



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

JUL 18 2008

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Kanchanal Patel
1420 U.S. Highway 19 South
Leesburg, Georgia 31763

Re: Administrative Complaint and Compliance Order
Docket No.: RCRA-UST-04-2008-0001

Dear Mr. Patel:

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

The Complaint specifies the United States Environmental Protection Agency's (EPA's) determination of certain violations of the Solid Waste Disposal Act, commonly referred to as the Resource Conservation and Recovery Act (RCRA), as amended, 42 U.S.C. § 6991, *et seq.*, by Kanchanal Patel, who, at the time of EPA's inspection on August 2, 2005, was the owner and operator of three Underground Storage Tanks (USTs) located at 1420 U.S. Highway 19 South, Leesburg, Georgia; and five USTs located at 2125 Newton Road, Albany, Georgia. The Complaint states in full the reasons for the determination that violations existed with respect to these USTs. A proposed civil penalty of **Forty Seven Thousand, Seven Hundred and Twenty Eight Dollars (\$ 47,728)** is assessed in the Complaint. You are also required to certify that all USTs identified in the Complaint, that you still own or operate, are no longer out of compliance with the UST regulations.

The rules of procedure governing this civil administrative litigation are set forth in 64 Fed Reg. 40138 (July 23, 1999), entitled, "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, and the Revocation/Termination or Suspension of Permits" (C.R.O.P.), codified at 40 C.F.R. Part 22. A copy of these rules accompanies this Complaint.

By law, you have the right to request a Hearing on the Complaint. Should you desire to contest any matter of law or material fact set forth in the Complaint, the appropriateness of the proposed penalty, or the terms of the Compliance Order, you must file a written Answer and request for a hearing with the Regional Hearing Clerk within thirty (30) days from receipt of this letter, pursuant to Section 9006(13) of RCRA, 42 U.S.C. § 6991e and Section 22.15 of C.R.O.P., 40 C.F.R. § 22.15. Unless you have filed an Answer you may be found in default pursuant to 40 C.F.R. § 22.17.

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

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Any Answer to the Complaint must clearly and directly admit, deny or explain each of the factual allegations in the Complaint, must specify the issues which are in dispute, must state the specific factual or legal grounds for your defense, and must state whether you are requesting a hearing pursuant to Section 22.15 of the CROP. Failure to admit, deny, or explain any material factual allegation contained in the Complaint constitutes an admission of the allegation. Address the Answer to:

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

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

Deborah S. Benjamin
Associate Regional Counsel U.S. EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

It is EPA's policy to encourage all parties against whom it files a Complaint to pursue the possibility of settlement. Whether or not a hearing is requested, you may request a settlement conference with EPA to discuss the allegations of the Complaint, the amount of the proposed civil penalty, and the injunctive relief required. A request for a settlement conference alone however, will not stay the thirty (30) day period for filing an Answer and hearing request. If you desire a hearing, an Answer should be filed. For the purpose of settlement pursuant to 40 C.F.R. § 22.18, EPA has included a proposed Consent Agreement and Final Order. Should you desire to resolve and settle all allegations in the Complaint without a hearing, and agree with the terms set forth therein you may sign and return the enclosed Consent Agreement and Final Order.

If you have any questions or wish to arrange an informal settlement conference, please contact Deborah Benjamin, Associate Regional Counsel, at (404) 562-9561. EPA urges your prompt attention to this matter.

Sincerely yours,



G. Alan Farmer, Director
RCRA Division

Enclosures

cc: Deborah Benjamin, OEA
Regional Hearing Clerk

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

2008 JUL 18 PM 2:18
RECEIVED
EPA REGION 4

IN THE MATTER OF:)	RCRA-UST-04-2008-0001
)	
Kanchanlal Patel)	Proceeding under Section 9006
1420 U.S. Highway 19 South)	of the Resource Conservation
Leesburg, Georgia 31763)	and Recovery Act, as amended,
)	42 U.S.C. § 6991e
)	
RESPONDENT)	
_____)	

ADMINISTRATIVE COMPLAINT AND COMPLIANCE ORDER

I. INTRODUCTION

This Administrative Complaint, Compliance Order and Notice of Opportunity for Hearing ("Complaint") is issued under the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA"), pursuant to Section 9006 of the Solid Waste Disposal Act, commonly referred to as the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984 (collectively referred to hereafter as "RCRA"), 42 U.S.C. Section 6991e, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("C.R.O.P."), 40 C.F.R. Part 22. The Administrator has delegated this authority to the Regional Administrator of EPA Region 4, who has in turn delegated it to the Director, RCRA Division, EPA Region 4 ("Complainant").

