



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

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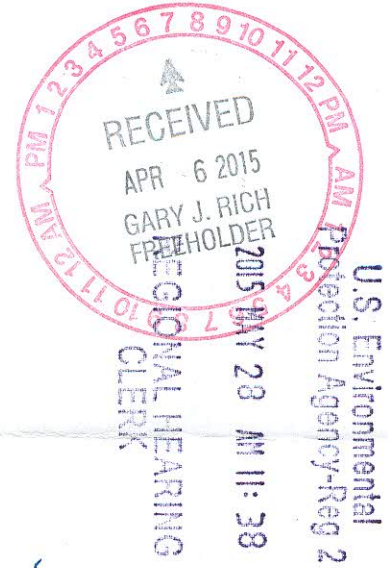
MAR 31 2015

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Article Number: 7005 3110 0000 5966 3530

Gary J. Rich, Sr.
Director
Monmouth County Board Of Chosen Freeholders
One East Main Street
P.O. Box 1255
Freehold, NJ 07728

Re: In the Matter of County of Monmouth, New Jersey
Docket Number RCRA-02-2015-7501



Dear Mr. Rich:

Enclosed is the Complaint, Compliance Order and Opportunity for Hearing in the above-referenced proceeding. The Complaint alleges violations of the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901 et seq.

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

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

If you do not file an Answer within thirty (30) days of receipt of this Complaint and have not obtained a formal extension for filing an Answer from the Regional Judicial Officer of Region 2, a default order may be entered against you and the entire proposed penalty may be assessed. Whether or not you request a formal hearing, you may request an informal conference with EPA to discuss any issue relating to the alleged violations and the amount of the proposed penalty. EPA encourages all parties against whom it files a Complaint to pursue the possibility of settlement and to have an informal conference with EPA. However, a request for an informal conference does not substitute for a written Answer, affect what you may choose to say in an Answer, or extend the thirty (30) days by which you must file an Answer requesting a hearing.

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

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

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

Sincerely,

Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

Enclosures

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

2015 MAY 28 AM 11:38

REGIONAL HEARING
CLERK

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region 2

In the Matter of County of Monmouth,
New Jersey

Respondent.

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

**COMPLAINT, COMPLIANCE ORDER
AND NOTICE OF OPPORTUNITY
FOR HEARING**

Docket No. RCRA-02-2015-7501

COMPLAINT

1. Complainant hereby alleges as and for her complaint against Respondent (as defined in paragraph 5, below):
2. 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’).
3. This proceeding seeks to assess a civil penalty against Respondent 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.
4. Complainant in this proceeding, Dore LaPosta, the Director of the Division of Enforcement and Compliance Assistance of the US EPA, Region 2, has been duly delegated the authority to institute this action.
5. Respondent is the County of Monmouth, New Jersey (hereinafter “Monmouth”). The current mailing address of Monmouth is care of Gary J. Rich, Sr., Director, Monmouth County Board of Chosen Freeholders, One East Main Street, P.O. Box 1255, Freehold, NJ 07728.
6. Respondent is, and has been, a county organized pursuant to the laws of the State of New Jersey.
7. Respondent 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.

8. The Respondent is, or has been for the times relevant to the matters alleged below, in the business of owning and/or operating public works facilities in the State of New Jersey.
9. The Respondent 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 or were located at one or more of the following public works facilities:
 - a) Monmouth County Highway District #8, 1621 Union Ave., Hazlet, NJ;
 - b) Monmouth County Highway District #3 + 6, 1180 Pine Brook Road, Tinton Falls, NJ. (Note, after EPA’s inspection the name of this facility was changed to Monmouth County Highway District #3);
 - c) Monmouth County Highway District #5, 383 Cranberry Road, Howell, NJ.
10. 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.
11. 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 and record-keeping requirements for tanks and piping.
12. Forty C.F.R. § 280.12 defines an 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.
13. 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.
14. Forty C.F.R. § 280.12 defines a “new tank system” as a tank system used to contain an accumulation of regulated substances and for which installation has commenced after December 22, 1988.
15. Pursuant to 40 C.F.R. § 280.41(a), owners and operators of underground tanks that routinely contain regulated substances must monitor for releases every thirty days in accordance with this section.
16. The underground piping for which violations are alleged in Count 2, Count 3, and Count 5 of this Complaint is classified as “pressurized” piping.
17. Pursuant to 40 C.F.R. § 280.41(b)(1)(ii), underground piping that conveys regulated

substances under pressure must: have an annual line tightness test conducted in accordance with § 280.44(b) or have monthly monitoring conducted in accordance with § 280.44(c).

