation of 40 C.F.R. § 280.20(c) and/or 40 C.F.R. § 280.21(d).

Schmitt's Robo Mart

93. During the August 31, 2009 Inspection of Schmitt's Robo Mart, an authorized representative for EPA found that UST System 4 did not have overfill prevention equipment.
94. In its August 27, 2010 IRL, EPA referenced the lack of overfill prevention equipment for UST System 4 and requested that Respondent Schmitt provide documentation that overfill prevention equipment had been installed.
95. In an email to EPA Inspector, Margaret Halley, dated September 11, 2009, Respondent attached a photograph of a drop tube that was installed at the above-mentioned facility.
96. In the September 14, 2010, IRL response for Schmitt's Robo Mart, Williamsville, Respondent stated that a drop tube with an automatic shutoff device was installed the first week in September 2009. The drop tube in the photograph is consistent with proper overfill prevention equipment.
97. Respondent's failure to use overfill prevention equipment on UST System number 4 at Schmitt's Robo Mart, from at least August 31, 2009, until the first week in September, constitutes a violation of 40 C.F.R. § 280.20(c) and/or 40 C.F.R. § 280.21(d).

T-Burg Foodline, Inc.

98. During the June 24, 2009 Inspection of T-Burg Foodline, Inc., an authorized representative for EPA found that UST System 003 did not have overfill prevention equipment.
99. In its August 27, 2010 IRL, EPA referenced the lack of overfill prevention equipment for UST System 003 and requested that Respondent Schmitt provide documentation that overfill prevention equipment had been installed.
100. In the September 14, 2010, IRL response for T-Burg Foodline, Inc, Respondent stated that an overfill prevention device was installed on UST System number 003 on June 26, 2009 and that a photograph had been sent to an EPA representative.
101. Respondent's failure to use overfill prevention equipment on UST System 003 at T-Burg Foodline, Inc. from at least June 24, 2009, until June 26, 2009, constitutes a violation of 40 C.F.R. § 280.20(c) and/or 40 C.F.R. § 280.21(d).

Count 4: Failure to secure and cap a temporarily closed UST after three months

UST Systems numbers 1 and 2 at Ducky's

102. Complainant realleges each allegation contained in Paragraphs "1" through "101" with the same force and effect as if fully set forth herein.
103. 40 C.F.R. § 280.70(b) requires that for any UST system that is temporarily closed for 3 months or more, owners and operators must also comply with the following requirements: (1) Leave vent lines open and functioning; and (2) Cap and secure all other lines, pumps, manways, and ancillary equipment.
104. During the September 1, 2009 Inspection of Ducky's, UST Systems numbers 1 and 2 were in temporary closure, having been closed since March of 2008, but the fill caps had not been locked and secured.
105. In an email to EPA Inspector Margaret Halley, dated September 17, 2009, Respondent Schmitt provided photographs documenting the locking of the fill caps. In the January 18, 2010 IRL response, Respondent again provided photographs showing the locked fill caps.
106. Respondent's failure to cap and secure the temporarily closed UST Systems 1 and 2 at Ducky's constitutes a violation of 40 C.F.R. § 280.70(b).

PROPOSED CIVIL PENALTY

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. Number 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, see 61 Fed. Reg. 69360 (1996); on February 13, 2004, see 69 Fed. Reg. 7121 (2004); and on December 11, 2008, see 73 Fed. Reg. 239 (2008), 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. Section 6991e(d)(2) for each tank for each day of violation occurring between January 30, 1997 and January 12, 2009, is \$11,000. The maximum civil penalty for violations occurring after January 12, 2009 was increased to \$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 UST 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 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, 2010. (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 Respondents to comply with the applicable requirements, Complainant proposes, subject to receipt and evaluation of further relevant information, to assess the following civil penalty:

Total Proposed Penalty Amount for Respondent

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

Count 1: Failure to Monitor, Properly Test and Maintain Records of Testing for Cathodic Protection Systems = \$ 56,194

Count 2: Failure to maintain all records of release detection monitoring for underground storage tanks = \$ 637

Count 3: Failure to install overfill prevention equipment = \$ 7,420

Count 4: Failure to secure and cap a temporarily closed UST after three months = \$ 12,008

Total Penalty = \$76,259

COMPLIANCE ORDER

Based on the foregoing, and pursuant to the authority of Sections 9006 of the Act, 42 U.S.C. § 6991e, 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 Respondents have 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):

Respondent shall, within thirty (30) calendar days of 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 Facilities in this Order.

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 Respondents are 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. Furthermore, in all documents or reports submitted to EPA pursuant to this Compliance Order, the Respondent's 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 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 persons directly responsible 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.

