



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2  
290 BROADWAY  
NEW YORK, NY 10007-1866

MAR 30 2009

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2009 MAR 31 AM 11:32  
REGIONAL HEARING  
CLERK

**CERTIFIED MAIL- RETURN RECEIPT REQUESTED**  
**Article Number: 7005 3110 0000 5942 9631**

Jack Brayton, President  
Manley's Mighty-Mart L.L.C.  
1249 Front Street  
Binghamton, NY 13905

Re: **In the Matter of Manley's Mighty-Mart L.L.C., Respondent**  
**Docket No. RCRA-02-2009-7503**

Dear Mr. Brayton:

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)** 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.

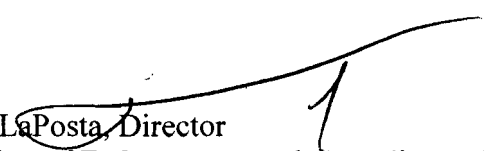
Whether or not you request a formal hearing, you may request an informal conference with EPA to discuss any issue relating to the alleged violations and the amount of the proposed penalty. EPA encourages all parties against whom it files a Complaint to pursue the possibility of settlement and to have 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. (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)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

PROTECTION ACCOUNT (1/20/01)  
2009 MAR 31 AM 11:31  
REGIONAL HEARING  
CLERK

-----X  
In the Matter of :  
 :  
Manley's Mighty-Mart, :  
L.L.C., :  
 :  
Respondent. :  
 :  
Proceeding Under Section 9006 :  
of the Solid Waste Disposal Act, :  
as amended :  
-----X

COMPLAINT, COMPLIANCE ORDER  
AND NOTICE OF OPPORTUNITY  
FOR HEARING

Docket No. RCRA-02-2009-7503

COMPLAINT

This is a civil administrative proceeding instituted pursuant to Section 9006 in Subchapter IX ("Regulation of Underground Storage Tanks") of the Solid Waste Disposal Act, as amended 42 U.S.C. § 6991 *et seq.* (referred to hereafter as "RCRA" or the "Act"). 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.

1. Respondent is Manley's Mighty-Mart, L.L.C.
2. Respondent is a corporation organized pursuant to the laws of the State of New York.
3. Respondent is 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.
4. Respondent was and is the "owner" and "operator" of "underground storage tanks," as those terms are defined in Section 9001 of the Act, 42 U.S.C. §6991, and in 40 C.F.R. §280.12.
5. Pursuant to 40 C.F.R. § 280.12, EPA is the "implementing agency" responsible for enforcing the requirements of the Act and the regulations promulgated pursuant thereto which are the subject of this Complaint.
6. Pursuant to Sections 2002, 9002, and 9003 of the Act, 42 U.S.C. §§ 6912, 6991a, and 6991b, EPA promulgated rules setting forth requirements applicable to owners and operators of underground storage tank (UST) systems, set forth at 40 C.F.R. Part 280.

7. Forty C.F.R. Section 280.12 defines an underground storage tank or UST as 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.
8. Pursuant to 40 C.F.R. § 280.44(a), an annual test of the operation of the automatic line leak detector for piping must be conducted in accordance with the manufacturer's requirements.
9. Pursuant to 40 C.F.R. § 280.41(b)(1)(ii) pressurized pipes must have an annual line tightness test conducted in accordance with §280.44(b), or have monthly monitoring conducted in accordance with §280.44(c).
10. Pursuant to 40 C.F.R. §§ 280.34 and 280.45, owners and operators of UST systems must maintain records demonstrating compliance with the release detection requirements.
11. Pursuant to 40 C.F.R. § 280.34(c) owners and operators must keep the records required either: (1) at the UST site and immediately available for inspection by the implementing agency; or (2) at a readily available alternative site and be provided for inspection to the implementing agency upon request.
12. Respondent has owned and operated, and continues to own and operate, USTs at locations known as Manley's Mighty-Mart, each facility having its own numeric designation (hereinafter MMM #1, MMM #2, MMM #3, etc.).
13. Pursuant to Section 9005 of the Act, 42 U.S.C. § 6991d, during November 2006 and November 2007 authorized representatives of EPA inspected several Manley's Mighty-Mart facilities, to determine their compliance with respect to the Act and 40 C.F.R. Part 280.
14. Pursuant to Section 9005(a) of the Act, 42 U.S.C. § 6991d(a), and 40 C.F.R. § 280.34, EPA sent an Information Request Letter dated December 27, 2007, (2007 Information Request Letter) to Respondent to determine the status of its compliance with the Act and 40 C.F.R. Part 280, for USTs at all Manley's Mighty-Mart facilities in EPA, Region 2, including New York State and New Jersey.
15. In EPA's Information Request Letter EPA specifically requested that Respondent provide documentation for all USTs that contain pressurized fuel pipes that are equipped with an automatic line leak detector showing that the line leak detectors located at Respondent's facilities were tested each year dating back to the time of their installation.
16. In EPA's Information Request Letter EPA specifically requested that Respondent provide documentation for all USTs that contain pressurized fuel pipes that are equipped with an automatic line leak detector showing that Respondent had performed

