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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

In the Matter of:)	
)	
PMIG 1011, LLC)	
12680 Darby Brooke Court)	
Woodbridge, Virginia 22192;)	
)	
PMIG 1010, LLC)	
12680 Darby Brooke Court)	
Woodbridge, Virginia 22192;)	
)	
E & C Enterprises, Inc.)	Administrative Complaint, Compliance
12680 Darby Brooke Court)	Order and Notice of Opportunity for
Woodbridge, Virginia 22192;)	Hearing
)	
and)	U.S. EPA Docket Number
)	RCRA-03-2009-0215
Petroleum Marketing Group, Inc.)	
12680 Darby Brooke Court)	
Woodbridge, Virginia 22192;)	Proceeding Under Section 9006 of the
)	Resource Conservation and Recovery
RESPONDENTS)	Act, as amended, 42 U.S.C. Section
)	6991e
Gallows Road Texaco)	
2919 Gallows Road)	
Falls Church, Virginia 22042;)	
)	
and)	
)	
Leesburg Pike Shell)	
6014 Leesburg Pike)	
Falls Church, Virginia 22041;)	
)	
FACILITIES)	

ADMINISTRATIVE COMPLAINT, COMPLIANCE ORDER
AND NOTICE OF OPPORTUNITY FOR HEARING

I. INTRODUCTION

This Administrative Complaint, Compliance Order and Notice of Opportunity for Hearing ("Complaint") is issued by the United States Environmental Protection Agency ("EPA" or "Complainant"), pursuant to Section 9006 of the Solid Waste Disposal Act, commonly referred to as the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984 (collectively referred to hereafter as "RCRA"), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22.

EPA hereby notifies PMIG 1011, LLC ("PMIG 1011"), PMIG 1010, LLC ("PMIG 1010") E & C Enterprises, Inc. ("E&C"), and Petroleum Marketing Group, Inc. ("PMG") (collectively referred to as "Respondents") that EPA has determined that Respondents have violated certain provisions of Subtitle I of RCRA, 42 U.S.C. §§ 6991-6991*m*, and the Virginia state underground storage tank ("UST") program, as authorized by EPA pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991*c*. Section 9006(a)-(d) of RCRA, 42 U.S.C. § 6991*e*(a)-(d) authorizes EPA to take an enforcement action whenever it is determined that a person is in violation of any requirement of RCRA Subtitle I, EPA's regulations thereunder, or any regulation of a state underground storage tank program which has been authorized by EPA. Under Section 9006(d) of RCRA, 42 U.S.C. § 6991*e*(d), EPA may assess a civil penalty against any person who, among other things, violates any requirement of the applicable federal or state UST program.

Effective October 28, 1998, pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991e, and 40 C.F.R. Part 281, Subpart A, the Commonwealth of Virginia was granted final authorization to administer a state UST management program *in lieu* of the Federal underground storage tank management program established under Subtitle I of RCRA, 42 U.S.C. §§ 6991-6991m. The provisions of the Virginia UST management program, through these final authorizations, are enforceable by EPA pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e.

Virginia's authorized UST program regulations are set forth in the Virginia Administrative Code, Title 9, Agency 25, Chapter 580, Sections 10 *et seq.*, and will be cited hereinafter as 9 VAC 25-580-10, *et seq.*

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

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Each Respondent is a "person" as defined in Section 9001 of RCRA, 42 U.S.C. § 6991, and 9 VAC 25-580-10.
2. At all times relevant to the violations alleged in this Complaint, Respondent PMIG 1011 has been an "owner" and/or an "operator," as those terms are defined in Section 9001 of RCRA, 42 U.S.C. § 6991, and 9 VAC 25-580-10, of "underground storage tanks" ("USTs") and "UST systems" as those terms are defined in Section 9001 of RCRA, 42 U.S.C. § 6991, and 9 VAC 25-580-10, located at a facility in Virginia, as set forth below.
3. At all times relevant to the violations alleged in this Complaint, Respondent PMIG 1010 has been an "owner" and/or an "operator," as those terms are defined in Section 9001 of RCRA,

42 U.S.C. § 6991, and 9 VAC 25-580-10, of “underground storage tanks” and “UST systems” as those terms are defined in Section 9001 of RCRA, 42 U.S.C. § 6991, and 9 VAC 25-580-10, located at a facility in Virginia, as set forth below.

4. At all times relevant to the violations alleged in this Complaint, Respondent E&C has been an “operator,” as that term are defined in Section 9001 of RCRA, 42 U.S.C. § 6991, and 9 VAC 25-580-10, of “underground storage tanks” and “UST systems” as those terms are defined in Section 9001 of RCRA, 42 U.S.C. § 6991, and 9 VAC 25-580-10, located at two facilities in Virginia, as set forth below.

