



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4  
SAM NUNN  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA GEORGIA 30303-8960

2010 MAR 23 PM 3:04  
HEARING CLERK

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Kanchanlal Patel  
2403 Barnesdale Way  
Albany, GA 31707-2407

Re: Administrative Complaint  
Docket No.: RCRA-UST-04-2010-002

Dear Mr. Patel:

Enclosed please find an Administrative Complaint and Compliance Order (hereinafter "Complaint"), which has been issued pursuant to the authority provided in Section 9006 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6991e.

The Complaint specifies the United States Environmental Protection Agency's (EPA's) determination that you have failed to comply with the terms of the Consent Agreement and Final Order (CAFO), which you entered into with EPA on December 8, 2008. The CAFO addressed alleged violations of the Underground Storage Tank (UST) Program at the "Super Mart" facility that you formerly operated at 1420 U.S. Highway 19 South, in Leesburg, Georgia. The CAFO required that you correct the UST violations at the facility and certify to EPA within twenty (20) days of your receipt of the CAFO that such corrections had been completed and the UST system had been returned to compliance. The Complaint states in full the reasons for EPA's determination that you failed to comply with the terms of the CAFO. A proposed civil penalty of Thirty Seven Thousand, Five Hundred Dollars (\$ 37,500) is assessed in the Complaint.

The rules of procedure governing the civil administrative litigation are set forth in the "Consolidated Rules of Civil Practice Governing the Administrative Assessment of Civil Penalties, and the Revocation/Termination or Suspension of Permits" (Consolidated Rules), which are codified at 40 C.F.R. Part 22. A copy of the Consolidated Rules accompanies this Complaint.

By law, you have the right to request a Hearing on the Complaint. Should you desire to contest any matter of law or material fact set forth in the Complaint or the appropriateness of the proposed penalty, you must file a written Answer and request a hearing with the Regional Hearing Clerk. Pursuant to Section 9006e of RCRA, 42 U.S.C. § 6991e, and 40 C.F.R. § 22.15, such Answer and request for a hearing must be filed within thirty (30) days of receipt of this letter. Failure your part to file an Answer within thirty (30) days may result in the issuance of a Default Order pursuant to 40 C.F.R. § 22.17.

Internet Address (URL) • <http://www.epa.gov>

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Any Answer to the Complaint must clearly and directly admit, deny or explain each of the factual allegations in the Complaint, must specify the issues which are in dispute, must state the specific factual or legal grounds for your defense, and must state whether you are requesting a hearing to 40 C.F.R. § 22.15. Failure to admit, deny, or explain any material factual allegation contained in the Complaint will be construed as an admission of that allegation.

Your Answer should be addressed to:

Regional Hearing Clerk  
U.S. EPA, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

A copy of your Answer and/or hearing request and all other documents that you fill in this action also should be sent to:

Adam Dilts  
Assistant Regional Counsel  
U.S. EPA, Region 4  
Office of Environmental Accountability  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

It is EPA's policy to encourage all parties against whom it files a Complaint to pursue the possibility of settlement. Notwithstanding a request for a hearing, you may request a settlement conference with EPA to discuss the allegations of the Complaint or the amount of the proposed penalty. A request for a settlement conference alone however, will not stay the thirty (30) day period for filing an answer and hearing request. If you desire a hearing, an Answer should be filed.

If you have questions or wish to arrange an informal settlement conference, please contact Adam Dilts, Assistant Regional Counsel, at (404) 562-9581. EPA encourages your prompt attention to this matter.

