



EPA hereby notifies The Cigar Boss, LLC., a Pennsylvania limited liability company (“Respondent”) that EPA has determined that Respondent has violated certain provisions of Subtitle I of RCRA, 42 U.S.C. §§ 6991-6991*m*, EPA’s regulations thereunder at 40 C.F.R. Part 280, and the Commonwealth of Pennsylvania’s federally authorized underground storage tank program with respect to the underground storage tanks at Respondent’s facility located at 4260 Tilghman Street, Allentown, Pennsylvania (the “Facility”). Section 9006 of RCRA, 42 U.S.C. § 6991*e*, authorizes EPA to take enforcement action, including issuing a compliance order and/or assessing a civil penalty, 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.

Pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991*c*, and 40 C.F.R. Part 281, Subpart A, the Commonwealth of Pennsylvania was granted final authorization to administer a state underground storage tank management program (“Pennsylvania Authorized UST Management Program”) *in lieu* of the Federal underground storage tank management program established under Subtitle I of RCRA, 42 U.S.C. §§ 6991-6991*i*. This authorization was effective on September 11, 2003. *See* 68 *Fed. Reg.* 53520 (September 11, 2003) and 40 C.F.R. § 282.88. Through this final authorization, the provisions of the Pennsylvania Authorized UST Management Program became requirements of RCRA Subtitle I and are, accordingly, enforceable by EPA pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991*e*. As of the date of EPA’s authorization of Pennsylvania’s Authorized UST Management Program, these provisions were codified in Chapter 245 of Title 25 of the Pennsylvania Code, and will be cited herein as 25 PA Code §§ 245.1 *et seq.*, a copy of which is enclosed with this Complaint (Enclosure “B”).

Section 9006(d) of RCRA, 42 U.S.C. § 6991e(d), authorizes EPA to assess a civil penalty against any owner or operator of an underground storage tank who fails to comply with, *inter alia*, any requirement or standard promulgated under Section 9003 of RCRA, 42 U.S.C. § 6991b (40 C.F.R. Part 280) or any requirement or standard of a State underground storage tank program that has been approved by EPA pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c.

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

In support of this Complaint, the Complainant makes the following allegations, findings of fact and conclusions of law:

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

1. Respondent, The Cigar Boss, LLC., a Commonwealth of Pennsylvania limited liability company, is a “person” as defined in Section 9001 of RCRA, 42 U.S.C. § 6991, and 25 PA Code § 245.1.
2. Respondent, The Cigar Boss, LLC. is and, at all times relevant to the allegations in this Complaint, has been the “owner” and/or “operator” as these terms are defined in Section 9001 of RCRA, 42 U.S.C. § 6991, and 25 PA Code § 245.1., of “underground storage tanks” (“USTs”) and “UST systems,” as those terms are defined in Section 9001 of RCRA, 42 U.S.C. § 6991, and 25 PA Code § 245.1., located at the Facility.
3. On June 27, 2011, an EPA representative conducted a Compliance Evaluation Inspection (“CEI”) of the Facility pursuant to Section 9005 of RCRA, 42 U.S.C. § 6991d.
4. At the time of the June 27, 2011 CEI, and at all times relevant to the violations alleged herein, three USTs, as described in the following subparagraphs, were located at the Facility:

- A. an eight thousand (8,000) gallon single-walled fiberglass reinforced steel tank that was installed in or about 1983 and that, at all times relevant hereto, routinely contained and was used to store regular grade gasoline, a “regulated substance” as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and 25 PA Code § 245.1 (hereinafter “UST No. 1”), and
  - B. an eight thousand (8,000) gallon single-walled fiberglass reinforced steel tank that was installed in or about 1983 and that, at all times relevant hereto, routinely contained and was used to store plus grade gasoline, a “regulated substance” as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and 25 PA § 245.1(hereinafter “UST No. 2”), and
  - C. an eight thousand (8,000) gallon single-walled fiberglass reinforced steel tank that was installed in or about 1983 and that, at all times relevant hereto, routinely contained and was used to store premium grade gasoline, a “regulated substance” as that term is defined in Section 9001(7) of RCRA,42 U.S.C. § 6991(7), and 25 PA § 245.1(hereinafter “UST No. 3”).
5. At all times relevant to the violations alleged herein, USTs Nos. 1, 2, and 3 have been a “petroleum UST system” and “existing UST system” as these terms are defined in 25 PA § 245.1, respectively.
6. USTs Nos. 1 through 3 are and were, at all times relevant to the violations alleged herein, used to store “regulated substance(s)” at Respondent’s Facility, as defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and 25 PA § 245.1, and have not been “empty” as that term is defined at 25 PA § 245.451.