an annual line tightness test or had performed monthly monitoring.

17. On or about January 25, 2008, Respondent sent EPA a reply to EPA's Information Request Letter ("Respondent's Reply").
18. Respondent has owned and operated, and continues to own and operate USTs located at MMM #2, 4005 Vestal Parkway, Vestal, New York.
19. Respondent has owned and operated, and continues to own and operate USTs located at MMM #3, 1343 Front Street, Binghamton, New York.
20. Respondent has owned and operated, and continues to own and operate USTs located at MMM #4, 715 Upper Court Street, Binghamton, New York.
21. Respondent has owned and operated, and continues to own and operate USTs located at MMM #5, 733 Harry L. Drive, Johnson City, New York.
22. Respondent has owned and operated, and continues to own and operate USTs located at MMM #9, 684 Conklin Road, Binghamton, NY.
23. Respondent has owned and operated, and continues to own and operate USTs located at MMM #10, 143 Riverside Drive, Johnson City, NY.
24. Respondent has owned and operated, and continues to own and operate USTs located at MMM #11, 3225 East Main Street, Endwell, NY.
25. Respondent has owned and operated, and continues to own and USTs located at MMM #13, 150-156 Conklin Avenue, Binghamton, NY.
26. Respondent has owned and operated, and continues to own and USTs located at MMM #14, 2965 NYS Rt 26, Glen Aubrey, NY.
27. Respondent has owned and operated, and continues to own and operate USTs located at MMM #15, 77 Main Street, Binghamton, NY.
28. Respondent has owned and operated, and continues to own and USTs located at MMM #17, 215 Clinton Street, Binghamton, NY.
29. Respondent has owned and operated, and continues to own and USTs located at MMM #24, 1000 Pennsylvania Avenue, Binghamton, NY.

### Count 1

Failure to Conduct Annual Line Tightness Test or Monthly Monitoring for Pressurized Pipe and Failure to Maintain and Provide for Inspection Records of the Test or Monthly Monitoring for MMM #2, 4005 Vestal Parkway, Vestal, New York.

30. Complainant realleges each allegation contained in Paragraphs "1" through "29" with the same force and effect as if fully set forth herein.
31. In Respondent's Reply, submitted in response to the 2007 Information Request Letter, Respondent provided EPA with printout slips from its electronic release detector showing that a sump sensor used for the monthly monitoring of at least one pressurized pipe was out of service for more than a year at the MMM #2 facility.
32. In Respondent's Reply, submitted in response to the 2007 Information Request Letter, Respondent did not provide documentation showing that at least the one pressurized pipe noted in paragraph 31, above, had undergone annual line tightness testing prior to EPA's inspections of Respondent's facilities in November 2006.
33. In Respondent's Reply, submitted in response to the 2007 Information Request Letter, Respondent did not provide documentation showing that monthly monitoring had been performed on at least the one pressurized pipe noted in paragraph 31, above, prior to EPA's inspections of Respondent's facilities in November 2006.
34. Respondent did not maintain and provide to EPA records demonstrating that at least the one pressurized pipe noted in paragraph 31, above, had had an annual line tightness test in 2007 as specified in 40 C.F.R. § 280.41(b)(1)(ii).
35. Respondent did not maintain and provide to EPA records demonstrating that monthly monitoring was performed in 2007 on at least the one pressurized pipe noted in paragraph 31, above, as specified in 40 C.F.R. § 280.41(b)(1)(ii).
36. Respondent did not perform an annual line tightness test in 2007 on at least the one pressurized pipe noted in paragraph 31, above, as specified in 40 C.F.R. § 280.41(b)(1)(ii).
37. Respondent did not perform monthly monitoring in 2007 on at least the one pressurized pipe noted in paragraph 31, above, as specified in 40 C.F.R. § 280.41(b)(1)(ii).
38. Respondent's failure to perform an annual line tightness test or to perform monthly monitoring in 2007 for at least the one pressurized pipe noted in paragraph 31, above, at the MMM #2 facility constitutes a violation of 40 C.F.R. § 280.41(b)(1)(ii).
39. Respondent's failure for at least the calendar year of 2007 to maintain, and failure to provide to EPA for inspection, records of either the annual line tightness test or monthly monitoring on at least the one pressurized pipe noted in paragraph 31, above, at the