Name

Title

Respondents shall submit the documents specified above to:

**Margaret Halley, Enforcement Officer
U.S. EPA Region 2
Division of Enforcement and Compliance Assistance
RCRA Compliance Branch
290 Broadway, 20st Floor
New York, NY 10007-1866**

NOTICE OF LIABILITY FOR ADDITIONAL CIVIL PENALTIES

Pursuant to Section 9006(a)(3) of the Act, 42 U.S.C. §6991e(a)(3), and in accordance with the Debt Collection and Improvement Act of 1996, Pub. L. Number 104-34, 110 Stat. 1321 (1996) and the regulations promulgated thereunder (see the Civil Monetary Inflation Rule, 73 Fed. Reg. 75340 (December 11, 2008), to be 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 continued noncompliance.

PROCEDURES GOVERNING THIS ADMINISTRATIVE LITIGATION

The rules of procedure governing this civil administrative litigation have been set forth in 64 Fed. Reg. 40138 (July 23, 1999), 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” which are codified at 40 C.F.R. Part 22 (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 thirty (30) days after service of the Complaint. *See* 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 their 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 state 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 intend 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 his 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, such Order shall automatically become final unless Respondent requests a hearing pursuant to 40 C.F.R. § 22.15 within thirty (30) days after such Order is served. 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 thirty (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 therefore 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 thirty (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 Respondents fail 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 judicial review. 40 C.F.R. § 22.27(d).

In order to appeal an initial decision to the Agency's Environmental Appeals Board [EAB; see 40 C.F.R. § 1.25(e)], Respondents 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 forty-five (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 Respondents request 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, Respondents may comment on the charges made in this Complaint, and Respondents may also provide whatever additional information that it believes is relevant to the disposition of this matter, including: (1) actions Respondents have 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 Respondents wish to raise.

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

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

Stuart Keith
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- 3217**

The parties may engage in settlement discussions irrespective of whether Respondents have requested a hearing. 40 C.F.R. § 22.18(b)(1). Respondent's requesting a formal hearing does not prevent them 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.

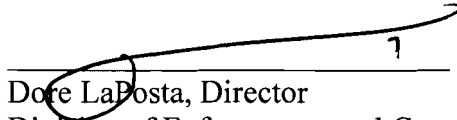
Any settlement that may be reached as a result of an informal settlement conference shall be embodied in a written consent agreement. 40 C.F.R. § 22.18(b)(2). In accepting the consent agreement, Respondents waive their right to contest the allegations in the Complaint and waive their right to appeal 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 their 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 their 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, Respondents wish not to contest the Compliance Order in the Complaint and want to pay the total amount of the proposed penalty within thirty (30) days after receipt of the Complaint, Respondents should promptly contact the Assistant Regional Counsel identified above.

Dated: JUNE 30, 2011



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

To: Maureen T. Schmitt, Owner/CEO
Schmitt Sales, Inc.
2101 St. Rita's Lane
Buffalo, NY 14221

cc: Russ Brauksieck, Chief
Facility Compliance Section
NYSDEC
625 Broadway, 11th Floor
Albany, NY 12233

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-02-2011-7508, and a copy of the Consolidated Rules of Practice, 40 C.F.R. Part 22, by certified mail, return receipt requested, to Maureen T. Schmitt, Owner/CEO, Schmitt Sales, Inc., 2101 St. Rita's Lane, Buffalo, New York 14221. I hand-carried the original and a copy of the Complaint to the Office of Regional Hearing Clerk, United States Environmental Protection Agency, Region 2.

Dated: JUL 13 2011
New York, New York

Smildred M. Bag

Site: **BROOKS SUPER DUPER, 1 THIRD ST, CATTARAUGUS, NY**

Violation: **§280.31(a), (b), and (d) - Failure to Monitor, Properly Test and Maintain Records of Testing for Cathodic Protection Systems**

- 1. Days of noncompliance: **22-Jun-08 14-Sep-10**
- 2. Number of facilities, tanks or pipes: **3**
- 3. Total number of days: **815**

Part 2 - Economic Benefit Component (See BEN computer model v. 4.3):

- 4. One Time Capital & Time Costs: **\$ -**
- 5. Delay Capital & Avoided Costs: **\$ -**
- 6. Avoided Annually Recurring Costs: **\$ 361.00**
- 7. Initial Economic Benefit (4-5+6): **\$ 361.00**
- 8. Final Economic Benefit at Penalty Payment Date: **\$ 462.00**

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

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

Inflation Adjustment Rules:

	Value	Start Date	End Date	Inflation	Value+Inflation Round To	Matrix	Total
10a.	750	6/22/2008	1/12/2009	1.2895	\$ 967.13	10 \$ 970.00	\$ 2,910.00
10b.	750	1/13/2009	9/14/2010	1.4163	\$ 1,062.23	10 \$1,060.00	\$ 3,180.00

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: **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%	\$2,910.00	-
11b. Degree of cooperation or noncooperation:	0%	\$3,180.00	-
12a. Degree of willfulness or negligence:	0%	\$2,910.00	-
12b. Degree of willfulness or negligence:	0%	\$3,180.00	-
13a. History of noncompliance:	0%	\$2,910.00	-
13b. History of noncompliance:	0%	\$3,180.00	-
14a. Unique factors:	0%	\$2,910.00	-
14b. Unique factors:	0%	\$3,180.00	-
15a. Adjusted Matrix Value, (line 10a + Dollar Adjustments in lines 11.a to 14a)			\$2,910.00
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.**
 Justification for Degree of Willfulness or Negligence: **No adjustment was made.**
 Justification for History of Noncompliance: **No adjustment was made.**
 Justification for Unique Factors: **No adjustment was made.**