18. 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.
19. 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).
20. 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.
21. 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.
22. 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.
23. EPA sent RCRA § 9005 Information Request Letters (hereinafter “IRLs”) to Lillian G. Burry, Director, Monmouth County Board Of Chosen Freeholders, One East Main Street, P.O. Box 1255, Freehold, NJ 07728 (dated March 10, 2014) and to Joseph M. Ettore, P.E., County Engineer, Division of Engineering & Traffic Safety, The Board Of Chosen Freeholders of the County of Monmouth, Hall of Records Annex, Freehold, NJ 07728 (dated September 18, 2014), in order to determine Monmouth’s compliance with the requirements of the Act and 40 C.F.R. Part 280 pertaining to underground storage tanks at the facilities specified in paragraph 9, above. These IRLs were sent, respectively:
 - a) March 10, 2014, seeking information on “Federally Regulated Underground Storage Tanks (USTs) Owned/Operated by Monmouth County or affiliates”;
 - b) September 18, 2014, seeking follow-up information on “Federally Regulated Underground Storage Tanks (USTs) Owned/Operated by Monmouth County or affiliates).”
24. Respondent’s response to the March 10, 2014 IRL referenced in paragraph number 23(a) was provided by mail on or about April 8, 2014. Respondent’s response to the September 18, 2014 IRL referenced in paragraph number 23(b) was provided by e-mail on or about

October 31, 2014 with a “certification of answers” for the October 31, 2014 IRL response provided by e-mail on November 7, 2014.

25. In Respondent’s April 8, 2014 response to EPA’s March 10, 2014 IRL and in its October 31, 2014 response to EPA’s September 18, 2014 IRL, Monmouth states that it has owned the UST systems at the three facilities subject to this complaint (as specified in paragraph 9, above).
26. Monmouth’s April 8, 2014 response was prepared and certified to be truthful and accurate by Joseph M. Ettore, County Engineer, County of Monmouth, in the course of carrying out his duties and responsibilities with regard to the ownership and/or operation of the six regulated UST systems at the three facilities subject to this Complaint.
27. Monmouth’s October 31, 2014 response was prepared and certified to be truthful and accurate via e-mail on November 7, 2014 by Joseph M. Ettore, County Engineer, County of Monmouth, in the course of carrying out his duties and responsibilities with regard to the ownership and/or operation of the six regulated UST systems at the three facilities subject to this Complaint.
28. Pursuant to Section 9005 of the Act, 42 U.S.C. § 6991d, authorized representatives of the EPA inspected Respondent’s six UST systems and three facilities (as specified in paragraph 9, above), on December 9 and 10, 2013, in order to determine Respondent’s compliance with the Act and 40 C.F.R. Part 280.

Count 1, Monmouth County Highway District #8 – Failure to Conduct Monthly Monitoring of Underground Tanks For Releases

29. Complainant realleges paragraphs 1 through 28, above with the same force and effect as if fully set forth below.
30. Respondent has owned and/or operated two 5,000-gallon USTs, one for diesel fuel storage and one for unleaded gasoline located at 1621 Union Ave., Hazlet, NJ (“District #8 facility”).
31. By letter dated April 8, 2014, Monmouth indicated that it is the current owner and operator of the USTs at the District # 8 facility.
32. The original New Jersey Department of Environmental Protection (“NJDEP”) Underground Storage Tank Registration application submitted for the District #8 facility states that the owner of the two tanks was the Monmouth County Highway Department. Three tanks were registered in this application and it was indicated that these three tanks had been installed in or around 1972. (These three tanks were subsequently removed and replaced with newer ones in 1991).