Sincerely,

  
G. Alan Farmer, Director  
RCRA Division

Enclosures

cc: Regional Hearing Clerk

**BEFORE THE**  
**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
**REGION 4**

RECEIVED  
EPA REGION 4  
2010 MAR 23 PM 3:04

**IN THE MATTER OF:** ) **RCRA-UST-04-2010-002**  
)  
**Kanchanal Patel** ) **Proceeding under Section 9006**  
**2403 Barnesdale Way** ) **of the Resource Conservation**  
**Albany, Georgia 31707** ) **and Recovery Act, as amended,**  
) **42 U.S.C. § 6991e**  
)  
**RESPONDENT.** )

**ADMINISTRATIVE COMPLAINT AND COMPLIANCE ORDER**

**I. INTRODUCTION**

This Administrative Complaint, Compliance Order and Notice of Opportunity for Hearing (Complaint) is issued under the authority vested in the Administrator of the United States Environmental Protection Agency (EPA), pursuant to 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 referred to as 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 (Consolidated Rules), Title 40 of the Code of Federal Regulations (40 C.F.R.) Part 22. The administrator has delegated this authority to the EPA Region 4 Regional Administrator, who has in turn delegated it to the EPA Region 4 RCRA Division Director (Complainant).

EPA hereby notifies Kanchanal Patel (Respondent) that Complainant has determined that Respondent has violated the terms of a Consent Agreement incorporated into a Final Order issued in accordance with the Consolidated Rules on December 8, 2008. The Final Order was issued pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e, and disposed of Respondent's alleged violations of Subtitle I of RCRA, EPA's regulations thereunder at 40 C.F.R. Part 280, and the Georgia Rules for Underground Storage Management (GUST Rules) Chapter 391-3-15.

Section 9006 of RCRA, 42 U.S.C. § 6991e, authorizes EPA to take an enforcement action whenever it is determined that a violator fails to comply with an order issued pursuant to that Section. Section 9006(a)(3), 42 U.S.C. § 6991e(a)(3), provides that such violator shall be liable for a civil penalty of not more than \$37,500 for each day of continued noncompliance.

Effective July 9, 1991, pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c and 40 C.F.R. Part 281, Subpart A, the State of Georgia was granted final authorization to administer a state UST management program in lieu of the Federal UST management program established

under Subtitle I of RCRA, 42 U.S.C. §§ 6991 – 6991*i*. Through this final authorization, the provisions of the State of Georgia’s UST management program are enforceable by EPA pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991*e*.

EPA has given the Georgia Environmental Protection Division prior notice of the issuance of this Complaint in accordance with Section 9006(a)(2) of RCRA, 42 U.S.C. § 6991*e*(a)(2).

## **II. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. Respondent entered into a Consent Agreement, Docket Number RCRA-UST-04-2008-01 (Consent Agreement), with EPA to resolve alleged violations of Section 9006 of RCRA, 42 U.S.C. § 6991*e*, and the regulations promulgated pursuant thereto, set forth at 40 C.F.R. Part 280, and GUST Chapter 391-3-15.
2. Respondent’s alleged violations of Section 9006 of RCRA, 42 U.S.C. § 6991*e*, related to his operation of a UST system located at 1420 U.S. Highway 19 South, Leesburg, Georgia (the “facility”).
3. The Consent Agreement was filed with the EPA Region 4 Regional Hearing Clerk and incorporated into a Final Order issued by the EPA Region 4 Regional Judicial Officer on December 8, 2008.
4. Pursuant to the terms of the Consent Agreement and Final Order (CAFO), Respondent was required to comply with all terms of the CAFO immediately upon its filing with the Regional Hearing Clerk.
5. Pursuant to Paragraph 20 of the CAFO, Respondent was required to submit to EPA, within twenty (20) calendar days of receipt of a final copy of the CAFO, a certification signed by Respondent certifying compliance with certain specified requirements of 40 C.F.R. Part 280.
6. Pursuant to Paragraph 23 of the CAFO, Respondent waived any right to contest the EPA allegations set forth therein.
7. Pursuant to Paragraph 23 of the CAFO, Respondent waived any right to appeal the CAFO.
8. Pursuant to Paragraph 24 of the CAFO, Respondent waived any right to challenge the validity of the CAFO or the settlement of matters addressed therein on the basis of any issue related to the Paperwork Reduction Act.
9. Pursuant to Paragraph 25 of the CAFO, Respondent waived any right pursuant to 40 C.F.R. § 22.8, to be served with and reply to any memorandum or communication addressed to EPA officials, or to be present during any discussion with EPA officials,

where the purpose of such discussion, memorandum or communication was to persuade such officials to accept and issue the CAFO.

