



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2013 AUG 23 P 1:25
REGIONAL HEARING
CLERK

August 22, 2013

Craig A. Slater, Esq.
The Slater Law Firm
Attorney for Respondents
26 Mississippi Street, Suite 400
Buffalo, NY 14203-3014

Re: In the Matter of Amerimart Development Copr., et al.
Docket No. RCRA-02-2012-7501
Amended Complaint to Remove Commercial Realty Fund II

Dear Mr. Slater:

As we discussed, please find enclosed an Amended Complaint that removes references to Respondent, Commercial Realty Fund II, from the caption of the Complaint, as well as in paragraphs 4 c., 11, 20 and paragraphs 227 through 274 in Counts 12 and 13, because each of these paragraphs indicated that Respondent Commercial Realty Fund II was an owner of the UST systems at the A & M Gas Mart Facility in Buffalo, NY. The removal of this Respondent is based on the information and documentation you provided that demonstrates that Commercial Realty Fund II was not an owner or operator of the underground storage tanks (at the A & M Gas Mart Facility in Buffalo, NY) during the relevant time periods for which violations were alleged in the Complaint.

If you have any questions, please contact me at (212) 637-3224.

Sincerely yours,

Bruce Aber
Assistant Regional Counsel

Enc.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 2

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2013 AUG 23 P 1 25
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AMENDED COMPLAINT, COMPLIANCE
ORDER
AND NOTICE OF OPPORTUNITY
FOR HEARING

In the Matter of: Amerimart Development
Company, Inc., Qual-Econ Lease Co.,
Inc., MJG Enterprises Inc., and Clear
Alternative of Western NY, Inc. (dba G &
G Petroleum)

Respondents.

Docket No. RCRA-02-2012-7501

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

AMENDED COMPLAINT

Complainant hereby alleges as and for her complaint against Respondents:

1. This administrative proceeding is being instituted pursuant to Section 9006 of the Solid Waste Disposal Act, as amended, 42 U.S.C. Section 6901 et seq. (the "Act").
2. This proceeding seeks to assess a civil penalty against Respondents for violations of the requirements or standards promulgated by the Administrator of the United States Environmental Protection Agency ("EPA") pursuant to Section 9003 of the Act, 42 U.S. C. § 6991b, and to require compliance with said requirements or standards.
3. Complainant in this proceeding, Dore LaPosta, the Director of the 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.
4. Respondents are:
 - a) Amerimart Development Company, Inc. (hereinafter "Amerimart"). The mailing addresses of Amerimart are: P.O. Box 473, Grand Island, NY 14072 and P.O. Box 811, Tonawanda, NY 14150. The street addresses of Amerimart are: 2320 W. Oakfield Rd., Grand Island, NY 14072 and 1066 Sheridan Drive, Tonawanda , N.Y. 14150.

b) Qual-Econ Lease Co., Inc. (also referred to as "Qual-Econ" or "Qual Econ Leasing Co."). The mailing address of Qual-Econ is P.O. Box 473, Grand Island, NY 14072. The street addresses of Qual-Econ are: 2320 West Oakfield Road, Grand Island, NY 14072 and 14 Colonial Drive, Tonawanda, NY 14150.

c) MJG Enterprises, Inc., 14 Colonial Drive, Tonawanda, NY 14150; and

d) Clear Alternative of Western NY, Inc. (doing business as "G & G Petroleum"), 3109 Delaware Avenue, Kenmore, N.Y. 14217 (corporate address).

5. a) G & G Petroleum is a trade name for Clear Alternative of Western NY, Inc.

b) G & G Petroleum facility address is 1531-1543 Niagara Street, Buffalo, NY 14213.

6. Qual-Econ Lease Co., Inc. owns the property and the UST systems at the G & G's Petroleum facility at 1531- 1543 Niagara Street, Buffalo, New York 14213, and at two Amerimart Development Co., Inc.-owned and/or operated service stations (Super Stop/Amerimart, 1545 Broadway, Buffalo, NY; and Amerimart, 5565 Millersport Highway, Amherst, NY).

7. Qual-Econ. Lease Co., Inc. owns the property at the Walden Convenient Mart, 599 Walden Avenue, Buffalo, NY 14150.

8. Qual-Econ Lease Co., Inc. has a legal relationship with Amerimart, as evidenced by:

(a) ownership of property and USTs at Amerimart-operated service stations: (Super Stop/Amerimart, 1545 Broadway, Buffalo, NY and Amerimart, 5565 Millersport Highway, Amherst, NY); and

(b) the appearance of Qual-Econ Lease Co., Inc.'s name on Invoices as the entity to be billed for the work performed by a contractor, Reid Petroleum, at several Amerimart-operated service stations.

9. Respondent Amerimart Development Company, Inc. ("Amerimart") is, and has been, a for-profit corporation organized pursuant to the laws of the State of New York.

10. Respondent Qual-Econ is, and has been, a for-profit corporation organized pursuant to the laws of the State of New York.

11. Respondent MJG Enterprises, Inc. is, and has been, a for-profit corporation organized pursuant to the laws of the State of New York.

12. Respondent Clear Alternative of Western NY, Inc. is, and has been, a for-profit corporation organized pursuant to the laws of the State of New York.

13. Each of the respondents is a “person” within the meaning of Section 9001(6) of the Act, 42 U.S.C. § 6991(6), and of 40 C.F.R. § 280.12.

14. Each of the respondents is, or has been for the times relevant to the matters alleged below, in the business of owning and/or operating retail gasoline stations in New York State.

15. Each of the respondents is, or has been for the times relevant to the matters alleged below, an “owner” and/or “operator” of underground storage tanks” (“USTs”) or “UST system”, as those terms are defined in Section 9001 of the Act, 42 U.S.C. Section 6991, and 40 C.F.R. Section 280.12, that are located at one or more of the following facilities identified within this Complaint:

- (1) Texas Gas Convenient Mart, 473 East Delavan Avenue, Buffalo, New York
- (2) Super Stop/Amerimart, 1545 Broadway, Buffalo, New York
- (3) Amerimart, 5565 Millersport Highway, Amherst, New York
- (4) A & M Gas Mart, 2756 Bailey Avenue, Buffalo, New York.
- (5) Sheridan Convenient Mart, 1066 Sheridan, Tonawanda, New York
- (6) Walden Convenient Mart, 599 Walden Avenue, Buffalo, New York
- (7) Herrscher’s Express Mart, 4291 Maple Road, Amherst, New York
- (8) G & G Petroleum, 1531-1543 Niagara Street, Buffalo, New York

16. Respondent Qual-Econ has been the owner and/or operator of the UST systems at a retail gasoline station, known as Super Stop/Amerimart, the address of which is 1545 Broadway, Buffalo, NY 14215.

17. Respondent Qual-Econ has been the owner and/or operator of the UST systems at a retail gasoline station, Amerimart, 5565 Millersport Highway, Amherst, NY 14226 (hereinafter “Amerimart-Amherst”)

18. Respondent Qual-Econ has been the owner and/or operator of the UST systems at a retail gasoline station, known as G & G Petroleum, the address of which is 1531-1543 Niagara Street, Buffalo, NY 14213.

19. Respondent MJG Enterprises, Inc. has been the owner and/or operator of the UST systems at a retail gasoline station, known as Herrscher’s Express Mart, the address of which is 4291 Maple Road, Amherst, NY 14226 (hereinafter “Herrscher’s Express Mart”).

20. Respondent Clear Alternative of Western NY, Inc, has been the owner and/or operator of the UST systems at a retail gasoline station, known as G & G Petroleum, the address of which is 1531-1543 Niagara Street, Buffalo, NY 14213.

21. 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.

22. Pursuant to Sections 9003 of the Act, 42 U.S.C. §6991b, EPA promulgated rules setting forth requirements for owners and operators of UST systems, codified at 40 C.F.R. Part 280. These rules include but are not limited to release detection, record-keeping, and upgrade requirements.

23. Forty C.F.R. § 280.12 defines an underground storage tank or UST as 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.

24. Forty C.F.R. § 280.12 defines an “existing tank system” as a tank system used to contain an accumulation of regulated substances or for which installation has commenced on or before December 22, 1988.

25. Forty C.F.R. § 280.12 defines a “new tank system” as a tank system used to contain an accumulation of regulated substances or for which installation has commenced after December 22, 1988.

26. Pursuant to 40 C.F.R. §280.20(c)(1)(ii), owners and operators of new UST systems must use overfill prevention equipment that will: (A) Automatically shut off flow into the tank when the tank is no more than 95% full; or (B) Alert the transfer operator when the tank is no more than 90 percent full by restricting the flow into the tank or triggering a high-level alarm; or (C) Restrict flow 30 minutes prior to overfilling, alert the operator with a high-level alarm one minute before overfilling, or automatically shut off flow into the tank so that none of the fittings located on top of the tank are exposed to product due to overfilling.

27. Pursuant to 40 C.F.R. § 280.21(a), not later than December 22, 1998, all existing UST systems had to comply with: a) the new UST system performance standards set forth in 40 CFR § 280.20, b) the upgrading requirements set forth in 40 C.F.R. §§ 280.21(b) through 280.21(d), or the closure requirements of 40 C.F.R. Part 280, Subpart G.

28. Pursuant to 40 C.F.R. §280.21(d), all existing UST systems must comply with the new UST system overfill prevention equipment requirements specified in 40 C.F.R. §280.20(c).

29. Pursuant to 40 C.F.R. §280.34, owners and operators of UST systems must cooperate fully with inspections by the implementing agency, as well as requests for document submission, testing, and monitoring by the owner or operator pursuant to Section 9005 of Subtitle I of the Act.

30. Pursuant to 40 C.F.R. §280.34(b)(4) owners and operators of UST systems must maintain records of recent compliance with release detection requirements (40 C.F.R. § 280.45).

31. Pursuant to 40 C.F.R. §280.34(c) owners and operators of UST systems must keep the records required either: (1) at the UST site and immediately available for inspection by the

implementing agency; or (2) at a readily available alternative site and be provided for inspection to the implementing agency.

32. Pursuant to 40 C.F.R. §280.45(a), owners and operators of UST systems must maintain, for 5 years from the date of installation, or another reasonable period of time determined by the implementing agency, records of all written performance claims pertaining to any release detection system used, and the manner in which these claims have been justified or tested by the equipment manufacturer or installer.

33. Pursuant to 40 C.F.R. §280.45(b), owners and operators of UST systems must maintain, for at least one year, the results of any sampling, testing or release detection monitoring.

34. Pursuant to 40 C.F.R. §280.41(a), owners and operators of petroleum UST systems must monitor tanks at least every 30 days for releases using one of the methods listed in 40 C.F.R. §280.43 (d) through (h), except that other methods may be used in circumstances that are inapplicable to the UST systems cited in this civil administrative proceeding.

35. The underground piping for which violations are alleged in the counts of this Complaint is the type referred to as “pressurized” piping.

36. Pursuant to 40 C.F.R. §280.41(b)(1), underground piping that conveys regulated substance under pressure must: i) be equipped with an automatic line leak detector conducted in accordance with §280.44(a); and ii) have an annual line tightness test conducted in accordance with §280.44(b) or have monthly monitoring conducted in accordance with §280.44(c).

37. On or about each of the following dates, EPA sent RCRA § 9005 Information Request Letters (hereinafter “IRLs”) to Bernard Ferer, President, Amerimart Development Company, Inc., or Michael J. Geiger, of G & G Petroleum, in order to determine each company’s compliance with the requirements of Act and 40 C.F.R. Part 280 pertaining to underground storage tanks at one or more of the following service stations: Texas Gas Convenient Mart, Super Stop/Amerimart, Amerimart-Amherst, A & M Gas Mart, Sheridan Convenient Mart, Walden Convenient Mart, Herrscher’s Express Mart, and G & G Petroleum facility. These IRLs were sent on the following dates:

- a) On January 7, 2008, to Bernard Ferer, seeking information on “Walden Convenient Mart” only;
- b) On July 2, 2008, to Bernard Ferer, seeking information on “All Amerimart Facilities”;
- c) On September 18, 2008, to Bernard Ferer, seeking follow-up information on “All Amerimart Facilities”;

- d) On June 8, 2009, August 11, 2009 and September 23, 2009 to Michael J. Geiger seeking information on “G & G Petroleum;”
- e) On January 6, 2010, to Bernard Ferer, seeking follow-up information on “All Amerimart Facilities;”
- f) On June 14, 2010, to Bernard Ferer, seeking follow-up information on “All Amerimart Facilities;”
- g) On September 30, 2011 to Bernard Ferer, seeking follow-up information on “All Amerimart Facilities;” and
- h) On January 25, 2012 to Bernard Ferer, seeking follow-up information on “Herrscher’s Express Mart.”

38. Respondent Amerimart’s responses to the aforementioned Section 9005 IRLs were provided, on or about the following dates: a) February 8, 2008; b) August 7, 2008; c) October 7 & 11, 2008, d) December 8, 2009, e) March 26, 2010, f) July 5, 2010, g) October 15, 2011, and h) February 22, 2012.

39. In Respondent Amerimart’s February 8, 2008, August 7, 2008, and March 26, 2010 responses to EPA’s January 7, 2008, July 2, 2008 and/or January 6, 2010 Information Request Letters, Bernard Ferer, the President of the company, states that Amerimart owns all the USTs at each of the following facilities:

- (1) Texas Gas Convenient Mart, 473 East Delavan Avenue, Buffalo, New York
- (2) Super Stop/Amerimart, 1545 Broadway, Buffalo, New York
- (3) Amerimart, 5565 Millersport Highway, Amherst, New York
- (4) A & M Gas Mart, 2756 Bailey Avenue, Buffalo, New York.
- (5) Sheridan Convenient Mart, 1066 Sheridan Drive, Tonawanda, New York
- (6) Walden Convenient Mart, 599 Walden Avenue, Buffalo, New York
- (7) Herrscher’s Express Mart, 4291 Maple Road, Amherst, New York

40. In Respondent Amerimart’s February 8, 2008 response to questions 19 and 21 of EPA’s January 7, 2008 IRL, Bernard Ferer states that Amerimart operates the UST systems at all the facilities identified in the paragraph above, except for Herrscher’s Express Mart.

41. Each of the aforementioned IRL responses, in paragraph 41 above, was prepared and certified to be accurate by Bernard Ferer in the course of carrying out his duties and responsibilities with regard to the ownership and/or operation of the UST systems at the Facilities identified in paragraph 41 above.

42. Pursuant to Section 9005 of the Act, 42 U.S.C. § 6991d, authorized representatives of EPA inspected on September 28, 2006, December 11, 2007, August 14, 2007, March 21, 2008,

August 13-14, 2008, May 24, 2010, August 4, 2011, and August 18, 2011 one or more of the following eight facilities, in order to determine its compliance with the Act and 40 C.F.R. Part 280:

- (1) Texas Gas Convenient Mart, 473 East Delavan Avenue, Buffalo, New York
- (2) Amerimart, 5565 Millersport Highway, Amherst, New York
- (3) Super Stop/Amerimart, 1545 Broadway, Buffalo, New York
- (4) A & M Gas Mart, 2756 Bailey Avenue, Buffalo, New York.
- (5) Sheridan Convenient Mart, 1066 Sheridan Drive, Tonawanda, New York
- (6) Walden Convenient Mart, 599 Walden Avenue, Buffalo, New York
- (7) Herrscher's Express Mart, 4291 Maple Road, Amherst, New York
- (8) G & G Petroleum, 1531-1543 Niagara Street, Buffalo, New York

COUNTS 1 to 4

Respondent Amerimart Development Company, Inc.
Texas Gas Convenient Mart
473 East Delavan Avenue, Buffalo, NY 14215

Count 1, Texas Gas - Failure to Use Overfill Prevention Equipment On New Tank System

43. Complainant realleges paragraphs 1 through 42, above, with the same force and effect as if fully set forth below.

44. Respondent Amerimart has owned and/or operated and continues to own and/or operate three petroleum UST systems (two 10,000 gallon gasoline USTs and one 3,000 gallon kerosene UST) located at 473 East Delavan Avenue, Buffalo, NY 14215.

45. In Amerimart's August 7, 2008 response to EPA's July 2, 2008 IRL, Bernard Ferer states that Amerimart acquired ownership of the USTs at the Texas Gas Convenient Mart ("Texas Gas") facility on January 2, 1998.

46. Both the New York State Department of Environmental Conservation Petroleum Bulk Storage ("NYSPBS") Registration Certificate, dated August 16, 2007 and the NYSPBS Application form, dated July 20, 2007, for this facility were signed by Bernard Ferer, and both indicate that mailing and correspondence should be sent to Bernard Ferer, Amerimart Development Company, Inc., P.O. Box 811, 1066 Sheridan Drive, Tonawanda, NY 14150.

47. The NYSPBS Registration Certificate and NYSPBS Application form for this facility indicate that there are three UST systems (two 10,000 gallon gasoline USTs and one 3,000 kerosene UST). These tanks are also referred to as Tanks 1, 2 and 5, respectively.

48. An authorized inspector of EPA inspected this facility on August 14, 2008.

49. At the time of EPA's inspection of the Texas Gas facility, the UST systems were in use.

50. The 3,000 gallon kerosene UST at this facility was installed on or about November 1, 1989 and therefore is considered a "new tank system" pursuant to 40 C.F.R. §280.12.

51. Pursuant to 40 C.F.R. § 280.20(c)(1)(ii), owners and operators of new UST systems must use overfill prevention equipment on each UST system.

52. The NYSPBS Registration Certificate, dated August 16, 2007, and the NYSPBS Application form, dated July 20, 2007, indicate that there was no overfill device on the 3,000 gallon kerosene UST system at the Texas Gas facility.

53. The August 14, 2008 inspection of the Texas Gas facility found no evidence of overfill prevention on the 3,000 gallon kerosene UST.

54. Respondent Amerimart's August 7, 2008 response to EPA's July 2, 2008 IRL states that the type of overfill prevention equipment that Respondent Amerimart employed for each UST system at the Texas Gas facility was a "fill pipe device."

55. EPA's January 6, 2010 IRL letter, question 3, requested clarification on the overfill prevention for the three UST systems at the Texas Gas facility.

56. Respondent Amerimart's March 26, 2010 response to question 3 of EPA's January 6, 2010 IRL states "There has been no overfill device added because the device that does not allow the tank[s] to fill is presently working very well."

57. A "fill pipe device" is not an overfill prevention equipment as specified at 40 C.F.R. §280.20(c) (1)(ii)(A) thru (C).

58. Respondent Amerimart's March 26, 2010 response to EPA's January 6, 2010 IRL states: "We have proceeded to order three drop tubes with shut-off through Reed Petroleum for the . . . three tanks located at 473 East Delevan."