33. The current NJDEP registration certificate provided to EPA's inspector on December 10, 2013 is dated January 4, 2013 (it expires December 31, 2015) and states that the owner of the USTs was Joseph Ettore, Monmouth County, 1 Main St. E, Hall of Records Annex 3rd Floor, Freehold, NJ 07728. The operator was listed as Jack Hosier. The certificate indicates that the District #8 facility had two 5,000-gallon USTs, one for diesel fuel storage and one for unleaded gasoline, referred to as C8 and D8 respectively. EPA's inspection report indicates that the tanks were installed in November 1992.
34. Monmouth's October 31, 2014 IRL response indicates that the installation date for the two new tanks was July 22, 1991.
35. Monmouth's October 31, 2014 IRL response indicates that the two new tanks were removed on July 16, 2014 and a closure report was supplied to EPA which indicates that there was no evidence of contamination from the tanks.
36. An authorized inspector of the EPA inspected USTs at this facility on December 10, 2013.
37. At the time of EPA's inspection of the USTs located at the District # 8 facility, two UST systems were in use.
38. Each of the two regulated tanks at the District #8 facility, installed in 1991 or 1992, is considered a "new tank system" pursuant to 40 C.F.R. § 280.12.
39. Pursuant to 40 C.F.R. § 280.41(a), owners and operators of underground storage tanks that routinely contain regulated substances must monitor them monthly for releases in accordance with this section.
40. Based on EPA's December 10, 2013 inspection, Respondent uses a Veeder-Root automatic tank gauge (ATG) TLS-350 to conduct monthly release detection monitoring on the two USTs via both statistical leak detection and electronic interstitial monitoring. However, the inspector was not provided records of release detection monitoring for either tank from April 2013 to December 10, 2013 with the exception of an electronic printout from November 19, 2013 stating "All Functions Normal."
41. EPA's March 10, 2014 IRL requested release detection records for the two USTs for the missing months. The April 8, 2014 IRL response provided tank release detection records for April and May 2013. However, it provided no records for June through December 2013. Furthermore, the IRL response states that "between June 2013 and January 2014, the ATG system was not operating properly and the monthly in tank leak test results are not available due to electrical surges, a dead backup battery, and a faulty computer chip. As of January 2014, the system was repaired and is operating properly." The response also stated that Respondent used a "multi-force fuel management system" called Tank Watch, to enable Respondent to check dispenser records against tank inventory. The

response included a January 2, 2014 record stating “All functions normal” and also provided records for February and March 2014.

42. EPA’s second IRL of September 18, 2014 again asked about the records for June through December 2013 and asked for an explanation of how release detection was being conducted if the ATG was down during this period including how the Tank Watch system was used.
43. Monmouth’s October 31, 2014 IRL response admitted that no records existed for July 2013 - January 2014, except for the electronic printout for November 19, 2013. Further, the response states: “The monthly release detection records for the two USTs during the months of June 2013 through January 2014 are not available since the automatic tank gauge (ATG) system was not operating properly. This was the result of the system electronics being hit with electrical surges. The Veeder-Root system usually provides the operators with a weekly print-out of the system status utilizing Continuous Statistical Leak Detection (CSLD) software; but, the computer print-outs could not be obtained for this period.”
44. Monmouth’s October 31, 2014 response goes on to state that Monmouth does manual back up review and logging as well but that “unfortunately the months of July 2013 through January 2014 were lost and are not available.” The IRL response provides a “30-day Release Detection Monitoring Record” sheet for the two tanks which have entries for January through June 13, 2013.
45. Monmouth’s October 31, 2014 IRL response further states that “December 2013 and January 2014 the Veeder-Root computer had problems and a CSLD [continuous statistical leak detection] could not be performed” and that “system alarm history is not available due to the Veeder-Root computer memory being affected by the electrical storms.”
46. With regard to Tank Watch, Monmouth’s October 31, 2014 response provides evidence that it compared inventory data with dispenser data to show that there were no major discrepancies each day (i.e., suggesting that no leak had occurred). However, this is not a valid release detection method under federal UST regulations.
47. In a November 21, 2014 e-mail response to a further EPA inquiry regarding the 30-day Release Detection Monitoring Record, Monmouth clarified that the preparer of the record also checks the Veeder-Root for any indication that the tank’s interstitial spaces have fluid and would indicate a fault on the record. However, based on Respondent’s IRL responses, for the July 2013 through January 2014 period that the Veeder-Root was down, ATG monitoring was not performed and consequently records are not available.
48. Monmouth’s failure to adequately monitor the two tanks at the District #8 facility for releases during the period between July 13, 2013 (30 days after last manual record)

through December 10, 2013, with the exception of November 19, 2013, constitutes a violation of 40 C.F.R. § 280.41(a).