10. Pursuant to Paragraph 30 of the CAFO, EPA reserved the right to enforce the terms and conditions therein.
11. Pursuant to Paragraph 34 of the CAFO, the provisions therein shall be deemed satisfied upon a determination by Complainant that Respondent has fully completed the actions required in the CAFO.
12. Pursuant to Paragraph 37 of the CAFO, change in the ownership, partnership, corporate, or legal status relating to the facility located at 1420 U.S. Highway 19 South in Leesburg, Georgia, in no way alters Respondent's obligations and responsibilities under the CAFO.
13. Respondent received a final copy of the CAFO on December 13, 2008.
14. Pursuant to the terms of the CAFO, Respondent was required to submit a signed certification to EPA certifying compliance with certain specified requirements of 40 C.F.R. Part 280, by January 2, 2009.
15. On December 19, 2008, EPA received an email communication from Elizabeth Fleming, Respondent's representative, requesting an extension of Respondent's date for certification required by the CAFO.
16. EPA and Respondent agreed to extend the date of certification required by the CAFO to January 19, 2009.
17. Respondent failed to certify compliance as required by the CAFO on or before January 19, 2009.
18. On January 29, 2009, EPA contacted Ms. Fleming to inquire into Respondent's compliance status with the CAFO.
19. On January 29, 2009, EPA was informed that Ms. Fleming was unaware of Respondent's compliance status with the CAFO.
20. On April 14, 2009, EPA contacted Ms. Fleming regarding Respondent's failure to comply with the terms of the CAFO.
21. On April 14, 2009, Ms. Fleming informed EPA that she was unaware of Respondent's compliance status and provided EPA with Respondent's contact information so that EPA could contact Respondent directly.
22. On April 14, 2009, EPA attempted to contact Respondent to inquire into the compliance status of the facility and left a message for Respondent to contact EPA.

23. On June 16, 2009, EPA mailed Respondent a Noncompliance Notice Letter to notifying him of his noncompliance with the terms of the CAFO, specifying the civil penalties authorized under Section 9006(a)(3), 42 U.S.C. § 6991e(a)(3), for such noncompliance, and requesting that Respondent contact EPA.
24. On June 18, 2009, Respondent received EPA's June 16, 2009, Noncompliance Letter.
25. On October 27, 2009, EPA conducted a UST Compliance Inspection of the facility and determined that the UST system was being operated by a new operator.
26. To date, Respondent has failed to comply with the terms of the CAFO.

### COUNT 1

27. The allegations of Paragraphs 1 through 26 of this Complaint are incorporated herein by reference.
28. Pursuant to the CAFO, Respondent was required to certify to EPA compliance with certain specified requirements of 40 C.F.R. Part 280, by January 2, 2009.
29. Pursuant to an agreement between EPA and Respondent, the date of certification to EPA required by the CAFO was extend to January 19, 2009.
30. Respondent failed to certify compliance to EPA by January 19, 2009.
31. Respondent violated the terms of the CAFO.

### III. PROPOSED PENALTY

Pursuant to Section 9006(a)(3) of RCRA, 42 U.S.C. § 6991e(a)(3), and 40 C.F.R. Part 19, EPA may assess a civil penalty of not more than \$25,000 for each day of continued noncompliance with an order issued pursuant to Section 9006(a) of RCRA, 42 U.S.C. § 6991e(a). Pursuant to the Debt Collection and Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321 (1996), and the regulations set forth at 40 C.F.R. Part 19 (Adjustment of Civil Monetary Penalties for Inflation), for violations occurring on and after January 13, 2009, the statutory maximum penalty for each day of continued noncompliance with an order issued pursuant to Section 9006(a) of RCRA, 42 U.S.C. § 6991e(a), is \$37,500. Based upon the facts alleged in this Complaint and taking into account the seriousness of the violations and any good faith efforts by Respondent to comply with the applicable requirements, Complainant proposes, subject to receipt and evaluation of further relevant information, **a civil penalty of thirty-seven thousand, five hundred dollars (\$37,500)** against Respondent.

