



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2  
290 BROADWAY  
NEW YORK, NY 10007-1866

JUN 29 2012

**CERTIFIED MAIL- RETURN RECEIPT REQUESTED**

**Article Number: 7005 3110 0000 5951 6614**

R.J. Stapell  
Chairman and General Counsel  
NOCO Incorporated  
2440 Sheridan Drive  
Tonawanda, NY 14150

Re: **In the Matter of: NOCO Energy Corp.**  
**Docket No. RCRA-02-2012-7503**

Dear Mr. Stapell:

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

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

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

If you do not file an Answer within thirty (30) days of receipt of this Complaint and have not obtained a formal extension for filing an Answer from the Regional Judicial Officer of Region 2, a default order may be entered against you and the entire proposed penalty may be assessed.

Whether or not you request a formal hearing, you may request an informal conference with EPA to discuss any issue relating to the alleged violations and the amount of the proposed penalty. EPA encourages all parties against whom it files a Complaint to pursue the possibility of settlement and to have an informal conference with EPA. However, a request for an informal conference **does not** substitute for a written Answer, affect what you may choose to say in an Answer, or extend the thirty (30) days by which you must file an Answer requesting a hearing.

You will find enclosed a copy of the "Consolidated Rules of Practice," which govern this proceeding.

U.S. ENVIRONMENTAL  
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REGIONAL HEARING  
CLERK

(A brief discussion of some of these rules appears in the later part of the Complaint.) For your general information and use, I also enclosed both an "Information Sheet for U.S. EPA Small Business Resources" and a "Notice of SEC Registrants' Duty to Disclose Environmental Legal Proceedings" which may apply to you depending on the size of the proposed penalty and nature of your company.

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

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

Sincerely,



Dore LaPosta, Director

Division of Enforcement and Compliance Assistance

Enclosures

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

Russ Brauksieck, Chief

Facility Compliance Section

New York State Department of Environmental Conservation

625 Broadway, 11<sup>th</sup> Floor

Albany, New York 12233-7250

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
**Region 2**

**IN THE MATTER OF:**

NOCO Energy Corp.,  
d.b.a. Yazan, Inc.,  
NOCO Express S-5,  
Karan & Anna, LLC,  
Food Port (Amal) Enterprises,  
NOCO Express 27,  
Snap Mart (Pyramid II, Inc.),  
Ronzo (Reham) Enterprises,  
Express S-53,  
NOCO Express S-30,  
NOCO Express 29,  
NOCO Express 32,  
NOCO Express 35, and  
NOCO Express S-36,

Respondent

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

**COMPLAINT, COMPLIANCE ORDER**

**AND**

**NOTICE OF OPPORTUNITY FOR HEARING**

**DOCKET NO. RCRA-02-2012-7503**

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2012 JUL -3 P 2:07  
REGIONAL HEARING  
CLERK

**COMPLAINT**

1. This is a civil administrative proceeding instituted pursuant to Section 9006 of the Solid Waste Disposal Act, as amended, 42 U.S.C. § 6901 et seq. (collectively referred to as "RCRA" or the "Act").
2. Complainant in this proceeding, Dore LaPosta, Director, Division of Enforcement and Compliance Assistance of the United States Environmental Protection Agency, Region 2 ("EPA"), has been duly delegated the authority to institute this action.
3. Respondent is NOCO Energy Corp., hereinafter "Respondent" or "NOCO."
4. Respondent is a domestic business corporation and a "person" within the meaning of Section 9001(5) of the Act, 42 U.S.C. § 6991(6) and 40 C.F.R. § 280.12.
5. Pursuant to Section 9001(10), 42 U.S.C. § 6991(10) and 40 C.F.R. § 280.12, an "underground storage tank" or "UST" is "any one or combination of tanks (including underground pipes connected thereto) that is used to contain an accumulation of regulated substances, and the volume of which (including the volume of underground pipes connected thereto) is 10 percent or more beneath the surface of the ground."
6. Respondent is the "owner" and "operator," as those terms are defined in 40 C.F.R. § 280.12, of underground storage tanks at various facilities identified in the paragraphs below.