MMM #2 facility constitutes a violation of 40 C.F.R. §§ 280.34 and 280.45.

Count 2

Failure to Conduct Annual Test of the Automatic Line Leak Detectors and to Maintain and Provide for Inspection Records of the Test for MMM #3, 1343 Front Street, Binghamton, New York.

40. Complainant realleges each allegation contained in Paragraphs "1" through "39" with the same force and effect as if fully set forth herein.
41. Respondent's UST systems at the MMM #3 facility had three pressurized pipes with automatic line leak detectors.
42. As of the EPA's November 8, 2006 Inspection of Respondent's MMM #3 facility, Respondent had not maintained documents showing compliance during the year preceding the inspection with the requirement to perform an annual test of the three automatic line leak detectors for the pressurized pipes of the UST systems.
43. During the November 8, 2006 Inspection of Respondent's MMM #3 facility, Respondent did not provide for inspection documents showing compliance with the requirement to perform an annual test of the three automatic line leak detectors for the pressurized pipes of the UST systems.
44. In Respondent's Reply, submitted in response to the 2007 Information Request Letter, Respondent did not provide documentation showing that it had performed the required annual testing prior to the date of EPA's November 2006 inspection.
45. To date, the only result of the testing of the three automatic line leak detectors of the pressurized pipe that Respondent has submitted to EPA was for testing conducted on January 25, 2007, after the 2006 inspection. This result was submitted to EPA with Respondent's Reply.
46. To date, Respondent has not provided to EPA records demonstrating that an annual test of the three automatic line leak detectors for the pressurized pipes of the UST systems was conducted at the MMM #3 facility as specified in 40 C.F.R. § 280.44(a) for the years 2005 and 2006.
47. Upon information and belief, for at least one year Respondent did not perform the annual test of the automatic line leak detectors for the pressurized pipes of the UST systems at the MM #3 facility.
48. Respondent did not maintain, nor did it provide to EPA for review, records of testing in 2005 or 2006 of the automatic line leak detectors on the pressurized pipes of the UST systems located at the MMM #3 facility.

49. Respondent's failure for at least one year to perform the required annual test of the three automatic line leak detectors on the pressurized pipes of the UST systems located at the MMM #3 facility constitutes a violation of 40 C.F.R. § 280.44(a).
50. Respondent's failure for at least one year to maintain, and failure to provide to EPA for inspection, records of the annual test of the three automatic line leak detectors on the pressurized pipes of the UST systems located at the MMM #3 facility constitute a violation of 40 C.F.R. §§ 280.34 and 280.45.

Count 3

Failure to Conduct Annual Test of the Automatic Line Leak Detectors and to Maintain and Provide for Inspection Records of the Test for MMM #4, 715 Upper Court Street, Binghamton, New York.