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

16. Environmental Sensitivity: **Low**
 17. Environmental Sensitivity Multiplier (ESM): **1**

Justification for Environmental Sensitivity Multiplier:

18. Days of Noncompliance Multiplier (DNM): **4**

	Start	End	Days	DNM
18a.	6/22/2008	1/12/2009	205	2
18b.	1/13/2009	9/14/2010	610	2

Calculations for Gravity Based Components:

	Start	End	(AMV)	(ESM)	(DNM)	TOTAL
19a.	6/22/2008	1/12/2009	\$2,910.00	1	2	\$ 5,820.00
19b.	1/13/2009	9/14/2010	\$3,180.00	1	2	\$ 6,360.00

20. Total Gravity-Based Component = **\$ 12,180.00**

21. Economic Benefit Component (from line 8): **\$ 462.00**

22. Gravity-Based Component (from line 20): **\$ 12,180.00**

23. Initial Penalty Target Figure: (line 21 plus line 22): **\$ 12,642.00**

Site: **DUTCH HOLLOW MARKET, 6107 EAST AVON-LIMA ROAD, AVON, NY**

Violation: **§280.31(a) and (b) - Failure to Monitor, Properly Test and Maintain Records of Testing for Cathodic Protection Systems**

- 1. Days of noncompliance: **16-Apr-09 14-Sep-09**
- 2. Number of facilities, tanks or pipes: **3**
- 3. Total number of days: **152**

Part 2 - Economic Benefit Component (See BEN computer model v. 4.3):

- 4. One Time Capital & Time Costs: **\$ -**
- 5. Delay Capital & Avoided Costs: **\$ -**
- 6. Avoided Annually Recurring Costs: **\$ 67.00**
- 7. Initial Economic Benefit (4-5+6): **\$ 67.00**
- 8. Final Economic Benefit at Penalty Payment Date: **\$ 81.00**

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

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

Inflation Adjustment Rules:

	Value	Start Date	End Date	Inflation	Value+Inflation Round To	Matrix	Total
10a.	750	4/16/2009	9/14/2009	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	-
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.**
Justification for Degree of Willfulness or Negligence: **No adjustment was made.**
Justification for History of Noncompliance: **No adjustment was made.**
Justification for Unique Factors: **No adjustment was made.**

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

16. Environmental Sensitivity: **Low**
 17. Environmental Sensitivity Multiplier (ESM): **1**

Justification for Environmental Sensitivity Multiplier:

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

	Start	End	Days	DNM
18a.	4/16/2009	9/14/2009	152	1.5

Calculations for Gravity Based Components:

	Start	End	(AMV)	(ESM)	(DNM)	TOTAL
19a.	4/16/2009	9/14/2009	\$3,180.00	1	1.5	\$ 4,770.00

20. Total Gravity-Based Component = **\$ 4,770.00**

21. Economic Benefit Component (from line 8): **\$ 81.00**

22. Gravity-Based Component (from line 20): **\$ 4,770.00**

23. Initial Penalty Target Figure: (line 21 plus line 22): **\$ 4,851.00**

Site: **Echoes on the Lake, BLACK LAKE ROAD, EDWARDSVILLE, NY**

Violation: **§280.31(a), (b), and (d) - Failure to Monitor, Properly Test and Maintain Records of Testing for Cathodic Protection Systems**

- 1. Days of noncompliance: **22-Jun-08 7-Oct-09**
- 2. Number of facilities, tanks or pipes: **2**
- 3. Total number of days: **473**

Part 2 - Economic Benefit Component (See BEN computer model v. 4.3):

- 4. One Time Capital & Time Costs: **\$ -**
- 5. Delay Capital & Avoided Costs: **\$ -**
- 6. Avoided Annually Recurring Costs: **\$ 146.00**
- 7. Initial Economic Benefit (4-5+6): **\$ 146.00**
- 8. Final Economic Benefit at Penalty Payment Date: **\$ 186.00**

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

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

Inflation Adjustment Rules:

	Value	Start Date	End Date	Inflation	Value+Inflation Round To	Matrix	Total
10a.	750	6/22/2008	1/12/2009	1.2895	\$ 967.13	10 \$ 970.00	\$ 1,940.00
10b.	750	1/13/2009	10/7/2009	1.4163	\$ 1,062.23	10 \$1,060.00	\$ 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: **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%	\$1,940.00	-
11b. Degree of cooperation or noncooperation:	0%	\$2,120.00	-
12a. Degree of willfulness or negligence:	0%	\$1,940.00	-
12b. Degree of willfulness or negligence:	0%	\$2,120.00	-
13a. History of noncompliance:	0%	\$1,940.00	-
13b. History of noncompliance:	0%	\$2,120.00	-
14a. Unique factors:	0%	\$1,940.00	-
14b. Unique factors:	0%	\$2,120.00	-
15a. Adjusted Matrix Value, (line 10a + Dollar Adjustments in lines 11.a to 14a)			\$1,940.00
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.
Justification for Degree of Willfulness or Negligence:	No adjustment was made.
Justification for History of Noncompliance:	No adjustment was made.
Justification for Unique Factors:	No adjustment was made.