59. Respondent Amerimart's July 5, 2010 IRL response documents that an overfill device was installed on the 3,000 gallon kerosene tank (also referred to as "tank 5"), on June 26, 2010.

60. An Invoice, dated July 9, 2010, for the installation of the overfill equipment at the Texas Gas facility indicates that Qual-Econ Lease Co. was billed for payment of the work.

61. Between at least August 14, 2008 and June 26, 2010 there was no adequate overfill device for the 3,000 gallon tank (Tank 5) at the Texas Gas facility.

62. Respondent Amerimart's failure, between at least August 14, 2008 and June 26, 2010, to use overfill prevention equipment for the 3,000 gallon UST at the Texas Gas facility, constitutes a violation of 40 C.F.R. § 280.20(c)(1)(ii).

Count 2, Texas Gas — Failure to Use Overfill Prevention Equipment On Existing Tank Systems

63. Complainant realleges paragraphs 1 through 62, above, with the same force and effect as if fully set forth below.

64. The two 10,000 gallon gasoline UST systems at this facility were installed prior to 1988 and are considered "existing tank systems" within the meaning of 40 C.F.R. §280.12.

65. Pursuant to 40 C.F.R. §280.21(d), all existing UST systems must comply with new UST system spill and overfill prevention requirements specified in §280.20(c).

66. The NYSPBS Registration Certificate, dated August 16, 2007 and the NYSPBS Application form, dated July 20, 2007, indicate that there was no overfill device on the two 10,000 gallon UST systems at this facility.

67. The August 14, 2008 inspection of Texas Gas found no evidence of overfill prevention for the two gasoline USTs.

68. In Respondent Amerimart's July 5, 2010 IRL response, a July 9, 2010 Invoice (invoice #39923) from Reid Petroleum shows that overfill devices were installed on the two 10,000 gallon UST systems (also known as "Tanks 1 & 2") on one of the following dates: April 12, 201, April 26, 2010 or June 25, 2010.

69. Between at least August 14, 2008 and April 12, 2010 there was no adequate overfill device for the two 10,000 gallon tanks at the Texas Gas facility.

70. Respondent Amerimart's failure, between at least August 14, 2008 and April 12, 2010, to use overfill prevention equipment for the two 10,000 gallon USTs located at the Texas Gas facility, constitutes a violation of 40 C.F.R. § 280.21(d).

Count 3, Texas Gas — Failure to Inspect Cathodic Protection System of the UST systems within 6 months of Installation and Every 3 years Thereafter and To Maintain Records of Results of Testing from Last 2 Triennial Inspections

71. Complainant realleges paragraphs 1 through 70, above, with the same force and effect as if fully set forth below.

72. Forty C.F.R. § 280.31 provides, in part, that “[a]ll owners and operators of steel UST systems with corrosion protection must comply [with requirements specified in said regulation] to ensure that releases due to corrosion are prevented for as long as the UST system is used to store regulated substances....”

73. Forty C.F.R. § 280.31(b)(1) provides in relevant part, that “[a]ll UST systems equipped with cathodic protection...must be tested [for proper operation] within 6 months of installation and at least every 3 years thereafter....”

74. The two 10,000 gallon tanks and the 3,000 gallon tank at the Texas Gas facility are “steel UST system[s] with corrosion protection...used to store [a] regulated substance[.]” within the meaning of 40 C.F.R. § 280.31.

75. The two 10,000 gallon gasoline tanks (also referred to as Tanks 1 and 2) at this facility use piping with metallic components to deliver gasoline to dispensers.

76. The two 10,000 gallon tanks at this facility were installed on or about October 1, 1971.

77. The piping on the two 10,000 gallon tanks (Tanks 1 & 2) at the Texas Gas facility was required to be equipped with cathodic protection by no later than December 22, 1998.

78. The 3,000 gallon kerosene tank (also referred to as Tank 5) at this facility is constructed of fiberglass coated steel with sacrificial anodes.

79. The 3,000 gallon tank (Tank 5) at the Texas Gas facility was installed on November 1, 1989 and was equipped with a cathodic protection system at that time.

80. Respondent Amerimart was required to test for the proper operation of the cathodic protection on the piping for the two 10,000 gallon tanks starting on or about June 22, 1999 and continuing at least every three years thereafter.

81. As of the date of EPA’s August 14, 2008 inspection at the Texas Gas facility, the last two cathodic protection tests for the piping of the two 10,000 gallon USTs systems were required by June 22, 2005 and June 22, 2008.

82. Respondent Amerimart was required to test for the proper operation of the cathodic protection on the tank of the 3,000 gallon UST system starting on or about May 1, 1990 and continuing at least every three years thereafter.

83. As of the date of EPA’s August 14, 2008 inspection at the Texas Gas facility, the last two cathodic protection tests for the tank of the 3,000 gallon UST system were required by May 1, 2005 and May 1, 2008.

84. During EPA's August 14, 2008 inspection at the Texas Gas facility, there was no evidence that corrosion protection tests had ever been performed on the steel piping of the two 10,000 gallon UST systems and on the tank of the 3,000 gallon UST system.

85. During EPA's August 14, 2008 inspection at the Texas Gas facility, Respondent's representative could not provide records of the results of the last two triennial inspections for the piping of the two 10,000 gallon UST systems and the tank of the 3,000 gallon UST system.

86. EPA's January 6, 2010 IRL asked whether there had been any CP testing done at this facility.

87. Respondent Amerimart's March 26, 2010 response to EPA's January 2010 IRL includes documentation that cathodic testing for the three UST systems was performed on March 19, 2010.

88. Respondent did not have a qualified cathodic protection tester inspect the cathodic protection system of the two 10,000 gallon tanks and the tank itself of the 3,000 gallon UST system within 6 months of installation.

89. Between at least May 1, 2008 (for the 3,000 gallon UST system) and March 19, 2010, Respondent Amerimart did not have a qualified cathodic protection tester inspect the cathodic protection system for the tank of the 3,000 gallon UST system at the Texas Gas facility.

90. Between at least June 22, 2008 (for the two 10,000 gallon UST systems) and March 19, 2010, Respondent Amerimart did not have a qualified cathodic protection tester inspect the cathodic protection system for the piping of the two 10,000 gallon UST systems at the Texas Gas facility.

91. Between at least May 1, 2008 (for the 3,000 gallon UST system) and March 19, 2010, Respondent Amerimart did not maintain records of the results of testing from the last two triennial inspections of the tank of the 3,000 gallon UST system at the Texas Gas facility.

92. Between at least June 22, 2008 (for the two 10,000 gallon UST systems) and March 19, 2010, Respondent Amerimart did not maintain records of the results of testing from the last two triennial inspections of the piping of the two 10,000 gallon UST systems at the Texas Gas facility.

93. Respondent Amerimart's failure to have a qualified cathodic protection tester inspect the cathodic protection system for piping of the two 10,000 gallon UST systems and the tank of the 3,000 gallon UST system within six months of installation and every 3 years thereafter constitutes a violation of 40 C.F.R. Section 280.31(b).

94. Respondent Amerimart's failure to maintain records of the results of testing from the last two triennial inspections of the piping of the two 10,000 gallon UST systems and the tank of the 3,000 gallon UST system constitutes a violation of 40 C.F.R. §280.31(d)(2).

Count 4, Texas Gas — Failure to Conduct an Annual Test of the Operation of the Automatic Line Leak Detectors for Pressurized Piping for UST systems and to Maintain Records of the Test

95. Complainant realleges paragraphs 1 through 94, above with the same force and effect as if fully set forth below.

96. Pursuant to 40 C.F.R. §280.41(b), owners and operators of underground piping that routinely contains regulated substances must monitor for releases in accordance with this section.

97. The two 10,000 gallon tanks at this facility had underground piping that routinely contained regulated substances.

98. The 3,000 gallon kerosene tank at this facility had suction piping.

99. The two 10,000 gallon USTs at this facility had pressurized piping.

100. Pursuant to 40 C.F.R. § 280.41(b)(1)(i), underground piping that conveys regulated substances under pressure must be equipped with an automatic line leak detector conducted in accordance with 40 C.F.R. § 280.44(a).

101. As of December 22, 1999 the piping for the two 10,000 gallon USTs was equipped with automatic line leak detectors.

102. Forty C.F.R. § 280.44(a) provides, in part, that “[a]n annual test of the operation of the leak detector must be conducted in accordance with the manufacturer’s requirements.”

103. Amerimart was required to conduct an annual test of the operation of the automatic line leak detector for the two 10,000 gallon UST systems starting no later than December 22, 1999 and continuing every year thereafter.

104. Respondent Amerimart's August 7, 2008 response to question 14 of EPA's July 2, 2008 IRL states that the operation of the automatic line leak detectors (ALLDs) for the pressurized piping on the two 10,000 gallon tanks “are scheduled to be tested this [August 2008] month.”

105. Respondent Amerimart's October 7, 2008 IRL response provides ALLD test results for October 1, 2008, but no previous test result was provided.

106. During EPA's August 14, 2008 inspection, facility representatives were unable to provide records of testing of the ALLDs for the pressurized piping for the twelve months prior to the inspection.

107. Respondent Amerimart's March 26, 2010 IRL response provides additional ALLD test results for January 28, 2010.

108. Respondent Amerimart's July 5, 2010 IRL response confirms that no tests of the ALLDs for the two 10,000 gallon UST systems at this facility were conducted between October 1, 2008 and January 28, 2010.

109. Between at least December 22, 2007 and October 1, 2008, Respondent Amerimart did not conduct annual tests of the operation of the ALLDs which monitor the pressurized piping for the two 10,000 gallon UST systems, as specified in 40 C.F.R. §280.44(a).

110. Between at least October 1, 2009 and January 28, 2010, Respondent Amerimart did not conduct annual tests of the operation of the ALLDs which monitor the pressurized piping for the two 10,000 gallon UST systems, as specified in 40 C.F.R. §280.44(a).

111. Between at least December 22, 2007 and October 1, 2008, Respondent Amerimart did not maintain any records demonstrating that annual tests of the operation of the ALLDs had been conducted on the pressurized piping of the two 10,000 gallon UST systems, as specified in 40 CFR §280.34(b)(4), §280.34(c) and §280.45(b).

112. Between at least October 1, 2009 and January 28, 2010, Respondent Amerimart did not maintain any records demonstrating that annual tests of the operation of the ALLDs had been conducted on the pressurized piping of the two 10,000 gallon UST systems, as specified in 40 C.F.R. §280.34(b)(4), §280.34(c), and §280.45(b).

113. Respondent Amerimart's failure to conduct annual tests of the operation of the ALLDs which monitor the pressurized piping of the two 10,000 gallon USTs, from at least December 22, 2007 until October 1, 2008 constitutes a violation of 40 C.F.R. §280.41(b)(1)(i) and 280.44(a).

114. Respondent Amerimart's failure to conduct annual tests of the operation of the ALLDs which monitor the pressurized piping of the two 10,000 gallon USTs, from October 1, 2009 until January 28, 2010 constitutes a violation of 40 C.F.R. §280.41(b)(1)(i) and §280.44(a).

115. Respondent Amerimart's failure to maintain records of the results, for at least 1 year, of the test of the operation of the ALLDs which monitor the pressurized piping of the two 10,000 gallon UST systems, constitutes a violation of 40 CFR §280.34(b)(4), §280.34(c), and §280.45(b).

COUNTS 5 to 9

Respondents Amerimart Development Company, Inc. and Qual-Econ Lease Co., Inc.
Super Stop/Amerimart
1545 Broadway, Buffalo, New York

Count 5, Super Stop/Amerimart — Failure to Use Overfill Prevention Equipment For New Tank Systems

116. Complainant realleges paragraphs 1 through 115, above, with the same force and effect as if fully set forth below.

117. Respondents Amerimart and Qual-Econ have owned and/or operated and continue to own and/or operate two petroleum UST systems (9000 and 3,000 gallon gasoline USTs) located at 1545 Broadway, Buffalo, NY.

118. In Amerimart's August 7, 2008 response to EPA's July 2, 2008 IRL, Bernard Ferer states that Amerimart acquired ownership of the USTs at this facility on June 1, 1999.

119. EPA's UST Inspection form, dated September 28, 2006, for this facility indicates that Qual-Econ Co., Inc., of 2320 West Oakfield, Grand Island, NY, was the owner of the tanks at this facility.

120. EPA's UST Inspection forms, dated October 21, 2008 and August 4, 2011, for this facility indicate that Amerimart Development Co., Inc. of 1066 Sheridan Drive, P.O. Box 811, Tonawanda, NY was the owner of the tanks at this facility.

121. The NYSPBS Registration Certificate, dated August 16, 2007, and the NYSPBS Application form, dated July 20, 2007, both indicate that Qual-Econ, of 2320 West Oakfield, Grand Island, NY, was the owner of the tanks at this facility.

122. (a) The NYSPBS Registration Certificate, dated August 16, 2007, was signed by Bernard Ferer and indicates that all mailing and correspondence should be sent to Bernard Ferer of Amerimart Development Co., Inc., P.O. Box 811, 1066 Sheridan Drive, Tonawanda, NY 14150.

(b) The NYSPBS Application form was signed by Bernard Ferer, President, Amerimart Development Co., Inc., as owner or authorized representative, and the form indicates that all mailing and correspondence should be sent to Bernard Ferer of Amerimart Development Co., Inc., P.O. Box 811, 1066 Sheridan Drive, Tonawanda, NY 14150.

123. Both of the UST systems at this Facility were installed subsequent to 1988 and are considered "new tank systems" pursuant to 40 C.F.R. §280.12.

124. Pursuant to 40 C.F.R. § 280.20(c)(1)(ii), owners and operators of new UST systems must use overfill prevention equipment on each UST system.

125. (a) The April 6, 2006 PBS Program Facility Information Report indicates that there was no overfill device on the 9,000 and 3,000 gallon tanks (also referred to as Tanks 4 A and 4 B, respectively).

(b) The July 20, 2007 PBS Application form indicates that there was no overfill device on the 9,000 and 3,000 gallon tanks (also referred to as Tanks 4 A and 4 B , respectively).

126. An authorized representative of EPA inspected this facility on September 28, 2006 and October 21, 2008.

127. The September 28, 2006 inspection of Super Stop/Amerimart found no evidence of overfill prevention on the UST systems.

128. The type of overfill prevention equipment that Respondent Amerimart employed for each UST system were “ball floats”, according to its August 7, 2008 response to EPA’s IRL.

129. The October 21, 2008 inspection of Super Stop/Amerimart found no evidence of overfill prevention on the UST systems.

130. EPA’s January 6, 2010 IRL letter requested information concerning any overfill prevention for the USTs at this facility.

131. Respondent Amerimart’s March 26, 2010 response to EPA’s January 20, 2010 IRL states “There has been no upgrade or repairs made to these tanks” and further states that it has no blueprints for which it can confirm the presence of the “ball floats” as an overfill device.

132. Respondent Amerimart’s July 5, 2010 IRL response includes documentation that an overfill device was installed on these tanks on or about May 11, 2010.

133. An invoice, dated May 11, 2010, indicates that Qual-Econ Leasing Co., Inc. was billed for payment of the work performed at this facility.

134. Between at least July 1, 2007 and May 11, 2010 there was no overfill device for the 9,000 and 3,000 gallon tanks (Tanks 4 A and 4 B) at the Super Stop/Amerimart facility.

135. Respondents’ Amerimart and Qual Econ Lease Co., Inc.’s failure, between at least July 1, 2007 and May 11, 2010, to use overfill prevention equipment for the 9,000 and 3,000 gallon USTs at the facility, constitutes a violation of 40 C.F.R. § 280.20(c)(1)(ii).

Count 6, Super Stop/Amerimart — Failure to Inspect Cathodic Protection System of the UST Systems Within 6 months of Installation and Every 3 years Thereafter and to Maintain Records of Results of Testing from Last 2 Triennial Inspections

136. Complainant realleges paragraphs 1 through 135, above, with the same force and effect as if fully set forth below.

137. 40 C.F.R. § 280.31 provides, in part, that “[a]ll owners and operators of steel UST systems with corrosion protection must comply [with requirements specified in said regulation] to ensure that releases due to corrosion are prevented for as long as the UST system is used to store regulated substances....”

138. 40 C.F.R. § 280.31(b)(1) provides in relevant part, that “[a]ll UST systems equipped with cathodic protection...must be tested [for proper operation] within 6 months of installation and at least every 3 years thereafter....”

139. The 9,000 and 3,000 gallon tanks (tanks 4 A and 4 B) at this facility are steel tanks that have sacrificial anodes for corrosion protection and use piping with metallic components to deliver gasoline to dispensers.

140. The 9,000 and 3,000 gallon tanks at this facility are “steel UST system[s] with corrosion protection...used to store [a] regulated substance[.]” within the meaning of 40 C.F.R. § 280.31.

141. The tanks and piping at this facility were installed on June 1, 1999 and were equipped with a cathodic protection system at that time.

142. Respondents Qual-Econ and Amerimart were required to test for the proper operation of the cathodic protection on the tanks and piping for the 9,000 gallon and 3,000 gallon UST systems starting on or about December 1, 1999 and continuing at least every three years thereafter.

143. As of the date of EPA’s October 21, 2008 inspection at the Amerimart/Super Stop facility, the last two cathodic protection tests for the 9,000 gallon and 3,000 gallon UST systems were required by December 1, 2002 and December 1, 2005.

144. During the September 28, 2006 and October 21, 2008 inspections, EPA found no evidence of that the corrosion protection test had ever been performed on the 9,000 and 3,000 gallon UST systems.

145. During the September 28, 2006 and October 2008 inspections, Respondents’ representative could not provide records of the results of any cathodic protection testing, including the last two triennial testings.

146. Respondent Amerimart's August 2008 IRL response acknowledges that no cathodic protection testing had been performed on the two UST systems at the facility.

147. Respondent Amerimart's March 26, 2010 IRL response provided a triennial test of the cathodic protection system performed on March 19, 2010.

148. Between at least December 1, 2008 and March 19, 2010 Respondents Amerimart and Qual-Econ did not test the cathodic protection system of the two UST systems.

149. Between at least December 1, 2008 and March 19, 2010, Respondents Amerimart and Qual-Econ did not maintain records of the results of testing from the last two triennial inspections of the two UST systems at this Super Stop/Amerimart facility.

150. Respondents Amerimart and Qual-Econ's failure to have a qualified cathodic protection tester inspect the cathodic protection system of the two UST systems and conduct testing within six months of installation and every 3 years thereafter constitutes a violation of 40 C.F.R. Section 280.31(b).

151. Respondents Amerimart and Qual-Econ's failure to maintain records of the results of testing from the last two triennial inspections of the two UST systems constitutes a violation of 40 C.F.R. §280.31(d)(2).