### IV. COMPLIANCE ORDER

Respondent no longer operates the subject facility, and therefore, is unable to certify the compliance status of the UST system at issue. As such, compliance with this Order shall be

deemed satisfied upon Respondent's full payment of the penalty. If Respondent does not contest the findings and assessments set out above, payment of the proposed penalty shall be made by cashier's check, certified check, or other payment acceptable to EPA, payable to: **Treasurer, United States of America**. Such payment shall be made within thirty (30) days of receipt of this Complaint. The facility name and the docket number for this matter shall be referenced on the face of the check. Payments shall be tendered to:

United States Environmental Protection Agency  
Fines and Penalties - CFC  
P.O. Box 979077  
St. Louis, Missouri 63197-9000

If Respondent sends payment by non-U.S. Postal express mail delivery, the payment shall be sent to:

U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
ATTN Box 979077  
St. Louis, Missouri 63101  
Contact: Natelie Pearson  
(314) 418-4087

If paying by ACH, Respondent shall remit payment to:

PNC Bank  
808 17<sup>th</sup> Street NW  
Washington, DC 20074  
Contact: Jesse White, (301) 887-6548  
ABA: 051036706  
Transaction Code 22 – checking  
Environmental Protection Agency, Account 310006  
CTX Format

If paying by On Line Payment, Respondent shall access this payment option via:

WWW.PAY.GOV  
Enter "SFO 1.1" in the search field  
Select "EPA Miscellaneous Payments – Cincinnati Finance Center"  
Open the form and complete the required fields

Respondent shall submit a copy of the payment to the following addressees:

Patricia A. Bullock  
Regional Hearing Clerk  
U.S. EPA - Region 4

61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8690

and to:

Bill Truman  
UST Section – 10th Floor  
U.S. EPA – Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8690

Alternatively, Respondent has the right to contest the allegations and/or the proposed penalty specified herein by requesting a hearing pursuant to 40 C.F.R. § 22.15(c), as specified below in Section V below. If a hearing is requested, compliance with this Order shall be deemed satisfied upon Respondent's full payment of the final penalty consistent with the payment terms specified in the Final Order.

#### **V. OPPORTUNITY TO REQUEST A HEARING**

Pursuant to 40 C.F.R. § 22.15(c), Respondent has the right to request a hearing to contest any matter of law or material in this Complaint and the appropriateness of the proposed penalty. To request a hearing, Respondent must file a written Answer to the Complaint with the Regional Hearing Clerk, U.S. EPA Region 4, 61 Forsyth Street, Atlanta, Georgia 30303, **within thirty (30) days of receipt of this Complaint**. The Answer must clearly and directly admit, deny, or explain each of the factual allegations in the Complaint of which the Respondent has any knowledge. If Respondent has no knowledge of a particular factual allegation, the Answer should so state. The Answer should contain: (1) the circumstances or arguments which are alleged to constitute the grounds of any defense; (2) the facts which Respondent disputes; (3) the basis for opposing any proposed relief; and, (4) a statement as to whether a hearing is requested. The denial of any material fact or the raising of any affirmative defense shall be construed as a request for a hearing. Failure of the Respondent to admit, deny, or explain any material allegation in the Complaint shall constitute an admission of such allegations.

**Respondent's failure to file a written answer within thirty (30) days of receipt of this Complaint may result in the filing of a Motion for Default and the issuance of a Default Order. Default by the Respondent constitutes, for purposes of the pending proceedings, an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations. Any penalty assessed in the Default Order shall become due thirty (30) days after the Default Order becomes final.**

A hearing requested by Respondent will be conducted in accordance with the Consolidated Rules of Practice. A copy of these rules is enclosed with this Complaint.