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

16. Environmental Sensitivity:	High
17. Environmental Sensitivity Multiplier (ESM):	2

Justification for Environmental Sensitivity Multiplier:

18. Days of Noncompliance Multiplier (DNM):	3
	Start End Days DNM
18a.	6/22/2008 1/12/2009 205 2
18b.	1/13/2009 10/7/2009 268 1

Calculations for Gravity Based Components:

	Start	End	(AMV)	(ESM)	(DNM)	TOTAL
19a.	6/22/2008	1/12/2009	\$1,940.00	2	2	\$ 7,760.00
19b.	1/13/2009	10/7/2009	\$2,120.00	2	1	\$ 4,240.00

20. Total Gravity-Based Component =	\$ 12,000.00
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21. Economic Benefit Component (from line 8):	\$ 186.00
22. Gravity-Based Component (from line 20):	\$ 12,000.00
23. Initial Penalty Target Figure: (line 21 plus line 22):	\$ 12,186.00

Site: **PARKVIEW MARKET, W LAKE RD, MAYVILLE, NY**

Violation: **§280.31(a), (b), and (d) - Failure to Monitor, Properly Test and Maintain Records of Testing for Cathodic Protection Systems**

- 1. Days of noncompliance: **22-Jun-08 28-Jul-09**
- 2. Number of facilities, tanks or pipes: **3**
- 3. Total number of days: **402**

Part 2 - Economic Benefit Component (See BEN computer model v. 4.3):

- 4. One Time Capital & Time Costs: **\$ -**
- 5. Delay Capital & Avoided Costs: **\$ -**
- 6. Avoided Annually Recurring Costs: **\$ 190.00**
- 7. Initial Economic Benefit (4-5+6): **\$ 190.00**
- 8. Final Economic Benefit at Penalty Payment Date: **\$ 243.00**

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

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

Inflation Adjustment Rules:

	Value	Start Date	End Date	Inflation	Value+Inflation Round To	Matrix	Total
10a.	750	6/22/2008	1/12/2009	1.2895	\$ 967.13	10 \$ 970.00	\$ 2,910.00
10b.	750	1/13/2009	7/28/2009	1.4163	\$ 1,062.23	10 \$1,060.00	\$ 3,180.00

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: **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%	\$2,910.00	-
11b. Degree of cooperation or noncooperation:	0%	\$3,180.00	-
12a. Degree of willfulness or negligence:	0%	\$2,910.00	-
12b. Degree of willfulness or negligence:	0%	\$3,180.00	-
13a. History of noncompliance:	0%	\$2,910.00	-
13b. History of noncompliance:	0%	\$3,180.00	-
14a. Unique factors:	0%	\$2,910.00	-
14b. Unique factors:	0%	\$3,180.00	-
15a. Adjusted Matrix Value, (line 10a + Dollar Adjustments in lines 11.a to 14a)			\$2,910.00
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.**
 Justification for Degree of Willfulness or Negligence: **No adjustment was made.**
 Justification for History of Noncompliance: **No adjustment was made.**
 Justification for Unique Factors: **No adjustment was made.**

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

16. Environmental Sensitivity: **High**
 17. Environmental Sensitivity Multiplier (ESM): **2**

Justification for Environmental Sensitivity Multiplier:

18. Days of Noncompliance Multiplier (DNM): **3**

	Start	End	Days	DNM
18a.	6/22/2008	1/12/2009	205	2
18b.	1/13/2009	7/28/2009	197	1

Calculations for Gravity Based Components:

	Start	End	(AMV)	(ESM)	(DNM)	TOTAL
19a.	6/22/2008	1/12/2009	\$2,910.00	2	2	\$ 11,640.00
19b.	1/13/2009	7/28/2009	\$3,180.00	2	1	\$ 6,360.00

20. Total Gravity-Based Component = **\$ 18,000.00**

21. Economic Benefit Component (from line 8): **\$ 243.00**

22. Gravity-Based Component (from line 20): **\$ 18,000.00**

23. Initial Penalty Target Figure: (line 21 plus line 22): **\$ 18,243.00**

Site: **PINE VALLEY BUSYMART, 4520 WATKINS ROAD, PINE VALLEY, NY**

Violation: **§280.31(a) and (b) - Failure to Monitor, Properly Test and Maintain Records of Testing for Cathodic Protection Systems**

- 1. Days of noncompliance: **22-Jun-08 2-Sep-10**
- 2. Number of facilities, tanks or pipes: **1**
- 3. Total number of days: **803**

Part 2 - Economic Benefit Component (See BEN computer model v. 4.3):