Count 7, Super Stop/Amerimart — Failure to Conduct Annual Line Tightness Test or Conduct Monthly Monitoring for Pressurized Piping and to Maintain Records of the Test or Monitoring

152. Complainant realleges paragraphs 1 through 151, above, with the same force and effect as if fully set forth below.

153. Pursuant to 40 C.F.R. § 280.41, owners and operators of petroleum UST systems must provide, *inter alia*, release detection for piping in accordance with 40 C.F.R. § 280.41(b).

154. Pursuant to 40 C.F.R. § 280.41(b)(1)(ii), underground piping that routinely contains and conveys regulated substances under pressure must, *inter alia*, have an annual line tightness test conducted in accordance with 40 C.F.R. § 280.44(b) or have monthly monitoring conducted in accordance with 40 C.F.R. § 280.44(c).

155. The two UST systems (Tank numbers 4A and 4B (i.e., the 9,000 gallon and 3,000 gallon tanks)) at Super Stop/Amerimart constituted petroleum UST systems and had underground piping that routinely contained product and that was used to convey gasoline under pressure.

156. The UST systems were installed on June 1, 1999.

157. As of EPA's September 28, 2006 inspection of the facility, there was no line tightness test or monthly monitoring of the pressurized piping for the two UST systems at this facility.

158. During EPA's October 21, 2008 inspection of the facility, annual line tightness test results, dated October 14, 2008, were provided to EPA.

159. Between at least July 1, 2007 and October 14, 2008, Respondents Amerimart and Qual-Econ failed to have either an annual line tightness test conducted in accordance with 40 C.F.R. § 280.44(b) or monthly monitoring conducted in accordance with 40 C.F.R. § 280.44(c) for the pressurized piping of the 9,000 gallon and 3,000 gallon gasoline UST systems at the Super Stop/Amerimart facility.

160. Between at least July 1, 2007 and October 14, 2008, Respondents Amerimart and Qual Econ failed to maintain records demonstrating annual line tightness test or monthly monitoring for the pressurized piping for the two UST systems at the Super Stop/Amerimart facility.

161. Respondents Amerimart and Qual-Econ's failure to conduct annual line tightness testing or monthly monitoring for the period between July 1, 2007 and October 14, 2008, of the pressurized piping for the two UST systems at this facility constitutes a violation of 40 C.F.R. § 280.41(b)(1)(ii) and §280.44(c).

162. Respondents Amerimart and Qual-Econ's failure to maintain the results for at least 1 year of the annual line tightness test or monthly monitoring of the pressurized piping for the two UST systems at this facility constitutes a violation of 40 C.F.R. §280.34(b)(4), §280.34(c), and §280.45(b).

Count 8, Super Stop/Amerimart — Failure to Conduct an Annual Test of the Operation of the Automatic Line Leak Detectors for Pressurized Piping for UST systems and to Maintain Records of the Test

163. Complainant realleges paragraphs 1 through 162, above with the same force and effect as if fully set forth below.

164. Pursuant to 40 C.F.R. §280.41(b), owners and operators of underground piping that routinely contains regulated substances must be monitored for releases in accordance with this section.

165. The 9,000 gallon and the 3,000 gallon USTs at the Super Stop/Amerimart facility had underground piping that routinely contained regulated substances.

166. The two USTs at this facility had pressurized piping.

167. Pursuant to 40 C.F.R. §280.41(b)(1)(i), underground piping that conveys regulated substances under pressure must be equipped with an automatic line leak detector conducted in accordance with 40 C.F.R. §280.44(a).

168. Forty C.F.R. § 280.44(a) provides, in part, that “[a]n annual test of the operation of the leak detector must be conducted in accordance with the manufacturer’s requirements.”

169. As of June 1, 1999 the piping for the two USTs was equipped with automatic line leak detectors.

170. During EPA’s September 28, 2006 inspection of the facility EPA found ALLDs present, but no annual tests of their operation were provided.

171. Respondent Amerimart’s August 2008 response to EPA’s IRL states that ALLD tests were pending.

172. During EPA’s October 21, 2008 inspection of the facility, ALLD test results, dated October 14, 2008, were provided to EPA.

173. Respondents Amerimart and Qual-Econ were required to conduct an annual test of the operation of the automatic line leak detector for the two UST systems starting no later than June 1, 2000 and continuing every year thereafter.

174. Respondents Amerimart and Qual-Econ conducted an annual test of the operation of the ALLD for the two UST systems at this facility, for the first time, on October 14, 2008.

175. Between at least June 1, 2008 and October 14, 2008, Respondents Amerimart and Qual Econ did not conduct annual tests of the operation of the ALLDs for the pressurized piping of UST systems as specified in 40 CFR §280.44(a).

176. Between at least June 1, 2008 and October 14, 2008 Respondents Amerimart and Qual Econ did not maintain any records demonstrating that annual tests of the operation of the ALLDs had been conducted on the pressurized piping of the UST systems as specified in 40 C.F.R. §280.34(b)(4), §280.34(c), and §280.45(b).

177. Respondents Amerimart and Qual-Econ’s failure to conduct annual tests of the operation of the ALLDs on the pressurized piping of the two UST systems at this facility, from June 1, 2008 to October 14, 2008, constitutes a violation of 40 C.F.R. §280.41(b)(1)(i) and §280.44(a).

178. Respondents Amerimart and Qual-Econ’s failure to maintain the results, for at least 1 year, of the annual tests of the operation of the ALLDs on pressurized piping of the two UST systems at this facility constitutes a violation of 40 C.F.R. §280.34(b)(4), §280.34(c), and §280.45(b).

Count 9, Super Stop/Amerimart — Failure to Maintain Release Detection Records for Tanks

179. Complainant realleges paragraphs 1 through 178, above, with the same force and effect as if fully set forth below.

180. During the September 28, 2006 and October 21, 2008 inspections at this facility, EPA found no records of release detection for the 9,000 gallon and 3,000 gallon UST systems.

181. During the October 21, 2008 inspection at this facility, Respondents representatives could not provide the results of monthly monitoring of the 9,000 gallon and 3,000 gallon UST systems for the twelve month period prior to the inspection.

182. In Respondent Amerimart's March 26, 2010 response to EPA's IRL, despite EPA's request for this information, Respondent did not provide documentation showing that it had performed, prior to the date of EPA's October 21, 2008 inspection at this facility, the required monitoring for the two tanks at least every 30 days for releases.

183. EPA sent a followup IRL to Respondent Amerimart on June 14, 2010 requesting release detection documentation.

184. Respondent Amerimart's July 5, 2010 response to EPA's June 14, 2010 IRL states that Amerimart had never recorded interstitial monitoring data but said that as of April 2010 it had recorded its release detection data. The response included handwritten records for interstitial monitoring for the period of April 2010 through June 2010.

185. Between at least July 1, 2007 and April 1, 2010, Respondents did not maintain results/records of release detection monitoring for the two tanks at this facility.

186. Respondents Amerimart and Qual-Econ's failure to maintain the results of at least 1 year of monitoring for releases from two tanks located at this facility constitutes a violation of 40 C.F.R. § 280.34(b) & 280.34(c) and 280.45(b).

COUNTS 10 to 11
Respondent Amerimart Development Company, Inc.
Amerimart-Amherst Service Station
5565 Millersport Highway, Amherst, New York

Count 10, Amerimart – Amherst--Failure to Provide Required Release Detection Monitoring and to Maintain Records of Release Detection for Tanks

187. Complainant realleges paragraphs 1 through 186, above, with the same force and effect as if fully set forth below.

188. Respondents Amerimart and Qual-Econ have owned and/or operated, and continued to own and/or operate two petroleum UST systems (a 10,000 gallon gasoline UST and a 8,000 gallon gasoline UST, also known as Tank 1 and Tank 2, respectively) at the Amerimart-Amherst facility.

189. In Amerimart's August 7, 2008 response to EPA's IRL, Bernard Ferer acknowledged that Respondent Amerimart acquired ownership of the two UST systems at the Amerimart-Amherst facility on December 1, 1999.

190. EPA's UST Inspection form, dated May 24, 2010, indicates that Amerimart Development Co., Inc. is the owner of the two tanks at the Amerimart-Amherst facility.

191. NYSPBS Registration Certificate, dated October 1, 2007, and the NYSPBS Application form, dated on or about November 27, 2007, both state that the owner of the tanks at this facility is "Qual-Econ Leasing Co., Inc., P.O. Box 473, Grand Island, NY 14072".

192. NYSPBS Registration Certificate, dated October 1, 2007, and the NYSPBS Application form, dated on or about November 27, 2007, both state that the mailing contact for this facility is Bernard Ferer, Amerimart Development Co., Inc., P.O. Box 811, 1066 Sheridan Dr., Tonawanda, NY 14150.

193. An authorized representative of EPA inspected this facility on August 13, 2008 but the facility was closed at this time.

194. An authorized representative of EPA reinspected this facility on May 24, 2010.

195. The NYSPBS Registration Certificate and the NYSPBS Application form both indicate that the facility has two USTs: a 10,000 fiberglass coated steel UST for gasoline storage (also referred to as "Tank 1") and an 8,000 gallon fiberglass coated steel UST also for gasoline storage (also referred to as "Tank 2").

196. Both UST systems at this facility were installed on December 1, 1999.

197. Amerimart's October 11, 2008 response to EPA's IRL confirms that Tank 2 at this facility is 8,000 gallons, not 6,000 gallons.

198. Respondent Amerimart's August 2008 IRL response provided documentation of release detection (inventory control) for the two tanks at this facility for the period of January - November 2007.

199. Respondent Amerimart's August 2008 IRL response did not provide any evidence of any performance of any 5-year tank tightness test.

200. Respondents' inventory control records for Tank 2 indicated a volume of 6,000 gallons.

201. The volume discrepancy between the inventory control records (6,000 gallons) and the actual capacity of the tank (8,000) led to inaccurate results using the inventory control method for release detection.

202. Inventory control without tank tightness testing was not an acceptable method of release detection for the UST systems at this facility.

203. Tank numbers 1 and 2 have been in temporary closure since at least the time of the first inspection on August 13, 2008.

204. 40 C.F.R. § 280.70(a) provides, in part, that "[w]hen an UST system is temporarily closed, owners and operators must continue operation and maintenance of [*inter alia*] any release detection in accordance with subpart D [40 C.F.R. Part 280, Subpart D]," provided there remains in said system more than 2.5 centimeters (one inch) of residue or 0.3 percent by weight of the total capacity of said system.

205. Respondent Amerimart's July 5, 2010 IRL response indicates that the two tanks were emptied of product to a level of one inch or less on October 1, 2009.

206. From the time of temporary closure (since at least August 13, 2008) until October 1, 2009, the two tanks at this facility contained product.

207. Since the UST systems contained product after temporary closure, release detection was still required until the contents of the two tanks were emptied on October 1, 2009.

208. EPA's May 24, 2010 EPA inspection verifies that fluid levels in tank number 1 and tank number 2 were at a depth of less than 1 inch.

209. Between July 1, 2007 and October 1, 2009, Respondents did not conduct required tank tightness testing of the two tanks at this facility.

210. Between July 1, 2007 and October 1, 2009, Respondents did not conduct accurate inventory control.

211. Between August 13, 2008 and October 1, 2009, Respondents did not conduct monitoring for releases from the temporarily closed tanks containing product.

212. Between July 1, 2007 and October 1, 2009, Respondents did not maintain results/records of release detection monitoring for the two tanks located at this facility.

213. Respondents Amerimart and Qual-Econ's failure, between at least July 1, 2007 and October 1, 2009, to conduct required release detection monitoring of the two tanks at the facility constitutes a violation of 40 C.F.R. § 280.41(a).

214. Respondents Amerimart and Qual-Econ's failure, between at least August 13, 2008 and October 1, 2009, to perform release detection on the two temporarily closed tanks containing greater than 1 inch of product, constitutes a violation of 40 C.F.R. Section 280.70(a).

215. Respondents Amerimart and Qual-Econ's failure to maintain the results, for at least 1 year, of monitoring for releases for the two tanks located at this facility constitutes a violation of 40 C.F.R. §280.34(b), §280.34(c) and §280.45(b).

Count 11, Amerimart-Amherst--Failure to Cap and Secure Temporarily Closed USTs

216. Complainant realleges paragraphs 1 through 215, above, with the same force and effect as if fully set forth below.

217. Pursuant to 40 C.F.R. § 280.70(b), "[w]hen an UST system is temporarily closed for 3 months or more," the owner and operator thereof are required to "[l]eave vent lines open and functioning" and also to "[c]ap and secure all other lines, pumps, manways, and ancillary equipment."

218. At Amerimart-Amherst, the 10,000 and 8,000 gallon tanks (tank numbers 1 and 2) were temporarily closed since at least the time of the first EPA inspection on August 13, 2008.

219. By no later than on or about November 13, 2008 and possibly earlier, Respondent Amerimart was required to have capped and secured tank numbers 1 and 2 at Amerimart - Amherst.

220. Tank numbers 1 and 2 at Amerimart-Amherst were not capped and secured as of November 13, 2008.

221. The May 24, 2010 inspection of Amerimart - Amherst verified that the dispensers and lines for tank numbers 1 and 2 had been removed/capped.

222. During the May 24, 2010 inspection, an EPA inspector learned that the capping occurred in February 2010.

223. Respondents Amerimart and Qual-Econ did not cap and secure the two tanks after said tanks had been temporarily closed for 3 months, as required by 40 C.F.R. §280.70(b).

224. Respondents Amerimart and Qual Econ's failure, between at least November 13, 2008 and February 1, 2010, to cap and secure two temporarily closed USTs at Amerimart – Amherst constitutes a violation of 40 C.F.R. Section 280.70(b).

COUNTS 12 to 13
Respondent Amerimart Development Company, Inc.
A & M Gas Mart
2756 Bailey Avenue, Buffalo, New York

Count 12, A & M Gas Mart--Buffalo — Failure to Conduct Annual Line Tightness Test or Conduct Monthly Monitoring for Pressurized Piping and to Maintain Records of the Test or Monitoring

225. Complainant realleges paragraphs 1 through 224, above, with the same force and effect as if fully set forth below.

226. Respondent Amerimart has been the owner and/or operator of two petroleum UST systems (a 10,000 gallon fiberglass coated steel UST and a 6,000 gallon fiberglass coated steel UST, also referred to as Tank 1 and Tank 2, respectively) at a retail gasoline station, A & M Gas Mart, the address of which is 2756 Bailey Avenue, Buffalo, NY 14215.

227. The NYSPBS Application form, dated August 17, 2009 was signed by Bernard Ferer, President, Amerimart Development Co., Inc., as owner or authorized representative.

228. On the NYSPBS Facility Information Report, the NYSPBS Registration Certificate, and NYSPBS Application form, Bernard Ferer was listed as the contact person care of Amerimart Development Co., Inc., P.O. Box 811, 1066 Sheridan Dr., Tonawanda, N.Y. 14150.

229. In Amerimart's August 7, 2008 response to EPA's IRL, Bernard Ferer stated that Respondent Amerimart acquired ownership of the two UST systems at this facility on February 1, 1999.

230. EPA's UST Inspection form, dated December 11, 2007, indicates that Amerimart Development Co., Inc. was the owner of the two tanks at this facility.

231. An authorized representative of EPA inspected this facility on December 11, 2007

232. Pursuant to 40 C.F.R. § 280.41, owners and operators of petroleum UST systems must provide, *inter alia*, release detection for piping in accordance with 40 C.F.R. § 280.41(b).

233. Pursuant to 40 C.F.R. § 280.41(b)(1)(ii), underground piping that routinely contains and conveys regulated substances under pressure must, *inter alia*, have an annual line tightness

test conducted in accordance with 40 C.F.R. § 280.44(b) or have monthly monitoring conducted in accordance with 40 C.F.R. § 280.44(c).

234. Each tank at A & M Gas Mart had underground piping that routinely contained and that was used to convey gasoline under pressure.

235. Gasoline is a “regulated substance” within the meaning of Section 9001(2) of the Act, 42 U.S.C. § 6991(2), and 40 C.F.R. § 280.12.

236. Tank number 1 and tank number 2 at A & M Gas Mart constituted a petroleum UST system for purposes of 40 C.F.R. § 280.41.

237. EPA’s December 11, 2007 inspection found no evidence of release detection for pressurized piping for both UST systems at this facility.

238. During the December 11, 2007 inspection of this facility, Respondent Amerimart’s representative could not provide results of line tightness test or monthly monitoring for pressurized piping for the UST systems for the twelve month period prior to the inspection.

239. On January 3, 2008, Respondent Amerimart provided EPA with documentation that annual line tightness tests occurred on both product lines (and passed) on December 31, 2007.

240. Subsequent to EPA’s December 11, 2007 inspection, a representative of Respondent Amerimart informed EPA that no line tightness testing had occurred prior to December 31, 2007.

241. EPA’s July 2, 2008 IRL requested information as to any monthly monitoring that had been conducted for tanks and piping.

242. Respondent Amerimart’s August 7, 2008 response to EPA’s July 2, 2008 IRL indicated interstitial monitoring of tanks only, not piping, for the period December 2006 to November 2007, for the two UST systems at this facility.

243. Respondent Amerimart’s August 7, 2008 response to EPA’s July 2, 2008 IRL did not include any evidence of monthly monitoring for pressurized piping for the two UST systems at this facility.

244. EPA sent an IRL on January 6, 2010 asking Respondent Amerimart to provide all line tightness tests conducted since December 2007.

245. Respondent Amerimart’s March 26, 2010 response to EPA’s IRL indicated only 1 line tightness test on February 12, 2010.

246. No other line tightness tests were conducted between December 31, 2007 and February 12, 2010.

247. Between at least July 1, 2007 and December 31, 2007, Respondent Amerimart failed to have either an annual line tightness test conducted in accordance with 40 C.F.R. §280.44(b) or monthly monitoring conducted in accordance with 40 CFR §280.44(c) for pressurized piping for both UST systems.

248. Between at least December 31, 2008 and February 12, 2010, Respondent Amerimart failed to have either an annual line tightness test conducted in accordance with 40 C.F.R. §280.44(b) or monthly monitoring conducted in accordance with 40 CFR §280.44(c) for pressurized piping for both UST systems.

249. Respondent Amerimart's failure, between at least July 1, 2007 and December 31, 2007 to have either an annual line tightness test conducted in accordance with 40 C.F.R. Section 280.43(b) or monthly monitoring conducted in accordance with 40 C.F.R. Section 280.44(c) for pressurized piping for both UST systems at this facility, constitutes a violation of 40 C.F.R. §280.41(b)(1)(ii) and §280.44(c).

250. Respondent Amerimart's failure, between at least December 31, 2008 and February 12, 2010, to have either annual line tightness tests or monthly monitoring for the two UST systems at this facility, constitutes a violation of 40 C.F.R. §280.41(b)(1)(ii) and 280.44(c).