EPA hereby notifies Kanchanlal Patel ("Respondent") that EPA has determined that Respondent has violated certain provisions of Subtitle I of RCRA, 42 U.S.C. §§ 6991 - 6991i, EPA's regulations thereunder at 40 C.F.R. Part 280, and the State of Georgia's Underground Storage Tank ("UST") program, as authorized by EPA pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c. Section 9006(a) - (d) of RCRA, 42 U.S.C. § 6991e(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. § 6991e(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 July 9, 1991, pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c and 40 C.F.R. Part 281, Subpart A, the State of Georgia was granted final authorization to administer a state UST management program in lieu of the Federal UST management program established under Subtitle I of RCRA, 42 U.S.C. §§ 6991 - 6991i. Through this final authorization, the provisions of the State of Georgia's UST management program are enforceable by EPA pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e.

The Georgia Environmental Protection Division (EPD) is charged with the statutory duty of enforcing the laws of the State relating to the storage of petroleum in underground storage tanks, as specified in O.C.G.A. § 12-13-1 et seq., and in GA. COMP. R. & REGS. r. 391-3-15 et seq. Georgia has adopted and incorporated by reference 40 C.F.R. Part 280, Subparts B, C, D, E, F, and G, into GUST Chapter 319-3-15. Therefore, for the purpose of this Complaint, a citation to the requirements of 40 C.F.R. Part 280, Subparts B, C, D, E, F, and G, shall constitute a citation to the equivalent State requirements.

EPA has given EPD 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. Respondent is a "person" as defined in Section 9001(6) of RCRA, 42 U.S.C. § 6991(6), 40 C.F.R. § 280.12, and GA. COMP. R. & REGS. r. 391-3-15-.02(o) (2004).
2. On August 2, 2005, a representative of EPA Region 4 inspected two facilities owned by Respondent.
3. One of Respondent's facilities that was inspected on August 2, 2005, was located at 1420 U.S. Highway 19 South, Leesburg, Georgia (hereinafter, Facility #1).
4. The other of Respondent's facilities that was inspected on August 2, 2005, was located at 2125 Newton Road, Albany, Georgia (hereinafter, Facility #2).
5. At the time of the inspection, Respondent was the "owner" and/or "operator" of three USTs at Facility #1, as those terms are defined in Section 9001(3), (4), and (10) of RCRA, 42 U.S.C. § 6991(3), (4), and (10); and 40 C.F.R. § 280.12; and GA. COMP. R. & REGS. r. 391-3-15-.02(m), (l), and (z) (2004).
6. All three USTs at Facility #1 were 8,000 gallon capacity tanks and were installed in 1992.
7. All three USTs at Facility #1 were steel USTs equipped with cathodic protection.
8. Facility #1 is located in a wellhead protection area, water supply ID# 1770068.

9. At the time of the inspection, Respondent was using the three USTs at Facility #1 to store gasoline, which is a petroleum product, and is a "regulated substance," as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and GA. COMP. R. & REGS. r. 391-3-15-.02(s) (2004).
10. At the time of the inspection, all three USTs at Facility #1 were connected to underground piping that routinely contained regulated substances.
11. At the time of the inspection, Respondent was the "owner" and/or "operator" of five "underground storage tanks" ("USTs") at Facility #2, as those terms are defined in Section 9001(3), (4), and (10) of RCRA, 42 U.S.C. § 6991(3), (4), and (10); and 40 C.F.R. § 280.12; and GA. COMP. R. & REGS. r. 391-3-15-.02(m), (l), and (z) (2004).
12. All five USTs at Facility #2 were 10,000 gallon capacity tanks and were installed in 1987.
13. At the time of the inspection, all five USTs at Facility #2 were steel USTs equipped with cathodic protection.
14. At the time of the inspection, Respondent was using the five tanks at Facility #2 to store gasoline, which is a petroleum product, and is a "regulated substance," as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and GA. COMP. R. & REGS. r. 391-3-15-.02(s) (2004).
15. At the time of the inspection, all five USTs at Facility #2 were connected to underground piping that routinely contained regulated substances.
16. On August 2, 2005, during the course of EPA's inspections, Respondent was given a Request For Information pursuant to RCRA Section 9005, 42 U.S.C. 6991d. Respondent never responded to that information request.
17. On September 1, 2005, EPA sent Respondent a second Request For Information pursuant to RCRA Section 9005, 42 U.S.C. 6991d. Respondent never responded to EPA's second information request.
18. On November 3, 2005, EPA sent Respondent a letter inviting him to meet with representatives of the Agency to show cause why EPA should not take a formal enforcement action against him for the violations observed during the inspections of August 2, 2005. Respondent never responded to EPA's letter.