7. Respondent was and continues to be an “owner” and “operator” of three USTs, which are located at Yazan, Inc., 2487 Browncroft Blvd., Rochester, NY 14625. The USTs store gasoline for retail sale. The facility is registered with the New York State Petroleum Bulk Storage program with the following number: 8-232572. The December 11, 2007 PBS Registration indicates that the owner of the facility is NOCO Energy Corporation, 2440 Sheridan Drive, Tonawanda, NY 14150, and that Michael Yount, Environmental Compliance Manager, is the authorized representative.
8. Yazan, Inc., UST System numbers 01, 02 and 03 are 8000 gallons in capacity. The USTs were installed in May 1987. The USTs are constructed of fiberglass reinforced plastic (FRP). The pipes are constructed of FRP. The tanks are equipped with an automatic tank gauge (ATG) for leak detection. The piping is equipped with a pressurized piping leak detector. The tanks are equipped with an excavation/trench liner system. The pipes are not equipped with secondary containment. An UST inspection was performed at this facility on or about November 10, 2010 by Mr. Jeffrey Blair of Polu Kai Services, LLC, an EPA UST inspection contractor.
9. Respondent was and continues to be an “owner” and “operator” of four USTs, which are located at NOCO Express S-5, 535 Kenmore Avenue, Tonawanda, NY 14223. The USTs store gasoline, kerosene, or diesel fuel for retail sale. The facility is registered with the New York State Petroleum Bulk Storage program with the following number: 9-001457. The July 7, 2007 PBS Registration indicates that the owner of the facility is NOCO Energy Corporation, 2440 Sheridan Drive, Tonawanda, NY 14150, and that Michael Yount, Environmental Compliance Manager, is the authorized representative.
10. NOCO Express S-5 UST System 1 is 20,000 gallons in capacity; this UST stores gasoline/ethanol. UST System 1A is 6,000 gallons in capacity; this UST stores gasoline/ethanol. UST System 2 is 3,000 gallons in capacity; this UST stores diesel fuel. UST System 3 is 500 gallons in capacity; this UST stores kerosene (#1 fuel oil). These USTs were installed in March 1999, and all are constructed of steel/carbon steel/iron. The USTs are double-walled. The piping is of equivalent construction. Tank leak detection is performed by interstitial electronic monitoring. The piping is equipped with an automatic line leak detector (ALLD). An UST inspection was performed at this facility on or about December 8, 2010, by Mr. Jeffrey Blair.
11. Respondent was and continues to be an “owner” and “operator” of three USTs for Karan & Anna, LLC, 2221 Hyde Park, Niagara Falls, NY 14305. The USTs store gasoline for retail sale. The facility is registered with the New York State Petroleum Bulk Storage program with the following number: 9-033332. The March 28, 2007, PBS Registration indicates that the owner of the facility is NOCO Energy Corporation, 2440 Sheridan Drive, Tonawanda, NY 14150, and that Michael Yount, Environmental Manager, is the authorized representative.
12. Karan & Anna, LLC UST System 1 is 8,000 gallons in capacity. UST System 2 is 6,000 gallons in capacity. The two USTs were installed in December 1981, and are constructed of FRP. UST System # 3 is 10,000 gallons in capacity. The UST was installed in October 1987 and is constructed of steel/carbon steel/iron. Piping of the three UST Systems is constructed of FRP. Tanks 1 and 2 have secondary containment in the form of an excavation/trench liner system and tank 3 is double-walled. The pipes are not equipped with secondary containment. The pipes are equipped with an ALLD. Tank leak detection is operated by an ATG. An UST inspection was performed at this facility on or about December 9, 2010, by Mr. Jeffrey Blair.

13. Respondent was and continues to be an “owner” and “operator” of three USTs for Food Port (Amal) Enterprises, 1225 Broadway & Memorial, Buffalo, NY 14211. The USTs store gasoline/ethanol for retail sale. The facility is registered with the New York State Petroleum Bulk Storage program with the following number: 9-222682. The December 11, 2007, PBS Registration indicates that the owner of the facility is NOCO Energy Corporation, 2440 Sheridan Drive, Tonawanda, NY 14150, and that Michael Yount, Environmental Compliance Manager, is the authorized representative.
14. Food Port (Amal) Enterprises utilizes three USTs numbered 1, 2 and 3. Each UST is 8,000 gallons in capacity. The USTs were installed in August 1989. All three USTs store gasoline/ethanol. The PBS registration for the tanks and piping indicate that they are constructed of FRP. The tanks are constructed of steel with retrofit sacrificial anode. The piping is constructed of steel. UST secondary containment consists of excavation/trench liner systems. The pipes are not equipped with secondary containment; the pipes are equipped with an ALLD. The USTs are equipped with an ATG. An UST inspection was performed at this facility on or about January 11, 2011 by Mr. Jeffrey Blair.
15. Respondent was and continues to be an “owner” and “operator” of three USTs for NOCO Express 27, 1555 North French Road, Getzville, NY 14068. The facility is registered with the New York State Petroleum Bulk Storage program with the following number: 9-423009. The PBS Registration indicates that the owner of the facility is NOCO Energy Corporation, 2440 Sheridan Drive, Tonawanda, NY 14150, and that Michael Yount, Environmental Compliance Manager, is the authorized representative.
16. NOCO Express 27 utilizes three USTs numbered 1, 2, and 3. Each UST is 12,000 gallons in capacity. The USTs were installed in May, 1987. All three tanks store gasoline/ethanol for retail sale. The tanks are constructed of steel/carbon steel/iron. The piping is constructed of FRP. The tanks are equipped with double-walled secondary containment. The pipes are not equipped with secondary containment and are equipped with ALLDs. An UST inspection was performed at this facility on or about November 8, 2010 by Mr. Jeffrey Blair.
17. Respondent was and continues to be an “owner” and “operator” of Snap Mart (Pyramid II, Inc.) 2183 Genesee Street, Buffalo, NY 14211. The facility is registered with the New York State Petroleum Bulk Storage program with the following number: 9-459631. The January 15, 2008, PBS Registration indicates that the owner of the facility is NOCO Energy Corporation, 2440 Sheridan Drive, Tonawanda, NY 14150, and that Michael Yount, Environmental Compliance Manager, is the authorized representative.
18. Snap Mart (Pyramid II, Inc.) utilizes three USTs numbered 1, 2, and 3. Each UST is 8,000 gallons in capacity. The USTs were installed on August 1, 1988. The USTs store gasoline/ethanol for retail sale. The tanks are constructed of FRP, and the pipes are constructed of FRP. The tanks are equipped with excavation/trench liner systems secondary containment. The pipes are not equipped with secondary containment and are equipped with an ALLD. The tanks are equipped with an ATG. An UST inspection was performed at this facility on or about November 9, 2010, by Mr. Jeffrey Blair.
19. Respondent was and continues to be an “owner” and “operator” of Ronzo (Reham) Enterprises, 523 Starin Avenue, Buffalo, NY 14216. The facility is registered with the New York State Petroleum Bulk Storage program with the following number: 9-459674. The October 6, 2010,



PBS Registration indicates that the owner of the facility is NOCO Energy Corporation, 2440 Sheridan Drive, Tonawanda, NY 14150, and that Michael Yount, Environmental Compliance Manager, is the authorized representative.