251. Between at least July 1, 2007 and December 31, 2007, Respondent Amerimart failed to maintain records demonstrating annual line tightness test or monthly monitoring had been conducted on the pressurized piping of the two UST systems at this facility.

252. Between at least December 31, 2008 and February 12, 2010, Respondent Amerimart failed to maintain records demonstrating annual line tightness test or monthly monitoring had been conducted on the pressurized piping of the two UST systems at this facility.

253. Respondent Amerimart's failure to maintain the results, for at least 1 year, of the annual line tightness test or monthly monitoring on pressurized piping for the two UST systems at this facility constitutes a violation of 40 C.F.R. §280.34(b)(4), §280.34(c), and §280.45(b).

Count 13, A & M Gas Mart-- Buffalo — Failure to Conduct an Annual Test of the Operation of the Automatic Line Leak Detectors for Pressurized Piping for UST Systems and to Maintain Records of the Test

254. Complainant realleges paragraphs 1 through 253, above with the same force and effect as if fully set forth below.

255. Pursuant to 40 C.F.R. § 280.41(b)(1)(i), underground piping that conveys regulated substances under pressure must be equipped with an automatic line leak detector conducted in accordance with 40 C.F.R. § 280.44(a).

256. Forty C.F.R. § 280.44(a) provides, in part, that “[a]n annual test of the operation of the leak detector must be conducted in accordance with the manufacturer’s requirements.”

257. As of at least February 1, 1999, underground piping at A & M Gas Mart was equipped with automatic line leak detectors (ALLDs) for the 10,000 gallon and 6,000 gallon UST systems (tank numbers 1 and 2) at this facility.

258. Respondent was required to conduct an annual test of the operation of the ALLDs starting no later than February 1, 2000 and continuing every year thereafter.

259. EPA’s December 11, 2007 inspection found no evidence of annual testing for the ALLDs for both UST systems at this facility.

260. During EPA’s December 11, 2007 inspection Respondent’s representative was unable to provide records of any testing of ALLDs for the twelve month period prior to the inspection.

261. Annual testing of the ALLDs for both UST systems were conducted (after the inspection) on December 31, 2007.

262. Subsequent to EPA’s inspection, a representative of Respondent informed EPA that no annual testing of the ALLDs at A & M Gas Market was performed prior to December 31, 2007.

263. EPA sent an IRL on January 6, 2010 asking for Respondent Amerimart to provide all testing of the ALLDs at A & M Gas Mart since December 2007.

264. Respondent Amerimart’s March 26, 2010 response to EPA’s IRL indicated that the only annual test of the ALLDs subsequent to December 2007 was performed on February 12, 2010.

265. No testing of the ALLDs was conducted between December 31, 2007 and February 12, 2010.

266. Between at least July 1, 2007 and December 31, 2007, Respondent Amerimart did not conduct an annual test of the operation of the ALLDs for the pressurized piping of UST systems at A & M Gas Mart as specified in 40 C.F.R. §280.44(a).

267. Between at least December 31, 2008 and February 12, 2010, Respondent Amerimart did not conduct an annual test of the operation of the ALLDs for the pressurized piping of UST systems at A & M Gas Mart as specified in 40 C.F.R. §280.44(a).

268. Respondent Amerimart's failures, between at least July 1, 2007 and December 31, 2007, to conduct an annual test of the operation of the ALLDs for the pressurized piping of two UST systems at this facility constitute violations of 40 C.F.R. §§280.41(b)(1)(i) and 280.44(a).

269. Respondent Amerimart's failures, between at least December 31, 2008 and February 12, 2010, to conduct an annual test of the operation of the ALLDs for the pressurized piping of two UST systems at this facility constitute violations of 40 CFR §§280.41(b)(1)(i) and 280.44(a)

270. Between at least July 1, 2007 and December 31, 2007, Respondent Amerimart failed to maintain records of the required annual test of the operation of the automatic line leak detectors for the pressurized piping of the two UST systems at this facility.

271. Between at least December 31, 2008 and February 12, 2010, Respondent Amerimart failed to maintain records of the required annual test of the operation of the automatic line leak detectors for the pressurized piping of the two UST systems at this facility.

272. Respondent Amerimart's failure to maintain the results, for at least 1 year, of the annual test of the operation of the automatic line leak detectors on pressurized piping for the two UST systems at this facility, constitutes a violation of 40 C.F.R. §280.34(b)(4), §280.34(c), and §280.45(b).

COUNTS 14 to 17
Respondent Amerimart Development Company, Inc.
Sheridan Convenient Mart
1066 Sheridan, Tonawanda, New York

Count 14, Sheridan — Failure to Use Overfill Protection for New Tank Systems

273. Complainant realleges paragraphs 1 through 272, above, with the same force and effect as if fully set forth below.

274. Respondent Amerimart has owned and/or operated and continues to own and/or operates three petroleum UST systems (10,000 gallon, and two 8,000 gallon USTs, also referred to as Tank 1, 2 and 3, respectively) located at 1066 Sheridan Drive, Tonawanda, New York.

275. In Amerimart's August 7, 2008 response to EPA's IRL, Bernard Ferer acknowledged that Respondent Amerimart acquired ownership of the three UST systems at this facility on April 1, 1999.

276. (a) The NYSPBS Registration Certificate, dated October 15, 2004, the NYSPBS Facility Information Report, dated April 6, 2006, and the NYSPBS Application form, dated May 1, 2009, each indicate that the owner of the USTs is 2976 Seneca Street Inc. (now dissolved), P.O. Box 473 Grand Island, NY 14072.

(b) The NYSPBS Registration Certificate, dated October 15, 2004, and the NYSPBS Application form, dated May 1, 2009, were both signed by Bernard Ferer, President, (no company name was specified), wherein he affirmed that he is responsible for assuring that the facility is in compliance with the applicable UST requirements.

277. On the 2004 NYSPBS Registration Certificate and the 2009 NYSPBS Application form, Bernard Ferer, c/o Amerimart Development Co. Inc., of 1066 Sheridan Drive, Tonawanda, NY 14150, is listed as the contact person for all mailing and correspondence.

278. EPA's UST Inspection form, dated March 21, 2008, indicates that Bernard Ferer is the contact person regarding ownership of the tanks.

279. An authorized inspector of EPA inspected this facility on March 21, 2008.

280. At the time of EPA's inspection of this facility, the UST systems were in use.

281. The 2004 NYSPBS Registration Certificate and the NYSPBS Facility Information Report, dated April 6, 2006, for this facility indicate that there are three UST systems (two 6,000 gallon USTs (one gasoline and one diesel fuel) and one 10,000 gallon gasoline UST).

282. The 2009 NYSPBS Application form indicates that the two smallest USTs each have an 8,000 capacity each, not a 6,000 gallon capacity.

283. Respondent Amerimart's October 11, 2008 response to EPA's IRL indicates that the two smaller USTs are both 8,000 gallons, not 6,000 gallons.

284. The three UST systems at this facility were installed subsequent to 1988 and are considered "new tank systems" pursuant to 40 C.F.R. §280.12.

285. Pursuant to 40 C.F.R. § 280.20(c)(1)(ii), owners and operators of new UST systems must use overfill prevention equipment on each UST system.

286. The NYSPBS Program Facility Information Report, dated April 6, 2006, indicates that there was no overfill device.

287. EPA's March 21, 2008 inspection of Sheridan Convenient Mart found no evidence of overfill prevention on this UST system.

288. Respondent Amerimart's August 7, 2008 IRL response states that the type of overfill prevention equipment employed for each UST system at this facility was a "ball float valve."

289. EPA's September 18, 2008 IRL letter requested clarification on the overfill prevention for the USTs at this facility.

290. Respondent Amerimart's October 11, 2008 response to EPA's September 2008 IRL states "The only evidence of overfill protection we have is the presence of a device that shuts down delivery of product 500 gallons short of filling the tanks to their capacity."

291. EPA's January 10, 2010 IRL asked again for evidence of the overfill device that Amerimart mentioned in its October 11, 2008 response.

292. Respondent Amerimart's March 26, 2010 response to EPA's January 10, 2010 IRL states: "We have not been able to confirm the actual overfill device on the USTs."

293. Respondent Amerimart's March 26, 2010 response to EPA's January 10, 2010 IRL also indicated that it had arranged to have Reid Petroleum install shut off valves for all three USTs.

294. Respondent Amerimart's July 5, 2010 IRL response includes a May 13, 2010 invoice #39084, which indicates that an overfill device was installed on the USTs during the period of April 5 – 9, 2010.

295. Between at least March 21, 2008 and April 5, 2010 there was no adequate overfill device for the three UST systems at the Sheridan Convenient Mart facility.

296. Respondent Amerimart's failure, between at least March 21, 2008 and April 5, 2010, to use overfill prevention equipment for the three UST systems at the facility, constitutes a violation of 40 C.F.R. § 280.20(c)(1)(ii).

Count 15, Sheridan — Failure to Provide Required Release Detection Monitoring and to Maintain Release Detection Records for Tanks

297. Complainant realleges paragraphs 1 through 296, above, with the same force and effect as if fully set forth below.

298. EPA's March 21, 2008 inspection of Sheridan confirmed release detection was being done using 10-day reconciliation for the 10,000 gallon and two 8,000 gallon tanks (also referred to as Tanks 1, 2 and 3, respectively), but found no evidence of an associated tank tightness tests.

299. Because the tanks were installed in April 1999, if inventory reconciliation was to be used as a release detection method, a tank-tightness test was required at the time of installation and then by April 2004 and again in April 2009 as required in 40 C.F.R. §280.41(a)(1).

300. Respondent Amerimart's August 7, 2008 IRL response provided documentation of release detection (10-day inventory reconciliation data) for the tanks at this facility for the period of March 2007 to August 2007.

301. Some of the values in the 10-day reports were not calculated correctly, indicating that this method was not fully in accordance with 40 C.F.R. §280.43(a).

302. Respondent Amerimart's October 11, 2008, IRL response provided inventory reconciliation control data for January 2008 - September 2008 for the three tanks at this facility.

303. Neither Respondent Amerimart's August 7, 2008 IRL response nor the October 11, 2008 IRL response provided any evidence of a 5-year tank tightness test.

304. In EPA's January 10, 2010 IRL Respondent Amerimart was asked to provide evidence of the performance of any tank tightness tests on the three UST systems since at least 2004.

305. In Amerimart's March 26, 2010 IRL response, Bernard Ferer acknowledged that Amerimart had not conducted any such tank tightness tests.

306. In EPA's January 10, 2010 IRL letter, Respondent Amerimart was asked to use another form of release detection since the 10-day reconciliation method could no longer be used as of April 2009, when the USTs became ten years old.

307. Respondent Amerimart's March 26, 2010 response states that "The alternative release detection method we have been using for the last twelve months has been ground water monitoring. We now realize [that]. . . the use of groundwater well monitoring is not acceptable."

308. Respondent Amerimart's March 26, 2010 IRL response states that it had changed its release detection method to manual interstitial monitoring.

309. Respondent Amerimart's March 26, 2010 response did not include any groundwater or interstitial monitoring release detection records.

310. In its July 5, 2010 IRL response, Respondent Amerimart provides evidence of hand written interstitial monitoring for three months, from April 2010 thru June 2010, for the three tanks at the Sheridan facility.

311. Between July 1, 2007 and April 1, 2009 Respondent Amerimart did not conduct required tank tightness testing of the three tanks at this facility.

312. Between July 1, 2007 and April 1, 2009, Respondent Amerimart did not conduct proper inventory control for the three tanks at this facility.

313. Between July 1, 2007 and March 26, 2010, Respondent Amerimart did not conduct monitoring for releases from the three tanks at this facility.

314. Between July 1, 2007 and March 26, 2010, Respondent Amerimart did not maintain records of release detection for the three tanks at this facility.

315. Respondent Amerimart's failure, between at least July 1, 2007 and April 1, 2009, to conduct required tightness testing and proper inventory control of the three tanks at the facility constitutes a violation of 40 C.F.R. Section 280.41(a).

316. Respondent Amerimart's failure, between at least July 1, 2007 and March 31, 2010, to perform monitoring of releases from the three tanks, constitutes a violation of 40 C.F.R. §280.41(a) and §280.43(d) – (h).

317. Respondent Amerimart's failure to maintain the results of at least 1 year of monitoring for releases from the three tanks at this facility constitutes a violation of 40 C.F.R. §280.34(b)(4), §280.34(c), and §280.45(b).

Count 16, Sheridan — Failure to Conduct Annual Line Tightness Test or Conduct Monthly Monitoring for Pressurized Piping and to Maintain Records of Test or Monitoring

318. Complainant realleges paragraphs 1 through 317, above, with the same force and effect as if fully set forth below.

319. Pursuant to 40 C.F.R. § 280.41, owners and operators of petroleum UST systems must provide, *inter alia*, release detection for piping in accordance with 40 C.F.R. § 280.41(b).

320. Pursuant to 40 C.F.R. § 280.41(b)(1)(ii), underground piping that routinely contains and conveys regulated substances under pressure must, *inter alia*, have an annual line tightness test conducted in accordance with 40 C.F.R. § 280.44(b) or have monthly monitoring conducted in accordance with 40 C.F.R. § 280.44(c).

321. Each tank at Sheridan Convenient Mart had underground piping that routinely contained and that was used to convey gasoline under pressure.

322. Gasoline is a "regulated substance" within the meaning of Section 9001(2) of the Act, 42 U.S.C. § 6991(2), and 40 C.F.R. § 280.12.

323. The tanks and piping at Sheridan Convenient Mart constituted a petroleum UST system for purposes of 40 C.F.R. § 280.41.

324. Respondent Amerimart had performed a line tightness test for each of tanks number 1, 2 and 3 at Sheridan on the day of the EPA inspection, March 21, 2008.

325. EPA's March 21, 2008 inspection found no evidence of monthly monitoring for the pressurized piping of the three UST systems at this facility.

326. EPA's March 21, 2008 inspection found no evidence of any previous annual line tightness tests.

327. During EPA's March 21, 2008 inspection of the Sheridan Convenient Mart facility, Respondent's representatives could not provide the results of line tightness test or any monthly monitoring for pressurized piping for the UST systems for the twelve month period prior to the inspection.

328. Between at least March 21, 2007 and March 21, 2008, Respondent Amerimart failed to have either an annual line tightness test conducted in accordance with 40 C.F.R. § 280.44(b) or monthly monitoring conducted in accordance with 40 C.F.R. § 280.44(c) for tank numbers 1, 2 and 3 at the Sheridan Convenient Mart facility.

329. EPA's January 10, 2010 IRL asked Respondent Amerimart to provide evidence of the performance of any annual line tightness tests since March 21, 2008 for the 10,000 gallon and two 8,000 gallon UST systems at the Sheridan facility.

330. Respondent Amerimart's March 26, 2010 IRL response only provided a line tightness test dated February 11, 2010, indicating that no other tests were conducted between this date and the previous test of March 21, 2008.

331. In its July 5, 2010, IRL response, Respondent Amerimart confirms that no other line tightness tests were conducted for the 10,000 gallon and two 8,000 gallon UST systems at the Sheridan facility between March 21, 2008, and February 11, 2010.

332. Between at least July 1, 2007 and March 21, 2008, Respondent Amerimart failed to have either an annual line tightness test conducted in accordance with 40 C.F.R. §280.44(b) or monthly monitoring conducted in accordance with 40 C.F.R. §280.44(c) for the three UST systems at this facility.

333. Respondent Amerimart's failure, between at least July 1, 2007 and March 21, 2008 to have either annual line tightness tests or monthly monitoring for the three UST systems at this facility, constitutes a violation of 40 C.F.R. §280.41(b)(1)(ii) .

334. Between at least March 21, 2009 and February 11, 2010, Respondent Amerimart failed to have either an annual line tightness test conducted in accordance with 40 C.F.R. §280.44(b) or monthly monitoring conducted in accordance with 40 C.F.R. §280.44(c) for the three UST systems.

335. Respondent Amerimart's failure, between at least March 21, 2009 and February 11, 2010 to have either annual line tightness tests or monthly monitoring for the three UST systems at this facility, constitutes a violation of 40 C.F.R. §280.41(b)(1)(ii) .

336. Between at least July 1, 2007 and March 21, 2008, Respondent Amerimart failed to maintain records demonstrating annual line tightness test or monthly monitoring on the pressurized piping of the three UST systems at this facility.

337. Between at least March 21, 2009 and February 11, 2010, Respondent Amerimart failed to maintain records demonstrating annual line tightness test or monthly monitoring on the pressurized piping of the three UST systems at this facility

338. Respondent Amerimart's failure to maintain the results of at least 1 year, of the annual line tightness test or monthly monitoring on pressurized piping for the three UST systems at this facility, constitutes a violation of 40 C.F.R. §280.34(b)(4), §280.34(c), and §280.45(b).

Count 17, Sheridan — Failure to Conduct Annual Test of the Operation of Automatic Line Leak Detectors for Pressurized Piping for UST Systems and to Maintain Records of Test

339. Complainant realleges paragraphs 1 through 338, above with the same force and effect as if fully set forth below.

340. Pursuant to 40 C.F.R. § 280.41(b)(1)(i), underground piping that conveys regulated substances under pressure must be equipped with an automatic line leak detector (ALLD) conducted in accordance with 40 C.F.R. § 280.44(a).

341. 40 C.F.R. § 280.44(a) provides, that “[a]n annual test of the operation of the leak detector must be conducted in accordance with the manufacturer’s requirements.”

342. As of at least April 1, 1999 underground piping at Sheridan was equipped with ALLDs for the 10,000 gallon and two 8,000 gallon UST systems.

343. Respondent Amerimart was required to conduct an annual test of the operation of the ALLDs starting no later than April 1, 2000 and continuing every year thereafter for the pressurized piping for the three UST systems at this facility.

344. During EPA’s March 21, 2008 inspection of the Sheridan facility, Respondent’s representative could not provide the results of any test of the operation of the ALLDs for pressurized piping for the UST systems for the twelve month period prior to the inspection.

345. During EPA’s March 21, 2008 inspection, contractors were on site performing a test of the ALLDs.

346. Respondent's August 7, 2008 IRL response provided documentation that a test of the ALLDs was performed on March 21, 2008.

347. In EPA's January 10, 2010 IRL, Respondent Amerimart was asked to provide evidence of any tests of the ALLDs for the pressurized piping performed since March 21, 2008 for the three UST systems at the Sheridan facility.

348. In its March 26, 2010 IRL response, Respondent Amerimart only provided a test, dated February 11, 2010, of the ALLD for the pressurized piping of the three UST systems.

349. In its March 26, 2010 IRL response, Respondent Amerimart stated that no other tests of the ALLDs for the pressurized piping of the three UST systems were conducted between the date of the March 21, 2008 inspection at the Sheridan Convenient Mart facility and February 11, 2010.