5. At all times relevant to the violations alleged in this Complaint, Respondent PMG has been an “operator,” as that term are defined in Section 9001 of RCRA, 42 U.S.C. § 6991, and 9 VAC 25-580-10, of “underground storage tanks” and “UST systems” as those terms are defined in Section 9001 of RCRA, 42 U.S.C. § 6991, and 9 VAC 25-580-10, located at two facilities in Virginia, as set forth below.

A. GALLOWS ROAD TEXACO

COUNT 1

6. The allegations of Paragraphs 1 through 5 of this Complaint are incorporated herein by reference.

7. From at least June 30, 2004, through at least the date of this Complaint, Respondent PMIG 1011 has been the “owner” and/or “operator,” Respondent E&C has been an “operator,” and Respondent PMG has been an “operator,” as those terms are defined in Section 9001 of RCRA, 42 U.S.C. § 6991, and 9 VAC 25-580-10, of three “USTs” and “UST systems,” as those

terms are defined in Section 9001 of RCRA, 42 U.S.C. § 6991, and 9 VAC 25-580-10, located at the Gallows Road Texaco, 2919 Gallows Road, Falls Church, Virginia (“Gallows Road Texaco”). The three USTs and UST systems at the Gallows Road Texaco were installed during 1975, and are thus “existing tank systems” as that term is defined at 9 VAC 25-580-10. The USTs consist of the following:

- a. A 10,000-gallon UST (referred to herein as “Tank G-1”); and
- b. Two 15,000-gallon USTs (referred to herein as “Tanks G-2 and G-3”).

8. At all times relevant to the violations set forth in this Complaint, Tanks G-1, G-2 and G-3 have been used to store gasoline, which is a petroleum product and is a “regulated substance,” as that term is defined in Section 9001 of RCRA, 42 U.S.C. § 6991, and 9 VAC 25-580-10.

9. At all times relevant to the violations set forth in this Complaint, Tanks G-1, G-2, and G-3 have each been part of a “petroleum UST system” as that term is defined in 9 VAC 25-580-10.

10. Pursuant to 9 VAC 25-580-60.1, owners and operators of existing UST systems must, no later than December 22, 1998, comply with either (a) the upgrade requirements set forth in 9 VAC 25-580-60, (b) the new UST system performance standards set forth in 9 VAC 25-580-50, or (3) the closure requirements under 9 VAC 25-580, Part VII.

11. Pursuant to 9 VAC 25-580-60.2, existing steel tanks must be upgraded to be protected from corrosion using one of the options specified in that section, including interior lining, 9 VAC 25-580-60.2.a; cathodic protection, 9 VAC 25-580-60.2.b; or internal lining combined with cathodic protection, 9 VAC 25-580-60.2.c. A tank which is upgraded using the option set forth in 9 VAC 25-580-60.2.b, must be cathodically protected in accordance with the requirements of

9 VAC 25-580-50.1.b(2), (3) and (4). Pursuant to 9 VAC 25-580-50.1, new tanks (and therefore existing tanks complying with 9 VAC 25-580-50 pursuant to 9 VAC 25-580-60.1.a) must be protected from corrosion using one of the options specified in that section, including (a) construction of fiberglass reinforced plastic, 9 VAC 25-580-50.1.a; construction of steel with cathodic protection, 9 VAC 25-580-50.1.b; construction of steel-fiberglass reinforced-plastic composite, 9 VAC 25-580-50.1.c; or construction and protection determined by the implementing state agency to be no less protective of human health and the environment than 9 VAC 25-580-50.1.a through c, 9 VAC 25-580-50.1.d.

12. Pursuant to 9 VAC 25-580-50.1.b(4), cathodic protection systems must be operated and maintained in accordance with 9 VAC 25-580-90, which requires, in relevant part, that cathodic protection systems must be inspected for proper operation by a qualified cathodic protection tester within six months of installation and at least every three years after that. 9 VAC 25-580-90.2. UST systems with impressed current cathodic protection systems must also be inspected every 60 days to ensure the equipment is running properly. 9 VAC 25-580-90.3. Corrosion protection systems must be operated and maintained to continuously provide corrosion protection to the metal components of that portion of the tank and piping that routinely contain regulated substances and are in contact with the ground. 9 VAC 25-580-90.1.

13. Tanks G-1, G-2 and G-3 are steel tanks. Each tank is entirely constructed of metal, and nearly all of each tank (1) routinely contains regulated substances, and (2) is in contact with the ground.