COUNT 1

19. The allegations of Paragraphs 1 through 18 of this Complaint are incorporated herein by reference.

20. Pursuant to 40 C.F.R. §§ 280.40(a)(1), and 280.41(a), owners and operators of USTs must provide release detection for USTs that includes monthly monitoring in accordance with those sections.

21. At the time of the inspection, Respondent was not utilizing any release detection method for his three USTs at Facility #1.

22. Respondent failed to comply with the UST release detection requirements at Facility #1. These acts or omissions constitute a violation of Section 9003 of RCRA, 42 U.S.C. § 6991b, and 40 C.F.R. §§ 280.40(a)(1), and 280.41(a).

COUNT 2

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

24. Pursuant to 40 C.F.R. §§ 280.40(a)(1), and 280.41(b), owners and operators of UST systems must provide release detection for underground piping that routinely contains regulated substances.

28. At the time of the inspection, Respondent was not utilizing any release detection method for the underground piping that routinely contained regulated substances and was connected to his three USTs at Facility #1.

29. Respondent failed to comply with the release detection requirements for underground piping at Facility #1. These acts or omissions constitute a violation of Section 9003 of RCRA, 42 U.S.C. § 6991b, and 40 C.F.R. §§ 280.40(a)(1), and 280.41(b).

COUNT 3

30. The allegations of Paragraphs 1 through 29 of this Complaint are incorporated herein by reference.

31. Pursuant to 40 C.F.R. § 280.31(b), all owners and operators of steel USTs with cathodic protection must be inspected for proper operation by a qualified tester as specified in that section. Pursuant to 40 C.F.R. § 280.31(b)(1), all cathodic protection systems must be tested within 6 months of installation, and thereafter, once every three years.

32. At the time of the inspection, Respondent had not performed the required testing for cathodic protection on his three USTs at Facility #1.

33. Respondent failed to comply with the UST cathodic protection requirements at Facility #1. These acts or omissions constitute violations of Section 9003 of RCRA, 42 U.S.C. § 6991b, and 40 C.F.R. § 280.31(b)(1).

COUNT 4

34. The allegations of Paragraphs 1 through 33 of this Complaint are incorporated herein by reference.

35. Pursuant to 40 C.F.R. § 280.20(c)(ii), owners and operators of USTs must use the overfill prevention equipment that has the capabilities specified in that section.

36. At the time of the inspection, Respondent was not utilizing overfill prevention equipment on his three USTs at Facility #1.

37. Respondent failed to comply with the UST overfill prevention requirements at Facility #1. These acts or omissions constitute violations of Section 9003 of RCRA, 42 U.S.C. § 6991b, and 40 C.F.R. § 280.20(c)(ii).

COUNT 5

38. The allegations of Paragraphs 1 through 37 of this Complaint are incorporated herein by reference.

39. Pursuant to 40 C.F.R. §§ 280.40, and 280.41(a), owners and operators of USTs must provide release detection for USTs that includes monthly monitoring in accordance with those sections.

40. At the time of the inspection Respondent was not utilizing any release detection method for his five USTs at Facility #2.

41. Respondent failed to comply with the UST release detection requirements at Facility #2. These acts or omissions constitute violations of Section 9003 of RCRA, 42 U.S.C. § 6991b, and 40 C.F.R. §§ 280.40 and 280.41(a).

COUNT 6

42. The allegations of Paragraphs 1 through 41 of this Complaint are incorporated herein by reference.

43. Pursuant to 40 C.F.R. §§ 280.40(a)(1), and 280.41(b), owners and operators of UST systems must provide release detection for underground piping that routinely contains regulated substances.

44. At the time of the inspection, Respondent was not utilizing any release detection method for the underground piping that routinely contained regulated substances and was connected to his five USTs at Facility #2.