350. In its July 5, 2010 IRL response, Respondent Amerimart stated that no other tests of the ALLDs for the pressurized piping of the three UST systems were conducted between the date of the March 21, 2008 inspection at the Sheridan Convenient Mart facility and February 11, 2010.

351. Between at least March 21, 2009 and February 11, 2010, Respondent Amerimart did not conduct an annual test of the operation of the ALLDs for the pressurized piping of UST systems as specified in 40 C.F.R. §280.44(a).

352. Respondent Amerimart's failure, between at least March 21, 2009 and February 11, 2010, to conduct an annual test of the operation of the ALLDs for the pressurized piping of the three UST systems, constitutes a violation of 40 C.F.R. §280.41(b)(1)(i) and §280.44(a).

353. Between at least March 21, 2009 and February 11, 2010, Respondent Amerimart failed to maintain records demonstrating performance of the annual test of the operation of the ALLD for the pressurized piping of the three UST systems at this facility.

354. Respondent Amerimart's failure to maintain the results for at least 1 year of the performance of the annual test of the operation of the ALLD on pressurized piping for the three UST systems at this facility, constitutes a violation of 40 C.F.R. §280.34(b)(4), §280.34(c), and §280.45(b).

COUNTS 18 to 22
Respondent Amerimart Development Company, Inc.
Walden Convenient Mart
599 Walden Avenue, Buffalo, New York 14150

Count 18, Walden — Failure to Use Overfill Protection for Existing Tank System

355. Complainant realleges paragraphs 1 through 354, above, with the same force and effect as if fully set forth below.

356. Respondent Amerimart has owned and/or operated and continues to own and/or operates three petroleum UST systems (10,000 gallon gasoline UST, 8,000 gallon gasoline UST and 4,000 gallon diesel fuel UST, each also referred to as “Tank 1,” Tank 2” or “Tank 3”, respectively) located at Walden Convenient Mart (“Walden”).

357. Respondent Amerimart’s February 8, 2008 response to question 17 of EPA’s January 7, 2008 IRL states that the owner of the Walden facility is “Amerimart Development Co. Inc.”, 1066 Sheridan Drive, Tonawanda, NY 14150.

358. EPA’s UST Inspection form, dated August 14, 2007, indicates that the owner of the tanks at Walden is “Amerimart Development Co., Inc., P.O. Box 811, 1066 Sheridan Drive, Tonawanda, NY 14150. . .[and the] Contact Person [is] Bernard Ferer.”

359. NYSPBS Registration Certificate, dated February 9, 2004, and the NYSPBS Application form were both signed by Bernard Ferer as representative of 2976 Seneca Street, Inc. (now a dissolved corporation), P.O. Box 473, Grand Island, NY 14072, wherein he acknowledges that he is responsible for assuring that this facility is in compliance with applicable UST requirements.

360. NYSPBS Registration Certificate and the NYSPBS Application form both indicate that all mailing correspondence should go to Bernard Ferer, c/o Amerimart Development Co., Inc., P.O. Box 811, 1066 Sheridan Drive, Tonawanda, N.Y.

361. An authorized inspector of EPA inspected this facility on August 14, 2007.

362. At the time of EPA’s inspection of the Walden facility, the UST systems were in use.

363. NYSPBS Registration Certificate for this facility indicates that there are three UST systems (10,000 gallon gasoline UST, 8,000 gallon gasoline UST and 4,000 gallon diesel fuel UST).

364. Each UST system includes a double-walled fiberglass coated steel UST.

365. The three UST systems at this facility were installed prior to 1988 and are considered "existing tank systems" within the meaning of 40 C.F.R. §280.12.

366. Pursuant to 40 C.F.R. §280.21(d), all existing UST systems must comply with new UST system spill and overfill prevention requirements specified in §280.20(c).

367. (a) EPA's August 14, 2007 inspection of Walden found no evidence of overfill prevention for the 4,000 gallon diesel fuel UST.

(b) NYSPBS Application form indicates that there is no overfill prevention for the 4,000 gallon diesel fuel UST.

368. Respondent Amerimart's February 8, 2008, IRL response to EPA's January 7, 2008 IRL for Walden Convenient Mart only, describes overfill prevention for the 4,000 gallon diesel fuel tank at Walden as follows: "When ordering gasoline, you must subtract at least 400 gallons from the tank capacity because that is when the tank will shut the delivery down by indicating that the tank is full."

369. Respondent Amerimart's February 8, 2008 IRL response indicates that the overfill prevention method used at this facility for the 4,000 gallon diesel fuel tank is not in compliance with UST regulations for overfill prevention.

370. In a May 8, 2008, telephone conversation between Paul Sacker, of EPA, and Respondent's Representative, Harold Geiger, Mr. Geiger stated that the overfill prevention device on this tank was not working and that it was scheduled to be replaced.

371. Respondent Amerimart's March 26, 2010 response to EPA's January 2010 IRL, states that it was unable to provide documentation of an overfill device on the 4,000 gallon diesel fuel UST, and it had made arrangements to have a drop tube installed.

372. Respondent Amerimart's July 5, 2010, IRL response, provided evidence that an ATG installed by Reid Petroleum on March 16, 2010, provides electronic overfill prevention with an audible alarm for the 4,000 gallon diesel fuel UST at the Walden facility.

373. Between at least August 14, 2007 and March 16, 2010 there was no adequate overfill device for the 4,000 gallon diesel fuel UST at the Walden facility.

374. Respondent Amerimart's failure, between at least August 14, 2007 and March 16, 2010, to use overfill prevention equipment for the 4,000 gallon diesel fuel UST at the facility, constitutes a violation of 40 C.F.R. § 280.21(d).

Count 19. Walden — Failure to Provide Required Release Detection Monitoring

375. Complainant realleges paragraphs 1 through 374, above, with the same force and effect as if fully set forth below.

376. EPA's August 14, 2007 inspection of Walden found evidence of an ATG on site, but no monitoring records and no indication was provided as to how this ATG tested for releases.

377. Respondent Amerimart's February 8, 2008 IRL response states that "the Automatic Tank Gauging has been out of service but is in the process of being replaced and upgraded."

378. Respondent Amerimart's February 8, 2008 IRL response provided hand-written ground water monitoring logs as evidence of weekly release detection for the 10,000 gallon, 8,000 gallon and 4,000 gallon tanks at the Walden facility for the period of September 2006 through August 2007.

379. In its March 2010 IRL response Respondent Amerimart states with regards to release detection for the three tanks at Walden that it has "tried numerous times to repair and replace broken wires and parts to the (ATG) system and failed."

380. Respondent Amerimart's March 2010 IRL response indicated that the ATG system was replaced in March 2010, and an invoice dated March 16, 2010, was provided.

381. Respondent Amerimart's March 26, 2010 IRL response provided printouts from the new ATG which show inventory levels only, but not any evidence of a release detection test.

382. Respondent Amerimart's March 26, 2010, IRL response, states that it was using ground water monitoring as a backup release detection method for the three tanks at Walden but that "We now realize using your criteria [§280.43(f)] requirements for the use of ground water well monitoring is not acceptable."

383. Respondent Amerimart acknowledged that it has not had proper release detection until at least installation of the new ATG on March 16, 2010.

384. In Respondent Amerimart's July 5, 2010 IRL response, proper release detection results from the ATG at Walden were provided.

385. Between July 1, 2007 and March 16, 2010 Respondent Amerimart did not conduct required monitoring for releases from the three tanks, as required by 40 C.F.R. §280.41(a).

386. Respondent Amerimart's failure, between at least July 1, 2007 and March 16, 2010, to perform monitoring for releases from the three tanks, constitutes a violation of 40 C.F.R. §§280.41(a) and 280.43(d) – (h).

Count 20, Walden — Failure to Conduct Annual Line Tightness Test or Conduct Monthly Monitoring for Pressurized Piping and To Maintain Records of Test or Monitoring

387. Complainant realleges paragraphs 1 through 386, above, with the same force and effect as if fully set forth below.

388. Pursuant to 40 C.F.R. § 280.41, owners and operators of petroleum UST systems must provide, *inter alia*, release detection for piping in accordance with 40 C.F.R. § 280.41(b).

389. Pursuant to 40 C.F.R. § 280.41(b)(1)(ii), underground piping that routinely contains and conveys regulated substances under pressure must, *inter alia*, have an annual line tightness test conducted in accordance with 40 C.F.R. § 280.44(b) or have monthly monitoring conducted in accordance with 40 C.F.R. § 280.44(c).

390. Each of the three UST systems at the Walden Convenient Mart facility routinely contained and were used to convey regulated substances under pressure.

391. Gasoline and diesel fuel are each a “regulated substance” within the meaning of Section 9001(2) of the Act, 42 U.S.C. § 6991(2), and 40 C.F.R. § 280.12.

392. EPA’s August 14, 2007 inspection of Walden did not identify a form of release detection for the pressurized piping for the three tanks at this facility.

393. Respondent Amerimart’s February 8, 2008 IRL response indicated that monthly release detection for pressurized piping was provided via groundwater monitoring for the period of September 2006 through August 2007.

394. Respondent Amerimart’s March 16, 2010 IRL response acknowledged that groundwater monitoring was not conducted in accordance with 280.43(f): “We now realize using your criteria [§280.43(f)] requirements for the use of ground water well monitoring is not acceptable.”

395. Respondent Amerimart’s February 8, 2008 IRL response included passing line tightness tests for the three UST systems at this facility on February 4, 2008.

396. Respondent Amerimart’s March 16, 2010 IRL response provides passing line tightness tests for the three UST systems at this facility on February 5, 2010.

397. EPA’s January 6, 2010 requested that Respondent Amerimart provide line tightness test results for 2009.

398. In its July 5, 2010 IRL response, Respondent Amerimart confirms that no other line tightness tests or release detection monitoring for the lines from the three UST systems at this facility were conducted between February 4, 2008 and February 5, 2010.

399. Between July 1, 2007 and February 4, 2008, Respondent Amerimart did not conduct either monthly monitoring or annual line tightness test for the pressurized piping for the three UST systems at the facility.

400. Between February 4, 2009 and February 5, 2010, Respondent Amerimart did not conduct either monthly monitoring or annual line tightness test for pressurized piping for the three UST systems at the facility.

401. Between at least July 1, 2007 and February 4, 2008, Respondent Amerimart failed to maintain records demonstrating annual line tightness test or monthly monitoring on the pressurized piping of the three UST systems at this facility

402. Between at least February 4, 2009 and February 5, 2010, Respondent Amerimart failed to maintain records demonstrating annual line tightness test or monthly monitoring on the pressurized piping of the three UST systems at this facility.

403. Respondent Amerimart's failure to maintain the results, for at least 1 year, of the annual line tightness test or monthly monitoring on pressurized piping for the three UST systems at this facility, constitutes a violation of 40 C.F.R. §280.34(b)(4), §280.34(c), and §280.45(b).

Count 21, Walden — Failure to Conduct Test of the Operation of the Automatic Line Leak Detectors For Pressurized Piping for UST Systems and to Maintain Records of Test

404. Complainant realleges paragraphs 1 through 403, above with the same force and effect as if fully set forth below.

405. Pursuant to 40 C.F.R. § 280.41(b)(1)(i), underground piping that conveys regulated substances under pressure must be equipped with an automatic line leak detector conducted in accordance with 40 C.F.R. § 280.44(a).

406. 40 C.F.R. § 280.44(a) provides, in part, that “[a]n annual test of the operation of the leak detector must be conducted in accordance with the manufacturer’s requirements.”

407. As of at least December 22, 1998 underground piping for the three UST systems at this facility were equipped with automatic line leak detectors (“ALLDs”).

408. Respondent Amerimart was required to conduct an annual test of the operation of the automatic line leak detector starting no later than December 22, 1999 and continuing every year thereafter for the pressurized piping for the three UST systems at this facility.

409. At EPA's August 14, 2007 inspection of Walden, Respondent Amerimart was unable to provide any evidence of annual tests of the ALLDs for pressurized piping during the twelve month period prior to the date of this inspection.

410. Respondent Amerimart's February 8, 2008 IRL response provides the first documented ALLD test for the pressurized piping for the three UST systems at Walden which was performed on February 4, 2008.

411. Subsequent to EPA's inspection, a representative of Respondent informed EPA that no annual tests of the ALLDs were performed prior to February 2008.

412. EPA's January 6, 2010 IRL requested any documentation demonstrating that an ALLD test was performed on the pressurized piping for the UST systems during 2009.

413. Respondent Amerimart's March 26, 2010 IRL response did not provide any information or documentation demonstrating that any test of the ALLD was performed for the three tanks during 2009.

414. Respondent Amerimart's March 26, 2010 IRL response provided documentation that a test of the ALLDs for the pressurized piping for the three UST systems at this facility was performed on February 5, 2010.

415. In its July 5, 2010 IRL response, Respondent Amerimart confirms that no other tests of ALLDs were conducted for the pressurized piping for the three UST systems at this facility between February 4, 2008 and February 5, 2010.

416. Between at least December 22, 2007 and February 4, 2008, Respondent Amerimart did not conduct an annual test of the operation of the ALLDs for the pressurized piping of the three UST systems, as specified in 40 C.F.R. §280.44(a).

417. Between at least February 4, 2009 and February 5, 2010, Respondent Amerimart did not conduct an annual test of the operation of the ALLDs for the pressurized piping of the three UST systems, as specified in 40 C.F.R. §280.44(a).

418. Respondent Amerimart's failure between at least December 22, 2007 and February 4, 2008 to conduct an annual test of the operation of the ALLDs for the pressurized piping of the three UST systems constitutes a violation of 40 C.F.R. §§280.41(b)(1)(i) and 280.44(a) .

419. Respondent Amerimart's failure between at least February 4, 2009 and February 5, 2010 to conduct an annual test of the operation of the ALLDs for the pressurized piping of the three UST systems constitutes a violation of 40 C.F.R. §280.41(b)(1)(i) and §280.44(a) .

420. Between at least December 22, 2007 and February 4, 2008, Respondent Amerimart failed to maintain records demonstrating annual test of the operation of the automatic line leak detector for the pressurized piping of the three UST systems at this facility.

421. Between at least February 4, 2009 and February 5, 2010, Respondent Amerimart failed to maintain records demonstrating annual test of the operation of the automatic line leak detector for the pressurized piping of the three UST systems at this facility.

422. Respondent Amerimart's failure to maintain, for at least 1 year, the results of the annual test of the operation of the automatic line leak detector on pressurized piping for the three UST systems at this facility constitutes a violation of 40 C.F.R. §280.34(b)(4), §280.34(c), and §280.45(b).

Count 22, Walden – Failure to Maintain Release Detection Records for UST system

423. Complainant realleges paragraphs 1 through 422, above, with the same force and effect as if fully set forth below.

424. During EPA's August 4, 2011 inspection of Walden, Respondent's representative confirmed that the release detection system, automatic tank gauging, was operational.

425. During EPA's August 4, 2011 inspection of Walden, Respondent's representative could not provide the results of monthly monitoring for the twelve month period prior to the inspection.

426. EPA's September 30, 2011 IRL requested monitoring records for the UST systems at the Walden Facility for the period of August 4, 2010 through August 4, 2011, which represented the twelve month period prior to the date of EPA's August 4, 2011 inspection of this facility.

427. Subsequent to EPA's August 4, 2011 inspection of Walden, Respondent's representative provided EPA's authorized inspector with monitoring records for the period of November 29, 2010 through August 2011.

428. Respondent was unable to provide results of monthly monitoring for the period August 4, 2010 through November 28, 2010.

429. Between at least August 4, 2010 and November 28, 2010, Respondent Amerimart did not maintain the results/records of release detection monitoring for the three UST systems at the Walden facility.

430. Respondent Amerimart's failure to maintain the results for at least 1 year of monitoring for releases from the three UST systems located at this facility, constitutes a violation of 40 C.F.R. §§280.34(b)(4), 280.34(c) and 280.45(b).

COUNTS 23 to 26
Respondents Amerimart Development Company, Inc. &
MJG Enterprises, Inc.
Herrscher's Express Mart
4291 Maple Road, Amherst, New York 14226

Count 23, Herrscher's — Failure to Upgrade Existing UST Systems, or Meet the New UST System Performance Standards, or Close the Existing UST Systems at Herrscherr's Express Mart, as Required by 40 C.F.R. §280.21.

431. Complainant realleges paragraphs 1 through 430, above, with the same force and effect as if fully set forth below.

432. Respondents Amerimart and MJG Enterprises have been the owners and/or operators of three petroleum UST systems (two 8,000 gallon gasoline USTs—also referred to as Tank 1 and Tank 2, and a 2,500 gallon diesel fuel UST, also referred to as Tank 4) at a retail gasoline station, Herrscher's Express Mart ("Herrscher's"), the address of which is 4291 Maple Road, Amherst, NY 14226.

433. The NYSPBS Application form, dated September 27, 2010 and the NYSPBS Certificate, dated October 1, 2010, were both signed by Michael J. Geiger, President, who affirmed that he is responsible for assuring the facility's compliance with all applicable UST requirements.

434. The NYSPBS Application form, dated September 27, 2010 and the NYSPBS Registration Certificate, dated October 1, 2010, identified MJG Enterprises Inc., of 14 Colonial Drive, Tonawanda, NY 14150, as owner of the UST systems at the Herrscherr's Express Mart Facility.

435. Respondents MJG Enterprises Inc., Michael J. Geiger and Qual-Econ, Inc. each have the same physical address of "14 Colonial Drive, Tonawanda, NY 14150."

436. The NYSPBS Application form and the NYSPBS Registration Certificate both identified Michael J. Geiger, President, as the contact person to whom all mailing and correspondence should be sent, c/o MJG Enterprises, Inc., 14 Colonial Drive, Tonawanda, NY 14150.

437. In Respondent Amerimart Development Co., Inc.'s August 7, 2008 IRL response Bernard Ferer acknowledges that Amerimart acquired ownership of the USTs at Herrscher's on January 2, 1998.

438. The NYSDEC PBS Registration Certificate, dated August 22, 2005, for Herrscher's indicates that each of the UST systems at this facility was installed on August 1, 1986, thus making them existing tanks as defined by 40 C.F.R. § 280.12.

439. Pursuant to 40 C.F.R. § 280.21(a), not later than December 22, 1998, all existing UST systems had to comply with the upgrade requirements in paragraphs (b) through (d) of that section, or with the new performance standard requirements set forth in 40 C.F.R. §280.20, or the closure requirements set forth in 40 C.F.R. §§ 280.70 – 280.74.

440. Pursuant to 40 C.F.R. § 280.21(c), metal piping that routinely contains regulated substances and is in contact with the ground must be cathodically protected in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory and must meet the requirements of §280.20(b)(2) (ii), (iii), and (iv).