49. Between July 13, 2013 and December 10, 2013, with the exception of November 19, 2013, Monmouth failed to conduct monthly release detection monitoring in accordance with 40 C.F.R. § 280.41(a) for the two tanks at the District #8 facility.

Count 2, Monmouth County Highway District #8 – Failure to Maintain Records of Release Detection For Underground Piping

50. Complainant re-alleges paragraphs 1 through 49 above, with the same force and effect as if fully set forth below.
51. EPA's December 10, 2013 inspection revealed that the two USTs at this facility had pressurized piping.
52. EPA's December 10, 2013 inspection revealed that the pressurized piping was monitored monthly via electronic interstitial monitoring (EIM). The inspection revealed that while a timely automatic line leak detector test for the pressurized piping was provided, no records of the monthly EIM were provided except for a printout from November 19, 2013 saying "All Functions Normal." This printout indicates that the sump sensors were functioning but is not line specific and therefore is not acceptable as a release detection record for the piping. In addition, no evidence of an annual line tightness test for either line (piping for each UST system) was provided as an alternative to monthly release detection monitoring of the lines.
53. EPA's March 10, 2014 IRL requested evidence of monthly release detection monitoring records for the lines (piping) for the period of December 2012 through December 2013 or, in the alternative, evidence of a line tightness test for that period.
54. Monmouth's April 8, 2014 IRL response provided various test results from Independent Service Technicians which included a "pressure decay" test which was presumably submitted as evidence of a line tightness test. However, this test appeared to be referring to vapor recovery tests and was unrelated to line tightness. Also, the test was not specific to each line and did not provide specific results for each line. On the cover sheet of the test results, under line tightness, it states "Double Wall Piping" which does not provide the required information.
55. EPA's September 18, 2014 IRL requested clarification on how Monmouth felt the test results from Independent Service Technicians qualified as a line tightness test and again requested the submission of monthly release detection monitoring records as an alternative.
56. Monmouth's October 31, 2014 IRL response admits that with regard to the March 4, 2013 Independent Service Technicians document "annual line tightness testing was not

performed.” In addition, the response provides manual interstitial monitoring results for the pressurized line sump pits from January 2013 through June 13, 2013. However, the response states that “Operator record keeping for the rest of 2013 are incomplete.”

57. From at least July 13, 2013 (30 days after last manual record) through December 10, 2013, with the exception of November 19, 2013, Respondent did not maintain records of monthly release detection or line tightness tests for its two pressurized lines at the District #8 facility.
58. Monmouth’s failures to maintain the records of monthly release detection monitoring or line tightness testing for the two pressurized lines at the District #8 facility for the period from at least July 13, 2013 through December 10, 2013, with the exception of November 19, 2013, constitute violations of 40 C.F.R. §§ 280.34(b), 280.34(c) and 280.45(b).

Count 3, Monmouth County Highway District #3 + 6 – Failure to Maintain Records of Release Detection For Pressurized Piping

59. Complainant realleges paragraphs 1 through 58 above, with the same force and effect as if fully set forth below.
60. Monmouth has owned and/or operated and continues to own and/or operate two 10,000-gallon USTs, one for unleaded gasoline storage and the other for diesel fuel storage located at 1180 Pine Brook Road, Tinton Falls, NJ (“District #3 + 6 facility”).
61. By letter dated April 8, 2014, Monmouth indicated that it is the current owner and operator of the USTs at the District #3 + 6 facility.
62. NJDEP provided EPA with the earliest UST registration application for the District #3 + 6 facility, dated April 9, 1986. It states that the owner of the tanks was the Monmouth County Highway Department. There were three tanks registered in this application which were installed on or around 1971-72. (These tanks were subsequently removed and replaced with the two current ones in 1991).
63. The current NJDEP UST Registration certificate dated January 1, 2013 was provided to the EPA inspector on December 9, 2013. It has an expiration date of December 31, 2015. It states that the owner of the facility is Joseph Ettore, Monmouth County, 1 Main St. E, Hall of Records Annex 3rd Floor, Freehold, NJ 07728. The operator is listed as Fred Gunsarls. The registration indicates that there are two 10,000-gallon USTs, one for unleaded gasoline storage and the other for diesel fuel storage, referred to as 001 and 002 respectively. The EPA inspection report indicates that the tanks were installed in January 1991. (Monmouth’s April 8, 2014 IRL response indicates that the tanks were installed July 22, 1991.)
64. The two regulated tanks at the District #3 + 6 facility were installed in 1991 and are therefore each considered a “new tank system” pursuant to 40 C.F.R. § 280.12.