20. Ronzo (Reham) Enterprises utilizes three USTs numbered 1, 2, and 3. Each UST is 8,000 gallons in capacity. The USTs were installed in August 1988. The USTs store gasoline/ethanol for retail sale. The PBS registration indicates that the tanks and piping are constructed of FRP. The tanks are equipped with excavation/trench liner systems secondary containment. The pipes are not equipped with secondary containment and are equipped with an ALLD. The tanks are equipped with an ATG. An UST inspection was performed at this facility on or about November 9, 2010, by Mr. Jeffrey Blair.
21. Respondent was and continues to be an “owner” and “operator” of NOCO Express S-53, 8925 Main Street, Clarence, NY 14031. The facility is registered with the New York State Petroleum Bulk Storage program with the following number: 9-465461. The January 15, 2008, PBS Registration indicates that the owner of the facility is NOCO Energy Corporation, 2440 Sheridan Drive, Tonawanda, NY 14150, and that Michael Yount, Environmental Compliance Manager, is the authorized representative.
22. NOCO Express S-53 utilizes three USTs numbered 1, 2, and 3. Each UST is 8,000 gallons in capacity. The USTs were installed in November 1988. The USTs store gasoline/ethanol for retail sale. The PBS registration indicates that the tanks and piping are constructed of FRP. The tanks are equipped with excavation/trench liner systems secondary containment. The pipes are not equipped with secondary containment and are equipped with an ALLD. The tanks are equipped with an ATG for control of release detection. An UST inspection was performed at this facility on or about November 3, 2010, by Mr. Jeffrey Blair.
23. Respondent was and continues to be an “owner” and “operator” of NOCO Express S-30, 1898 Whitehaven Road, Grand Island, NY 14072. The facility is registered with the New York State Petroleum Bulk Storage program with the following number: 9-492779. The October 19, 2009 PBS Registration indicates that the owner of the facility is NOCO Energy Corporation, 2440 Sheridan Drive, Tonawanda, NY 14150, and that Michael Yount, Environmental Compliance Manager, is the authorized representative.
24. NOCO Express S-30 utilizes three USTs numbered NL1, PN2 and SP3. Each UST is 12,000 gallons in capacity. The USTs were installed in May 1989. UST NL1 and PN2 store gasoline/ethanol, and UST SP3 stores diesel fuel. The tanks are constructed of steel/carbon steel/iron. The pipes are constructed of FRP. The tanks are equipped with double-walled secondary containment. The pipes are not equipped with secondary containment. The tanks are equipped with an ATG to monitor release detection. The pipes are equipped with an ALLD. An UST inspection was performed at this facility on or about December 9, 2010, by Mr. Jeffrey Blair.
25. Respondent was and continues to be an “owner” and “operator” of NOCO Express 29, 5980 South Park Avenue, Hamburg, NY 14075. The USTs store gasoline/ethanol for retail sale. The facility is registered with the New York State Petroleum Bulk Storage program with the following number: 9-492787. The July 20, 2009 PBS Registration indicates that the owner of the facility is NOCO Energy Corporation, 2440 Sheridan Drive, Tonawanda, NY 14150, and that Michael Yount, Environmental Compliance Manager, is the authorized representative.

26. NOCO Express 29 utilizes three USTs numbered 1, 2 and 3. Each UST is 12,000 gallons in capacity. The USTs were installed in May 1989. The USTs store gasoline/ethanol for retail sale. The tanks are constructed of steel/carbon steel/iron. The piping is constructed of FRP. The tanks are equipped with double-walled secondary containment. The tanks are equipped with an ATG to monitor release detection. Pipes are not equipped with secondary containment and are equipped with an ALLD. An UST inspection was performed at this facility on or about December 10, 2010, by Mr. Jeffrey Blair.
27. Respondent was and continues to be an "owner" and "operator" of NOCO Express 32, 3085 Delaware Avenue, Kenmore, NY 14217. The facility is registered with the New York State Petroleum Bulk Storage program with the following number: 9-494119. The PBS Registration indicates that the owner of the facility is NOCO Energy Corporation, 2440 Sheridan Drive, Tonawanda, NY 14150, and that Michael Yount, Environmental Compliance Manager, is the authorized representative.
28. NOCO Express 32 utilizes two USTs numbered NL1 and PN2. Each UST is 10,000 gallons in capacity. The USTs were installed in August 1989. The USTs store gasoline/ethanol for retail sale. The tanks are constructed of steel/carbon steel/iron. The pipes are constructed of FRP. The tanks are equipped with double-walled secondary containment. Pipes are not equipped with secondary containment. Pipes are equipped with an ALLD. An UST inspection was performed at this facility on or about December 8, 2010 by Mr. Jeffrey Blair.
29. Respondent was and continues to be an "owner" and "operator" of NOCO Express 35, 6011 Transit Road, East Amherst, NY 14051. The facility is registered with the New York State Petroleum Bulk Storage program with the following number: 9-507601. The September 14, 2010 PBS Registration indicates that the owner of the facility is NOCO Energy Corporation, 2440 Sheridan Drive, Tonawanda, NY 14150, and that Michael Yount, Environmental Compliance Manager, is the authorized representative.
30. NOCO Express 35 utilizes three USTs numbered 1, 2, and 3. Each UST is 12,000 gallons in capacity. The USTs were installed in September 1990. The USTs store gasoline/ethanol for retail sale. The tanks are constructed of steel/carbon steel/iron. The piping is constructed of FRP. The tanks are equipped with double-walled secondary containment. The tanks are equipped with an ATG to monitor release detection. The pipes are not equipped with secondary containment and are equipped with an ALLD. An UST inspection was performed at this facility on or about November 8, 2010 by Mr. Jeffrey Blair.
31. Respondent was and continues to be an "owner" and "operator" of NOCO Express S-36, 5114 Transit Road, Depew, NY 14043. The facility is registered with the New York State Petroleum Bulk Storage program with the following number: 9-600030. The May 11, 2006 and July 8, 2011 PBS Registration indicates that the owner of the facility is NOCO Energy Corporation, 2440 Sheridan Drive, Tonawanda, NY 14150, and that Michael Yount, Environmental Compliance Manager, is the authorized representative.
32. NOCO Express S-36 utilizes three USTs numbered 1, 2, and 3. Each UST is 12,000 gallons in capacity. The USTs were installed in June 1991. USTs #s 1 and 2 store gasoline/ethanol, and UST # 3 stores diesel fuel for retail sale. The tanks are constructed of steel/carbon steel/iron. The piping construction is equivalent. The tanks are equipped with double-walled secondary containment. Tank leak detection is implemented through interstitial monitoring. Pipes are not

equipped with secondary containment and are equipped with an ALLD. An UST inspection was performed at this facility on or about November 3, 2010 by Mr. Jeffrey Blair.