51. Complainant realleges each allegation contained in Paragraphs "1" through "50" with the same force and effect as if fully set forth herein.
52. Respondent's UST systems at the MMM #4 facility had four pressurized pipes with automatic (mechanical) line leak detectors.
53. As of the EPA's November 8, 2006 Inspection of Respondent's MMM #4 facility, Respondent had not maintained documents showing compliance with the requirement to perform an annual test of the four automatic line leak detectors on the pressurized pipes of the UST systems.
54. During the EPA's November 8, 2006 Inspection of Respondent's MMM #4 facility, Respondent did not provide for inspection documents showing compliance with the requirement to perform an annual test of the four automatic line leak detectors on the pressurized pipes of the UST systems.
55. To date, the only result of the testing of the automatic line leak detectors that Respondent has submitted to EPA was for testing conducted on January 18, 2007 after the November 2006 inspection. This test result was provided to EPA during the 2007 inspection.
56. To date, Respondent has not provided to EPA records demonstrating that an annual test of the automatic line leak detectors for the four pressurized pipes of the UST systems was conducted at the MMM #4 facility for the years 2005 and 2006.
57. Upon information and belief, for at least one year Respondent did not perform an annual test of the automatic line leak detectors for the four pressurized pipes of the UST systems located at the MM #4 facility.
58. Respondent did not maintain, nor did it provide to EPA for review, records of testing in 2005 or 2006 of the automatic line leak detectors on the pressurized pipes of the UST



systems located at the MMM #4 facility.

59. Respondent's failure for at least one year to perform the required annual test of the four automatic line leak detectors on the pressurized pipes of the UST systems located at the MMM #4 facility constitutes a violation of 40 C.F.R. § 280.44(a).
60. Respondent's failure for at least one year to maintain, and failure to provide to EPA for inspection, records of the annual test of the four automatic line leak detectors on the pressurized pipes of the UST systems located at the MMM #4 facility constitute a violation of 40 C.F.R. §§ 280.34 and 280.45.

#### Count 4

Failure to Conduct Annual Test of the Automatic Line Leak Detectors and to Maintain and Provide for Inspection Records of the Test for MMM #5, 733 Harry L. Drive, Johnson City, New York.

61. Complainant realleges each allegation contained in Paragraphs "1" through "60" with the same force and effect as if fully set forth herein.
62. Respondent's UST systems at the MMM #5 facility had two pressurized pipes with automatic (mechanical) line leak detectors.
63. As of the EPA's November 8, 2006 Inspection of Respondent's MMM #5 facility, Respondent had not maintained documents showing compliance with the requirement to perform an annual test of the automatic line leak detectors on the pressurized pipes of the UST systems prior to the date of that Inspection.
64. As of the EPA's November 8, 2006 Inspection of Respondent's MMM #5 facility, Respondent did not provide for inspection documents showing compliance with the requirement to perform an annual test of the two automatic line leak detectors on the pressurized pipes of the UST systems prior to this Inspection.
65. To date, the only result of the testing of the automatic line leak detectors that Respondent has submitted to EPA was for testing conducted on January 18, 2007, after the November 2006 inspection. This test result was submitted to EPA with Respondent's Reply.
66. To date, Respondent has not provided to EPA records demonstrating that an annual test of the automatic line leak detectors on the pressurized pipes of the UST systems was conducted at the MMM #5 facility for the years 2005 and 2006.
67. Upon information and belief, for at least one year Respondent did not perform the annual test of the automatic line leak detectors on the pressurized pipes of the UST systems at the MMM #5 facility.

68. Respondent did not maintain, nor did it provide to EPA for review, records of testing in 2005 or 2006 of the automatic line leak detectors on the pressurized pipes of the UST systems located at the MMM #5 facility.
69. Respondent's failure for at least one year to perform the required annual test of the two automatic line leak detectors on the pressurized pipes of the UST systems located at the MMM #5 facility constitutes a violation of 40 C.F.R. § 280.44(a).
70. Respondent's failure for at least one year to maintain, and failure to provide to EPA for inspection, records of the annual test of the two automatic line leak detectors on the pressurized pipes of the UST systems located at the MMM #5 facility constitute a violation of 40 C.F.R. §§ 280.34 and 280.45.

Count 5

Failure to Conduct Annual Test of the Automatic Line Leak Detectors and to Maintain and Provide for Inspection Records of the Test for MMM #9, 684 Conklin Road, Binghamton, New York.

