



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

JUN 01 2009

**CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

Dilbag Khera  
4667 Jefferson Davis Highway  
Clearwater, South Carolina 29842

Dilbag Khera  
1108 Hampton Ave., NW  
Aiken, South Carolina 29482

RE: Administrative Complaint  
Docket No.: RCRA-UST- 04-2009-0001

Dear Mr. Khera:

Enclosed please find an Administrative Complaint (Complaint) and Final Order. The documents have been issued pursuant to the authority of Section 9006 of RCRA, 42 U.S.C. § 6991(e).

The Complaint specifies this Agency'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.* The Complaint states in full the reasons for the determination that violation(s) have occurred at the A.M. Food and Gas facility formerly owned by you and located at 11670 Jones Bridge Road, Alpharetta, Georgia. In brief, as determined from an EPA inspection on January 6, 2006, Dilbag Khera, as owner of the A.M. Food and Gas facility, failed to comply with the requirements for Underground Storage Tanks as required by Section 9005 of RCRA, 42 U.S.C. § 6991d, and 40 C.F.R. Part 280. A proposed civil penalty of Twelve Thousand Sixty Nine Dollars (\$ 12,069) is assessed in the Complaint.

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 Assessments of Civil Penalties, Issuance of Compliance or Corrective Action Orders, 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, or the appropriateness of the proposed penalty, you must file a written Answer and request for a hearing with the Regional Hearing Clerk within thirty (30) days from receipt of this Complaint, pursuant to 40 C.F.R. § 22.15. Unless you file an Answer or pay the penalty, you may be found in default pursuant to 40 C.F.R. § 22.17.

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 40 C.F.R. § 22.15. 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

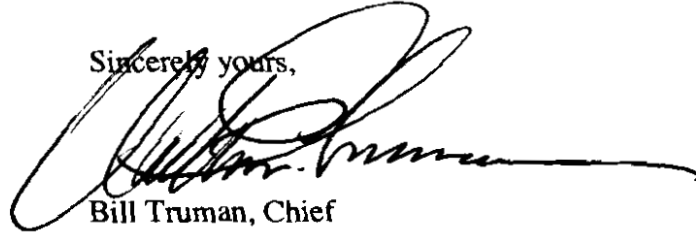
A copy of your Answer and/or hearing request and all other documents that you file in this action also should be sent to:

Susan Capel  
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, and the amount of the proposed civil penalty. 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.

If you have any questions or wish to arrange an informal settlement conference, please contact Susan Capel, Associate Regional Counsel, at (404) 562-9566. EPA urges your prompt attention to this matter.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Bill Truman", with a long horizontal flourish extending to the right.

Bill Truman, Chief  
Underground Storage Tank Section  
RCRA Division

Enclosures

cc: Susan Capel, EAD  
Regional Hearing Clerk

**BEFORE THE**  
**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
**REGION 4**

~~RECEIVED  
EPA REGION IV  
2009 MAY 32 AM 8:33  
HEARING CLERK~~ P.B.

**IN THE MATTER OF:** )  
) )  
**Dilbag Khera** )  
**AM Food and Gas** )  
**11670 Jones Bridge Road** )  
**Alpharetta, Georgia 30005** )  
) )  
**RESPONDENT** )

**Proceeding under Section 9006  
of the Resource Conservation  
and Recovery Act, as amended,  
42 U.S.C. § 6991e**  
  
**Docket No. RCRA-UST-04-2009-0001**

2009 JUN -1 AM 8:42  
HEARING CLERK  
RECEIVED  
EPA REGION IV

**ADMINISTRATIVE COMPLAINT**

**I. INTRODUCTION**

1. This Administrative Complaint 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 in accordance with 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”).

2. EPA hereby notifies Dilbag Khera (“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 (Thomson/West current through March 13, 2009, and the State of Georgia’s Underground Storage Tank (“UST”) program, as approved 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 approved 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 requirements.

3. Effective July 9, 1991, pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c, and 40 C.F.R. Part 281, Subpart A (Thomson/West current through March 13, 2009), 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.

4. 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 GA Code Ann., § 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 GA. COMP. R. & REGS. r. 391-3-15 et seq. 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.

5. 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. ALLEGATIONS AND DETERMINATIONS**

6. 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) (Thomson/West current through amendments received through December 31, 2008).

7. The Respondent's Facility, A.M. Food and Gas, was located at 11670 Jones Bridge Road, Alpharetta, Georgia 30005 (hereinafter, the Facility).

8. Respondent first provided notification of UST activity to the Georgia Department of Natural Resources in 2002.

9. On December 14, 2005, EPA sent Respondent a "Notice of EPA Inspection of Underground Storage Tank Systems," via certified mail. The Notice advised of an imminent inspection and requested that the Facility have certain records available to allow evaluation of the Facility's compliance with the Federal and State UST regulations found at 40 C.F.R. Part 280 and GA. COMP. R. & REGS. r. 391-3-15 et seq.