**Count 1: Failure to maintain and provide records of testing for cathodic protection systems**

UST Systems numbers 1, 1A, 2 and 3 at NOCO Express S-5

UST Systems numbers 1, 2 and 3 at NOCO Express 27

UST Systems numbers NL1, PN2 and SP3 at NOCO Express S-30

UST Systems numbers 1, 2 and 3 at NOCO Express 29

UST System numbers NL1 and PN2 at NOCO Express 32

UST Systems numbers 1, 2 and 3 at NOCO Express 35

UST Systems numbers 1, 2 and 3 at NOCO Express S-36

33. Complainant realleges each allegation contained in Paragraphs "1" through "32" with the same force and effect as if fully set forth herein.
34. Pursuant to 40 C.F.R. § 280.31(b) all owners and operators of UST systems equipped with cathodic protection systems must have them inspected for proper operation by a qualified cathodic protection tester within six months of installation and at least every three years thereafter (triennially), and the criteria that are used to determine that cathodic protection is adequate must be in accordance with a code of practice developed by a nationally recognized association, *e.g.*, the National Association of Corrosion Engineers Standard RP-02-85, "Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems."
35. Pursuant to 40 C.F.R. § 280.31(d), the results of the last two triennial cathodic protection tests must be maintained to demonstrate compliance with performance standards.

**NOCO Express S-5**

36. Respondent's UST Systems numbers 1, 1A, 2 and 3 at NOCO Express S-5 utilize steel/carbon steel/iron tanks that have been equipped with cathodic protection since their installation in March 1999.
37. During the December 8, 2010 inspection of NOCO Express S-5, an EPA representative requested the records for the last two triennial cathodic protection tests.
38. During the December 8, 2010, inspection of NOCO Express S-5, Respondent's representatives produced the results of one triennial cathodic protection test for the steel/carbon steel/iron tanks in UST Systems 1, 1A, 2 and 3. This test was dated July 1, 2010.
39. As of December 8, 2010, Respondent failed to maintain records of the last two triennial cathodic protection test for the tanks for UST Systems 1, 1A, 2 and 3.



40. Respondent's failures to maintain records of the results of last two triennial cathodic protection tests for the tanks at NOCO Express S-5 for UST Systems 1, 1A, 2 and 3, constitute violations of 40 C.F.R. § 280.31(d).

NOCO Express 27

41. Respondent's UST Systems numbers 1, 2 and 3 at NOCO Express 27 utilize steel/carbon steel/iron tanks that have been equipped with cathodic protection since their installation in May 1987.
42. During the November 8, 2010 inspection of NOCO Express 27, an EPA representative requested the records for the last two triennial cathodic protection tests.
43. During the November 8, 2010 inspection of NOCO Express 27, Respondent's representatives produced one cathodic protection test for the tanks of UST Systems numbers 1, 2 and 3. The cathodic protection test was dated June 8, 2010.
44. As of November 8, 2010, Respondent failed to maintain records of the last two triennial cathodic protection test for the tanks for UST Systems 1, 2 and 3.
45. Respondent's failures to maintain records of the results of the last two triennial cathodic protection tests for the tanks at NOCO Express 27 for UST Systems 1, 2 and 3, constitute violations of 40 C.F.R. § 280.31(d).

NOCO Express S-30

46. Respondent's UST Systems numbers NL1, PN2 and SP3 at NOCO Express S-30 utilize steel/carbon steel/iron tanks with steel piping that have been equipped with cathodic protection since their installation in May 1989.
47. During the December 9, 2010 inspection of NOCO Express S-30, an EPA representative requested the records for the last two triennial cathodic protection tests.
48. During the December 9, 2010 inspection of NOCO Express S-30, Respondent's representatives produced one cathodic protection test for the tanks of UST Systems numbers NL1, PN2 and SP3. The cathodic protection test was dated April 15, 2010.
49. As of December 9, 2010, Respondent failed to maintain records of the last two triennial cathodic protection tests for the tanks for UST Systems NL1, PN2 and SP3.
50. Respondent's failures to maintain records of the results of the last two triennial cathodic protection tests for the tanks at NOCO Express S-30 for UST Systems NL1, PN2 and SP3, constitute violations of 40 C.F.R. § 280.31(d).

NOCO Express 29

51. Respondent's UST Systems numbers 1, 2 and 3 at NOCO Express 29 utilize steel/carbon steel/iron tanks that have been equipped with cathodic protection since their installation in May 1989.

- 52. During the December 20, 2010 inspection of NOCO Express 29, an EPA representative requested the records for the last two triennial cathodic protection tests.
- 53. During the December 10, 2010, inspection of NOCO Express 29, Respondent's representatives produced one cathodic protection test for the tanks of UST Systems numbers 1, 2, and 3. The cathodic protection test was dated May 27, 2010.
- 54. As of December 10, 2010, Respondent failed to maintain records of the last two triennial cathodic protection tests for the tanks for UST Systems 1, 2 and 3.
- 55. Respondent's failures to maintain records of the results of the last two cathodic protection tests for the tanks at NOCO Express 29 for UST Systems 1, 2 and 3, constitute violations of 40 C.F.R. § 280.31(d).