45. Respondent failed to comply with the release detection requirements for underground piping at Facility #2. These acts or omissions constitute a violation of Section 9003 of RCRA, 42 U.S.C. § 6991b, and 40 C.F.R. §§ 280.40(a)(1), and 280.41(b).

COUNT 7

46. The allegations of Paragraphs 1 through 45 of this Complaint are incorporated herein by reference.

47. Pursuant to 40 C.F.R. § 280.20(c)(ii), owners and operators of USTs must use the overfill prevention equipment that has the capabilities specified in that section.

48. At the time of the inspection Respondent was not utilizing overfill prevention equipment on his five USTs at Facility #2.

49. Respondent failed to comply with the UST overfill prevention requirements at Facility #2. These acts or omissions constitute violations of Section 9003 of RCRA, 42 U.S.C. § 6991b, and 40 C.F.R. § 280.20(c)(ii).

COUNT 8

50. The allegations of Paragraphs 1 through 49 of this Complaint are incorporated herein by reference.

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

52. Respondent failed to comply with two separate Requests for Information pursuant to RCRA Section 9005, 42 U.S.C. § 6991d. The first one was given to Respondent on August 2, 2005, during the course of the inspection. The second one was sent to Respondent on September 1, 2005. Respondent never responded to either information request.

53. Respondent failed to comply with EPA's requests for documentary submissions. These acts or omissions constitute a violation of Section 9005 of RCRA, 42 U.S.C. § 6991d, and 40 C.F.R. § 280.34.

III. PROPOSED CIVIL PENALTY

Section 9006(d) of RCRA, 42 U.S.C. § 6991e(d), authorizes EPA to assess a civil penalty of up to Ten Thousand Dollars (\$10,000) per tank for each day of noncompliance with any requirement or standard promulgated under Section 9003 of RCRA, 42 U.S.C. § 6991(b). Pursuant to the *Debt Collection and Improvement Act* of 1996, Pub. L. No. 104-134, 110 Stat. 1321 (1996) and the regulations promulgated thereunder [see the *Civil Monetary Penalty Inflation Adjustment Rule*, 61 Fed. Reg. 69360 (December 31, 1996), codified at 40 C.F.R. Part 19], for violations occurring on and after January 31, 1997, the statutory maximum penalty for each tank for each day of violation shall be Eleven Thousand Dollars (\$11,000). Based upon the facts alleged in this Complaint and taking into account the seriousness of the violation and any good faith efforts by Respondent to comply with the applicable requirements, Complainant proposes, subject to receipt and evaluation of further relevant information, a civil penalty of **\$47,728 (Forty-Seven Thousand, Seven Hundred and Twenty-Eight Dollars)** against Respondent.

This proposed penalty has taken into account the particular facts and circumstances of this case pursuant to the November 14, 1990, *U.S. EPA Penalty Guidance for Violations of UST Requirements*, a copy of which is attached to this Complaint. This policy provides a rational, consistent and equitable calculation methodology for applying the statutory penalty factors to particular cases.

EPA examined the gravity of the aforementioned violations and the economic benefit to the Respondent from either the avoided costs or the delayed costs of compliance in determining the reasonableness of the proposed penalty. The proposed penalty was calculated pursuant to the aforementioned penalty guidance.

EPA determined that the potential for harm and the extent of deviation from the regulations was major for the violations cited above. The environmental sensitivity multiplier is considered moderate for the violations identified at Facility #1, as Facility #1 is located in an environmentally sensitive area. The environmental sensitivity multiplier is considered low for the violations identified at Facility #2, as Facility #2 is not located in an area known to be environmentally sensitive. The days of non-compliance multiplier is based on the number of

days of non-compliance for each violation. EPA also examined the economic benefit to the Respondent from either the avoided costs or the delayed costs of compliance in determining the reasonableness of the proposed penalty.