The original and one copy of Respondent's Answer and all other documents that Respondent files in this action should be filed with the Regional Hearing Clerk. Such Answer and other documents must be sent to:



Regional Hearing Clerk  
U.S. EPA Region 4  
61 Forsyth St., S.W.  
Atlanta, Georgia 30303

A copy of Respondent's Answer and all other documents that Respondent files in this action should be sent to the following EPA attorney representing EPA in this matter:

Adam Dilts  
Assistant Regional Counsel  
U.S. EPA Region 4  
Office of Environmental Accountability  
61 Forsyth St., S.W.  
Atlanta, Georgia 30303

## **VI. SETTLEMENT CONFERENCE**

Complainant encourages settlement of this proceeding at any time after issuance of the Complaint if such settlement is consistent with the provisions and objectives of RCRA. Whether or not a hearing is requested, Respondent may request a settlement conference with Complainant to discuss the allegations of the Complaint and the amount of the proposed penalty. **A request for a settlement conference, however, does not relieve Respondent of its responsibility to file a timely Answer to the Complaint.**

In the event settlement is reached, its terms shall be expressed in a written Consent Agreement prepared by Complainant, signed by the parties, and incorporated into a Final Order signed by the Regional Administrator or his designee. Execution of the Consent Agreement shall constitute a waiver of Respondent's right to contest the Complaint allegations or appeal the Final Order accompanying the Consent Agreement.

If you wish to arrange a settlement conference, you or your legal counsel should contact Adam Dilts, Assistant Regional Counsel, at (404) 562-9581, prior to the expiration of the thirty (30) day period following your receipt of this Complaint. However, such request for a settlement conference does not relieve you of your responsibility to file an Answer within thirty (30) days following your receipt of this Complaint.

## **VII. EXHAUSTION OF ADMINISTRATIVE REMEDIES**

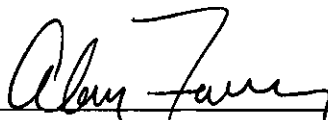
The decision issued by the Presiding Officer after a hearing constitutes an initial decision. Likewise, a Default Order issued by the Presiding Officer constitutes an initial decision. Respondent has the right to appeal an adverse initial decision to the Environmental Appeals Board (EAB). In accordance with 40 C.F.R. § 22.30(a)(1), this appeal must be made within thirty (30) days after the initial decision is served. Pursuant to 40 C.F.R. § 22.7(c), "[w]here a document is served by first class mail or commercial delivery service, but not by overnight or same-day delivery, five (5) days shall be added to the time allowed by [the Consolidated Rules] for the filing of a responsive document." Therefore, the maximum time period to file an appeal

under 40 C.F.R. § 22.30 is thirty-five (35) days unless an extension is granted by the EAB. The forty-five (45) day period provided in 40 C.F.R. § 22.27(c) (discussing when an initial decision becomes a final order) does not pertain to, nor extend, the thirty (30) days for filing an appeal as provided in 40 C.F.R. § 22.30(a)(1). If Respondent fails to properly appeal an adverse initial decision, and that initial decision thereby becomes a final order pursuant to 40 C.F.R. § 22.27(c), Respondent will have waived its rights to judicial review. 40 C.F.R. § 22.27(d).

**VIII. EX PARTE COMMUNICATIONS**

Respondent is advised that, after the Complaint is issued, the Consolidated Rules prohibit any *ex parte* (unilateral) discussion of the merits of this action with the Administrator, the Environmental Appeals Board, the Regional Administrator, the Presiding Officer, or any person likely to advise these officials in the decision of this case.

Date: 3/22/2010

  
\_\_\_\_\_  
G. Alan Farmer, Director  
RCRA Division  
Complainant

**ENCLOSURES**

Consolidated Rules of Practice

CERTIFICATE OF SERVICE


I certify that, on the date indicated below, I hand-delivered the original and one copy of the Administrative Complaint and Compliance Order In the Matter of Kanchanlal Patel, Docket No. RCRA-UST-04-2010-002, to the Regional Hearing Clerk at the following address:

Patricia A. Bullock  
Regional Hearing Clerk  
U.S. EPA - Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

I also certify that, on the date indicated below, I sent by Certified Mail, return receipt request, a copy of the Administrative Complaint and Compliance Order and a copy of the Consolidated Rules of Practice at 40 C.F.R. Part 22, to the following addressee:

Kanchanlal Patel  
2403 Barnesdale Way  
Albany, Georgia 31707

3/23/2010  
Date

  
Adam Dilts, Assistant Regional Counsel  
United States Environmental  
Protection Agency, Region 4  
Atlanta Federal Center  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303  
(404) 562-9581