#### NOCO Express 32

- 56. Respondent's UST System numbers NL1 and PN2 at NOCO Express 32 utilize steel/carbon steel/iron tanks that have been equipped with cathodic protection since their installation in August 1989.
- 57. During the December 8, 2010 inspection of NOCO Express 32, an EPA representative requested the records for the last two triennial cathodic protection tests.
- 58. During the December 8, 2010 inspection of NOCO Express 32, Respondent's representatives provided one test record of cathodic protection, which was dated March 31, 2010.
- 59. As of December 8, 2010, Respondent failed to maintain records of the last two triennial cathodic protection test for the tanks for UST Systems NL1 and PN2.
- 60. Respondent's failures to maintain records of the results of the last two cathodic protection tests for the tanks at NOCO Express 29 for UST Systems NL1 and PN2, constitute violations of 40 C.F.R. § 280.31(d).

#### NOCO Express 35

- 61. Respondent's UST Systems numbers 1, 2 and 3 at NOCO Express 35 utilize steel/carbon steel/iron tanks that have been equipped with cathodic protection since their installation in September 1990.
- 62. During the November 8, 2010 inspection of NOCO Express 35, an EPA representative requested the records for the last two triennial cathodic protection tests.
- 63. During the November 8, 2010 inspection of NOCO Express 35, Respondent's representatives provided one cathodic protection test for the tanks of UST Systems numbers 1, 2 and 3. The cathodic protection test was dated April 12, 2010.
- 64. As of November 8, 2010, Respondent failed to maintain records of the last two triennial cathodic protection test for the tanks for UST Systems 1, 2 and 3.

65. Respondent's failures to maintain records of the results of the last two cathodic protection tests for the tanks at NOCO Express 35 for UST Systems 1, 2 and 3, constitute violations of 40 C.F.R. § 280.31(d).

NOCO Express S-36

66. Respondent's UST Systems numbers 1, 2 and 3 at NOCO Express S-36 utilize steel/carbon steel/iron tanks that have been equipped with cathodic protection since their installation in June 1991.
67. During the November 3, 2010 inspection of NOCO Express S-36, an EPA representative requested the records for the last two triennial cathodic protection tests.
68. During the November 3, 2010 inspection of Express S-36, Respondent's representatives provided one cathodic protection test for the tanks of UST Systems numbers 1, 2 and 3. The cathodic protection test was dated April 12, 2010.
69. Prior to the November 3 2010 inspection, Respondent failed to maintain records of the last two triennial cathodic protection tests for the tanks for UST Systems 1, 2 and 3.
70. Respondent's failure to maintain records of the results of last two cathodic protection tests for the tanks at NOCO Express S-36 for UST Systems 1, 2 and 3, constitute violations of 40 C.F.R. § 280.31(d).

**Count 2: Failure to maintain and provide all records of release detection monitoring for underground storage tanks.**

UST Systems numbers 01, 02 and 03 at Yazan, Inc.

UST Systems numbers 1, 2 and 3 at Karan & Anna LLC

UST Systems numbers 1, 2 and 3 at Food Port (Amal) Enterprises

UST Systems numbers 1, 2 and 3 at Snap Mart Pyramid II, Inc., NOCO D-40

UST Systems numbers 1, 2 and 3 at Ronzo (Reham, KRK Food Mart) Enterprises

UST Systems numbers 1, 2 and 3 NOCO Express S-53

UST Systems numbers 1, 2 and 3 NOCO Express 36

71. Complainant realleges each allegation contained in Paragraphs "1" through "70" with the same force and effect as if fully set forth herein.
72. Pursuant to 40 C.F.R. § 280.41(a), owners and operators are required to ensure that UST system tanks must be monitored at least every thirty (30) days for releases from tanks using one of the methods listed in § 280.43(d) through (h).



- 73. Pursuant to 40 C.F.R. § 280.45(b), the results of any of release detection sampling, testing or monitoring must be maintained for at least 1 year.
- 74. Pursuant to 40 C.F.R. § 280.34, owners and operators of UST Systems must fully cooperate with requests from the implementing agency for document submission and must maintain records evidencing compliance with release detection requirements. These records must be immediately available or must be provided upon request for inspection.

Yazan, Inc.

- 75. In its RCRA 9005 Information Request Letter (IRL) dated March 28, 2011, EPA requested, pursuant to Section 9005 of the Act and 40 C.F.R. § 280.34, records documenting that release detection had been conducted on UST Systems 01, 02, and 03 for the previous consecutive twelve month period from the time of its response.
- 76. In the June 15, 2011 IRL response, Respondent provided release detection (ATG) records for UST Systems numbers 01, 02 and 03 for the months of July 2010, August 2010 September 2010, October 2010, November 2010, December 2010, January 2011, February 2011, March 2011, April 2011, and May 2011.
- 77. Respondent did not provide in its June 15, 2011, IRL response and to date, has not provided any release detection records for the tanks for UST Systems numbers 1, 2 and 3 for Yazan, Inc., for the month of June 2010.
- 78. Respondent's failure to maintain and provide to EPA the results of release detection monitoring for Yazan, Inc., UST Systems numbers 01, 02 and 03, for the month of June 2010, constitutes a violation of 40 C.F.R. § 280.45(b) and 40 C.F.R. § 280.34.

Karan & Anna LLC

- 79. In its RCRA 9005 Information Request Letter (IRL) dated March 28, 2011, EPA requested, pursuant to Section 9005 of the Act and 40 C.F.R. § 280.34, records documenting that release detection had been conducted on UST systems numbers 1, 2 and 3 for the previous consecutive twelve month period from the time of its response.
- 80. In the June 15, 2011 IRL response, Respondent provided release detection (ATG) records for seven months: August 2010, September 2010, October 2010, November 2010, December 2010, January 2011 and May 2011.
- 81. Respondent in its June 15, 2011 IRL response did not provide to EPA any tank release detection records for tanks of UST Systems numbers 1, 2 and 3 for Karan & Anna LLC for five months: June 2010, July 2010, February 2011, March 2011, or April 2011.
- 82. Respondent's failure to maintain and to provide the results of release detection monitoring for the tanks at Karan & Anna LLC UST Systems numbers 1, 2 and 3, for the months of June 2010,

July 2010, February 2011, March 2011, and April 2011 constitutes a violation of 40 C.F.R. § 280.45(b) and 40 C.F.R. § 280.34.