71. Complainant realleges each allegation contained in Paragraphs "1" through "70" with the same force and effect as if fully set forth herein.
72. Respondent's sectionalized UST at the MMM #9 facility had three pressurized pipes with mechanical line leak detectors.
73. As of the EPA's November 8, 2006 Inspection of Respondent's MMM #9 facility, Respondent had not maintained documents showing compliance with the requirement to perform an annual test of the automatic line leak detectors for the three pressurized pipes of the UST systems.
74. During the EPA's November 8, 2006 Inspection of Respondent's MMM #9 facility, Respondent did not provide for inspection documents showing compliance with the requirement to perform an annual test of the automatic line leak detectors for the three pressurized pipes of the UST systems.
75. In Respondent's Reply, submitted in response to the 2007 Information Request Letter, Respondent did not provide documentation showing that it had performed the required annual testing prior to the date of EPA's November 2006 inspection.
76. To date, the only result of the testing of the automatic line leak detectors that Respondent has submitted to EPA was for testing conducted on January 18, 2007, after the 2006 inspection. This test result was submitted to EPA with Respondent's Reply.
77. To date, Respondent has not provided to EPA records demonstrating that an annual test of the automatic line leak detectors for the three pressurized pipes of the UST systems

was conducted at the MMM #9 facility for the years 2005 and 2006.

78. Upon information and belief, for at least one year Respondent did not perform the annual test of the automatic line leak detectors for the three pressurized pipes of the UST systems at the MMM #9 facility.
79. Respondent did not maintain, nor did it provide to EPA for review, records of testing in 2005 or 2006 of the automatic line leak detectors on the pressurized pipes of the UST systems located at the MMM #9 facility.
80. Respondent's failure for at least one year to perform the required annual test of the three automatic line leak detectors on the pressurized pipes of the UST systems located at the MMM #9 facility constitutes a violation of 40 C.F.R. § 280.44(a).
81. Respondent's failure for at least one year to maintain, and failure to provide to EPA for inspection, records of the annual test of the three automatic line leak detectors on the pressurized pipes of the UST systems located at the MMM #9 facility constitute a violation of 40 C.F.R. §§ 280.34 and 280.45.

Count 6

Failure to Conduct Annual Test of the Automatic Line Leak Detectors and to Maintain and Provide for Inspection Records of the Test for MMM #10, 143 Riverside Drive, Johnson City, New York.

82. Complainant realleges each allegation contained in Paragraphs "1" through "81" with the same force and effect as if fully set forth herein.
83. Respondent's UST systems at the MMM #10 facility had three pressurized pipes with automatic (mechanical) line leak detectors.
84. As of the EPA's November 9, 2006 Inspection of Respondent's MMM #10 facility, Respondent had not maintained documents showing compliance with the requirement to perform an annual test of the three automatic line leak detectors on the pressurized pipes of the UST systems.
85. During the EPA's November 9, 2006 Inspection of Respondent's MMM #10 facility, Respondent did not provide for inspection documents showing compliance with the requirement to perform an annual test of the three automatic line leak detectors on the pressurized pipes of the UST systems.
86. In Respondent's Reply, submitted in response to the 2007 Information Request Letter, Respondent did not provide documentation showing that it had performed the required annual testing prior to the date of EPA's November 2006 inspection.

87. To date, the only result of the testing of the automatic line leak detectors that Respondent has submitted to EPA was for testing conducted on January 25, 2007, after the 2006 inspection. This test result was provided to EPA during the 2007 inspection.
88. To date, Respondent has not provided to EPA records demonstrating that an annual test of the three automatic line leak detectors on the pressurized pipes of the UST systems was conducted at the MMM #10 facility for the years 2005 and 2006.
89. Upon information and belief, for at least one year Respondent did not perform the annual test of the three automatic line leak detectors on the pressurized pipes of the UST systems as specified in 40 C.F.R. § 280.44(a), at the MMM #10 facility.
90. Respondent did not maintain, nor did it provide to EPA for review, records of testing in 2005 or 2006 of the automatic line leak detectors on the pressurized pipes of the UST systems located at the MMM #10 facility.
91. Respondent's failure for at least one year to perform the required annual test of the three automatic line leak detectors on the pressurized pipes of the UST systems located at the MMM #10 facility constitutes a violation of 40 C.F.R. § 280.44(a).
92. Respondent's failure for at least one year to maintain, and failure to provide to EPA for inspection, records of the annual test of the three automatic line leak detectors on the pressurized pipes of the UST systems located at the MMM #10 facility constitute a violation of 40 C.F.R. §§ 280.34 and 280.45.