65. An authorized inspector of the EPA inspected the USTs at the District #3 + 6 facility on December 9, 2013.
66. At the time of EPA's inspection of the USTs located at the District #3 + 6 facility, the UST systems were in use.
67. The two 5,000-gallon USTs at the District #3 + 6 facility and their associated pressurized piping (lines) routinely contained regulated product.
68. EPA's December 9, 2013 inspection report indicates that the two tanks use pressurized piping. The primary release detection method used is EIM with a manual interstitial monitoring used as a back-up. However, the facility was missing release detection records from either EIM or its manual logs for both lines for March, July and September 2013.
69. EPA's March 10, 2014 IRL requested release detection records for the two lines for the missing months or, in the alternative, evidence of a line tightness test. Monmouth's April 8, 2014 IRL response provided various test results from Independent Service Technicians, dated February 25, 2013 which included a "pressure decay" test but this appeared to be referring to a vapor recovery test and is not related to a line tightness test. Also, the test was not specific to any line and did not provide specific results as to each line. Referring to line tightness, the cover sheet for the test results states "Double Wall Piping" which does not provide the required information.
70. EPA's September 18, 2014 IRL again inquired as to how the test results from Independent Service Technicians demonstrated a line tightness test and again requested the missing release detection records. Monmouth's October 31, 2014 IRL response admits that with regard to the February 25, 2013 Independent Service Technicians test results "annual line tightness testing was not performed." The response provides the same manual interstitial monitoring logs as were provided during EPA's December 9, 2013 inspection which were missing months as noted in paragraph 69, above. Respondent stated that "Operator record keeping for the months of July and September 2013 are incomplete." Respondent did not mention March 2013 which was also missing.
71. Monmouth states in its October 31, 2014 IRL response that it had put into place a new practice to get weekly printouts from its ATG on sump sensor status and that Respondent now performs manual inspections of its lines.
72. For at least March, July and September 2013. Monmouth did not maintain records of release detection for its two pressurized lines at the District #3 + 6 facility.
73. Monmouth's failures to maintain records of monitoring for releases for the two pressurized lines located at the District #3 + 6 facility for March, July and September 2013 constitute violations of 40 C.F.R. §§ 280.34(b), 280.34(c) and 280.45(b).

Count 4, Monmouth County Highway District #5 – Failure to Conduct Monthly Monitoring of Underground Tank

74. Complainant realleges paragraphs 1 through 74, above with the same force and effect as if fully set forth below.
75. Monmouth has owned and/or operated two 3,000-gallon regulated petroleum UST systems (one for gasoline and one diesel fuel storage) located at 383 Cranberry Road, Howell, NJ (“District #5 facility”).
76. By letter dated April 8, 2014, Monmouth indicated that it was the current owner and operator of the USTs at the District #5 facility.
77. NJDEP provided EPA with the earliest UST registration application dated April 9, 1986. It states that the owner of the tanks was the Monmouth County Highway Department. There were two tanks registered in this application which were installed in or around 1970. (These tanks were subsequently removed and replaced with two newer ones in 1992).
78. A NJDEP registration certificate provided to EPA is dated January 4, 2013 (it expires December 31, 2015) and states that the UST owner is Joseph Ettore, Monmouth County, 1 Main St. E, Hall of Records Annex 3rd Floor, Freehold, NJ 07728. The operator is as Lenny Williams. The certificate indicates that the District #5 facility has two 3,000-gallon USTs, one for diesel fuel storage and one for unleaded gasoline, referred to as E5 and F5 respectively. EPA’s inspection report for the December 9, 2013 inspection indicates that the tanks were installed in June 1992. (Monmouth’s April 8, 2014 IRL response states that the date of installation was July 18, 1991.)
79. Monmouth informed EPA in its October 31, 2014 IRL response that the two tanks were removed in October 2014.
80. An authorized inspector of the EPA inspected USTs at the District #5 facility on December 9, 2013.
81. At the time of EPA’s inspection of the USTs located at the District #5 facility, the UST systems were in use.
82. The two regulated tanks at the District #5 facility are considered “new tank systems” pursuant to 40 C.F.R. § 280.12.
83. Pursuant to 40 C.F.R. § 280.41(a), owners and operators of underground storage tanks that routinely contains regulated substances must monthly monitor them for releases in accordance with this section.