**COUNT #1**

(Failure to perform automatic line leak detector testing annually on  
USTs Nos. 1 through 3)

7. The allegations of Paragraphs 1 through 6 of this Complaint are incorporated herein by reference.
8. Pursuant to 25 PA Code § 245.441(a) and (c), owners and operators of new and existing UST systems must provide a method or combination of methods of release detection monitoring that meets the requirements described therein.
9. 25 PA Code § 245.442(2)(i) provides, in pertinent part, that underground piping that conveys regulated substances under pressure shall:
  - (A) Be equipped with an automatic line leak detector conducted in accordance with § 245.445(1); and
  - (B) Have an annual line tightness test conducted in accordance with § 245.445(2) or have monthly monitoring conducted in accordance with § 245.445(3).
10. 25 PA Code § 245.445(1) provides, in pertinent part, that an annual test of the operation of the leak detector shall be conducted in accordance with the manufacturer's requirements.
11. Respondent conducted testing of the automatic line leak detectors for the piping associated with USTs Nos. 1 through 3 on August 24, 2009 and June 23, 2011.
12. From August 24, 2009 until June 23, 2011, the piping for USTs Nos. 1 through 3 was underground and routinely conveyed regulated substances under pressure.

13. Respondent failed to perform an annual test of the automatic line leak detectors for the underground piping for USTs Nos. 1 through 3 from August 25, 2010 until June 22, 2011.
14. Respondent's acts and/or omissions as alleged in Paragraph 13, above, constitute a violation by Respondent of 25 PA Code §§ 245.442(2)(i) and 245.445(1).

**COUNT #2**

(Failure to perform line tightness testing or monthly monitoring on piping for USTs Nos. 1 through 3)

15. The allegations of Paragraphs 1 through 14 of this Complaint are incorporated herein by reference.
16. Respondent conducted a line tightness test of the piping associated with USTs Nos. 1 through 3 on August 24, 2009 and June 23, 2011.
17. From August 24, 2009 until June 23, 2011, the piping for USTs Nos. 1 through 3 was underground and routinely conveyed regulated substances under pressure.
18. Respondent failed to perform an annual line tightness testing in accordance with 25 PA Code § 245.445(2) or have monthly monitoring conducted in accordance with 25 PA Code § 245.445(3) for the underground piping associated with USTs Nos. 1 through 3 from August 25, 2010 until June 22, 2011.
19. Respondent's acts and/or omissions as alleged in Paragraph 18, above, constitute violations by Respondent of 25 PA Code § 245.442(2)(i)(B).

### III. COMPLIANCE ORDER

Pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e, Respondent is hereby ordered to:

20. Within forty-five (45) days of the effective date of this Compliance Order, conduct a test of the line leak detector for USTs Nos. 1 through 3, and thereafter remain in compliance with line leak detector testing requirements of 25 PA Code § 245.445(1) for such UST systems located at the Facility subject to this Complaint.
21. Within forty-five (45) days of the effective date of this Compliance Order, perform an annual line tightness testing in accordance with 25 PA Code § 245.445(2) or have monthly monitoring conducted in accordance with 25 PA Code § 245.445(3) for the underground piping associated with USTs Nos. 1 through 3 located at the Facility subject to this Complaint.
22. 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 Respondent's manager.

The certification 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: \_\_\_\_\_

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

Gary Morton  
RCRA Compliance and Enforcement Branch (3LC70)  
U.S. Environmental Protection Agency - Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

and

Louis F. Ramalho  
Sr. Assistant Regional Counsel (3RC30)  
U.S. Environmental Protection Agency - Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

One copy of all documents submitted to EPA shall also be sent by regular mail to the attention of:

Kris Shiffer  
Environmental Group Manager  
PADEP – Division of Storage Tanks  
Rachel Carson State Office Building  
400 Market Street  
Harrisburg, PA 17101  
PHONE: 717-772-5806  
FAX: 717-772-5598  
EMAIL: [kshiffer@state.pa.us](mailto:kshiffer@state.pa.us)

24. If activities undertaken by the Respondent in connection with this Compliance Order or otherwise indicate that a release of a regulated substance from any UST at the Facility



may have occurred, Respondent may be required to undertake corrective action pursuant to applicable regulations in 25 Pa. Code. § 245.301 et. seq.