Count 7

Failure to Conduct Annual Test of the Automatic Line Leak Detectors and to Maintain and Provide for Inspection Records of the Test for MMM #11, 3225 East Main Street, Endwell, New York.

93. Complainant realleges each allegation contained in Paragraphs "1" through "92" with the same force and effect as if fully set forth herein.
94. Respondent's sectionalized UST at the MMM #11 facility had three pressurized pipes with mechanical line leak detectors.
95. As of the EPA's November 9, 2006 Inspection of Respondent's MMM #11 facility, Respondent had not maintained documents showing compliance with the requirement to perform an annual test of the three automatic line leak detectors on the pressurized pipes of the UST systems.
96. During the EPA's November 9, 2006 Inspection of Respondent's MMM #11 facility, Respondent did not provide for inspection documents showing compliance with the requirement to perform an annual test of the three automatic line leak detectors on the

pressurized pipes of the UST systems prior to this Inspection.

97. In Respondent's Reply, submitted in response to the 2007 Information Request Letter, Respondent did not provide documentation showing that it had performed the required annual testing prior to the date of EPA's November 2006 inspection.
98. To date, the only result of the testing of the automatic line leak detectors that Respondent has submitted to EPA was for testing conducted on February 1, 2007, after the 2006 inspection. This test result was submitted to EPA with Respondent's Reply.
99. To date, Respondent has not provided to EPA records demonstrating that an annual test of the three automatic line leak detectors on the pressurized pipes of the UST systems was conducted at the MMM #11 facility for the years 2005 and 2006.
100. Upon information and belief, for at least one year Respondent did not perform the annual test of the three automatic line leak detectors on the pressurized pipes of the UST systems at the MMM #11 facility.
101. Respondent did not maintain, nor did it provide to EPA for review, records of testing in 2005 or 2006 of the automatic line leak detectors on the pressurized pipes of the UST systems located at the MMM #11 facility.
102. Respondent's failure for at least one year to perform the required annual test of the three automatic line leak detectors on the pressurized pipes of the UST systems located at the MMM #11 facility constitutes a violation of 40 C.F.R. § 280.44(a).
103. Respondent's failure for at least one year to maintain, and failure to provide to EPA for inspection, records of the annual test of the three automatic line leak detectors on the pressurized pipes of the UST systems located at the MMM #11 facility constitute a violation of 40 C.F.R. §§ 280.34 and 280.45.

#### Count 8

Failure to Conduct Annual Test of the Automatic Line Leak Detectors and to Maintain and Provide for Inspection Records of the Test for MMM #13, 150-156 Conklin Avenue, Binghamton, New York.

104. Complainant realleges each allegation contained in Paragraphs "1" through "103" with the same force and effect as if fully set forth herein.
105. Respondent's UST systems at the MMM #13 facility had four pressurized pipes with automatic (mechanical) line leak detectors.
106. As of EPA's Inspection on November 9, 2006 at MMM #13 Respondent had not maintained documentation showing that it had performed the required annual testing of its four automatic line leak detectors on the pressurized pipes of the UST systems.

107. During the EPA authorized contractor's Inspection on November 9, 2006 at MMM #13 Respondent did not provide for inspection documentation showing that it had performed the required annual testing of its four automatic line leak detectors on the pressurized pipes of the UST.
108. In Respondent's Reply, submitted in response to the 2007 Information Request Letter, Respondent did not provide documentation showing that it had performed the required annual testing prior to the date of EPA's November 2006 inspection.
109. To date, the only result of the testing of the automatic line leak detectors that Respondent has submitted to EPA was for testing conducted on January 18, 2007, after the 2006 inspection. This test result was submitted to EPA with Respondent's Reply.
110. To date, Respondent has not provided to EPA records demonstrating that an annual test of the automatic line leak detectors for the four pressurized pipes of the UST systems was conducted at the MMM #13 facility for the years 2005 and 2006.
111. Upon information and belief, for at least one year Respondent did not perform the annual test of the automatic line leak detectors as specified in 40 C.F.R. § 280.44(a), on the pressurized pipes of the UST systems located at the MMM #13 facility.
112. Respondent did not maintain, nor did it provide to EPA for review, records of testing in 2005 or 2006 of the automatic line leak detectors on the pressurized pipes of the UST systems located at the MMM #13 facility.
113. Respondent's failure for at least one year to perform the required annual test of the four automatic line leak detectors on the pressurized pipes of the UST systems located at the MMM #13 facility constitutes a violation of 40 C.F.R. § 280.44(a).
114. Respondent's failure for at least one year to maintain, and failure to provide to EPA for inspection, records of the annual test of the four automatic line leak detectors on the pressurized pipes of the UST systems located at the MMM #13 facility constitute a violation of 40 C.F.R. §§ 280.34 and 280.45.