84. During the December 9, 2013 UST inspection, EPA's inspector found that Respondent uses a Veeder-Root ATG TLS-350 to conduct monthly release detection monitoring on the tanks via CSLD. EPA's inspection report indicates that the EPA inspector was not provided with records of release detection for September, October, and November 2013 for the gasoline tank. This was due to low tank level errors, indicating that the fuel level was too low to be tested properly.
85. EPA's March 10, 2014 IRL requested data on the three missing months for the gasoline tank and requested an explanation of how release detection occurred for the gasoline tank despite the low product level.
86. Monmouth's April 8, 2014 IRL response acknowledges that there had been a low level error for the gasoline tank from September through November 2013 and states that "no leak detection tests could be completed during this time period." No other records were provided.
87. EPA's September 18, 2014 IRL requested confirmation that no release detection occurred for the gasoline tank during September, October, and November 2013. Monmouth's October 31, 2014 IRL response provided manual interstitial logs (Monthly Containment Device Inspection Log) for lines as evidence of release detection on tanks. Such logs for lines are not acceptable for release detection purposes for tanks. Respondent's October 31, 2014 response also included a "30-Day Release Detection Monitoring Record" which Monmouth stated was created by "polling the Veeder-Root Console....and recording the results on the log sheets ... to document leak detection monitoring for tanks and product lines" but stated "September 2013 was not recorded." This 30-Day Record conflicts with the statement made in the April 8, 2014 IRL response that the low level alarm prevented the ATG from properly conducting leak detection. The 30-Day Record also shows no results for January and March through August 2013, and when it does show results, it is not clear what has been monitored.
88. In a November 21, 2014 e-mail response to a further EPA inquiry concerning the 30-day Release Detection Monitoring Record, Monmouth states that the Record is a list of manual inspections to double-check the sensors in the interstitial spaces of the tanks for releases via the Veeder-Root. "Tank leak detection via the interstitial sensor is continuously monitored by the Veeder-Root and checked by the operator. Any activation of the interstitial alarm is noted on the log sheet." Since the log is not tank specific and there are missing months, it does not suffice for release detection compliance purposes.
89. Between September 4, 2013 (30-days after the August 4, 2013 passing result) through October 3, 2013 (the next passing result), Monmouth failed to conduct proper monthly release detection monitoring in accordance with 40 C.F.R. § 280.41(a) for the gasoline UST at the District #5 facility.
90. Monmouth's failure to conduct monthly release detection monitoring during the period between September 4, 2013 and October 3, 2013 for the gasoline UST at this facility

constitutes a violation of 40 C.F.R. § 280.41(a).

Count 5, Monmouth County Highway District #5 – Failure to Maintain Records of Release Detection For Pressurized Piping

91. Complainant re-alleges paragraphs 1 through 91 above, with the same force and effect as if fully set forth below.
92. Pursuant to 40 C.F.R. § 280.41(b)(ii), owners and operators of underground tanks that use pressurized piping that routinely contain regulated substances must monitor for releases every thirty days in accordance with this section or, in the alternative, perform an annual line tightness test.
93. The two 3,000-gallon USTs at the District #5 facility and their associated pressurized piping routinely contained regulated product.
94. The December 9, 2013 inspection indicated that the two pressurized piping systems were monitored via EIM. However, the inspector found no records of monthly release detection for lines (piping) except one EIM printout for the day of inspection, nor was the inspector provided an annual line tightness test for the piping.
95. EPA's March 10, 2014 IRL requested the release detection monitoring data for the two lines for the twelve months prior to the inspection or, in the alternative, line tightness tests.
96. Monmouth's April 8, 2014 IRL response provided various test results from Independent Service Technicians dated March 1, 2013 which shows a "pressure decay" test was passed. But, as this test appeared to be referring to vapor recovery and does not relate to line tightness, this is not relevant. Also, the test was not specific to each line and did not provide specific results as to each of the lines. Finally, referring to line tightness the cover sheet for the test results states "Pass Veeder-Root Double Wall monitored" which does not provide the required information.
97. EPA's September 18, 2014 IRL requested more release detection information on the two lines. Monmouth's October 31, 2014 IRL response admits that with regard to the March 1, 2013 Independent Service Technicians test results "annual line tightness testing was not performed."
98. In addition, in its IRL response Monmouth provided manual interstitial monitoring data including a 30-day Release Detection Monitoring Record" for overall release detection which it claimed shows release detection for the lines as well as tanks. Between February 5, 2013 and October 3, 2013, this Record is missing monthly entries for March through September 2013. The IRL response further states that "eight months [are] not recorded" (the eighth month would apply to January 2013 which was also missing). Respondent's October 31, 2014 response includes a "Monthly Containment Device Inspection Log" for