25. Respondent is hereby notified that failure to comply with any of the terms of this Compliance Order may subject it to imposition of a civil penalty of up to \$37,500 for each day of continued noncompliance, pursuant to Section 9006(a)(3) of RCRA, 42 U.S.C. § 6991e(a)(3), the Debt Collection Improvement Act of 1996 (“DCIA”), and the subsequent Civil Monetary Penalty Inflation Adjustment Rules, 61 *Fed. Reg.* 69360 (December 31, 1996) and 69 *Fed. Reg.* 7121, 7126 (February 13, 2004), codified at 40 C.F.R. Part 19. (Enclosure “D” and “E”).
26. The term “days” as used herein shall mean calendar days unless specified otherwise.

#### **IV. PROPOSED CIVIL PENALTY**

Section 9006(d)(2) of RCRA, 42 U.S.C. § 6991e(d)(2), and 40 C.F.R. Part 19, provide, in relevant part, that any owner or operator of an underground storage tank who fails to comply with any requirement or standard promulgated by EPA under Section 9003 of RCRA, 42 U.S.C. § 6991c, or that is part of an authorized state underground storage tank program shall be liable for a civil penalty not to exceed \$16,000 for each tank for each day of violation. In accordance with the Adjustment of Civil Monetary Penalties for Inflation, promulgated pursuant to the Debt Collection Improvement Act of 1996 and codified at 40 C.F.R. Part 19, all violations of RCRA Section 9006(d)(2), 42 U.S.C. § 6991e(d)(2), occurring on or before March 15, 2004 are subject to a 1.100 increase for inflation, all violations occurring after March 15, 2004 are subject to a 1.1723% increase for inflation, and all violations occurring after January 12, 2009 are subject to a 1.4163 increase not to exceed \$16,000 per violation per day. For purposes of determining the amount of any penalty to be assessed, Section 9006(c) of RCRA, 42 U.S.C. § 6991e(c), requires

EPA to take into account the seriousness of the violation and any good faith efforts to comply with the applicable requirements.

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).

To develop a proposed penalty for the violations alleged in this Complaint, EPA 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") (Enclosure C), the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. Part 19 (Enclosure D), and the Amendments to EPA's Civil Penalty Policies to Implement the 2008 Civil Monetary Penalty Inflation Adjustment Rule (December 29, 2008) (Enclosure E). 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 also consider, among other factors, Respondent's ability to pay a civil penalty. The burden of raising and demonstrating an inability to pay rests with the Respondent. In addition, to the extent that facts and circumstances unknown to Complainant at the time of issuance of this Complaint become known after the Complaint is issued, such facts and circumstances may also be considered as a basis for adjusting a civil penalty.

This Complaint 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 and severity of the violations alleged in this Complaint is set forth below.

**Failure to perform automatic line leak detection annually.**

The “potential for harm” for this violation is “major”. It is critically important that facility owners and operators utilize effective methods of detecting releases from USTs and their associated piping. The prevention and detection of leaks are the cornerstones of the UST regulatory program. Respondent’s failure to perform an annual line leak detector test for the underground piping associated with USTs at the Facility presented a substantial risk to human health or the environment from a leak going undetected.

The “extent of deviation” for this violation is also “major” because it presents a substantial deviation from the requirements of the RCRA regulatory program.

**Failure to perform annual line tightness testing or monthly monitoring.**

The “potential for harm” for this violation is “major”. It is critically important that facility owners and operators utilize effective methods of detecting releases from USTs and their associated piping. The prevention and detection of leaks are the cornerstones of the UST regulatory program. Respondent’s failure to perform an annual line tightness test or monthly monitoring of underground piping associated with USTs at the Facility presented a substantial risk to human health or the environment from a leak going undetected.

The “extent of deviation” for this violation is also “major” because it presents a substantial deviation from the requirements of the RCRA regulatory program.

**V. NOTICE OF RIGHT TO REQUEST A HEARING**

Respondent may request a hearing before an EPA Administrative Law Judge and at such hearing may contest any material fact upon which the Complaint is based, contest the appropriateness of any compliance order or proposed penalty, and/or assert that Respondent is entitled to judgment as a matter of law. To request a hearing, Respondent must file a written

answer ("Answer") within thirty (30) days after service of this Complaint. The Answer should clearly and directly admit, deny or explain each of the factual allegations contained in this Complaint of which Respondent has any knowledge. Where Respondent has no knowledge of a particular factual allegation and so states, such a statement is deemed to be a denial of the allegation. 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 of whether a hearing is requested. All material facts not denied in the Answer will be considered to be admitted.