14. At no time relevant to the violations set forth in this Count have Tanks G-1, G-2 and G-3 been closed or been in compliance with the requirements of 9 VAC 25-580-50.1.a, c or d, or 25-580-60.2.a or c. All three tanks are intended to be protected by an impressed current cathodic protection system, which, if properly operated and maintained, was intended to comply with the requirements of 9 VAC 25-580-50.1.b and/or 25-580-60.2.b. However, for certain periods of time, these tanks failed to comply with either 9 VAC 25-580-50.1.b or 25-580-60.2.b. in a number of ways, as set forth in this Count, below, and in Counts 2 and 3, below.

15. The impressed cathodic protection system for Tanks G-1, G-2 and G-3 was inspected for proper operation by a qualified cathodic protection tester on February 4, 2002. Another such inspection was required to be conducted no later than February 4, 2005. However, another such inspection was not conducted until October 22, 2008.

16. The Gallows Road Texaco was inspected by and EPA inspector on July 10, 2007. At the time of this inspection, the rectifier for the impressed current system was indicating zero amperage, meaning that the impressed current system was not providing any cathodic protection to the three steel USTs at the facility.

17. Pursuant to 9 VAC 25-580-110.5, within 6 months following the repair of any cathodically protected UST system, the cathodic protection system must be tested in accordance with 9 VAC 25-580-90.2 and 25-580-90.3.

18. On April 22, 2008 the impressed current system for the three USTs at the Gallows Road Texaco was repaired, including the replacement of significant components. This impressed cathodic protection system was thus required to be inspected for proper operation by a qualified

cathodic protection tester no later than October 22, 2008. However, such an inspection was not conducted until December 23, 2008. The December 23, 2008 testing showed that the impressed current system was not properly providing cathodic protection for any of the three USTs at the Gallows Road Texaco.

19. From February 4, 2005 to July 10, 2007 and from October 22, 2008 until December 23, 2008, Respondents PMIG 1011, E&C and PMG violated 9 VAC 25-580-50.1.b(4), 25-580-60.1, 25-580-60.2, and 25-580-90.2 by failing to either timely test the impressed current cathodic protection system for Tanks G-1, G-2 and G-3 at the Gallows Road Texaco, or comply with the closure requirements under 9 VAC 25-580, Part VII.

COUNT 2

20. The allegations of Paragraphs 1 through 19 of this Complaint are incorporated herein by reference.

21. From at least five years prior to the date of this Complaint at least until EPA's July 10, 2007 inspection, the impressed current cathodic protection system for Tanks G-1, G-2 and G-3 was not inspected every 60 days to ensure the equipment was running properly.

22. From at least five years prior to the date of this Complaint until at least July 10, 2007, Respondents PMIG 1011, E&C and PMG violated 9 VAC 25-580-50.1.b(4), 25-580-60.1, 25-580-60.2, and 25-580-90.3 by failing to either inspect the impressed current cathodic protection system for Tanks G-1, G-2 and G-3 at the Gallows Road Texaco every 60 days to ensure the equipment was running properly, or comply with the closure requirements under 9 VAC 25-580, Part VII.

COUNT 3

23. The allegations of Paragraphs 1 through 22 of this Complaint are incorporated herein by reference.

24. The impressed current system for Tank G-1, G-2 and G-3 at the Gallows Road Texaco did not provide adequate cathodic protection for the metal portions of such USTs which routinely contain regulated substances and are in contact with the ground, from at least July 10, 2007, when an EPA inspection discovered that the system was not working, until April 22, 2008, when such system was repaired, including the replacement of significant components.

25. The impressed current system for Tank G-1, G-2 and G-3 at the Gallows Road Texaco again did not provide adequate cathodic protection for the metal portions of such USTs which routinely contain regulated substances and are in contact with the ground, from at least December 23, 2008, when cathodic protection testing demonstrated that the system was not providing adequate protection, at least until February 19, 2009, when such system was again repaired.

26. From at least July 10, 2007 until April 22, 2008, and from at least December 23, 2008, until at least until February 19, 2009, Respondents PMIG 1011, E&C and PMG violated 9 VAC 25-580-50.1.b, 25-580-60.1, 25-580-60.2, and 25-580-90.I by failing to either provide continuous corrosion protection in accordance with any of the alternative corrosion protection requirements set forth in 9 VAC 25-580.50.b or 25-580-60.2 for Tanks G-1, G-2 and G-3 at the Gallows Road Texaco, or comply with the closure requirements under 9 VAC 25-580, Part VII.