The total penalty proposed against Respondent breaks down as follows:

Count 1: failure to provide release detection for tanks (facility #1)	\$7,506
Count 2: failure to provide release detection for piping (facility #1)	\$7,425
Count 3: failure to provide cathodic protection (facility #1)	\$7,579
Count 4: failure to provide overfill prevention (facility #1)	\$3,713
Count 5: failure to provide release detection for tanks (facility #2)	\$8,250
Count 6: failure to provide release detection for piping (facility #2)	\$8,250
Count 7: failure to provide overfill prevention (facility #2)	\$4,125
Count 8: failure to respond to information requests (both facilities)	<u>\$ 880</u>

TOTAL PENALTY AMOUNT **\$47,728**

IV. COMPLIANCE ORDER

A. At all times after the effective date of this Compliance Order, Respondent must ensure that all USTs identified in the Complaint, that are currently owned or operated by him, are in compliance with the release detection requirements for tanks found at 40 C.F.R. Subpart D, §§ 280.40(a)(1), and 280.41(a); the release detection requirements for piping found at 40 C.F.R. Subpart D, §§ 280.41(a)(1), and 280.41(b); the cathodic protection requirements found at 40 C.F.R. Subpart C, § 280.31(b)(1); and the overfill prevention requirements found at 40 C.F.R. Subpart B, § 280.20(c)(ii). Alternatively, Respondent may close any or all of such USTs pursuant to 40 C.F.R. Subpart G, §§ 280.70 through 280.74.

B. Within sixty (60) days after the effective date of this Compliance Order, Respondent shall submit to EPA a Report detailing all measures taken to comply with Paragraph A of this Compliance Order and providing written documentation that Respondent has provided tank release detection, piping release detection, overfill prevention and cathodic protection as required. Such Report shall clearly indicate which of the various regulatory options or combination of options is being utilized for each such requirement for each UST, and provide documentation that such option(s) is being utilized.

C. Any notice, report, certification, data presentation, or other document submitted by Respondent pursuant to this Compliance Order which discusses, describes, demonstrates, supports any finding or makes any representation concerning Respondent's compliance or noncompliance with any requirement of this Compliance Order shall be certified by a responsible representative of Respondent, as provided in 40 C.F.R. § 270.11(a). The certification of the responsible representative required above shall be in the following form:

I certify that the information contained in or accompanying this [type of submission] is true, accurate, and complete. As to [the/those] identified portions of this [type of submission] for which I cannot personally verify [its/their] accuracy, I certify under penalty of law that this [type of submission] and all attachments were prepared in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

Signature: _____
Name: _____
Title: _____

D. All documents and reports to be submitted pursuant to this Compliance Order shall be sent to the following persons:

1. Documents to be submitted to EPA shall be sent certified mail, return receipt requested, or by overnight delivery with signature verification, to:

Bill Truman, Chief
Underground Storage Tank Section
U.S. EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303-8909

2. A copy of all documents submitted to EPA shall also be sent to:

Richard Swanson, Manager
Georgia Environmental Protection Division
Underground Storage Tank Management Program
4244 International Parkway, Suite 104
Atlanta, GA 30354

E. The term "days" as used herein shall mean calendar days unless specified otherwise.

Respondent is hereby notified that failure to comply with any of the terms of this Compliance Order may subject Respondent to the imposition of a civil penalty of up to \$32,500 for each day of continued noncompliance, pursuant to Section 9006(a)(3) of RCRA, 42 U.S.C. § 6991e(a)(3), and the *Debt Collection and Improvement Act* of 1996, Pub. L. No. 104-134, 110 Stat. 1321 (1996) and the regulations promulgated thereunder [see the *Civil Monetary Penalty Inflation Adjustment Rule*, 61 Fed. Reg. 69360 (December 31, 1996), codified at 40 C.F.R. Part 19].

V. OPPORTUNITY TO REQUEST A HEARING

Pursuant to 40 C.F.R. § 22.15(c), Respondent has the right to request a hearing to contest any matter of law or material fact set forth in this Complaint and the appropriateness of the proposed penalty. To request a hearing, Respondent must file a written Answer to the Complaint with the Regional Hearing Clerk, U.S. EPA Region 4, 61 Forsyth Street, Atlanta, Georgia 30303-8909, *within thirty (30) days of receipt of this Complaint*. The Answer must clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint of which Respondent has any knowledge. Where Respondent has no knowledge of a particular factual allegation, the Answer should so state. The Answer should contain: (1) the circumstances or arguments which are alleged to constitute the grounds of any defense; (2) the facts which Respondent disputes; (3) the basis for opposing any proposed relief; and (4) a statement as to whether a hearing is requested. The denial of any material fact or the raising of any affirmative defense shall be construed as a request for a hearing. Failure of the Respondent to admit, deny, or explain any material allegation contained in the Complaint shall constitute an admission of such allegations.