441. An authorized representative of EPA inspected this facility on August 14, 2008.

442. EPA's August 14, 2008 inspection of Herrscher's found evidence that the piping for three tanks had metallic components that were not protected from corrosion pursuant to 40 C.F.R. §§280.21(b) and 280.21(c).

443. At the time of the August 14, 2008 inspection of the UST systems at the facility, the UST systems were in use and did not meet the performance standards set forth at 40 C.F.R. §280.21, or had not been closed pursuant to 40 CFR §§280.70-280.74.

444. The piping on the three UST systems was required to be upgraded with cathodic protection by no later than December 22, 1998.

445. In Respondent Amerimart's March 26, 2010 IRL response, it acknowledged that "there has been no added corrosion protection to the metallic components of the piping of the three UST systems at this facility."

446. Respondent Amerimart's March 26, 2010 IRL response stated that a contractor misled the company into believing that the pipes on the UST systems were upgraded with corrosion protection.

447. Respondent Amerimart's March 26, 2010 response stated that the company has taken steps to have the pipes tested for corrosion protection.

448. In Respondent Amerimart's July 5, 2010 IRL response, cathodic protection testing results for all three lines performed on March 30, 2010 were provided showing that the cathodic protection system had been installed.

449. Between at least August 14, 2008 through March 30, 2010, Respondents Amerimart and MJG Enterprises Inc. provided no evidence of the presence of cathodic protection for the piping on the three tanks at Herrscher's.

450. Respondents Amerimart and MJG Enterprise's failure, from at least August 14, 2008 through March 30, 2010, to comply with the upgrade requirements specified in 40 C.F.R. §280.21 or with the performance standards set forth in 40 C.F.R. §280.20 or the closure requirements set forth in 40 C.F.R. §§280.70 – 280.74 constitutes a violation of 40 C.F.R. §280.21.

Count 24, Herrscher's — Failure to Provide Required Release Detection Monitoring for Tanks and To Maintain Release Detection Records

451. Complainant realleges paragraphs 1 through 450, above, with the same force and effect as if fully set forth below.

452. 40 C.F.R. §280.41(a), owners and operators are required to ensure that UST systems are monitored at least every thirty (30) days for releases from tanks using one of the methods listed in §280.43(d) through (h), except under certain conditions which are not applicable to the present situation.

453. 40 C.F.R. §280.43(f)(7) requires that within and immediately below the UST system excavation zone, the site is assessed to ensure compliance with the requirements of (f)(1) through (5) of this section and to establish the number and positioning of monitoring wells that will detect releases from any portions of tanks that contain product.

454. The NYSDEC PBS Registration Certificate indicates that groundwater monitoring is the release detection method for the three tanks at Herrscher's Express Mart.

455. During EPA's August 14, 2008 inspection, Respondents informed EPA that it employed groundwater monitoring as the method of release detection for the three UST systems at this facility.

456. Respondent Amerimart's October 11, 2008 IRL response included twelve months of groundwater monitoring records, from September 2007 thru September 2008.

457. Respondent Amerimart's March 16, 2010 IRL Response provides additional detail on the groundwater monitoring system employed for the UST systems at this facility.

458. During EPA's August 4, 2011 inspection, facility representatives again informed EPA that groundwater monitoring was the method of release detection for the three UST systems at this facility.

459. During EPA's August 4, 2011 inspection, facility representatives were unable to provide records of release detection monitoring for the twelve months prior to this inspection.

460. Respondent Amerimart's February 22, 2012 IRL Response to EPA's January 25, 2012 IRL indicates that wells # 2 through #6 were installed in 2010 and well # 7 was installed in 2011.

461. Respondent Amerimart's February 22, 2012 IRL Response states that no site assessment was conducted for recently installed wells (wells #2 thru 7).

462. The groundwater monitoring system employed by Respondents is inadequate to provide proper release detection and meet the performance requirements of 40 C.F.R. §280.43(f).

463. a. Respondent Amerimart's February 22, 2012 IRL Response states that it kept monitoring logs for only one well (or it combined the results from two wells). Specifically, Respondent stated: "The entries [groundwater monitoring records] provide the results from one monitoring well... and the compilation of observations made of two wells. There are no separate logs kept for each well."

b. The groundwater monitoring records kept by Respondents are inadequate to provide proper groundwater monitoring well recordkeeping.

464. Respondent Amerimart's October 11, 2008 IRL response indicates that inventory control reconciliation was another method of release detection for the three UST systems at this facility.

465. Respondent Amerimart's October 11, 2008 IRL response acknowledges that it "did not know that the EPA does not approve the New York State Department of Environmental Conservation 10 day inventory reconciliation method for release detection for tanks that are over 10 years old."

466. Inventory reconciliation is not an acceptable method of release detection for the three UST systems at this facility, because the tanks are older than 10 years old.

467. Respondent Amerimart's March 16, 2010 IRL response states that it is in the process of installing an ATG for this facility.

468. As of Amerimart's February 22, 2012 IRL response, no acceptable method of release detection has been operated by Respondents Amerimart and MJG Enterprise at this facility.

469. Between July 1, 2007 and June 30, 2012, Respondents' Amerimart and MJG Enterprise did not conduct proper monitoring for releases from the UST systems at this facility.

470. Respondents Amerimart and MJG Enterprise's failure between at least July 1, 2007 and June 30, 2012 to perform monthly monitoring for releases from the UST systems, constitutes a violation of 40 C.F.R. §§280.41(a) and 280.43(d) – (h).

471. Between July 1, 2007 and June 30, 2012 Respondents Amerimart and MJG Enterprise did not maintain records of release detection for the UST systems at this facility.

472. Respondent Amerimart and MJG Enterprise's failure to maintain the results of at least 1 year of release detection monitoring for the three UST systems at this facility, constitutes a violation of 40 C.F.R. §§280.34(b)(4), 280.34(c), and 280.45(b).

Count 25, Herrscher's — Failure to Conduct Annual Line Tightness Test or Conduct Monthly Monitoring for Pressurized Piping and to Maintain Records of Test or Monitoring

473. Complainant realleges paragraphs 1 through 472 above, with the same force and effect as if fully set forth below.

474. Pursuant to 40 C.F.R. § 280.41, owners and operators of petroleum UST systems must provide, *inter alia*, release detection for piping in accordance with 40 C.F.R. § 280.41(b).

475. Pursuant to 40 C.F.R. § 280.41(b)(1)(ii), underground piping that routinely contains and conveys regulated substances under pressure must, *inter alia*, have an annual line tightness test conducted in accordance with 40 C.F.R. § 280.44(b) or have monthly monitoring conducted in accordance with 40 C.F.R. § 280.44(c).

476. Each of the USTs at Herrscher's facility routinely contain and are used to convey regulated substances under pressure.

477. Gasoline and diesel fuel are each a "regulated substance" within the meaning of Section 9001(2) of the Act, 42 U.S.C. § 6991(2), and 40 C.F.R. § 280.12.

478. Respondent Amerimart's August 7, 2008 IRL response, included line tightness tests results, dated August 7, 2008 (same date the response was signed).

479. EPA's August 14, 2008 inspection at Herrscher's facility revealed that annual line tightness testing was not performed on pressurized piping prior to August 7, 2008.

480. Respondents Amerimart and MJG Enterprise did not conduct proper monthly monitoring for releases from the piping associated with the UST systems at this facility.

481. Respondent Amerimart's March 26, 2010 IRL response provided results for line tightness tests conducted on February 1, 2010.

482. In its July 5, 2010 IRL response Respondent Amerimart confirms that no other line tightness tests or release detection monitoring for pressurized piping were conducted between August 7, 2008 and February 1, 2010.

483. Between July 1, 2007 and August 7, 2008, Respondents Amerimart and MJG Enterprise did not conduct either monthly monitoring or annual line tightness tests for the pressurized piping for the three UST systems at the facility.

484. Between August 7, 2009 and February 1, 2010, Respondents Amerimart and MJG Enterprise did not conduct either monthly monitoring or annual line tightness tests for pressurized piping for the three UST systems at the facility.

485. Respondents Amerimart and MJG Enterprise's failure between at least July 1, 2007 and August 7, 2008 to perform monthly monitoring or a line tightness test for the pressurized piping for the three UST systems constitutes a violation of 40 C.F.R. §280.41(b)(1)(ii).

486. Respondents Amerimart and MJG Enterprise's failure between at least August 7, 2009 and February 1, 2010 to perform monthly monitoring or a line tightness test for the pressurized piping for the three UST systems constitutes a violation of 40 C.F.R. §280.41(b)(1)(ii).

487. Between at least July 1, 2007 and August 7, 2008 Respondents Amerimart and MJG Enterprise failed to maintain records of performance of an annual line tightness test or monthly monitoring on the pressurized piping of the three UST systems at this facility.

488. Between at least August 7, 2009 and February 1, 2010, Respondents Amerimart and MJG Enterprise failed to maintain records of performance of an annual line tightness test or monthly monitoring on the pressurized piping of the three UST systems at this facility.

489. Respondents Amerimart and MJG Enterprise's failure to maintain the results, of at least 1 year, of annual line tightness test or monthly monitoring on pressurized piping for the three UST systems at this facility constitutes a violation of 40 C.F.R. §280.34(b)(4), §280.34(c), and §280.45(b).

Count 26, Herrscher's — Failure to Conduct Test of the Operation of the Automatic Line Leak Detectors for Pressurized Piping for the UST Systems and to Maintain Records of the Test

490. Complainant realleges paragraphs 1 through 489, above with the same force and effect as if fully set forth below.

491. Pursuant to 40 C.F.R. § 280.41(b)(1)(i), underground piping that conveys regulated substances under pressure must be equipped with an automatic line leak detector conducted in accordance with 40 C.F.R. § 280.44(a).

492. 40 C.F.R. § 280.44(a) provides, in part, that “[a]n annual test of the operation of the leak detector must be conducted in accordance with the manufacturer’s requirements.”

493. As of at least December 22, 1998 underground piping for the three UST systems at this facility were equipped with automatic line leak detectors.

494. Respondents Amerimart and MJG Enterprise were required to conduct an annual test of the operation of the automatic line leak detector starting no later than December 22, 1999 and continuing every year thereafter for the pressurized piping for the three UST systems at this facility.

495. Respondent Amerimart’s August 7, 2008 IRL response included the first ALLD test, dated August 7, 2008 (same date the response was signed) for the three UST systems at this facility.

496. EPA’s August 14, 2008 inspection of Herrscher’s revealed that there had been no test of the ALLDs on the pressurized piping for the twelve month period prior to August 7, 2008.

497. Respondent Amerimart’s March 26, 2010 IRL response provided documentation that a test of the ALLDs for the pressurized piping for the three UST systems at this facility was performed on February 1, 2010.

498. In its July 5, 2010 IRL response, Respondent Amerimart confirms that no other tests of ALLDs were conducted for the pressurized piping for the three UST systems at this facility between August 7, 2008 and February 1, 2010.

499. Between at least December 22, 2007 and August 7, 2008, Respondents Amerimart and MJG Enterprise did not conduct an annual test of the operation of the ALLDs for the pressurized piping for the three UST systems as specified in 40 C.F.R. §280.44(a).

500. Between at least August 7, 2009 and February 1, 2010, Respondents Amerimart and MJG Enterprise did not conduct an annual test of the operation of the ALLDs for the pressurized piping of the three UST systems as specified in 40 C.F.R. §280.44(a).

501. Respondents Amerimart and MJG Enterprise’s failure between at least December 22, 2007 and August 7, 2008 to conduct an annual test of the operation of the ALLDs for the pressurized piping for the three UST systems constitutes a violation of 40 C.F.R. §§280.41(b)(1)(i) and 280.44(a).

502. Respondent Amerimart and MJG Enterprise's failure between at least August 7, 2009 and February 1, 2010 to conduct an annual test of the operation of the ALLDs for the pressurized piping for the three UST systems constitutes a violation of 40 C.F.R. §§280.41(b)(1)(i) and 280.44(a).

503. Between at least December 22, 2007 and August 7, 2008 Respondents Amerimart and MJG Enterprise failed to maintain records of performance of annual line tightness test or monthly monitoring on the pressurized piping of the three UST systems at this facility

504. Between at least August 7, 2009 and February 1, 2010, Respondents Amerimart and MGJ Enterprise failed to maintain records of performance of annual line tightness tests or monthly monitoring on the pressurized piping of the three UST systems at this facility.

505. Respondents Amerimart and MJG Enterprise's failure to maintain the results of at least 1 year, of annual line tightness test or monthly monitoring on pressurized piping for the three UST systems at this facility, constitutes a violation of 40 C.F.R. §§280.34(b)(4) and 280.45(b).

COUNTS 27- 33

**Respondents Qual-Econ Lease Co., Inc. and Clear Alternative of Western NY, Inc.
(dba G & G Petroleum)**

**G & G Petroleum Facility
1531-1543 Niagara Street
Buffalo, NY**

Count 27, G & G Petroleum – Failure to Comply with Information Request Letters Issued Under RCRA § 9005 and 40 C.F.R. Section 280.34 for all UST Systems at the G & G Petroleum Facility

506. Complainant realleges each allegation contained in Paragraphs 1 through 505 above with the same force and effect as if fully set forth herein.

507. Respondents Qual Econ and Clear Alternative of Western, NY (dba G & G Petroleum) have been the owners and/or operators of UST systems at the G & G Petroleum retail gasoline facility ("G & G"), located at 1531-1543 Niagara Street, Buffalo, NY 14213.

508. A NYSPBS Application Form, dated September 13, 2010, identifies "Qual-Econ Lease Co., Inc., of 14 Colonial Drive, Tonawanda, N.Y. 14150," as the "Owner" of the UST systems at the G & G Petroleum Facility.

509. The NYSPBS Application Form indicates that all correspondence should be mailed to Michale J. Geiger, c/o G & G Petroleum, 1531-1543 Niagara Street, Buffalo, NY 14213.

510. An unsigned NYSPBS Registration Certificate, dated October 12, 2010, and a NYSPBS Facility Information Report, dated January 11, 2012, each indicate that the owner of the four UST systems at the G & G Site is “Qual-Econ Lease Co., Inc., of 14 Colonial Drive, Tonawanda, NY 14150.”

511. The unsigned 2010 NYSPBS Registration Certificate and the 2012 NYSPBS Facility Information Report each indicate that the Facility/Site is “G & G Petroleum, 1531-1543 Niagara Street, Buffalo, NY 14213.”

512. The 2010 NYSPBS Registration Certificate and the 2012 NYS Facility Information Report identify Michael J. Geiger as the “on-site operator” of the UST systems and all mailing correspondence should be sent to Michael J. Geiger, c/o G & G Petroleum, 1531-1543 Niagara Street, Buffalo, NY 14213.

513. EPA’s UST inspection report, dated April 21, 2010, lists Michael J. Geiger as the contact person for G & G.

514. RCRA § 9005, 42 U.S.C. § 6991d provides, in relevant part, that “any owner or operator of an underground storage tank (or any tank subject to study under Section 9009 that is used for storing regulated substances) shall, upon request of any officer, employee or representative of the Environmental Protection Agency...furnish information relating to such tanks....”

515. Pursuant to Section 9005 of RCRA, 42 U.S.C. §6991d, and 40 C.F.R. §280.34, EPA sent the First IRL, dated on June 8, 2009, to Michael J. Geiger, of 14 Colonial Drive, Tonawanda,, NY 14150, inquiring about the UST systems at the G & G Petroleum facility at 1531 – 1543 Niagara [street], Buffalo, New York.

516. EPA’s June 8, 2009 IRL requested that the “owners and operators of UST systems” submit information concerning the status of compliance with federal UST requirements at the G & G Petroleum facility.

517. Michael J. Geiger is a Vice President of G & G and an officer of Clear Alternative of Western New York.

518. Michael J. Geiger is chairman of the board and sole owner of Qual-Econ.

519. The First IRL was received and signed for by Michael J. Geiger on or about June 19, 2009.

520. Section 9005 and 40 C.F.R. §280.34 constitute requirements of Subtitle I of RCRA for purposes of §9006(a) of RCRA, 42 U.S.C. § 6991e(a).

521. The First IRL required an answer within thirty (30) calendar days of receipt of the

letter, or a request for additional time to respond within ten (10) days of receipt of the letter.

522. EPA did not receive a response to the First IRL by July 13, 2009, which was thirty (30) calendar days after its receipt of said First IRL.

523. EPA did not receive any requests for an extension of time to submit a response to the First IRL.

524. On August 11, 2009 EPA issued a second IRL to Michael Geiger concerning the G & G Petroleum facility.

525. The Second IRL required an answer within fifteen (15) days of receipt, or a request for additional time to respond within ten (10) days of receipt.

526. The Second IRL was not accepted at the facility address where the first IRL had been accepted.

527. The Second IRL was returned to EPA unopened.

528. On September 23, 2009, EPA issued a third IRL, this time sending it directly to the facility, at 1531-1543 Niagara in Buffalo, NY. The third notice was returned to EPA Region 2's office unopened.

529. To date, EPA has not received any responses to the IRLs.

530. Respondents Qual-Econ Lease Co., Inc. and Clear Alternative of Western N.Y., Inc.'s (dba G & G Petroleum) failure to comply with the first IRL from July 19, 2009 to June 30, 2012 constitutes a violation of 40 C.F.R. Section 280.34 and Section 9005 of the Act, 42 U.S.C. Section 6991d.

Count 28, G & G Petroleum---Failure to Meet Performance Standards for New UST System --Tanks--40 C.F.R. Section 280.20(a)

531. Paragraphs 1 through 530 are realleged and incorporated herein.

532. Respondents Qual-Econ and Clear Alternative of Western NY own and/or operate the UST systems at the G & G Petroleum facility.

533. The NYSPBS Registration Certificate indicates the following four UST systems are located at the G & G Petroleum Facility: 7,000 gallon gasoline steel UST (Tank 1A), 5,000 gallon diesel fuel steel UST (Tank 1B), 9,000 gallon gasoline steel UST (Tank 2A), and 3,000 gallon kerosene steel UST (Tank 2B).

534. The four UST systems at this facility were installed subsequent to 1988 and are considered “new tank systems” pursuant to 40 C.F.R. Section 280.12.

535. Pursuant to 40 C.F.R. Section 280.20, owners and operators of new UST systems must meet the requirements for tanks in 280.20(a).

536. Pursuant to 40 C.F.R. Section 280.20(a), any portion of a tank that routinely contains product must be protected from corrosion in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory as specified in (b)(1) through (5) of this section.

537. An authorized inspector of EPA inspected this facility on October 21, 2008, April 21, 2010, and August 18, 2011.

538. During EPA’s October 21, 2008 and August 18, 2011 inspections of G & G, the inspectors observed that the tanks were constructed of double-wall steel and were underneath the ground.