Food Port (Amal) Enterprises

- 83. In its RCRA 9005 Information Request Letters (IRL) dated March 28, 2011, and February 27, 2012, EPA requested, pursuant to Section 9005 of the Act and 40 C.F.R. § 280.34, records documenting that release detection had been conducted on UST Systems 1, 2 and 3 for the previous consecutive twelve month period from the time of its response.
- 84. In the June 15, 2011 and April 2012 (received undated) IRL responses, Respondent provided release detection (ATG) records for three months: February 2011, March 2011, April 2011 and May 2011.
- 85. Respondent did not maintain and provide to EPA tank release detection records for UST Systems numbers 1, 2 and 3, at Food Port (Amal) Enterprises for eight months: June 2010, July 2010, August 2010, September 2010, October 2010, November 2010, December 2010, and January 2011.
- 86. Respondent's failure to maintain and to provide to EPA the results of release detection monitoring for tanks for UST Systems numbers 1, 2 and 3 at Food Port (Amal) Enterprises for the months of June 2010, July 2010, August 2010, September 2010, October 2010, November 2010, December 2010, and January 2011, constitutes a violation of 40 C.F.R. § 280.45(b) and 40 C.F.R. § 280.34.

Snap Mart (Pyramid II, Inc.)

- 87. In its RCRA 9005 Information Request Letter (IRL) dated March 28, 2011, EPA requested, pursuant to Section 9005 of the Act and 40 C.F.R. § 280.34, records documenting that release detection had been conducted on UST Systems 1, 2 and 3 for the previous consecutive twelve month period from the time of its response.
- 88. In the June 15, 2011 IRL response, Respondent provided release detection (ATG) records for four months: February 2011, March 2011, April 2011, and May 2011. During the EPA contractor's inspection in November 2010, the facility representative provided him with a tank release detection record for one month: November 2010.
- 89. Respondent did not maintain and provide to EPA tank release detection records for UST Systems numbers 1, 2 and 3, at Snap Mart (Pyramid II, Inc.) for seven months: June 2010, July 2010, August 2010, September 2010, October 2010, December 2010, or January 2011.
- 90. Respondent's failure to maintain and to provide to EPA the results of release detection monitoring for tanks for UST Systems numbers 1, 2 and 3 at Snap Mart Pyramid II, Inc., NOCO D-40, for the months of June 2010, July 2010, August 2010, September 2010, October 2010, December 2010, and January 2011 constitutes a violation of 40 C.F.R. § 280.45(b) and 40 C.F.R. § 280.34.

### Ronzo (Reham) Enterprises

91. In its RCRA 9005 Information Request Letters (IRL) dated March 28, 2011, and February 27, 2012, EPA requested, pursuant to Section 9005 of the Act and 40 C.F.R. § 280.34, records documenting that release detection had been conducted on UST Systems 1, 2 and 3 for the previous consecutive twelve month period from the time of its response.
92. In the June 15, 2011 and April 2012 (received undated) IRL responses, Respondent provided release detection (ATG) records for one month: June 2010, July 2010, December 2010, January 2011, February 2011, March 2011. During the EPA contractor's inspection in November 2010, the facility representative provided him with a tank release detection record for one month, November 2010, which documents tank leak detection for all three tanks.
93. Respondent did not maintain and provide to EPA tank release detection records for all three UST System tanks at Ronzo (Reham) Enterprises for four months: August 2010, September 2010, October 2010, and April 2011.
94. Respondent's failure to maintain and to provide to EPA the results of release detection monitoring for tanks for all three UST Systems at Ronzo (Reham) Enterprises for the months of August 2010, September 2010, October 2010, and April 2011, constitutes a violation of 40 C.F.R. § 280.45(b) and 40 C.F.R. § 280.34.

### NOCO Express S-53

95. In its RCRA 9005 Information Request Letter (IRL) dated March 28, 2011, EPA requested, pursuant to Section 9005 of the Act and 40 C.F.R. § 280.34, records documenting that release detection had been conducted on UST Systems 1, 2 and 3 for the previous consecutive twelve month period from the time of its response.
96. In the June 15, 2011 IRL response, Respondent provided release detection (ATG) records for seven months: November 2010, December 2010, January 2011, February 2011, March 2011, April 2011 and May 2011.
97. Respondent did not maintain and provide to EPA tank release detection records for UST Systems numbers 1, 2 and 3, at NOCO Express S-53 for five months: June 2010, July 2010, August 2010, September 2010, and October 2010.
98. Respondent's failure to maintain and to provide to EPA the results of release detection monitoring for tanks for UST Systems numbers 1, 2 and 3 at NOCO Express S-53 for the months of June 2010, July 2010, August 2010, September 2010, and October 2010, constitutes a violation of 40 C.F.R. § 280.45(b) and 40 C.F.R. § 280.34.

### NOCO Express 36

99. In its RCRA 9005 Information Request Letters (IRL) dated March 28, 2011 and February 27, 2012, EPA requested, pursuant to Section 9005 of the Act and 40 C.F.R. § 280.34, records



documenting that release detection had been conducted on UST Systems 1, 2 and 3 for the previous consecutive twelve month period from the time of its response.