- 4. One Time Capital & Time Costs: **\$ -**
- 5. Delay Capital & Avoided Costs: **\$ -**
- 6. Avoided Annually Recurring Costs: **\$ 119.00**
- 7. Initial Economic Benefit (4-5+6): **\$ 119.00**
- 8. Final Economic Benefit at Penalty Payment Date: **\$ 152.00**

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

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

Inflation Adjustment Rules:

	Value	Start Date	End Date	Inflation	Value+Inflation Round To	Matrix	Total
10a.	750	6/22/2008	1/12/2009	1.2895	\$ 967.13	10 \$ 970.00	\$ 970.00
10b.	750	1/13/2009	9/2/2010	1.4163	\$ 1,062.23	10 \$1,060.00	\$ 1,060.00

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: **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%	\$970.00	-
11b. Degree of cooperation or noncooperation:	0%	\$1,060.00	-
12a. Degree of willfulness or negligence:	0%	\$970.00	-
12b. Degree of willfulness or negligence:	0%	\$1,060.00	-
13a. History of noncompliance:	0%	\$970.00	-
13b. History of noncompliance:	0%	\$1,060.00	-
14a. Unique factors:	0%	\$970.00	-
14b. Unique factors:	0%	\$1,060.00	-
15a. Adjusted Matrix Value, (line 10a + Dollar Adjustments in lines 11.a to 14a)			\$970.00
15b. Adjusted Matrix Value, (line 10b + Dollar Adjustments in lines 11.b to 14b)			\$1,060.00

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

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

16. Environmental Sensitivity: **High**
 17. Environmental Sensitivity Multiplier (ESM): **2**

Justification for Environmental Sensitivity Multiplier:

18. Days of Noncompliance Multiplier (DNM): **4**

	Start	End	Days	DNM
18a.	6/22/2008	1/12/2009	205	2
18b.	1/13/2009	9/2/2010	598	2

Calculations for Gravity Based Components:

	Start	End	(AMV)	(ESM)	(DNM)	TOTAL
19a.	6/22/2008	1/12/2009	\$970.00	2	2	\$ 3,880.00
19b.	1/13/2009	9/2/2010	\$1,060.00	2	2	\$ 4,240.00

20. Total Gravity-Based Component = **\$ 8,120.00**

21. Economic Benefit Component (from line 8): **\$ 152.00**

22. Gravity-Based Component (from line 20): **\$ 8,120.00**

23. Initial Penalty Target Figure: (line 21 plus line 22): **\$ 8,272.00**

Site: **BROOKS SUPER DUPER, 1 THIRD ST, CATTARAUGUS, NY**

Violation: **§280.34 and 45(b) - Failure to maintain all records of release detection monitoring for underground storage tanks.**

1. Days of noncompliance: **1-Feb-10 30-Apr-10**
2. Number of facilities, tanks or pipes: **1**
3. Total number of days: **89**

Part 2 - Economic Benefit Component (See BEN computer model v. 4.3):

4. One Time Capital & Time Costs: \$ -
5. Delay Capital & Avoided Costs: \$ -
6. Avoided Annually Recurring Costs: \$ **16.00**
7. Initial Economic Benefit (4-5+6): \$ **16.00**
8. Final Economic Benefit at Penalty Payment Date: \$ **19.00**

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

9. Matrix Value (MV): **100**

Inflation Adjustment Rules:

	Value	Start Date	End Date	Inflation	Value+Inflation Round To	Matrix	Total
10a.	100	2/1/2010	4/30/2010	1.4163	\$ 141.63	10 \$ 140.00	\$ 140.00

Note: Inflation adjustments are defined as:

a. 9.83% increase effective Jan 13,2009

Potential for Harm: **Minor** Extent of Deviation: **Moderate**

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%	\$140.00	-
12a. Degree of willfulness or negligence:	0%	\$140.00	-
13a. History of noncompliance:	0%	\$140.00	-
14a. Unique factors:	0%	\$140.00	-
15a. Adjusted Matrix Value, (line 10a + Dollar Adjustments in lines 11.a to 14a)			\$140.00

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

Justification for Degree of Willfulness or Negligence: **No adjustment was made.**

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

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

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

16. Environmental Sensitivity: **Low**
 17. Environmental Sensitivity Multiplier (ESM): **1**

Justification for Environmental Sensitivity Multiplier:

18. Days of Noncompliance Multiplier (DNM): **1**
 18a. Start End Days DNM
 2/1/2010 **4/30/2010** **89** **1**

Calculations for Gravity Based Components:

	Start	End	(AMV)	(ESM)	(DNM)	TOTAL
19a.	2/1/2010	4/30/2010	\$140.00	1	1	\$ 140.00

20. Total Gravity-Based Component = **\$ 140.00**

21. Economic Benefit Component (from line 8): **\$ 19.00**

22. Gravity-Based Component (from line 20): **\$ 140.00**

23. Initial Penalty Target Figure: (line 21 plus line 22): **\$ 159.00**

Site: **DUTCH HOLLOW MARKET, 6107 EAST AVON-LIMA ROAD, AVON, NY**
 Violation: **§280.34 and 45(b) - Failure to maintain all records of release detection monitoring for underground storage tanks.**