Count 9

Failure to Conduct Annual Test of the Automatic Line Leak Detectors and to Maintain and Provide for Inspection Records of the Test for MMM #14, 2965 NYS Rt 26, Glen Aubrey, New York.

115. Complainant realleges each allegation contained in Paragraphs "1" through "114" with the same force and effect as if fully set forth herein.
116. Respondent's UST systems at the MMM #14 facility had two pressurized pipes with automatic (mechanical) line leak detectors.

117. As of the EPA's November 9, 2006 Inspection of the MMM #14 facility, Respondent had not maintained documents showing compliance with the requirement to perform an annual test of the two automatic line leak detectors on the pressurized pipes of the UST systems prior to this Inspection.
118. During the EPA's November 9, 2006 Inspection of the MMM #14 facility, Respondent did not provide for inspection documents showing compliance with the requirement to perform an annual test of the two automatic line leak detectors on the pressurized pipes of the UST systems prior to this Inspection.
119. In Respondent's Reply, submitted in response to the 2007 Information Request Letter, Respondent did not provide documentation showing that it had performed the required annual testing prior to the date of EPA's November 2006 inspection.
120. To date, the only result of the testing of the automatic line leak detectors that Respondent has submitted to EPA was for testing conducted on January 23, 2007. This test result was provided to EPA during the 2007 inspection.
121. To date, Respondent has not provided to EPA records demonstrating that an annual test of the two automatic line leak detectors on the pressurized pipes of the UST systems was conducted at the MMM #14 facility for the years 2005 and 2006.
122. Upon information and belief, for at least one year Respondent did not perform an annual test of the two automatic line leak detectors on the pressurized pipes of the UST systems at the MMM #14 facility.
123. Respondent did not maintain, nor did it provide to EPA for review, records of testing in 2005 or 2006 of the automatic line leak detectors on the pressurized pipes of the UST systems located at the MMM #14 facility.
124. Respondent's failure for at least one year to perform the required annual test of the two automatic line leak detectors on the pressurized pipes of the UST systems located at the MMM #14 facility constitutes a violation of 40 C.F.R. § 280.44(a).
125. Respondent's failure for at least one year to maintain, and failure to provide to EPA for inspection, records of the annual test of the two automatic line leak detectors on the pressurized pipes of the UST systems located at the MMM #14 facility constitute a violation of 40 C.F.R. §§ 280.34 and 280.45.

Count 10

Failure to Conduct Annual Line Tightness Test or Monthly Monitoring for Pressurized Pipe and Failure to Maintain and Provide for Inspection Records of the Test or Monthly Monitoring for MMM #14, 2965 NYS Route 26, Glen Aubrey, New York.