100. In the June 15, 2011 and April 2012 (received undated) IRL responses, Respondent provided release detection (ATG) records for ten months: May 2010, June 2010, July 2010, August 2010, September 2010, October 2010, November 2010, December 2010, January 2011, February 2011, March 2011, and May 2011.
101. Respondent did not maintain and provide to EPA tank release detection records for UST Systems numbers 1, 2 and 3, at NOCO Express 36 for the month of April 2011.
102. Respondent's failure to maintain and to provide to EPA the results of release detection monitoring for tanks for UST Systems numbers 1, 2 and 3 at NOCO Express 36 for the month of April 2011, constitutes a violation of 40 C.F.R. § 280.45(b) and 40 C.F.R. § 280.34.

**Count 3: Failure to maintain and provide all records of release detection monitoring for underground storage tank pressurized pipes**

Food Port (Amal) Enterprises

103. Complainant realleges each allegation contained in Paragraphs "1" through "102" with the same force and effect as if fully set forth herein.
104. Pursuant to 40 C.F.R. § 280.41(a), owners and operators are required to ensure that UST system pressurized piping be monitored for releases either by an annual line tightness test conducted in accordance with § 280.44(b) or have monthly monitoring conducted in accordance with § 280.44(c).
105. Pursuant to 40 C.F.R. § 280.45(b), the results of any of release detection sampling, testing or monitoring must be maintained for at least 1 year.
106. During the January 11, 2010 inspection of Food Port (Amal) Enterprises, an EPA representative requested the records for the release detection monitoring of the pressurized piping for UST Systems 1, 2 and 3 at the Food Port (Amal) facility.
107. During the January 11, 2010 inspection of the Food Port (Amal) Enterprises, Respondent was unable to provide any records for the release detection monitoring of the pressurized piping for UST Systems 1,2, and 3 at the Food Port (Amal) facility.
108. Respondent did not maintain and provide to EPA either an annual product line tightness test or monthly monitoring records for the pressurized piping for UST Systems numbers 1, 2 and 3, at Food Port (Amal) Enterprises for the year prior to the inspection of January 11, 2010.
109. Respondent's failure to maintain and to provide to EPA the results of release detection monitoring or an annual line tightness test for pressurized piping for UST Systems numbers 1, 2 and 3 at Food Port (Amal) Enterprises for the year prior to the EPA inspection in January 2010, constitutes a violation of 40 C.F.R. § 280.45(b) and 40 C.F.R. § 280.34.

## **PROPOSED CIVIL PENALTY**

Section 9006(d)(2)(A) of the Act, 42 U.S.C. § 6991e (d)(2)(A), authorizes the assessment of a civil penalty of up to \$10,000 for each tank for each day of violation of any requirement or standard promulgated by the Administrator. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection and Improvement Act of 1996, Pub. L. Number 104-34, 110 Stat. 1321 (1996), required EPA to adjust its penalties for inflation on a periodic basis. EPA issued a Civil Monetary Penalty Inflation Adjustment Rule on December 31, 1996, see 61 Fed. Reg. 69360 (1996); on February 13, 2004, see 69 Fed. Reg. 7121 (2004); and on December 11, 2008, see 73 Fed. Reg. 239 (2008), codified at 40 C.F.R. Part 19.

Under Table I of the Civil Monetary Penalty Inflation Adjustment Rule, the maximum civil penalty under 42 U.S.C. Section 6991e(d)(2) for each tank for each day of violation occurring between January 30, 1997 and January 12, 2009, is \$11,000. The maximum civil penalty for violations occurring after January 12, 2009 was increased to \$16,000.

The penalties are proposed pursuant to the “U.S. EPA Penalty Guidance for Violations of UST Requirements,” dated November 1990 (“UST guidance”). The penalty amounts in this UST guidance were amended by a September 21, 2004 document entitled, “Modifications to EPA Penalty Policies to implement the Civil Monetary Penalty Inflation Rule (pursuant to the Debt Collection Improvement Act of 1996, Effective October 1, 2004),” and a December 29, 2008 document entitled, “Amendments to EPA’s Civil Penalty Policies to Implement the 2008 Civil Monetary Penalty Inflation Adjustment Rule (Effective January 12, 2009).” A more specific guidance entitled “Revision to Adjusted Penalty Policy Matrices Issued on November 16, 2009” was issued on April 6, 2010. (These documents are available upon request.) This UST guidance provides a rational, consistent, and equitable calculation methodology for applying the statutory penalty factors to particular cases.

Based upon the facts alleged in this Complaint and taking into account factors such as the seriousness of the violations and any good faith efforts by the Respondents to comply with the applicable requirements, Complainant proposes, subject to receipt and evaluation of further relevant information, to assess the following civil penalty:

### **Total Proposed Penalty Amount for Respondent**

Penalty Computation Worksheets for the proposed civil penalty in this specific case are attached to this Complaint.

Count 1: Failure to Monitor, Properly Test and Maintain Records of Testing for Cathodic Protection Systems = \$ 12,694

Count 2: Failure to maintain all records of release detection monitoring for underground storage tanks = \$ 1,890

Count 3: Failure to maintain all records of release detection monitoring for underground piping = \$ 5300

Total Penalty = \$ 19,884

## COMPLIANCE ORDER

Based on the foregoing, and pursuant to the authority of Sections 9006 of the Act, 42 U.S.C. § 6991e, Complainant issues the following Compliance Order against Respondent, which shall take effect thirty (30) days after service of this Order (i.e., the effective date), unless by that date, the Respondents have requested a hearing pursuant to 40 C.F.R. § 22.15. See 42 U.S.C. § 6991(e)(b) and 40 C.F.R. §§ 22.37(b) and 22.7(c):

Respondent shall, within thirty (30) calendar days of the effective date of this Order, comply with all applicable UST system standards under 40 C.F.R. Section 280 for the UST systems at the Facilities in this Complaint.