1. Days of noncompliance: **1-Oct-09 31-May-10**
 2. Number of facilities, tanks or pipes: **1**
 3. Total number of days: **243**

Part 2 - Economic Benefit Component (See BEN computer model v. 4.3):

4. One Time Capital & Time Costs: **\$ -**
 5. Delay Capital & Avoided Costs: **\$ -**
 6. Avoided Annually Recurring Costs: **\$ 44.00**
 7. Initial Economic Benefit (4-5+6): **\$ 44.00**
 8. Final Economic Benefit at Penalty Payment Date: **\$ 51.00**

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

9. Matrix Value (MV): **100**

Inflation Adjustment Rules:

	Value	Start Date	End Date	Inflation	Value+Inflation Round To	Matrix	Total
10a.	100	10/1/2009	5/31/2010	1.4163	\$ 141.63	10 \$ 140.00	\$ 140.00

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

Potential for Harm: **Minor** Extent of Deviation: **Moderate**

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%	\$140.00	-
12a. Degree of willfulness or negligence:	0%	\$140.00	-
13a. History of noncompliance:	0%	\$140.00	-
14a. Unique factors:	0%	\$140.00	-
15a. Adjusted Matrix Value, (line 10a + Dollar Adjustments in lines 11.a to 14a)			\$140.00

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

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

16. Environmental Sensitivity: **Low**
 17. Environmental Sensitivity Multiplier (ESM): **1**

Justification for Environmental Sensitivity Multiplier:

18. Days of Noncompliance Multiplier (DNM): **2**
 18a.

	Start	End	Days	DNM
18a.	10/1/2009	5/31/2010	243	2

Calculations for Gravity Based Components:

	Start	End	(AMV)	(ESM)	(DNM)	TOTAL
19a.	10/1/2009	5/31/2010	\$140.00	1	2	\$ 280.00

20. Total Gravity-Based Component = **\$ 280.00**

21. Economic Benefit Component (from line 8): **\$ 51.00**

22. Gravity-Based Component (from line 20): **\$ 280.00**

23. Initial Penalty Target Figure: (line 21 plus line 22): **\$ 331.00**

Site: **TUBBYS CORNER QUICK STOP, 9299 ERIE RD, ANGOLA, NY**

Violation: **§280.34 and 45(b) - Failure to maintain all records of release detection monitoring for underground storage tanks.**

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

Part 2 - Economic Benefit Component (See BEN computer model v. 4.3):

- 4. One Time Capital & Time Costs: **\$ -**
- 5. Delay Capital & Avoided Costs: **\$ -**
- 6. Avoided Annually Recurring Costs: **\$ 6.00**
- 7. Initial Economic Benefit (4-5+6): **\$ 6.00**
- 8. Final Economic Benefit at Penalty Payment Date: **\$ 7.00**

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

- 9. Matrix Value (MV): **100**

Inflation Adjustment Rules:

	Value	Start Date	End Date	Inflation	Value+Inflation Round To	Matrix	Total
10a.	100	12/1/2009	12/31/2009	1.4163	\$ 141.63	10 \$ 140.00	\$ 140.00

Note: Inflation adjustments are defined as:

- a. **9.83% increase effective Jan 13,2009**

Potential for Harm: **Minor** Extent of Deviation: **Moderate**

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%	\$140.00	-
12a. Degree of willfulness or negligence:	0%	\$140.00	-
13a. History of noncompliance:	0%	\$140.00	-
14a. Unique factors:	0%	\$140.00	-
15a. Adjusted Matrix Value, (line 10a + Dollar Adjustments in lines 11.a to 14a)			\$140.00

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

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

16. Environmental Sensitivity: **Low**
 17. Environmental Sensitivity Multiplier (ESM): **1**

Justification for Environmental Sensitivity Multiplier:

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

	Start	End	Days	DNM
18a.	12/1/2009	12/31/2009	31	1

Calculations for Gravity Based Components:

	Start	End	(AMV)	(ESM)	(DNM)	TOTAL
19a.	12/1/2009	12/31/2009	\$140.00	1	1	\$ 140.00

20. Total Gravity-Based Component = **\$ 140.00**

21. Economic Benefit Component (from line 8): **\$ 7.00**

22. Gravity-Based Component (from line 20): **\$ 140.00**

23. Initial Penalty Target Figure: (line 21 plus line 22): **\$ 147.00**

Site: **CASSADAGA SUPERMARKET INC., ROUTE 60, CASSADAGA, NY**
 Violation: **§280.20(c) and 21(d) - Failure to install overfill prevention equipment.**

- 1. Days of noncompliance: **20-Apr-10 1-May-10**
- 2. Number of facilities, tanks or pipes: **1**
- 3. Total number of days: **12**

Part 2 - Economic Benefit Component (See BEN computer model v. 4.3):