A. LEESBURG PIKE SHELL**COUNT 4**

27. The allegations of Paragraphs 1 through 26 of this Complaint are incorporated herein by reference.

28. From at least June 30, 2004, through at least the date of this Complaint, Respondent PMIG 1010 has been the “owner” and/or “operator,” Respondent E&C has been an “operator,” and Respondent PMG has been an “operator,” as those terms are defined in Section 9001 of RCRA, 42 U.S.C. § 6991, and 9 VAC 25-580-10, of three “USTs” and “UST systems,” as those terms are defined in Section 9001 of RCRA, 42 U.S.C. § 6991, and 9 VAC 25-580-10, located at the Leesburg Pike Shell, 6014 Leesburg Pike, Falls Church, Virginia (“Leesburg Pike Shell”). Two of the three USTs and UST systems at the Leesburg Pike Shell were installed during 1965, and the third was installed in 1977, and all three USTs and UST systems are thus “existing tank systems” as that term is defined at 9 VAC 25-580-10. The USTs consist of the following:

- a. Two 15,000-gallon USTs (referred to herein as “Tanks L-1 and L-2”); and
- b. A 10,000-gallon UST (referred to herein as “Tank L-3”).

29. At all times relevant to the violations set forth in this Count, Tanks L-1, L-2 and L-3 have been used to store gasoline, which is a petroleum product and is a “regulated substance,” as that term is defined in Section 9001 of RCRA, 42 U.S.C. § 6991, and 9 VAC 25-580-10.

30. At all times relevant to the violations set forth in this Count, Tanks L-1, L-2, and L-3 have each been part of a “petroleum UST system” as that term is defined in 9 VAC 25-580-10.

31. Tanks L-1, L-2 and L-3 are steel tanks. Each tank is entirely constructed of metal, and nearly all of each tank (1) routinely contains regulated substances, and (2) is in contact with the ground.

32. At no time relevant to the violations set forth in this Count have Tanks L-1, L-2 and L-3 been closed or been in compliance with the requirements of 9 VAC 25-580-50.1.a, c or d, or 25-580-60.2.a or c. All three tanks are intended to be protected by an impressed current cathodic protection system, which, if properly operated and maintained, was intended to comply with the requirements of 9 VAC 25-580-50.1.b and/or 25-580-60.2.b. However, for certain periods of time, these tanks failed to comply with either 9 VAC 25-580-50.1.b or 25-580-60.2.b. in a number of ways, as set forth in this Count, below, and in Counts 5 and 6, below.

33. The impressed cathodic protection system for Tanks L-1, L-2 and L-3 was inspected for proper operation by a qualified cathodic protection tester on April 4, 2002. Another such inspection was required to be conducted no later than April 4, 2005. However, another such inspection was not conducted until June 19, 2005. The June 19, 2005, testing showed that the impressed current system was not properly providing cathodic protection for any of the three USTs at the Leesburg Pike Shell.

34. From April 4, 2005 to June 19, 2005, Respondents PMIG 1010, E&C and PMG violated 9 VAC 25-580-50.1.b(4), 25-580-60.1, 25-580-60.2, and 25-580-90.2 by failing to either timely test the impressed current cathodic protection system for Tanks L-1, L-2 and L-3 at the Leesburg Pike Shell, or comply with the closure requirements under 9 VAC 25-580, Part VII.

COUNT 5

35. The allegations of Paragraphs 1 through 34 of this Complaint are incorporated herein by reference.

36. From at least five years prior to the date of this Complaint until June 19, 2005, when the impressed current cathodic protection system for Tanks L-1, L-2 and L-3 was determined to be providing inadequate cathodic protection, such system was not inspected every 60 days to ensure the equipment was and is running properly.

37. After the repair of the impressed current system for Tanks L-1, L-2 and L-3 on March 27, 2006, there have been gaps of greater than 60 days between Respondents' operational inspections of such impressed current system, including the following:

- a. Respondents conducted an operational inspection on May 20, 2006, but did not conduct another such inspection until some time during the month of August, 2006.
- b. After the operational inspection in August, 2006, Respondents did not conduct another such inspection until some time during the month of December, 2006.

38. From at least five years prior to the date of this Complaint until June 19, 2005, and at other times since July 19, 2006, including, but not limited to, July 19, 2006 to August, 2006, and from October, 2006 until December, 2006, Respondents PMIG 1010, E&C and PMG violated 9 VAC 25-580-50.1.b(4), 25-580-60.1, 25-580-60.2, and 25-580-90.3 by failing to either inspect the impressed current cathodic protection system for Tanks L-1, L-2 and L-3 at the Leesburg Pike

Shell every 60 days to ensure the equipment was running properly, or comply with the closure requirements under 9 VAC 25-580, Part VII.