Failure of the Respondent to admit, deny or explain any material allegation in the Complaint shall constitute an admission by Respondent of such allegation. Failure to Answer may result in the filing of a Motion for Default Order and the possible issuance of a Default Order imposing the penalties proposed herein without further proceedings.

Any hearing requested and granted will be conducted in accordance with the Consolidated Rules, a copy of which has been enclosed with this Complaint (Enclosure "A"). Respondent must send any Answer and request for a hearing to the attention of:

Regional Hearing Clerk (3RC00)  
U.S. EPA Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029.

In addition, please send a copy of any Answer and/or request for a hearing to the attention of:

Louis F. Ramalho  
Sr. Assistant Regional Counsel  
U.S. EPA Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029.

## **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 THE RESPONDENT OF ITS RESPONSIBILITY TO FILE A TIMELY ANSWER.**

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 and its right to appeal the proposed Final Order accompanying the Consent Agreement.

If you wish to arrange a settlement conference, please contact Louis F. Ramalho, Senior Assistant Regional Counsel, at (215) 814-2681 prior to the expiration of the thirty (30) day period following service of this Complaint. Once again, however, such a request for a settlement conference does not relieve Respondent of its responsibility to file Answer(s) within thirty (30) days following service of this Complaint.

Please note that the Quick Resolution settlement procedures set forth in 40 C.F.R. § 22.18 do not apply to this proceeding because the Complaint seeks a compliance order. See 40 C.F.R. § 22.18(a)(1).

## **VII. SEPARATION OF FUNCTIONS AND EX PARTE COMMUNICATIONS**

The following Agency officers, and the staffs thereof, are designated as the trial staff to represent the Agency as the party in this case: the Region III Office of Regional Counsel, the Region III Land and Chemicals Division, and the Office of the EPA Assistant Administrator for Enforcement and Compliance Assurance. Commencing from the date of 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 Regional Judicial Officer, may have an *ex parte* communication with the trial staff or the merits of any issue involved in this proceeding. Please be advised that the Consolidated Rules prohibit any *ex parte* discussion of the merits of a case with, among others, the Administrator, members of the Environmental Appeals Board, Presiding Officer, Judicial Officer, Regional Administrator, Regional Judicial Officer, or any other person who is likely to advise these officials on any decision in this proceeding after issuance of this Complaint.

Dated: \_\_\_\_\_

6.17.13



John A. Armstead, Director  
Land and Chemicals Division  
U.S. EPA Region III

Enclosures: A. Consolidated Rules of Practice, 40 C.F.R. Part 22  
B. Chapter 245 of Title 25 of the Pennsylvania Code  
C. UST Penalty Guidance  
D. Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19  
E. Amendments to EPA's Civil Penalty Policies to Implement the 2008 Civil Monetary Penalty Inflation Adjustment Rule (December 29, 2008)

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

In the Matter of:	)	
	)	Administrative Complaint, Compliance
The Cigar Boss, LLC.	)	Order and Notice of Opportunity for
4260 Tilghman Street	)	Hearing
Allentown, PA 18104	)	
	)	U.S. EPA Docket Number
RESPONDENT,	)	RCRA-03-2013-0156
	)	
4260 Tilghman Street	)	Proceeding Under Section 9006 of the
Allentown, PA 18104	)	Resource Conservation and Recovery
	)	Act, as amended, 42 U.S.C. Section
FACILITY.	)	6991e
	)	
	)	
	)	
	)	

REGIONAL HEARING CLERK  
 EPA REGION III, PHILA. PA  
 2013 JUN 18 PM 2:11


**RECEIVED**

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that on the date provided below, I hand-delivered and filed the original of the above captioned United States Environmental Protection Agency's Administrative Complaint, Compliance Order and Notice of Opportunity for Hearing, with the Regional Hearing Clerk, EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029, and that true and correct copies of the Administrative Complaint, Compliance Order and Notice of Opportunity for Hearing, were sent by UPS Overnight mail, to:

The Cigar Boss, LLC  
 4260 Tilghman Street  
 Allentown, PA 18104

6/18/13  
 Date

  
 \_\_\_\_\_  
 Louis F. Ramalho  
 Senior Assistant Regional Counsel