10. On January 6, 2006, a representative of EPA Region 4 inspected the Facility.

11. At the time of the inspection, Respondent was the "owner" and/or "operator" of two USTs at the Facility, 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).

12. The two USTs at the Facility are fiberglass tanks with a capacity of 12,000 gallons each.

13. At the time of the inspection, Respondent was using the two USTs at the Facility 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 Code Ann. § 12-3-3.

14. Each UST at the Facility was connected to underground piping that routinely contained regulated substances.

15. At the time of the inspection, the Respondent did not have any records on site to demonstrate compliance with the requirements of 40 C.F.R. Part 280 and GA. COMP. R. & REGS. r. 391-3-15 et seq. These requirements include release detection for both the USTs and associated piping and spill and overfill control, among other requirements.

16. At the time of the inspection, Respondent was utilizing an Automatic Tank Gauging (ATG) system (Gilbarco EMC) as its method of release detection for the USTs. With this method, a probe permanently installed in the tank is wired to a monitor to provide information on product level and temperature. These systems automatically calculate changes in the product volume that can indicate a leak in the tank. If an anomaly is detected, the device will sound an alarm to alert the owner/operator.

17. At the time of the inspection, the probe used to sense volumetric changes in Tank 1 was not operating.

18. At the time of the inspection, the EPA inspector noted that the alarm lights for the ATG system were on, and the front panel was broken, indicating that the device was not being operated, calibrated, or maintained in a manner that allowed for the detection of a release.

19. Respondent utilizes pressurized piping to convey product from the tanks.

20. At the time of the inspection, the Respondent could not demonstrate that the piping was equipped with automatic line leak detectors.

21. At the time of the inspection, Respondent could not demonstrate that annual line tightness tests were being performed.

22. Respondent utilizes spill buckets for spill prevention during the transfer of product from the delivery tankers to the USTs.

23. At the time of the inspection, the spill buckets were dirty and contained water, which limited their capacity to contain spills.

24. At the time of the inspection, Respondent did not have any overfill devices to prevent a release from occurring while the tank was being filled with product.

25. At the conclusion of the January 6, 2006, inspection, the Respondent was given a list of information to provide to EPA to demonstrate compliance with the requirements of 40 C.F.R. Part 280 and GA. COMP. R. & REGS. r. 391-3-15 et seq.

26. On January 18, 2006, and again on January 20, 2006, an EPA representative contacted the Facility concerning the status of the information request issued at the time of the inspection. EPA did not receive any response.

27. On September 7, 2006, EPA sent Respondent an information request letter under the authority of RCRA Section 9005, 42 U.S.C. § 6991d. The letter asked for the same information requested in the Notice of Inspection letter dated December 14, 2005, which was sent prior to the inspection, the same information requested by the inspector at the conclusion of the January 6, 2006 inspection, and the same information requested via telephone on January 18 and 20, 2006.

28. Respondent did not provide any of the information requested by EPA and did not contact EPA.

29. Respondent sold the facility in 2008.

30. The Facility now operates under a new name and new ownership and was determined by Georgia EPD to be in compliance with the requirements of 40 C.F.R. Part 280 and GA. COMP. R. & REGS. r. 391-3-15 et seq. following an inspection conducted in April 2008.

#### COUNT 1

31. The allegations of preceding paragraphs are incorporated herein by reference.

32. 40 C.F.R. § 280.40(a) and GA. COMP. R. & REGS. r. 391-3-15 -.07(1) requires that owners and operators of new and existing UST systems provide a method or combination of methods of release detection that can 1) detect a release from any portion of the tank or associated piping that routinely contains product; 2) is installed, calibrated, operated, and maintained in accordance with the manufacturer's instructions, including routine maintenance and service checks for operability; and 3) meets the performance specifications in 40 C.F.R. §§ 280.43 or 280.44 and GA. COMP. R. & REGS. r. 391-3-15 -.07(1).

33. At the time of the inspection, Respondent's ATG system was not being calibrated, operated, and maintained in a manner to provide release detection method for the USTs.

34. Respondent failed to comply with the UST release detection requirements for tanks at its Facility. 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) and GA. COMP. R. & REGS. r. 391-3-15 -.07(1).

### **COUNT 2**

35. The allegations of the preceding paragraphs are incorporated herein by reference.

36. 40 C.F.R. § 280.41(b) and GA. COMP. R. & REGS. r. 391-3-15 -.07(1) require that owners and operators of UST systems must provide release detection for piping. Underground piping that routinely contains regulated substances must be monitored for releases in a manner that meets the requirements specified under this section. Pressurized piping must be equipped with an automatic line leak detector conducted in accordance with 40 C.F.R. § 280.44(a); and have an annual line tightness test conducted in accordance with 40 C.F.R. § 280.44(b) or have monthly monitoring conducted in accordance with 40 C.F.R. § 280.44(c).