COUNT 6

39. The allegations of Paragraphs 1 through 38 of this Complaint are incorporated herein by reference.

40. The impressed current system for Tank L-1, L-2 and L-3 at the Leesburg Pike Shell did not provide adequate cathodic protection for the metal portions of such USTs which routinely contain regulated substances and are in contact with the ground, from at least June 19, 2005, when a cathodic protection test showed that the system was not providing adequate protection, until at least March 27, 2006, when such system was repaired, including the replacement of significant components.

41. From at least June 19, 2005 until at least March 27, 2006, Respondents PMIG 1010, E&C and PMG violated 9 VAC 25-580-60.1 and 25-580-60.2, by failing to either meet any of the alternative corrosion protection requirements set forth in 9 VAC 25-580-50.1 or 25-580-60.2 for Tanks L-1, L-2 and L-3 at the Leesburg Pike Shell, or comply with the closure requirements under 9 VAC 25-580, Part VII.

IV. CIVIL PENALTY

Section 9006(d)(2) of RCRA, 42 U.S.C. § 6991e(d)(2), provides in relevant part that any owner or operator of an underground storage tank who fails to comply with any requirement promulgated under Section 9003 of RCRA, 42 U.S.C. § 6991b, or any requirement or standard of a State program authorized pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c, shall be liable

for a civil penalty not to exceed \$10,000 for each tank for each day of violation. Pursuant to the DCIA and the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 61 *Fed. Reg.* 69360 (December 31, 1996), codified at 40 C.F.R. Part 19, violations which occur subsequent to January 30, 1997 are subject to a statutory maximum penalty of \$11,000 per violation per day. Pursuant to the DCIA and the Civil Monetary Penalty Inflation Adjustment Rule, 73 *Fed. Reg.* 75340 (December 11, 2008) violations which occur subsequent to January 12, 2009 are subject to a statutory maximum penalty of \$16,000 per violation per day.

Pursuant to 40 C.F.R. § 22.14(a)(4)(ii), Complainant is not proposing a specific penalty at this time, but will do so at a later date after an exchange of information has occurred. *See* 40 C.F.R. § 22.19(a)(4).

For purposes of determining the amount of any penalty to be assessed, Section 9006(c) and (e) of RCRA, 42 U.S.C. § 6991e(c) and (e), require EPA to take into account the seriousness of the violation, any good faith efforts to comply with the applicable requirements, the compliance history of the owner and operator, and any other appropriate factors. In developing the proposed penalty, Complainant will take into account the particular facts and circumstances of this case with specific reference to EPA's November 1990 "U.S. EPA Penalty Guidance for Violations of UST Regulations" ("UST Penalty Guidance"), the "Modifications to EPA's Penalty Policies to Implement the Civil Monetary Penalty Inflation Adjustment Rule (pursuant to the Debt Collection Improvement Act of 1996 (effective October 1, 2004))," dated September 21, 2004 ("2004 Penalty Policy Inflation Modification"), and the "Amendments to EPA's Civil Penalty Policies to Implement the 2008 Civil Monetary Penalty Inflation Adjustment Rule

(Effective January 12, 2009),” dated December 29, 2008 (“2008 Penalty Policy Inflation Modification”), copies of which are enclosed with this Complaint. These policies provide a rational, consistent and equitable methodology for applying the statutory penalty factors enumerated above to particular cases.

As a basis for calculating a specific penalty pursuant to 40 C.F.R. § 22.19(a)(4), Complainant will consider, among other factors, facts or circumstances unknown to Complainant at the time of issuance of the Complaint that become known after the Complaint is issued. In particular, EPA will consider, if raised, Respondent’s ability to pay as a factor in adjusting the civil penalty. The burden of raising the issue of inability to pay rests with Respondent.

Violations

Pursuant to Section 9006(d)(2) of RCRA, 42 U.S.C. § 6991e(d)(2), EPA proposes the assessment of a civil penalty of up to \$11,000 per tank per day against Respondent for each of the violations alleged in this Complaint. This does not constitute a "demand" as that term is defined in the Equal Access to Justice Act, 28 U.S.C. § 2412. Pursuant to 40 C.F.R. § 22.14(a)(4)(ii), an explanation of the number of and severity of violations is given below.

COUNT 1

Failure to Timely Test Cathodic Protection System – Gallows Road Texaco

Respondents PMIG 1011, E&C and PMG failed to timely test the cathodic protection system for Tanks G-1, G-2, and G-3 from February 4, 2005 to July 10, 2007 and from October 22, 2008 until December 23, 2008.