- 4. One Time Capital & Time Costs: **\$ 174.00**
- 5. Delay Capital & Avoided Costs: **\$ 174.00**
- 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+Inflation Round To	Matrix	Total
10a.	750	4/20/2010	5/1/2010	1.4163	\$ 1,062.23	10 \$1,060.00	\$ 1,060.00

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%	\$1,060.00	-
12a. Degree of willfulness or negligence:	0%	\$1,060.00	-
13a. History of noncompliance:	0%	\$1,060.00	-
14a. Unique factors:	0%	\$1,060.00	-
15a. Adjusted Matrix Value, (line 10a + Dollar Adjustments in lines 11.a to 14a)			\$1,060.00

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

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

16. Environmental Sensitivity: **Low**
 17. Environmental Sensitivity Multiplier (ESM): **1**

Justification for Environmental Sensitivity Multiplier:

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

	Start	End	Days	DNM
18a.	4/20/2010	5/1/2010	12	1

Calculations for Gravity Based Components:

	Start	End	(AMV)	(ESM)	(DNM)	TOTAL
19a.	4/20/2010	5/1/2010	\$1,060.00	1	1	\$ 1,060.00

20. Total Gravity-Based Component = **\$ 1,060.00**

21. Economic Benefit Component (from line 8): **\$ -**
 22. Gravity-Based Component (from line 20): **\$ 1,060.00**
 23. Initial Penalty Target Figure: (line 21 plus line 22): **\$ 1,060.00**

Site: **PINE VALLEY BUSYMART, 4520 WATKINS ROAD, PINE VALLEY, NY**
 Violation: **§280.20(c) and 21(d) - Failure to install overfill prevention equipment.**

- 1. Days of noncompliance: **21-Apr-10 23-Apr-10**
- 2. Number of facilities, tanks or pipes: **2**
- 3. Total number of days: **3**

Part 2 - Economic Benefit Component (See BEN computer model v. 4.3):

- 4. One Time Capital & Time Costs: **\$ 347.00**
- 5. Delay Capital & Avoided Costs: **\$ 347.00**
- 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+Inflation Round To	Matrix	Total
10a.	750	4/21/2010	4/23/2010	1.4163	\$ 1,062.23	10 \$ 1,060.00	\$ 2,120.00

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%	\$2,120.00	-
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.**
 Justification for Degree of Willfulness or Negligence: **No adjustment was made.**
 Justification for History of Noncompliance: **No adjustment was made.**
 Justification for Unique Factors: **No adjustment was made.**

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

16. Environmental Sensitivity: **High**
 17. Environmental Sensitivity Multiplier (ESM): **2**

Justification for Environmental Sensitivity Multiplier:

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

	Start	End	Days	DNM
18a.	4/21/2010	4/23/2010	3	1

Calculations for Gravity Based Components:

	Start	End	(AMV)	(ESM)	(DNM)	TOTAL
19a.	4/21/2010	4/23/2010	\$2,120.00	2	1	\$ 4,240.00

20. Total Gravity-Based Component = **\$ 4,240.00**

21. Economic Benefit Component (from line 8): **\$ -**
 22. Gravity-Based Component (from line 20): **\$ 4,240.00**
 23. Initial Penalty Target Figure: (line 21 plus line 22): **\$ 4,240.00**

Site: **SCHMITT'S ROBO MART, 5095 MAIN ST & ROYAL PARKWAY, WILLIAMSVILLE, NY**
 Violation: **§280.20(c) and 21(d) - Failure to install overfill prevention equipment.**

- 1. Days of noncompliance: **31-Aug-09 1-Sep-09**
- 2. Number of facilities, tanks or pipes: **1**
- 3. Total number of days: **2**

Part 2 - Economic Benefit Component (See BEN computer model v. 4.3):

- 4. One Time Capital & Time Costs: **\$ 175.00**
- 5. Delay Capital & Avoided Costs: **\$ 175.00**
- 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+Inflation Round To	Matrix	Total
10a.	750	8/31/2009	9/1/2009	1.4163	\$ 1,062.23	10 \$ 1,060.00	\$ 1,060.00

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%	\$1,060.00	-
12a. Degree of willfulness or negligence:	0%	\$1,060.00	-
13a. History of noncompliance:	0%	\$1,060.00	-
14a. Unique factors:	0%	\$1,060.00	-
15a. Adjusted Matrix Value, (line 10a + Dollar Adjustments in lines 11.a to 14a)			\$1,060.00

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

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

16. Environmental Sensitivity: **Low**
 17. Environmental Sensitivity Multiplier (ESM): **1**

Justification for Environmental Sensitivity Multiplier:

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

	Start	End	Days	DNM
18a.	8/31/2009	9/1/2009	2	1

Calculations for Gravity Based Components:

	Start	End	(AMV)	(ESM)	(DNM)	TOTAL
19a.	8/31/2009	9/1/2009	\$1,060.00	1	1	\$ 1,060.00

20. Total Gravity-Based Component = **\$ 1,060.00**

21. Economic Benefit Component (from line 8): **\$ -**
 22. Gravity-Based Component (from line 20): **\$ 1,060.00**
 23. Initial Penalty Target Figure: (line 21 plus line 22): **\$ 1,060.00**