37. At the time of the inspection, Respondent was not performing adequate release detection for the underground piping connected to the USTs that routinely contained regulated substances.

38. Respondent failed to comply with the release detection requirements for underground piping at its Facility. These acts or omissions constitute a violation of Section 9003 of RCRA, 42 U.S.C. § 6991b, and 40 C.F.R. § 280.41(b) and GA. COMP. R. & REGS. r. 391-3-15 -.07(1).

### **COUNT 3**

39. The allegations of the preceding paragraphs are incorporated herein by reference.

40. 40 C.F.R. § 280.20(c)(1)(ii) and GA. COMP. R. & REGS. r. 391-3-15 -.05(1) require that owners and operators of USTs provide overfill prevention equipment that will automatically shut off flow into the tank when the tank is no more than 95 percent full; alert the transfer operator when the tank is no more than 90 percent full by restricting the flow to the tank or triggering a high-level alarm; or restrict flow 30 minutes prior to overfilling, alert the operator with a high level alarm one minute before overfilling, or automatically shut off the flow into the tank so that none of the fittings located on the top of the tank are exposed to product due to overfilling.

41. At the time of the inspection, Respondent did not have any overfill devices installed.



42. Respondent failed to comply with the UST overfill prevention requirements at the Facility. 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) and GA. COMP. R. & REGS. r. 391-3-15 -.05(1).

#### **COUNT 4**

43. The allegations of the preceding paragraphs are incorporated herein by reference.

44. 40 C.F.R. § 280.34(b) and (c) and GA. COMP. R. & REGS. r. 391-3-15 -.06(1). requires that owners and operators of USTs maintain information documenting UST system repairs and recent compliance with release detection requirements, among other requirements, at the UST site immediately available for inspection or at a readily available alternative site and be provided for the inspection to the implementing agency upon request.

45. At the time of the inspection, Respondent could not provide documentation demonstrating compliance with release detection requirements. Respondent did not provide documentation requested in EPA's information request letter dated September 7, 2006, to show compliance with these requirements.

46. Respondent failed to comply with the UST recordkeeping requirements at its Facility. These acts or omissions constitute violations of Section 9003 of RCRA, 42 U.S.C. § 6991b, and 40 C.F.R. § 280.34(b) and (c) and GA. COMP. R. & REGS. r. 391-3-15 -.06(1).

#### **COUNT 5**

47. The allegations of the preceding paragraphs are incorporated herein by reference.

48. RCRA Section 9005, 42 U.S.C. § 6991d, provides that any owner or operator of USTs shall, upon request of any representative of EPA, furnish information relating to such USTs.

49. 40 C.F.R. § 280.34 and GA. COMP. R. & REGS. r. 391-3-15 -.06(1). require that owners and operators cooperate fully with requests for document submission pursuant to RCRA Section 9005, 42 U.S.C. § 6991d.

50. EPA requested information from the Respondent on January 6, 2006, at the conclusion of the inspection, verbally in telephone calls on January 18, 2006, and January 20, 2006, and by Information Request letter dated September 7, 2006. Respondent did not comply with any of these information requests.

51. Respondent failed to comply with the requirement to provide information when requested by EPA. These acts or omissions constitute violations of Section 9005 of RCRA, 42 U.S.C. § 6991d, and 40 C.F.R. § 280.34 and GA. COMP. R. & REGS. r. 391-3-15 -.06(1).

### III. PROPOSED CIVIL PENALTY

52. 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, codified at 40 C.F.R. Part 19], for violations occurring after March 15, 2004, 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 **\$15,544 (Fifteen Thousand Five Hundred Forty Four Dollars)** against Respondent.

53. 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.

54. 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.

55. EPA determined that the potential for harm and the extent of deviation from the regulations varies depending on the violation and the application of the penalty policy (see Paragraph 56 below). The environmental sensitivity multiplier is low because the Facility is not located near rivers or streams, groundwater wells providing a drinking water supply, or an environmentally sensitive area or sensitive populations. The Facility is located along a commercial strip on a major highway near the intersection with another major highway. Residential neighborhoods lying beyond the highway are served by municipal water supplies. Due to an absence of records, EPA was not able to determine the number of days of noncompliance. Therefore, EPA used 1.0 as the days of noncompliance multiplier. EPA also examined the economic benefit to the Respondent from either the avoided costs or the delayed costs. In this case, release detection for the tank is provided automatically by the automatic tank gauging device. However, release detection for piping requires the services of a consultant and

special equipment. EPA determined that the Respondent obtained an economic benefit of \$69 for failure to provide release detection for the piping associated with the tanks.