Periodic inspection of cathodic protection systems is necessary to ensure that the system is still adequately protecting the steel equipment, thus reducing the risk that corrosion will lead to a release of regulated substances. Under the UST Penalty Guidance, the failure to ensure that a cathodic protection system is inspected within 6 months after installation and every three years thereafter is generally considered a major deviation from the statutory and regulatory program with a moderate potential for harm to the environment and/or the regulatory program. There does not at this time appear to be any reason to deviate from that assessment. If anything, this assessment is overly conservative, given the circumstances in this case, which highlight the potential for harm posed by the failure to test. After a period of time during which testing was required but did not occur, it was discovered that the cathodic protection system for the Gallows Road Texaco was inoperable, and was thus providing no corrosion protection at all. After repairs were made to the system, Respondents again missed the deadline for testing to system. This time, when the system was eventually tested it was determined that the system, while operating, was providing an inadequate level of cathodic protection. In each instance, it is unlikely that the failure to provide the required level of cathodic protection began at the exact time such failure was discovered, and thus it is likely that the failure would have been discovered earlier had testing occurred when required by the UST regulations.

Depending on the information to be produced by Respondents in the litigation of this matter, Complainant will consider whether it is appropriate to make either upward or downward adjustments to the penalty based on Respondents' degree of cooperation with EPA, level of culpability and history of prior violations. In addition, Complainant may increase the base

penalty by a multiplier to account for relative sensitivity of the environment affected by the violation.

Further, a penalty component will be added to reflect the economic benefit gained by Respondents by failing to comply with the cathodic protection testing requirements.

Respondents delayed and/or avoided the expenditure of funds to pay a contractor to perform the required testing.

COUNT 2

Failure to Inspect Operation of Cathodic Protection System – Gallows Road Texaco

Respondents PMIG 1011, E&C and PMG failed to inspect the operation of the impressed current cathodic protection system for Tanks G-1, G-2, and G-3 from at least five years prior to the date of this Complaint until at least July 10, 2007.

Unlike a self-contained cathodic protection system (such as a sacrificial anode system), an impressed current system requires continual application of outside electrical current into the system in order to provide the required cathodic protection. It is thus essential to inspect an impressed current system on a frequent basis to ensure that system has not malfunctioned and is continuing to work as designed. Under the UST Penalty Guidance, the failure to ensure that the operation of an impressed current cathodic protection system is inspected every 60 days is generally considered a major deviation from the statutory and regulatory program with a moderate potential for harm to the environment and/or the regulatory program. There does not at this time appear to be any reason to deviate from that assessment. If anything, this assessment is overly conservative, given the circumstances in this case, which highlight the potential for harm

posed by the failure to inspect the operation of the system. At EPA's July 10, 2007 inspection, EPA's inspector examined the impressed current system and determined that the output was zero, meaning that it was providing no protective current whatsoever. Respondent's failure to perform the periodic 60-day inspections prevents EPA from knowing exactly when such conditions began. It is entirely possible that such conditions would have been detected much earlier had Respondents conducted the required inspections, allowing a shorter period of time during which the tanks were exposed to the corrosive forces of oxidation.

Depending on the information to be produced by Respondents in the litigation of this matter, Complainant will consider whether it is appropriate to make either upward or downward adjustments to the penalty based on Respondents' degree of cooperation with EPA, level of culpability and history of prior violations. In addition, Complainant may increase the base penalty by a multiplier to account for relative sensitivity of the environment affected by the violation.

Further, a penalty component will be added to reflect the economic benefit, if any, gained by Respondents by failing to comply with the cathodic protection inspection requirements.

COUNT 3

Failure to Provide Corrosion Protection – Gallows Road Texaco

Respondents PMIG 1011, E&C and PMG failed to provide a method of corrosion protection for Tanks G-1, G-2, and G-3 from at least July 10, 2007, when an EPA inspector discovered that the impressed current system at the facility was inoperable, until April 22, 2008, when the impressed current system was replaced/repared. Later, Respondents again failed to

provide a method of corrosion protection for the same USTs from at least December 23, 2008, when testing showed that cathodic protection was inadequate, until February 19, 2009, when the impressed current system was again replaced/repared.

The prevention of corrosion is a critical element of the UST regulatory regimen, and is a major element in the effort to reduce the risk that releases will occur. Under the UST Penalty Guidance, the failure to continuously provide corrosion protection is generally considered a major deviation from the statutory and regulatory program with a major potential for harm to the environment and/or the regulatory program. There does not at this time appear to be any reason to deviate from that assessment.

Depending on the information to be produced by Respondents in the litigation of this matter, Complainant will consider whether it is appropriate to make either upward or downward adjustments to the penalty based on Respondents' degree of cooperation with EPA, level of culpability and history of prior violations. In addition, Complainant may increase the base penalty by a multiplier to account for relative sensitivity of the environment affected by the violation.