539. The four tanks at G & G routinely contained regulated substances.

540. At the time of each of EPA’s inspection of this facility, the four steel tanks were in use.

541. During the October 21, 2008, April 21, 2010 and August 18, 2011 inspections of G & G, the inspectors were unable to find evidence of corrosion protection for the 7,000 and 9,000 gasoline tanks and the 5,000 gallon diesel fuel and 3,000 gallon kerosene tanks.

542. The NYSPBS Registration Certificate for G & G indicates that the UST systems are steel/carbon/iron with “jacketing” for external corrosion protection.

543. During the October 21, 2008, April 21, 2010 and August 18, 2011 inspections of the G & G facility, Respondents could not provide any records that the tanks had corrosion protection equipment.

544. Between at least October 21, 2008 and August 18, 2011, Respondents did not have corrosion protection for the tanks at the G & G facility.

545. Respondents Qual-Econ and Clear Alternative of Western NY’s failure to protect the tanks from corrosion at the G & G facility constitutes a violation of 40 C.F.R. §280.20(a).

Count 29, G & G Petroleum---Failure to Meet Performance Standards for New UST Systems –Piping 40 C.F.R. Section 280.20(b)

546. Paragraphs 1 through 546 are realleged and incorporated herein.

547. Pursuant to 40 C.F.R. § 280.20(b), piping that is part of a new UST system which routinely contains regulated substances and is in contact with the ground must be cathodically protected in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory and must meet the requirements as specified in subparagraphs (b) (1) through (4) of this section.

548. An authorized inspector of EPA inspected this facility on October 21, 2008, April 21, 2010, and August 18, 2011.

549. During EPA's October 21, 2008 and August 18, 2011 inspections of G & G, the inspectors observed that the piping was constructed of steel and was in contact with the ground.

550. The piping on the four UST systems at G & G routinely contained regulated substances.

551. At the time of each of EPA's inspections of this facility, the four steel tanks were in use.

552. During the October 21, 2008, April 21, 2010 and August 18, 2011 inspections of G & G, the inspectors were unable to find evidence of corrosion protection for the pressurized piping for the 7,000 and 9,000 gallon gasoline tanks and the 5,000 gallon diesel fuel and 3,000 gallon kerosene tanks.

553. The NYSPBS Registration Certificate for G & G indicates that the UST systems are steel/carbon/iron with "jacketing" for external corrosion protection.

554. During the October 21, 2008, April 21, 2010 and August 18, 2011 inspections of the G & G facility, Respondents could not provide any records that the piping having corrosion protection equipment.

555. Between at least October 21, 2008 and August 18, 2011, Respondents did not have corrosion protection for the pressurized piping for the four UST systems at the G & G facility.

556. Respondents Qual-Econ Leasing Co. and Clear Alternative of Western NY's failure to protect the pressurized piping on their four UST systems from corrosion at the G & G facility constitutes a violation of 40 C.F.R. Section 280.20(b).

Count 30. G & G Petroleum--- Failure to Use Overfill Protection on Three UST Systems at the G & G Facility

557. Complainant realleges paragraphs 1 through 556, above, with the same force and effect as if fully set forth below.

558. The four UST systems at this facility were installed subsequent to 1988 and are considered “new tank systems” pursuant to 40 C.F.R. §280.12.

559. Pursuant to 40 C.F.R. § 280.20(c)(1)(ii), owners and operators of new UST systems must use overfill prevention equipment on each UST system.

560. EPA’s October 21, 2008 and April 21, 2010 inspections of G & G facility found no evidence of overfill prevention on the four UST systems.

561. During the April 21, 2010 inspection of G & G facility, a facility representative stated that there is a “vent whistle” for overfill protection for the USTs.

562. A vent whistle is not an acceptable method of overfill prevention under federal requirements at 40 CFR §280.20(c)(1)(ii)(A) thru (C).

563. During EPA’s August 18, 2011 inspection at the G & G facility, the inspectors did not observe any overfill prevention equipment on the following three of four tanks: 1 A (7,000 gallon), 1 B (5,000 gallon) and 2 B (3,000 gallon).

564. Between at least October 21, 2008 and August 18, 2011 there was no adequate overfill device for three of the four UST systems at the G& G facility.

565. Respondents Qual Econ and Clear Alternative of Western NY’s failure, between at least October 21, 2008 and August 18, 2011 to use overfill prevention equipment for 3 of 4 UST systems at the facility, constitutes a violation of 40 C.F.R. § 280.20(c)(1)(ii).

Count 31, G & G Petroleum— Failure to Conduct Annual Line Tightness Test or Conduct Monthly Monitoring for Pressurized Piping and to Maintain Records of the Test or Monitoring

566. Complainant realleges paragraphs 1 through 565, above, with the same force and effect as if fully set forth below.

567. Pursuant to 40 C.F.R. § 280.41, owners and operators of petroleum UST systems must provide, *inter alia*, release detection for piping in accordance with 40 C.F.R. § 280.41(b).

568. Pursuant to 40 C.F.R. § 280.41(b)(1)(ii), underground piping that routinely contains and conveys regulated substances under pressure must, *inter alia*, have an annual line tightness

test conducted in accordance with 40 C.F.R. § 280.44(b) or have monthly monitoring conducted in accordance with 40 C.F.R. § 280.44(c).

569. Each of the four USTs at G & G facility routinely contained and were used to convey regulated substances under pressure.

570. Gasoline, diesel fuel and kerosene are each a “regulated substance” within the meaning of Section 9001(2) of the Act, 42 U.S.C. § 6991(2), and 40 C.F.R. § 280.12.

571. The four UST systems at the G & G facility constitute petroleum UST systems for purposes of 40 CFR §280.41.

572. EPA’s October 21, 2008 inspection at the G & G Petroleum facility revealed that annual line tightness testing was not performed on pressurized piping of the four UST systems at this facility on or before the date of this inspection.

573. EPA’s October 21, 2008 inspection at the G & G Petroleum facility did not identify any release detection monitoring of the pressurized piping for the four UST systems at this facility.

574. During EPA’s October 21, 2008 inspection at the G & G Petroleum facility, a representative of G & G was not able to provide any records of release detection monitoring for the pressurized piping for the twelve month period prior to the date of this inspection.

575. During EPA’s October 21, 2008 inspection at the G & G Petroleum facility, a representative of G & G was not able to provide any records of annual line tightness testing of the pressurized piping for the UST systems for the twelve month period prior to the date of this inspection.

576. EPA’s April 21, 2010 inspection at the G & G Petroleum facility revealed line tightness tests had been conducted on October 29, 2008 for pressurized piping for the 7,000 and 9,000 gallon gasoline USTs at the G & G facility.

577. EPA’s April 21, 2010 inspection at the G & G Petroleum facility revealed line tightness tests had been conducted on December 30, 2008 for pressurized piping for the 5,000 gallon diesel fuel and 3,000 gallon kerosene tanks at the G & G facility.

578. During the April 21, 2010 inspection of the G & G Petroleum facility, a representative of G & G was not able to provide any records of line tightness testing for the pressurized piping of the UST systems for the twelve months prior to the date of this inspection.

579. As of EPA’s April 21, 2010 inspection at the G & G Petroleum facility, the Respondents still had not, since the October 29, 2008 and December 30, 2008 annual line

tightness tests, conducted either monthly monitoring or annual line tightness tests for the four UST systems at this facility.

580. During the August 18, 2011 inspection at the G & G Petroleum facility, EPA inspectors did not see any evidence of annual line tightness tests for the pressurized piping or monthly release detection monitoring for the pressurized piping.

581. During the August 18, 2011 inspection at the G & G Petroleum facility, a representative of G & G was not able to provide any records of line tightness testing or monthly release detection monitoring for the pressurized piping of the UST systems for the twelve months prior to the date of this inspection.

582. As of EPA's August 18, 2011 inspection at the G & G Petroleum facility, the Respondents still had not, since the October 29, 2008 and December 30, 2008 annual line tightness tests, conducted either monthly monitoring or annual line tightness tests of the four UST systems at this facility.

583. Between at least October 21, 2007 and October 29, 2008, Respondents did not conduct either monthly monitoring or annual line tightness test of the pressurized piping of the 7,000 gallon and 9,000 gallon gasoline UST systems at the facility.

584. Between at least October 29, 2009 and August 18, 2011, Respondents did not conduct either monthly monitoring or annual line tightness test of the pressurized piping for the 7,000 gallon and 9,000 gallon gasoline UST systems at the facility.

585. Between at least October 21, 2007 and December 30, 2008, Respondents did not conduct either monthly monitoring or annual line tightness test for pressurized piping of the 5,000 gallon diesel fuel and 3,000 gallon kerosene UST systems at the facility.

586. Between at least December 30, 2009 and August 18, 2011, Respondents did not conduct either monthly monitoring or annual line tightness test for pressurized piping for the 5,000 gallon diesel fuel and 3,000 gallon kerosene UST systems at the facility.

587. Between at least October 21, 2007 and October 29, 2008, Respondents did not maintain any records demonstrating that annual line tightness tests or monthly monitoring were conducted on the pressurized piping of the 7,000 gallon and 9,000 gallon UST systems at this facility.

588. Between at least October 29, 2009 and August 18, 2011, Respondents did not maintain any records demonstrating that annual line tightness tests or monthly monitoring were conducted on the pressurized piping of the 7,000 gallon and 9,000 gallon UST systems at this facility.

589. Between at least October 21, 2007 and December 30, 2008, Respondents did not maintain any records demonstrating that annual line tightness tests or monthly monitoring were conducted on the pressurized piping of the 5,000 gallon and 3,000 gallon UST systems at this facility.

590. Between December 30, 2009 and August 18, 2011, Respondents did not maintain any records demonstrating that annual line tightness tests or monthly monitoring were conducted on the pressurized piping of the 5,000 gallon and 3,000 gallon UST systems at this facility.

591. Respondents Qual-Econ and Clear Alternative of Western NY's failure, between at least October 21, 2007 and October 29, 2008, to perform monthly monitoring or line tightness test for the pressurized piping for the 7,000 gallon and 9,000 gallon UST systems, constitutes a violation of 40 C.F.R. §280.41(b)(1)(ii).

592. Respondents Qual-Econ and Clear Alternative of Western NY's failure, between at least October 29, 2009 and August 18, 2011, to perform monthly monitoring or line tightness test for the pressurized piping for the 7,000 gallon and 9,000 gallon UST systems, constitutes a violation of 40 C.F.R. Section 280.41(b)(1)(ii).

593. Respondents Qual-Econ Leasing and Clear Alternative of Western NY's failure, between at least October 21, 2007 and December 30, 2008, to perform monthly monitoring or line tightness test for the pressurized piping for the 5,000 gallon diesel fuel and 3,000 gallon kerosene UST systems, constitutes a violation of 40 C.F.R. Section 280.41(b)(1)(ii).

594. Respondents Qual-Econ Leasing and Clear Alternative of Western NY's failure, between at least December 30, 2009 and August 18, 2011, to perform monthly monitoring or line tightness test for the pressurized piping for the 5,000 gallon diesel fuel and 3,000 gallon kerosene UST systems, constitutes a violation of 40 C.F.R. §280.41(b)(1)(ii).

595. Respondents Qual- Econ Leasing and Clear Alternative of Western NY's failure to maintain the results, for at least 1 year, of annual line tightness test or monthly monitoring on pressurized piping for the three UST systems at this facility, constitutes a violation of 40 C.F.R. §280.34(b)(4), §280.34(c) and §280.45(b).

Count 32, G & G Petroleum — Failure to Test Operation of Automatic Line Leak Detectors for Pressurized Piping and to Maintain Records of the Test

596. Complainant realleges paragraphs 1 through 595, above with the same force and effect as if fully set forth below.

597. Pursuant to 40 C.F.R. § 280.41(b)(1)(i), underground piping that conveys regulated substances under pressure must be equipped with an automatic line leak detector conducted in accordance with 40 C.F.R. § 280.44(a).

598. 40 C.F.R. § 280.44(a) provides, in part, that “[a]n annual test of the operation of the leak detector must be conducted in accordance with the manufacturer’s requirements.”

599. As of at least May 21, 1994 underground piping at the G & G Petroleum facility was equipped with automatic line leak detectors for the four UST systems at this facility.

600. Respondents were required to conduct an annual test of the operation of the automatic line leak detector starting no later than May 21, 1995 and continuing every year thereafter for the pressurized piping for the three UST systems at this facility.

601. EPA’s October 21, 2008 inspection at the G & G Petroleum facility revealed that an annual test of the operation of the ALLDs had not been performed on the pressurized piping of the four UST systems at this facility on or before the date of this inspection.

602. During EPA’s October 21, 2008 inspection at the G & G Petroleum facility, a representative of G & G was not able to provide any records of the annual test of the operation of the ALLDs on the pressurized piping of the four UST systems at this facility for the twelve month period prior to the date of the inspection.

603. In EPA's June 8, 2009 IRL letter, Michael J. Geiger was asked to provide further information on ALLD tests for the pressurized piping for the four tanks at the G & G facility.

604. To date, Michael J. Geiger has not responded to EPA’s June 8, 2009 IRL.

605. EPA’s April 21, 2010 inspection at the G & G Petroleum facility revealed a test of the ALLDs conducted on October 29, 2008 for pressurized piping of the 7,000 gallon and 9,000 gallon gasoline USTs at the G & G facility.

606. EPA’s April 21, 2010 inspection at the G & G Petroleum facility revealed a test of the ALLDs conducted on December 29, 2008 for pressurized piping of the 5,000 gallon diesel fuel and 3,000 gallon kerosene tanks at the G & G facility.

607. During the April 21, 2010 inspection at the G & G Petroleum facility, a representative of G & G was not able to provide any records of the annual test of the operation of the ALLDs for the pressurized piping of the four UST systems for the twelve months prior to the date of the inspection.

608. As of EPA’s April 21, 2010 inspection at the G & G Petroleum facility, the Respondents had not, since the October 29, 2008 and December 29, 2008 performance of the annual test of the operation of the ALLDs, conducted any additional test of the operation of the ALLDs for the four UST systems at this facility.

609. During the August 18, 2011 inspection at the G & G Petroleum facility, EPA inspectors did not see any evidence of the annual test of the operation of ALLDs for the twelve month period prior to the date of this inspection.

610. During the August 18, 2011 inspection at the G & G Petroleum facility, a representative of G & G was not able to provide any records of the annual test of the ALLDs for the pressurized piping of the UST systems for the twelve month period prior to the date of this inspection.

611. As of the date of EPA's inspection at the G & G Petroleum facility on August 18, 2011, the Respondents still had not, since at least October 29, 2008 and December 30, 2008, conducted annual tests of the operation of the ALLDs for the pressurized piping for the four UST systems at this facility.

612. Between at least May 21, 2008 and October 29, 2008 for the 7,000 gallon and 9,000 gallon gasoline USTs, Respondents did not conduct an annual test of the operation of the ALLDs for the pressurized piping of the UST systems.

613. Between at least October 29, 2009 and August 18, 2011, Respondents did not conduct an annual test of the operation of the ALLDs for the pressurized piping of 7,000 gallon and 9,000 gallon gasoline UST systems.

614. Between at least May 21, 2008 and December 30, 2008 for the 5,000 gallon diesel fuel UST and the 3,000 gallon kerosene UST, Respondents did not conduct an annual test of the operation of the ALLDs for the pressurized piping of the UST systems.

615. Between at least December 30, 2009 and August 18, 2011, Respondents did not conduct an annual test of the operation of the ALLDs for the pressurized piping of the 5,000 gallon diesel fuel UST and the 3,000 kerosene gallon UST systems.

616. Respondents Qual-Econ and Clear Alternative of NY's failure, between at least May 21, 2008 and October 29, 2008 to conduct an annual test of the operation of the ALLDs for the pressurized piping of the 7,000 gallon and 9,000 gallon gasoline UST system, constitutes a violation of 40 CFR §§280.41(b)(1)(i) and 280.44(a) .

617. Respondents Qual-Econ and Clear Alternative of NY's failure, between at least October 29, 2009 and August 18, 2011 to conduct an annual test of the operation of the ALLDs for the pressurized piping of the 7,000 gallon and 9,000 gallon gasoline UST systems, constitutes a violation of 40 CFR §§280.41(b)(1)(i) and 280.44(a) .

618. Respondents Qual-Econ and Clear Alternative of NY's failure, between at least May 21, 2008 and December 30, 2008, to conduct an annual test of the operation of the ALLDs for the pressurized piping of the 5,000 gallon diesel fuel UST and the 3,000 gallon kerosene UST, constitutes a violation of 40 CFR §§280.41(b)(1)(i) and 280.44(a) .

619. Respondents Qual-Econ and Clear Alternative of NY's failure, between at least December 30, 2009 and August 18, 2011, to conduct an annual test of the operation of the ALLDs for the pressurized piping of the 5,000 gallon diesel fuel UST and the 3,000 gallon kerosene UST, constitutes a violation of 40 CFR §§280.41(b)(1)(i) and 280.44(a).

620. Between at least May 21, 2008 and October 29, 2008, Respondents did not maintain any records demonstrating that annual line tightness tests or monthly monitoring were conducted on the pressurized piping of the 7,000 gallon and 9,000 gallon UST systems at this facility.

621. Between at least October 29, 2009 and August 18, 2011, Respondents did not maintain any records demonstrating that annual line tightness tests or monthly monitoring were conducted on the pressurized piping of the 7,000 gallon and 9,000 gallon UST systems at this facility.

622. Between at least May 21, 2008 and December 30, 2008, Respondents did not maintain any records demonstrating that annual line tightness tests or monthly monitoring were conducted on the pressurized piping of the 5,000 gallon and 3,000 gallon UST systems at this facility.

623. Between December 30, 2009 and August 18, 2011, Respondents did not maintain any records demonstrating that annual line tightness tests or monthly monitoring were conducted on the pressurized piping of the 5,000 gallon and 3,000 gallon UST systems at this facility.

624. Respondents Qual-Econ and Clear Alternative of NY's failure to maintain the results, for at least 1 year, of the annual test of the ALLDs on pressurized piping for the UST systems at this facility, constitutes a violation of 40 C.F.R. §§280.34(b)(4), 280.34(c), and 280.45(b).

Count 33, G & G — Failure to Maintain Records of Release Detection

625. Complainant realleges paragraphs 1 through 624 above, with the same force and effect as if fully set forth below.

626. During EPA's October 21, 2008 inspection at the G & G Petroleum facility, the authorized inspector found evidence of electronic interstitial monitoring for releases on the four UST systems at the G & G facility.

627. During EPA's October 21, 2008 inspection at the G & G Petroleum facility, a representative of G & G could not provide the results of monthly monitoring for the twelve month period prior to the inspection.