Site: **T-BURG FOODLINE, INC., ROUTE 96, TRUMANSBURG, NY**
 Violation: **§280.20(c) and 21(d) - Failure to install overfill prevention equipment.**

- 1. Days of noncompliance: **24-Jun-09 26-Jun-09**
- 2. Number of facilities, tanks or pipes: **1**
- 3. Total number of days: **3**

Part 2 - Economic Benefit Component (See BEN computer model v. 4.3):

- 4. One Time Capital & Time Costs: **\$ 164.00**
- 5. Delay Capital & Avoided Costs: **\$ 164.00**
- 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+Inflation Round To	Matrix	Total
10a.	750	6/24/2009	6/26/2009	1.4163	\$ 1,062.23	10 \$1,060.00	\$ 1,060.00

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%	\$1,060.00	-
12a. Degree of willfulness or negligence:	0%	\$1,060.00	-
13a. History of noncompliance:	0%	\$1,060.00	-
14a. Unique factors:	0%	\$1,060.00	-
15a. Adjusted Matrix Value, (line 10a + Dollar Adjustments in lines 11.a to 14a)			\$1,060.00

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

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

16. Environmental Sensitivity: **Low**
 17. Environmental Sensitivity Multiplier (ESM): **1**

Justification for Environmental Sensitivity Multiplier:

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

	Start	End	Days	DNM
18a.	6/24/2009	6/26/2009	3	1

Calculations for Gravity Based Components:

	Start	End	(AMV)	(ESM)	(DNM)	TOTAL
19a.	6/24/2009	6/26/2009	\$1,060.00	1	1	\$ 1,060.00

20. Total Gravity-Based Component = **\$ 1,060.00**

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

22. Gravity-Based Component (from line 20): **\$ 1,060.00**

23. Initial Penalty Target Figure: (line 21 plus line 22): **\$ 1,060.00**

Site: **Ducky's (formerly CROSBY DAIRY STORE), W. 28 MAIN STREET, FRIENDSHIP, NY**
 Violation: **§280.70(b) - Failure to secure and cap a temporarily closed UST after three months.**

- 1. Days of noncompliance: **30-Jun-08 17-Sep-09**
- 2. Number of facilities, tanks or pipes: **2**
- 3. Total number of days: **445**

Part 2 - Economic Benefit Component (See BEN computer model v. 4.3):

- 4. One Time Capital & Time Costs: **\$ 32.00**
- 5. Delay Capital & Avoided Costs: **\$ 26.00**
- 6. Avoided Annually Recurring Costs: **\$ -**
- 7. Initial Economic Benefit (4-5+6): **\$ 6.00**
- 8. Final Economic Benefit at Penalty Payment Date: **\$ 8.00**

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

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

Inflation Adjustment Rules:

	Value	Start Date	End Date	Inflation	Value+Inflation Round To	Matrix	Total
10a.	750	6/30/2008	1/12/2009	1.2895	\$ 967.13	10 \$ 970.00	\$ 1,940.00
10b.	750	1/13/2009	9/17/2009	1.4163	\$ 1,062.23	10 \$1,060.00	\$ 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: **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%	\$1,940.00	-
11b. Degree of cooperation or noncooperation:	0%	\$2,120.00	-
12a. Degree of willfulness or negligence:	0%	\$1,940.00	-
12b. Degree of willfulness or negligence:	0%	\$2,120.00	-
13a. History of noncompliance:	0%	\$1,940.00	-
13b. History of noncompliance:	0%	\$2,120.00	-
14a. Unique factors:	0%	\$1,940.00	-
14b. Unique factors:	0%	\$2,120.00	-
15a. Adjusted Matrix Value, (line 10a + Dollar Adjustments in lines 11.a to 14a)			\$1,940.00
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.**
 Justification for Degree of Willfulness or Negligence: **No adjustment was made.**
 Justification for History of Noncompliance: **No adjustment was made.**
 Justification for Unique Factors: **No adjustment was made.**

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

16. Environmental Sensitivity: **High**
 17. Environmental Sensitivity Multiplier (ESM): **2**

Justification for Environmental Sensitivity Multiplier:

18. Days of Noncompliance Multiplier (DNM): **3**

	Start	End	Days	DNM
18a.	6/30/2008	1/12/2009	197	2
18b.	1/13/2009	9/17/2009	248	1

Calculations for Gravity Based Components:

	Start	End	(AMV)	(ESM)	(DNM)	TOTAL
19a.	6/30/2008	1/12/2009	\$1,940.00	2	2	\$ 7,760.00
19b.	1/13/2009	9/17/2009	\$2,120.00	2	1	\$ 4,240.00

20. Total Gravity-Based Component = **\$ 12,000.00**

21. Economic Benefit Component (from line 8): **\$ 8.00**

22. Gravity-Based Component (from line 20): **\$ 12,000.00**

23. Initial Penalty Target Figure: (line 21 plus line 22): **\$ 12,008.00**