Further, a penalty component will be added to reflect the economic benefit gained by Respondents by failing to comply with the corrosion protection requirements, including the benefit in delaying for months the expenditure of funds necessary to replace and repair elements of the defective cathodic protection system at the Gallows Road Texaco.

COUNT 4**Failure to Timely Test Cathodic Protection System – Leesburg Pike Shell**

Respondents PMIG 1010, E&C and PMG failed to timely test the cathodic protection system for Tanks L-1, L-2, and L-3 from April 4, 2005 to June 19, 2005.

As discussed above, periodic inspection of cathodic protection systems is necessary to ensure that the system is still adequately protecting the steel equipment, thus reducing the risk that corrosion will lead to a release of regulated substances. Under the UST Penalty Guidance, the failure to ensure that a cathodic protection system is inspected within 6 months after installation and every three years thereafter is generally considered a major deviation from the statutory and regulatory program with a moderate potential for harm to the environment and/or the regulatory program. There does not at this time appear to be any reason to deviate from that assessment. If anything, this assessment is overly conservative, given the circumstances in this case, which highlight the potential for harm posed by the failure to test. After a period of time during which testing was required but did not occur, it was discovered that the cathodic protection system for the Leesburg Pike Shell was not properly providing adequate cathodic protection. The failure to provide the required level of cathodic protection would likely have been discovered earlier had testing occurred when required by the UST regulations.

Depending on the information to be produced by Respondents in the litigation of this matter, Complainant will consider whether it is appropriate to make either upward or downward adjustments to the penalty based on Respondents' degree of cooperation with EPA, level of culpability and history of prior violations. In addition, Complainant may increase the base

penalty by a multiplier to account for relative sensitivity of the environment affected by the violation.

Further, a penalty component will be added to reflect the economic benefit gained by Respondents by failing to comply with the cathodic protection testing requirements. Respondents delayed and/or avoided the expenditure of funds to pay a contractor to perform the required testing.

COUNT 5

Failure to Inspect Operation of Cathodic Protection System – Leesburg Pike Shell

Respondents PMIG 1010, E&C and PMG failed to inspect the operation of the impressed current cathodic protection system for Tanks L-1, L-2, and L-3 from at least five years prior to the date of this Complaint until June 19, 2005, and thereafter failed on several occasions to inspect within 60 days of the previous inspection. As noted above, under the UST Penalty Guidance, the failure to ensure that the operation of an impressed current cathodic protection system is inspected every 60 days is generally considered a major deviation from the statutory and regulatory program with a moderate potential for harm to the environment and/or the regulatory program. There does not at this time appear to be any reason to deviate from that assessment. If anything, the circumstances in this case might highlight the potential for harm posed by the failure to inspect the operation of the system, because timely inspection of the system may have earlier detected the failure of the impressed current system.

Depending on the information to be produced by Respondents in the litigation of this matter, Complainant will consider whether it is appropriate to make either upward or downward

adjustments to the penalty based on Respondents' degree of cooperation with EPA, level of culpability and history of prior violations. In addition, Complainant may increase the base penalty by a multiplier to account for relative sensitivity of the environment affected by the violation.

Further, a penalty component will be added to reflect the economic benefit, if any, gained by Respondents by failing to comply with the cathodic protection inspection requirements.

COUNT 6

Failure to Provide Corrosion Protection – Leesburg Pike Shell

Respondents PMIG 1010, E&C and PMG failed to provide a method of corrosion protection for Tanks L-1, L-2, and L-3 from at least June 19, 2005, when a cathodic protection test showed that the system was not providing adequate protection, until at least March 27, 2006, when the impressed current system was replaced/repared.

As noted above, under the UST Penalty Guidance, the failure to continuously provide corrosion protection is generally considered a major deviation from the statutory and regulatory program with a major potential for harm to the environment and/or the regulatory program. There does not at this time appear to be any reason to deviate from that assessment.

Depending on the information to be produced by Respondents in the litigation of this matter, Complainant will consider whether it is appropriate to make either upward or downward adjustments to the penalty based on Respondents' degree of cooperation with EPA, level of culpability and history of prior violations. In addition, Complainant may increase the base

penalty by a multiplier to account for relative sensitivity of the environment affected by the violation.

Further, a penalty component will be added to reflect the economic benefit gained by Respondents by failing to comply with the corrosion protection requirements, including the benefit in delaying for months the expenditure of funds necessary to replace and repair elements of the defective cathodic protection system at the Leesburg Pike Shell.