both lines which contains manual interstitial monitoring records. The diesel fuel UST results are shown on two separate sheets but results are missing for April, May, June, August, and September 2013. The IRL response acknowledges this missing data but provides no explanation.

99. In a November 21, 2014 e-mail response to a further EPA inquiry on the 30-day Release Detection Monitoring Record, Monmouth states that the Record shows that it performed manual inspections of the sumps into which pressurized lines would leak .
100. From at least April 20, 2013 (30-days from last record for the diesel fuel line) through at least October 3, 2013, Monmouth did not maintain complete records of release detection and provide annual line tightness tests for the two pressurized lines at the District #5 facility.
101. Monmouth's failure to maintain and provide the records of monitoring or testing for the two pressurized lines at the District #5 facility for the period of at least April 20, 2013 (30-days from last record for the diesel fuel line) through at least October 3, 2013 constitute violations 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 Respondent to comply with the applicable requirements, Complainant proposes, subject to receipt and evaluation of further relevant information, that the following civil penalties be assessed against the Respondent:

Facility/Count Number	UST(s) at issue	40 CFR Part 280 requirement violated	Violation summary – failure to:	Proposed penalty for count
Monmouth County Highway District #8/1	C8, D8	41(a)	Conduct Monthly Release Detection for USTs	\$6,094.00
Monmouth County Highway District #8/2	C8, D8	45	Maintain Release Detection Records For Piping	\$3,073.00
Monmouth County Highway District #3 + 6/3	001, 002	45	Maintain Release Detection Records for Piping	\$360.00
Monmouth County Highway District #5/4	F5	41(a)	Conduct Monthly Release Detection For UST	\$2,130.00
Monmouth County Highway District #5/5	E5, F5	45	Maintain Release Detection Records For Piping	\$3,238.00
Total Penalty				\$14,895.00

A copy of the document with the penalty calculation is attached.

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 Respondent. 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, Respondent has requested a hearing as provided for in 40 C.F.R. § 22.15. See 42 U.S.C. § 6991(e)(b) and 40 C.F.R. §§ 22.37(b) and 22.7(c). Pursuant to this Compliance Order, at the following facilities Respondent shall:

- 1) Monmouth County Highway District #3 + 6 facility (now named Monmouth County Highway District #3), ensure that monthly records of release detection monitoring for the pressurized lines will be maintained in accordance with 40 C.F.R. §§ 280.34(b), 280.34(c) and 280.45(b).
- 2) Maintain compliance with all applicable requirements of 40 C.F.R. Part 280 for each federally regulated UST system (as covered under 40 C.F.R. § 280.10) at any of its facilities where it is an owner and/or operator of an UST system.

Compliance with the provisions of this Compliance Order is neither intended nor shall it be construed to release Respondent 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 5, above or elsewhere. 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 and to seek and obtain any appropriate penalty or other remedy permitted under law.

NOTICE OF LIABILITY FOR ADDITIONAL CIVIL PENALTIES

Pursuant to Section 9006(a)(3) of the Act, 42 U.S.C. §6991e(a)(3), and in accordance with the Debt Collection and Improvement Act of 1996, Pub. L. No. 104-34, 110 Stat. 1321 (1996) and the regulations promulgated there under (see the Civil Monetary Inflation Rule, 73 Fed. Reg. 75340 (December 11, 2008), codified at 40 C.F.R. Part 19), a violator failing to comply within the time specified in the order with the requirements of a compliance order that has taken effect is liable for a civil penalty up to \$37,500 for each day of continued noncompliance.