Respondent shall, within forty-five (45) calendar days after the effective date of this Order, submit to EPA written notice of its current compliance (accompanied by a copy of all appropriate supporting documentation) or current noncompliance with each of the requirements set forth herein. If the Respondent is in noncompliance with a particular requirement, the notice shall state the reasons for noncompliance and shall provide a schedule for achieving expeditious compliance with the requirement. Furthermore, in all documents or reports submitted to EPA pursuant to this Compliance Order, the Respondent's written notice shall contain the following certification:

*I certify that the information contained in this written notice and the accompanying documents is true, accurate and complete. As to the identified portions of this response for which I cannot personally verify accuracy, I certify under penalty of law that this response 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.*

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Name

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Title

Respondent shall submit the documents specified above to:

**Dennis J. McChesney, Ph.D., MBA, Team Leader**  
**UST Team**  
**U.S. EPA Region 2**  
**290 Broadway, 20<sup>th</sup> Floor**  
**New York, NY 10007-1866**



## **NOTICE OF LIABILITY FOR ADDITIONAL CIVIL PENALTIES**

Pursuant to Section 9006(a)(3) of the Act, 42 U.S.C. §6991e(a)(3), and in accordance with the Debt Collection and Improvement Act of 1996, Pub. L. Number 104-34, 110 Stat. 1321 (1996) and the regulations promulgated thereunder (see the Civil Monetary Inflation Rule, 73 Fed. Reg. 75340 (December 11, 2008), to be codified at 40 C.F.R. Part 19), a violator failing to comply with a Compliance Order, once it has taken effect, within the time specified in the Order is liable for a civil penalty up to \$37,500 for each day of continued noncompliance.

## **PROCEDURES GOVERNING THIS ADMINISTRATIVE LITIGATION**

The rules of procedure governing this civil administrative litigation have been set forth in 64 Fed. Reg. 40138 (July 23, 1999), entitled, "CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENTS OF CIVIL PENALTIES, ISSUANCE OF COMPLIANCE OR CORRECTIVE ACTION ORDERS, AND THE REVOCATION, TERMINATION OR SUSPENSION OF PERMITS" which are codified at 40 C.F.R. Part 22 (hereinafter "Consolidated Rules"). A copy of these rules accompanies this "Complaint, Compliance Order, and Notice of Opportunity for Hearing" (hereinafter the "Complaint").

### **A. Answering the Complaint**

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

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

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

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

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

## **B. Opportunity to Request a Hearing**

If requested by Respondent in his Answer, a hearing upon the issues raised by the Complaint and Answer may be held. 40 C.F.R. § 22.15(c). If, however, Respondent does not request a hearing, the Presiding Officer (as defined in 40 C.F.R. § 22.3) may hold a hearing if the Answer raises issues appropriate for adjudication. 40 C.F.R. § 22.15(c). With regard to the Compliance Order in the Complaint, such Order shall automatically become final unless Respondent requests a hearing pursuant to 40 C.F.R. § 22.15 within thirty (30) days after such Order is served. 40 C.F.R. § 22.37.

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

## **C. Failure to Answer**

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

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

## **D. Exhaustion of Administrative Remedies**

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

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



### **INFORMAL SETTLEMENT CONFERENCE**

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

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

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

**Stuart N. Keith**  
**Assistant Regional Counsel**  
**Office of Regional Counsel**  
**U.S. Environmental Protection Agency, Region 2**  
**290 Broadway, 16th floor**  
**New York, New York 10007-1866**  
**(212) 637- 3217**

The parties may engage in settlement discussions irrespective of whether Respondents have requested a hearing. 40 C.F.R. § 22.18(b)(1). Respondent's requesting a formal hearing does not prevent them from also requesting an informal settlement conference; the informal conference procedure may be pursued simultaneously with the formal adjudicatory hearing procedure. A request for an informal settlement conference constitutes neither an admission nor a denial of any of the matters alleged in the Complaint. Complainant does not deem a request for an informal settlement conference as a request for a hearing as specified in 40 C.F.R. § 22.15(c). A request for an informal settlement conference does not affect Respondent's obligation to file a timely Answer to the Complaint pursuant to 40 C.F.R. § 22.15. No penalty reduction, however, will be made simply because an informal settlement conference is held.

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



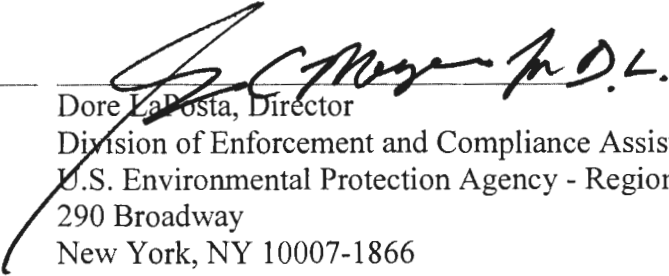
Respondent's entering into a settlement through the signing of such Consent Agreement and their complying with the terms and conditions set forth in the such Consent Agreement terminates this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint. Respondent's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

**RESOLUTION OF THIS PROCEEDING WITHOUT HEARING OR CONFERENCE**

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

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

6/29/12

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

To: R.J. Stapell  
Chairman and General Counsel  
NOCO Incorporated  
2440 Sheridan Drive  
Tonawanda New York 14150

cc: Russ Brauksieck  
Chief  
Facility Compliance Section  
NYSDEC  
625 Broadway, 11<sup>th</sup> Floor  
Albany, NY 12233

**CERTIFICATE OF SERVICE**

This is to certify that I have this day caused to be mailed a copy of the foregoing Complaint, Compliance Order, and Notice of Opportunity for Hearing, bearing docket number RCRA-02-2012-7503, and a copy of the Consolidated Rules of Practice, 40 C.F.R. Part 22, by certified mail, return receipt requested, to RJ Stapell, Chairman and General Counsel, NOCO Incorporated, 2440 Sheridan Drive, Tonawanda, NY 14150. I hand-carried the original and a copy of the Complaint to the Office of Regional Hearing Clerk, United States Environmental Protection Agency, Region 2.

Dated: JUL - 3 2012  
New York, New York

Smildred N. Bae