Respondent's failure to file a written Answer within (30) days of receipt of this Complaint, may result in the filing of a Motion for Default and the issuance of a Default Order. Default by the Respondent constitutes, for purposes of the pending proceedings, an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations. Any penalty assessed in such a Default Order shall become due and payable by Respondent without further proceedings 30 days after the Default Order becomes final.

Any hearing requested by 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.

The original and one copy of Respondent's Answer, and all other documents that Respondent files in this action should be filed with the Regional Hearing Clerk, as set forth above, and copies of all such filings shall be sent to:

Deborah Benjamin, Esq.
Associate Regional Counsel
U.S. EPA Region 4
Office of Environmental Accountability
61 Forsyth Street
Atlanta, GA 30303-8909
Phone: (404) 562-9561
Fax: (404) 562-9663

VI. SETTLEMENT CONFERENCE

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

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

If you wish to arrange a settlement conference, you or your legal counsel should contact Ms. Benjamin, Associate Regional Counsel, at (404) 562-9561, prior to the expiration of the thirty (30) day period following the receipt of this Complaint. Once again, however, such a request for settlement conference does not relieve Respondent of its responsibility to file an Answer within thirty (30) days following Respondent's receipt of this Complaint.

VII. EXHAUSTION OF ADMINISTRATIVE REMEDIES

The decision issued by the Presiding Officer after a hearing constitutes an initial decision. Likewise, a Default Order issued by the Presiding Officer constitutes an initial decision. Respondent has the right to appeal an adverse initial decision to the Environmental Appeals Board (EAB). Such an appeal must be made in accordance with 40 C.F.R. § 22.30(a)(1) within 30 days after the initial decision is served. Pursuant to 40 C.F.R. § 22.7(c), "where a document is served by first class mail or commercial delivery service, but not by overnight or same-day delivery, 5 days shall be added to the time allowed by these Consolidated Rules of Practice for the filing of a responsive document." Therefore, the maximum time period for the filing of an appeal under 40 C.F.R. § 22.30 is 35 days unless an extension is granted by the EAB. Note that the 45 day period provided in 40 C.F.R. § 22.27(c) (discussing when an initial decision becomes

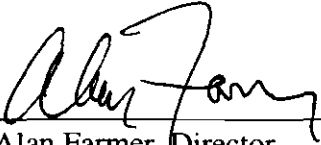
a final order) does not pertain to, nor extend, the 30 days prescribed in 40 C.F.R. § 22.30(a)(1) for filing an appeal.

If Respondent fails to appeal an adverse initial decision to the EAB, in accordance with 40 C.F.R. § 22.30, and that initial decision thereby becomes a final order pursuant to 40 C.F.R. § 22.27(c), Respondent will have waived its rights to judicial review. 40 C.F.R. § 22.27(d).

VIII. EX PARTE COMMUNICATIONS

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

Date: 7/15/08



G. Alan Farmer, Director
RCRA Division
Complainant

ENCLOSURES:

Consolidated Rules of Practice
Civil Monetary Penalty Adjustment Rule (40 C.F.R. Part 19)
UST Penalty Guidance

IN THE MATTER OF: Kanchanlal Patel, RCRA-UST-04-2008-0001

CERTIFICATE OF SERVICE

I certify that a copy of the cover letter, the Complaint and Compliance Order, and the Certificate of Service, for the above reference matter, together with a copy of The Consolidated Rules of Practice (40 C.F.R. Part 22); the Civil Monetary Penalty Adjustment Rule (40 C.F.R. Part 19); and the UST Penalty Guidance was sent this day, July 18, 2008, to the following person in the following manner:

Certified Mail - Return Receipt Requested

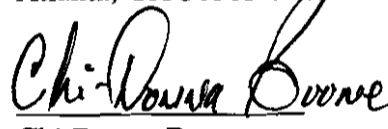
Kanchanlal Patel
1420 U.S. Highway 19 South
Leesburg, Georgia 31763

I further certify that the cover letter, the Complaint and Compliance Order, and the Certificate of Service, was filed this day, July 18, 2008, with the Regional Hearing Clerk, as specified below:

Hand Delivery - Original and one copy

Patricia Bullock
Regional Hearing Clerk
U.S. Environmental Protection Agency
Sam Nunn Federal Center
61 Forsyth Street, S.W.
Atlanta, GA 30303-8909

July 18, 2008


Chi-Donna Boone
Secretary
Office of Environmental Accountability
U.S. Environmental Protection Agency
61 Forsyth St., 13th Floor
Atlanta, GA 30303-3104