PROCEDURES GOVERNING THIS ADMINISTRATIVE LITIGATION

Upon receipt of a compliance order issued under RCRA section 3008(a), Respondent may seek administrative review in accordance with 40 C.F.R. Part 22. Respondent may seek judicial review of the compliance order pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701 – 706, once it is final and reviewable pursuant to RCRA Section 9006(b) and 40 C.F.R. Part 22.

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

A. Answering the Complaint

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

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

(NOTE: Any documents that are filed after the Answer has been filed should be filed as specified in “D” below.)

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

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

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

B. Opportunity to Request a Hearing

If requested by Respondent in its Answer, a hearing upon the issues raised by the Complaint and Answer may be held. 40 C.F.R. § 22.15(c). If, however, Respondent does not request a hearing,

the Presiding Officer (as defined in 40 C.F.R. § 22.3) may hold a hearing if the Answer raises issues appropriate for adjudication. 40 C.F.R. § 22.15(c). With regard to the Compliance Order in the Complaint, unless Respondent requests a hearing pursuant to 40 C.F.R. § 22.15 within 30 days after such Order is served, such Order shall automatically become final. 40 C.F.R. § 22.37.

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

C. Failure to Answer

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

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

D. Filing of Documents Filed After the Answer

Unless otherwise ordered by the Presiding Officer for this proceeding, all documents filed after Respondent has filed an Answer should be filed with the Headquarters Hearing Clerk acting on behalf of the Regional Hearing Clerk, addressed as follows:

If filing by the United States Postal Service:

Sybil Anderson
Headquarters Hearing Clerk
Office of the Administrative Law Judges
U.S. Environmental Protection Agency
Mail Code 1900R
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

If filing by UPS, FedEx, DHL or other courier or personal delivery, address to:

Sybil Anderson
Headquarters Hearing Clerk
Office of the Administrative Law Judges
Ronald Reagan Building, Room M1200
U.S. Environmental Protection Agency
1300 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

E. Exhaustion of Administrative Remedies

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

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

INFORMAL SETTLEMENT CONFERENCE

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

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

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

Carl R. Howard
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, New York 10007-1866
(212) 637- 3216
(212) 637-3199 (fax)

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

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

Any settlement that may be reached as a result of an informal settlement conference shall be embodied in a written consent agreement. 40 C.F.R. § 22.18(b)(2). In accepting the consent agreement, Respondent waives its right to contest the allegations in the Complaint and waives its right to appeal the final order that is to accompany the consent agreement. 40 C.F.R. § 22.18(b)(2). In order to conclude the proceeding, a final order ratifying the parties' agreement to settle will be executed. 40 C.F.R. § 22.18(b)(3).


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

RESOLUTION OF THIS PROCEEDING WITHOUT HEARING OR CONFERENCE

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

In the Matter of County of Monmouth, New Jersey
Docket Number RCRA-02-2015-7501

Dated: MARCH 31, 2015



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

To: Gary J. Rich, Sr.
Director
Monmouth County Board Of Chosen Freeholders
One East Main Street
P.O. Box 1255
Freehold, NJ 07728

cc: Michael Hastry, Chief
Bureau of Hazardous Waste and UST Compliance and Enforcement
New Jersey Department of Environmental Protection
Mail Code 09-03
9 Ewing Street
P.O. Box 420
Trenton, New Jersey 08625-0420

**In the Matter of County of Monmouth, New Jersey
Docket Number RCRA-02-2015-7501**

CERTIFICATE OF SERVICE

This is to certify that on the 1st day of April, 2015, 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-02-2015-7501 (henceforth referred to as the "Complaint"), and with a copy of the "CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENT OF CIVIL PENALTIES AND THE REVOCATION/TERMINATION OR SUSPENSION OF PERMITS," 40 C.F.R. Part 22, 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.

Respondent County of Monmouth, NJ

**Gary J. Rich, Sr.
Director
Monmouth County Board Of Chosen Freeholders
One East Main Street
P.O. Box 1255
Freehold, NJ 07728**

Mary C Cosgrove

Dated: April 1, 2015
New York, New York