628. In EPA's June 8, 2009 IRL letter, Michael J. Geiger was asked to provide records of release detection monitoring at the G & G Petroleum facility.

629. To date, EPA has not received any response to the June 8, 2009 IRL.

630. During EPA's April 21, 2010 inspection at the G & G Petroleum facility, the authorized inspector found evidence of electronic interstitial monitoring for releases on the four UST systems at the G & G facility.

631. During EPA's April 21, 2010 inspection at the G & G Petroleum facility, a representative of G & G Petroleum was not able to provide any records of release detection monitoring for the UST systems for the twelve month period prior to the date of the inspection.

632. During EPA's August 18, 2011 inspection at the G & G Petroleum facility, a representative of G & G Petroleum informed EPA that interstitial monitoring is the method of release detection for the four UST systems at the facility.

633. During EPA's August 18, 2011 inspection at the G & G Petroleum facility, the authorized inspector found evidence of electronic interstitial monitoring for releases on the four UST systems at the G & G facility.

634. During EPA's August 18, 2011 inspection at the G & G Petroleum facility, facility representatives could not provide the results of interstitial monitoring for the past twelve months.

635. Between at least October 21, 2007 and August 18, 2011 Respondents did not maintain records of release detection for the four UST systems at this facility.

636. Respondents Qual-Econ and Clear Alternative of NY's failure to maintain the results, for at least a year, of monitoring for releases for the UST systems located at this facility constitutes a violation of 40 C.F.R. §§ 280.34(b), 280.34(c) and 280.45(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 any person of up to \$10,000 for each UST for each day of violation of any requirement or standard promulgated by the Administrator of EPA. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection and Improvement Act of 1996, Pub. L. No. 104-34, 110 Stat. 1321 (1996), required EPA to adjust its penalties for inflation on a periodic basis. EPA issued a Civil Monetary Penalty Inflation Adjustment Rule on December 31, 1996, set forth in 61 *Fed. Reg.* 69360 (1996); on February 13, 2004, 69 *Fed. Reg.* 7121 (2004); and on December 11, 2008, 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 Section 9006(d)(2) of the Act, 42 U.S.C. § 6991e(d)(2), for each UST for each day of violation occurring after March 15, 2004 and before January 13, 2009 is \$11,000. The

maximum civil penalty for a violation(s) occurring on January 13, 2009 and afterwards 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 penalty guidance”; a copy of which is available upon request or at this Internet address: <http://www.epa.gov/swerust1/directiv/od961012.htm>). The penalty amounts in this UST penalty 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.) The penalty guidance for UST violations 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 penalties, as follows:

Facility/Count Number	UST(s) at issue	40 CFR Part 280 requirement violated	Violation summary – failure to:	Proposed penalty for count
Texas Gas/1	5	280.20(c)(1)	Install overfill for new tank.	\$3,696
Texas Gas/2	1 & 2	280.21(d)	Install overfill for existing tank.	\$7,383
Texas Gas/3	1,2, & 5	280.31(b)	Conduct triennial testing cathodic protection	\$10,992
Texas Gas/4	1 & 2	280.41(b)(1)(i) & 280.44(a)	Annually test automatic line leak detector	\$16,280

Super Stop/Amerimart 5	4a & 4b	280.20(c)(1)	Install overfill for new tank.	\$9,037
Super Stop/Amerimart 6	4a & 4b	280.31(b)	Conduct triennial testing cathodic protection	\$3,180
Super Stop/Amerimart 7	4a & 4b	280.41(b)(1)(ii)	Release detection for piping	\$11,799
Super Stop/Amerimart 8	4a & 4b	280.41(b)(1)(i) & 280.44(a)	Annually test automatic line leak detector	\$5,889
Super Stop/Amerimart 9	4a & 4b	280.34(b)& (c) and 280.45	Maintain records of release detection	\$9,137
Amerimart-Amherst/10	1 & 2	280.41(a) & 280.70(a)	Release detection for tanks	\$15,851
Amerimart-Amherst/11	1 & 2	280.70(b)	Secure/cap temp closed tanks	\$6,192
A & M Gas Mart—Buffalo/ 12	1 & 2	280.41(b)(1)(ii)	Release detection for piping	\$20,298
A & M Gas Mart—Buffalo/ 13	1 & 2	280.41(b)(1)(i) & 280.44(a)	Annually test automatic line leak detector	\$12,572
Sheridan/14	1,2 & 3	280.20(c)(1)	Install overfill for new tank.	\$12,263
Sheridan /15	1, 2 & 3	280.41(a)	Release detection for tanks	\$26,887
Sheridan /16	1, 2 & 3	280.41(b)(1)(ii)	Release detection for piping	\$27,846

Sheridan /17	1, 2 & 3	280.41(b)(1)(i) & 280.44(a)	Annually test automatic line leak detector	\$16,180
Walden/18	3	280.21(d)	Install overfill for existing tank.	\$4,595
Walden /19	1, 2 & 3	280.41(a)	Release detection for tanks	\$27,024
Walden /20	1, 2 & 3	280.41(b)(1)(ii)	Release detection for piping	\$31,210
Walden /21	1, 2 & 3	280.41(b)(1)(i) & 280.44(a)	Annually test automatic line leak detector	\$25,427
Walden/22	1, 2 & 3	280.34(b)(4), 280.34(c) and 280.45(b)	Maintain records of release detection	\$3,222
Herrscher's /23	1, 2 & 4	280.21	Upgrade Existing UST Systems	\$21,538
Herrscher's /24	1, 2 & 4	280.41(a)	Release detection for tanks	\$43,227
Herrscher's /25	1, 2 & 4	280.41(b)(1)(ii)	Release detection for piping	\$27,491
Herrscher's /26	1, 2 & 4	280.41(b)(1)(i) & 280.44(a)	Annually test automatic line leak detector	\$21,724

G & G/27	1a/1b & 2a/2b	280.34 and Section 9005 of the Act, 42 U.S.C. Section 6991d	Failure to Comply with Information Request Letter	\$9,541
G & G/28	1a/1b & 2a/2b	280.20(a)	Failure to Meet Performance Standards for New UST systems-TANKS	\$9,573
G & G/29	1a/1b & 2a/2b	280.20(b)	Failure to Meet Performance Standards for new UST systems-PIPING	\$18,974
G & G/30	1a/1b & 2a/2b	280.20(c)(1)	Install Overfill for new tank	\$18,974
G & G/31	1a/1b & 2a/2b	280.41(b)(1)(ii))	Release detection for piping	\$48,402
G & G/32	1a/1b & 2a/2b	280.41(b)(1)(i) & 280.44(a)	Annually test automatic line leak detector	\$44,766
G & G/33	1a/1b & 2a & 2b	280.34(b), 280.34(c), & 280.45(b)	Failure to Maintain Records of Release Detection	\$11,633
Total Penalty				\$582,803

As set forth above in the respective numbered allegations, liability shall be as follows:

- a) For each of **counts 1 through 4**, Respondent Amerimart Development Company, Inc. is liable for the violations alleged in said counts.

b) For **counts 5 through 11**, Respondents Amerimart Development Company, Inc. and Qual-Econ Lease Co., Inc. are jointly and severally liable for the violations alleged in said counts.

c) For **count 12 and 13**, Respondent Amerimart Development Company, Inc.. is liable for the violations alleged in said counts.

d) For **counts 14 through 22**, Respondent Amerimart Development Company, Inc. is liable for the violations alleged in said counts.

e) For **counts 23 through 26**, Respondents Amerimart Development Company, Inc. and MJG Enterprises, Inc. are jointly and severally liable for the violations alleged in said counts.

f) For **counts 27 through 33**, Respondents Qual-Econ Lease Co., Inc., and Clear Alternative of Western NY, Inc. are jointly and severally liable for the violations alleged in said counts.

COMPLIANCE ORDER

Pursuant to the authority granted EPA in Section 9006 of the Act, 42 U.S.C. § 6991e, Complainant issues the following Compliance Order against each of the Respondents named in this Complaint. This Compliance Order shall become final (*i.e.* take effect) thirty (30) days after service of this Compliance Order (henceforth, the “effective date”) unless, by said date, Respondents have requested a hearing as provided for in 40 C.F.R. § 22.15. Pursuant to this Compliance Order, Respondents shall:

- 1) **For Herrscher’s Express Mart:** Within thirty (30) days of the effective date of this Compliance Order, Respondents Amerimart Development Company, Inc. and MJG Enterprises, Inc. must comply with, to the extent it has not already done so, the release detection requirements of 40 C.F.R. § 280.41(a) for the underground tanks numbers 1,2 and 4 at Herrscher’s Express Mart.
- 2) **For G & G Petroleum:** Within thirty (30) days of the effective date of this Compliance Order, Respondents Qual-Econ Lease Co., Inc. and Clear Alternative of Western NY, Inc. (dba G & G Petroleum), as owners and/or operators of the UST systems at the G & G Petroleum facility at 1531-1543 Niagara Street, Buffalo, NY, must respond to EPA’s June 8, 2009 IRL addressed to Michael J. Geiger (concerning information on the compliance of USTs at the G & G Petroleum facility), in accordance with the requirements of 40 C.F.R. § 280.34 and Section 9005 of the Act, 42 U.S.C. Section 6991d for UST tank numbers 1a/1b and 2a/2b at G & G. (If it is no longer possible to

provide certain requested information, please include an explanation as to why a full response is not possible at this time).

- 3) Each Respondent of this Complaint must maintain compliance with all applicable requirements of 40 C.F.R. Part 280 for each UST system at each facility (ie., service station) at which it is an owner and/or operator as identified in counts 1 through 33 above.
- 4) Each Respondent must, within forty-five (45) days of the effective date of this Compliance Order, submit to EPA a written notice of compliance (accompanied by a copy of appropriate supporting documentation) or non-compliance with the provisions of this Compliance Order . If a Respondent(s) is/are in non-compliance with a particular requirement(s), such notice shall state the reason(s) for non-compliance and shall provide a schedule for achieving expeditious compliance with such requirement(s). Such notice shall contain the following certification:

I certify that the information contained in this written notice and the accompanying supporting documentation is true, accurate and complete to the best of my knowledge and belief. As to the identified portions of this response for which I am unable personally to verify their truthfulness, accuracy and/or completeness, I certify that this response and all accompanying supporting documentation were prepared in accordance with a system designed to assure that qualified personnel gather and evaluate the information submitted. I am aware that there are significant penalties for submitting false, misleading and/or incomplete information, and such penalties might include criminal fines and imprisonment for knowing violations.

Signature: _____

Name: _____

Title: _____

Date: _____

The notice required pursuant to this Compliance Order (including any accompanying supporting documentation) should be sent to:

**Dennis McChesney, Ph.D., Team Leader
UST Team, RCRA Compliance Branch
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency - Region 2
290 Broadway, 20th Floor
New York, New York 10007-1866**

Compliance with the provisions of this Compliance Order is neither intended nor shall be construed to release Respondents from liability for any past violations of 40 C.F.R. Part 280 that occurred at any of the facilities identified in counts 1 through 33 above. In addition, nothing herein waives, prejudices or otherwise affects EPA's right (or the right of the United States on behalf of EPA) to enforce any applicable provision of 40 C.F.R. Part 280 with regard to any UST system at any of the facilities identified in counts 1 through 33 above, and to seek and obtain any appropriate penalty or other remedy permitted under law in connection with Respondents' ownership and/or operation of any UST system at any facility identified in counts 1 through 33 above.

If a court of competent jurisdiction were to stay, enjoin enforcement or invalidate a given provision of this Compliance Order, and such ruling were to remain in effect, the other provisions of this Compliance Order shall remain in full force and effect, and for said remaining provisions EPA (or the United States on behalf of EPA) retains its rights to seek and obtain any relief or remedy provided for in, or pursuant to, Section 9006(a)(3) of the Act, 42 U.S.C. § 6991e(a)(3), or any other provision of applicable law.

NOTICE OF LIABILITY FOR ADDITIONAL CIVIL PENALTIES

Pursuant to the terms of Section 9006(a)(3) of the Act, 42 U.S.C. § 6991e(a)(3), as amended by the Debt Collection Improvement Act of 1996, 110 Stat. 1321, Public Law 104-134 (codified at 31 U.S.C. § 3701 note), and the regulations promulgated thereunder (see Civil Monetary Inflation Rule, 73 Fed. Reg. 75340 (December 11, 2008), codified at 40 C.F.R. Part 19, a violator failing to timely comply with the requirements of a Compliance Order that has taken effect within the time specified in the Order is liable for a civil penalty of up to \$37,500 for each day of continued noncompliance.

PROCEDURES GOVERNING THIS ADMINISTRATIVE LITIGATION

The rules of procedure governing this civil administrative litigation were promulgated 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 COMPLIANCE ORDERS, AND THE REVOCATION, TERMINATION OR SUSPENSION OF PERMITS," and which are codified at 40 C.F.R. Part 22. A copy of these rules accompanies this "Complaint, Compliance Order and Notice of Opportunity for Hearing" (hereinafter the "Complaint").

A. Answering The Complaint

Where Respondents intend to contest any material fact upon which the Complaint is based, to contest that the proposed penalty and/or the Compliance Order, to contend that the

proposed penalty and/or Compliance Order is inappropriate, or to contend that Respondents are entitled to judgment as a matter of law, Respondents must file with the Regional Hearing Clerk of EPA, Region 2, both an original and one copy of a written answer(s) to the Complaint, and such Answer(s) must be filed within 30 days after service of the Complaint. 40 C.F.R. §§ 22.15(a) and 22.7(c).¹ 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**

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

Respondents' Answer(s) 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 Respondents have any knowledge. 40 C.F.R. § 22.15(b). Where Respondents lack knowledge of a particular factual allegation and so state in the Answer(s), the allegation is deemed denied. 40 C.F.R. § 22.15(b).

The Answer(s) shall also set forth: (1) the circumstances or arguments that are alleged to constitute the grounds of defense, (2) the facts that Respondents dispute (and thus intend to place at issue in the proceeding) and (3) whether Respondents request a hearing. 40 C.F.R. § 22.15(b).

Respondents' failure affirmatively to raise in the Answer(s) facts that constitute or that might constitute the grounds of their defense may preclude Respondents, 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 Respondents, a hearing upon the issues raised by the Complaint and Answer(s) may be held. 40 C.F.R. § 22.15(c). If, however, Respondents do not request a hearing, the Presiding Officer (as defined in 40 C.F.R. § 22.3) may hold a hearing if the Answer(s) raises issues appropriate for adjudication. 40 C.F.R. § 22.15(c). With regard to the Compliance Order in the Complaint, unless Respondents request a hearing pursuant to 40 C.F.R. § 22.15 within thirty (30) days after the Compliance Order is served, the Compliance Order shall automatically become final. 40 C.F.R. § 22.37.

¹ However they deem it appropriate, Respondents may serve answers individually or otherwise. Nothing herein is intended to limit how any individual respondent answers the Complaint, nor to imply whether an individual response or otherwise is appropriate.

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

Any penalty assessed in the default order shall become due and payable by Respondents without further proceedings 30 days after the default order becomes final pursuant to 40 C.F.R. § 22.27(c). 40 C.F.R. § 22.17(d). If necessary, EPA may then seek to enforce such final order of default against Respondents, and to collect the assessed penalty amount, in federal court. 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 Agency's Environmental Appeals Board ("EAB"; see 40 C.F.R. § 1.25(e)) 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), Respondents waive their right to judicial review. 40 C.F.R. § 22.27(d).

To appeal an initial decision to the EAB, Respondents must do so "[w]ithin thirty (30) days after the initial decision is served." 40 C.F.R. § 22.30(a). Pursuant to 40 C.F.R. § 22.7(c), where service is effected by mail, "five days shall be added to the time allowed by these rules for the filing of a responsive pleading or document." Note that the 45-day period provided for in 40 C.F.R. § 22.27(c) [discussing when an initial decision becomes a final order] does not pertain to or extend the time period prescribed in 40 C.F.R. § 22.30(a) for a party to file an appeal to the EAB of an adverse initial decision.

INFORMAL SETTLEMENT CONFERENCE

Whether or not 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 the Complaint, and Respondents may also provide whatever additional information that they believes 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 Respondents' ability to continue in business and/or (4) any other special facts or circumstances Respondents wish to raise. At such a conference, Respondents may, if they so choose, be represented by counsel.

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:

Bruce H. Aber
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, Room 16th Floor
New York, New York 10007-1866
(212) 637-3224 (telephone)
(212) 637-3199 (facsimile)
Email: Aber.Bruce@epa.gov

The parties may engage in settlement discussions irrespective of whether Respondents have requested a hearing. 40 C.F.R. § 22.18(b)(1). Respondents' 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 Respondents' obligation to file a timely Answer(s) 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 will 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

any right to obtain judicial review of the final order that is to accompany the consent agreement. 40 C.F.R. § 22.18(b)(2). To conclude the proceeding, a final order ratifying the parties' agreement to settle will be executed. 40 C.F.R. § 22.18(b)(3).

Respondents' entering into a settlement through the signing of such Consent Agreement and its complying with the terms and conditions set forth in the such Consent Agreement terminate this administrative litigation and the civil proceedings arising out of the allegations made in the complaint. Respondents' 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(s), Respondents wish not to contest the Compliance Order in the Complaint and wish 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 on the previous page.

Dated: 8/21/13



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

To: Craig A. Slater, Esq.
Attorney for Respondents
The Slater Law Firm
26 Mississippi Street, Suite 400
Buffalo, NY 14203-3014

cc: Russ Brauksieck, Chief
Facility Compliance Section
New York State Department of Environmental Conservation
625 Broadway, 11th Floor
Albany, New York 12233-7012

CERTIFICATE OF SERVICE

This is to certify that on the 23 day of August, 2013, I caused to be mailed a true and correct copy of the foregoing "COMPLAINT, COMPLIANCE ORDER AND NOTICE OF OPPORTUNITY FOR HEARING," bearing Docket Number RCRA-02- 2012 -7501 (henceforth referred to as the "Complaint"), and with a copy of the "CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENTS OF CIVIL PENALTIES, ISSUANCE OF COMPLIANCE OR CORRECTIVE ACTION COMPLIANCE ORDERS, AND THE REVOCATION, TERMINATION OR SUSPENSION OF PERMITS," 40 C.F.R. Part 22, by certified mail, return receipt requested, to the following addressees listed below. I hand carried the original and a copy of the Complaint to the office of the Regional Hearing Clerk of the United States Environmental Protection Agency, Region 2, 290 Broadway, 16th floor, New York, New York 10007-1866.

Craig A. Slater, Esq.
Attorney for Respondents
The Slater Law Firm
26 Mississippi Street, Suite 400
Buffalo, NY 14203-3014

Dated: AUG 23, 2013
New York, New York

Mildred N. Baez