V. OPPORTUNITY TO REQUEST A HEARING

Respondents each have the right to request a hearing to contest any matter of law or material fact set forth in this Complaint and Compliance Order, the appropriateness of any penalty, or the terms of the Compliance Order. **To request a hearing, each Respondent must file a written Answer to the Complaint with the Regional Hearing Clerk, *within thirty (30) days of receipt of this Complaint*, at the following address:**

**Regional Hearing Clerk
Mail Code 3RC00
U.S. EPA Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029**

Each Answer must clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint of which such Respondent has any knowledge. Where such Respondent has no knowledge of a particular factual allegation, the Answer should so state. The Answer should contain: (1) the circumstances or arguments which are alleged to constitute the grounds of any defense; (2) the facts which such Respondent disputes; (3) the basis for opposing any proposed relief; and (4) a statement as to whether a hearing is requested. The denial of any

material fact or the raising of any affirmative defense shall be construed as a request for a hearing. All material facts not denied in the Answer will be considered as admitted.

More than one Respondent may file a joint Answer, so long as such joint Answer clearly lists all Respondents which are participating in such joint Answer.

If any Respondent fails to file a written Answer within (30) days of receipt of this Complaint, such failure shall constitute an admission of all facts alleged in the Complaint and a waiver of such Respondent's right to a hearing on such factual allegations. Failure to file a written Answer may result in the filing of a Motion for Default Order imposing the penalties herein and ordering compliance with the terms of the Compliance Order without further proceedings.

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

A copy of each Respondent's Answer and all other documents that each Respondent files in this action should be sent to the attorney assigned to represent EPA in this matter, as follows:

Benjamin D. Fields
Senior Assistant Regional Counsel
Mail Code 3RC30
U.S. EPA - Region III
1650 Arch Street
Philadelphia, PA 19103-2029.

VI. SETTLEMENT CONFERENCE

Complainant encourages settlement of the proceedings at any time after issuance of the Complaint if such settlement is consistent with the provisions and objectives of RCRA. Whether

or not a hearing is requested, any Respondent may request a settlement conference with the Complainant to discuss the allegations of the Complaint and the amount of the proposed civil penalty. A request for a settlement conference does not relieve such Respondent of its responsibility to file a timely Answer.

The procedures in the Consolidated Rules of Practice for quick resolution of a proceeding do not apply in this case because a specific penalty is not proposed and the Complaint seeks a compliance order. *See* 40 C.F.R. § 22.18(a).

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

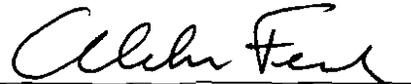
If you wish to arrange a settlement conference, please contact Benjamin D. Fields, Senior Assistant Regional Counsel, at (215) 814-2629. Please note that a request for a settlement conference does not relieve any Respondent of its responsibility to file an Answer within thirty (30) days following its receipt of this Complaint.

SEPARATION OF FUNCTIONS AND EX PARTE COMMUNICATIONS

The following Agency offices and officers, and their staffs, are designated as the trial staff to represent the Agency as a party in this case: U.S. EPA, Region III, Office of Regional Counsel; U.S. EPA, Region III, Land and Chemicals Division; and the EPA Assistant

Administrator for Enforcement and Compliance Assurance. Commencing from the date of the issuance of this Complaint until issuance of a final agency decision in this case, neither the Administrator, members of the Environmental Appeals Board, Presiding Officer, Regional Administrator, nor the Regional Judicial Officer, may have an *ex parte* communication with the trial staff or any representative of any Respondent on the merits of any issue involved in this proceeding. Please be advised that the Consolidated Rules of Practice prohibit any unilateral discussion or *ex parte* communication of the merits of a case with the Administrator, members of the Environmental Appeals Board, Presiding Officer, Regional Administrator, or the Regional Judicial Officer after issuance of a Complaint.

Date: 6/30/09



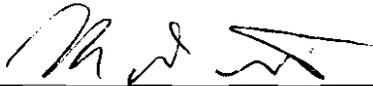
Abraham Ferdas, Director
Land and Chemicals Division

CERTIFICATE OF SERVICE

I hereby certify that on the date below I hand-delivered the original and one copy of the attached Complaint and Notice of Opportunity for Hearing to the Regional Hearing Clerk, and caused true and correct copies to be sent via Federal Express to:

Abdolossein Ejtemai
Managing Member, PMIG 1011
Managing Member, PMIG 1010
President, E & C Enterprises, Inc.
President, Petroleum Marketing Group, Inc.
12680 Darby Brooke Court
Woodbridge, Virginia 22192

6/30/09
Date



Benjamin D. Fields
Senior Assistant Regional Counsel