56. The total proposed penalty against Respondent is summarized below. Extent of Deviation from Requirement/Potential for Harm characterization is contained in parentheses for each violation.

Count 1: failure to provide release detection for tanks (Major/Major)	\$3,869
Count 2: failure to provide release detection for piping (Major/Major)	\$3,938
Count 3: failure to provide overfill prevention (Major/Moderate)	\$1,934
Count 4: failure to comply with recordkeeping requirements (Major/Major)	\$3,869
Count 5: failure to comply with information request (Major/Major)	\$1,934
<b>TOTAL PROPOSED PENALTY AMOUNT</b>	<b>\$15,544</b>

#### **IV. OPPORTUNITY TO REQUEST A HEARING**

57. Pursuant to 40 C.F.R. § 22.15, Respondent has the right to request a hearing to contest any matter of law or material fact set forth in this Complaint, the appropriateness of the proposed penalty, or to contend that it is entitled to judgement as a matter of law. 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 and the allegation is deemed denied. 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. Failure of the Respondent to admit, deny, or explain any material allegation contained in the Complaint shall constitute an admission of such allegations.

58. ***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.***

59. 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.

60. 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 the following individual who is authorized to receive service relating to this proceeding.

Susan Capel.  
Associate Regional Counsel  
U.S. EPA Region 4  
Office of Environmental Accountability  
61 Forsyth Street  
Atlanta, GA 30303-8909  
Phone: (404) 562-9566  
Fax: (404) 562-9598

#### **V. SETTLEMENT CONFERENCE**

61. 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.**

62. 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.

63. If you wish to arrange a settlement conference, you or your legal counsel should contact Susan Capel, Associate Regional Counsel, at (404) 562-9566, 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.

#### **VI. EXHAUSTION OF ADMINISTRATIVE REMEDIES**

64. 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 30 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.

65. 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).

#### **VII. EX PARTE COMMUNICATIONS**

66. 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.

#### **VIII. RESOLUTION OF THIS PROCEEDING WITHOUT HEARING OR CONFERENCE**

67. Instead of filing an Answer, requesting a Hearing, or requesting an informal settlement conference, Respondent may choose to pay the total amount of the proposed penalty within 30 days after receiving the Complaint, pursuant to 40 C.F.R. § 22.18(a). Such payment can be made by any of the following methods.

68. If paying by check, the Respondent shall submit a cashier's or certified check, payable to “Environmental Protection Agency.” If the Respondent sends payment by the U.S. Postal Service, the payment shall be addressed to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

69. If paying by Electronic Fund Transfer (on line payment), the Respondent shall transfer the penalty amount Fifteen Thousand Five Hundred Forty Four Dollars (\$15,544.00) to [www.pay.gov](http://www.pay.gov). Enter SFO into the “search public forms” field. Open the form and enter the requested information.

70. If paying by check, the Respondent shall note on the penalty payment check the title and docket number of this case. The Respondent shall submit copies of the check (or, in the case of an EFT transfer, copies of the EFT confirmation) to the following people:


Patricia Bullock  
Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 4  
SNAFC  
61 Forsyth Street, SW  
Atlanta, GA 30303

And

Bill Truman, Chief  
Underground Storage Tank Section  
U.S. Environmental Protection Agency  
Region 4  
SNAFC  
61 Forsyth Street, SW  
Atlanta, GA 30303

71. Upon receipt of payment in full, the Regional Judicial Officer or Regional Administrator shall issue a Final Order. Payment by the Respondent shall constitute a waiver of Respondent's rights to contest the allegations and to appeal the Final Order.

Date: 5/18/09

  
\_\_\_\_\_  
G. Alan Farmer, Director  
RCRA Division  
Complainant

ENCLOSURES:

Consolidated Rules of Practice  
U.S. EPA Penalty Guidance for Violations of UST Regulations

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true and correct copy of the Foregoing ADMINISTRATIVE COMPLAINT, in the matter of Dilbag Khera, A.M. Food and Gas, Docket No. RCRA-UST-4-2009- 0001 on the parties listed below in the manner indicated:

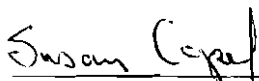
Susan Capel (Via EPA's internal mail)  
Office of Environmental Accountability  
U.S. EPA, Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303

Bill Truman (Via EPA's internal mail)  
RCRA Division  
U.S. EPA, Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303

Dilbag Khera (Via Certified Mail)  
1108 Hampton Ave., NW  
Aiken, South Carolina 29801

Dilbag Khera (Via Certified Mail)  
4667 Jefferson Davis Hwy  
Clearwater, South Carolina 29822

Dated this 1<sup>st</sup> day of June, 2009.

  
\_\_\_\_\_  
Susan Capel  
U.S. EPA – Region 4  
Sam Nunn Atlanta Federal Center  
61 Forsyth Street, SW  
Atlanta, Georgia 30303-8960