126. Complainant realleges each allegation contained in Paragraphs "1" through "125" with the same force and effect as if fully set forth herein.
127. Respondent's UST systems at the MMM #14 facility had two pressurized pipes and automatic (mechanical) line leak detectors. One UST was sectioned into three compartments (hereinafter referred to as the "20K UST"). The other UST was not sectioned (hereinafter referred to as the "5K UST").
128. In Respondent's Reply, Respondent provided EPA with printout slips from its electronic release detector showing that a sump sensor used for the monthly monitoring of a pressurized pipe from the 5K UST had been out of service at least during 2007 at the MMM #14 facility.
129. As of EPA's November 9, 2006 inspection of the MMM #14 facility a sump sensor used for the monthly monitoring of a pressurized pipe from the 5K UST was out of service.
130. As of EPA's November 28, 2007 inspection of the MMM #14 facility the sump sensor referenced in paragraph 129, above, used for the monthly monitoring of a pressurized pipe from the 5K UST had been out of service for more than a year.
131. During EPA's November 9, 2006 inspection of the MMM #14 facility, Respondent did not present documents demonstrating that an annual line tightness test had been conducted for the pressurized pipe from the 5K UST during the year prior to this inspection.
132. During EPA's November 28, 2007 inspection of the MMM #14 facility, Respondent did not present documents demonstrating that an annual line tightness test had been conducted for the pressurized pipe from the 5K UST during the year prior to this inspection.
133. In Respondent's Reply, submitted in response to the 2007 Information Request Letter, Respondent did not provide documentation demonstrating that an annual line tightness test had been conducted for the pressurized pipe from the 5K UST during calendar year 2006.
134. In Respondent's Reply, submitted in response to the 2007 Information Request Letter, Respondent did not provide documentation showing that it had performed the required monthly monitoring on the pressurized pipe from the 5K UST during calendar year 2006.
135. To date, the only annual line tightness test of the pressurized pipe from the 20K UST and the pressurized pipe from the 5K UST that Respondent has submitted to EPA was one conducted on November 20, 2007, after the 2006 inspection. This result was provided to EPA with Respondent's Reply to EPA's Information Request Letter.



136. Respondent did not maintain and provide to EPA records demonstrating that the pressurized pipe from the 5K UST at the MMM #14 facility had had an annual line tightness test between November 10, 2005 and November 19, 2007, as specified in 40 C.F.R. § 280.41(b)(1)(ii).
137. Respondent did not maintain and provide to EPA records demonstrating that it had performed monthly monitoring on the pressurized pipe from the 5K UST at the MMM #14 facility between November 10, 2005 and November 19, 2007, as specified in 40 C.F.R. § 280.41(b)(1)(ii).
138. Respondent did not perform annual line tightness testing for the pressurized pipe from the 5K UST at the MMM #14 facility in 2005, 2006 or until November 20, 2007.
139. Respondent did not perform monthly monitoring for the pressurized pipe from the 5K UST at the MMM #14 facility in 2005, 2006 or until November 28, 2007.
140. Respondent's above-described failure to perform an annual line tightness test or to perform monthly monitoring for at least one year for the pressurized pipe from the 5K UST at the MMM #14 facility constitutes a violation of 40 C.F.R. § 280.41(b)(1)(ii).
141. Respondent's above-described failure for at least one year to maintain, and failure to provide to EPA for inspection, records of either the annual line tightness test or monthly monitoring for the pressurized pipe from the 5K UST at the MMM #14 facility constitutes a violation of 40 C.F.R. §§ 280.34 and 280.45.

Count 11

Failure to Conduct Annual Test of the Automatic Line Leak Detectors and to Maintain and Provide for Inspection Records of the Test for MMM #15, 77 Main Street, Binghamton, New York.

142. Complainant realleges each allegation contained in Paragraphs "1" through "141" with the same force and effect as if fully set forth herein.
143. Respondent's UST systems at the MMM #15 facility had three pressurized pipes with automatic (mechanical) line leak detectors.
144. As of the EPA's November 8, 2006 Inspection of the MMM #15 facility, Respondent had not maintained documents showing compliance with the requirement to perform an annual test of the three automatic line leak detectors on the pressurized pipes of the UST systems prior to this Inspection.
145. During the EPA's November 8, 2006 Inspection of the MMM #15 facility, Respondent did not provide for inspection documents showing compliance with the requirement to perform an annual test of the three automatic line leak detectors on the pressurized pipes of the UST systems prior to this Inspection.

146. In Respondent's Reply, submitted in response to the 2007 Information Request Letter, Respondent did not provide documentation showing that it had performed the required annual testing prior to the date of EPA's November 2006 inspection.
147. To date, the only result of the testing of the automatic line leak detectors that Respondent has submitted to EPA was for testing conducted on November 21, 2007, after the 2006 inspection. This test result was provided to EPA during the 2007 inspection.
148. To date, Respondent has not provided to EPA records demonstrating that an annual test of the three automatic line leak detectors on the pressurized pipes of the UST systems was conducted at the MMM #15 facility in 2005, and in 2006 or prior to November 21 in 2007.
149. Upon information and belief, for at least one year Respondent did not perform the annual test of the three automatic line leak detectors on the pressurized pipes of the UST systems at the MMM #15 facility.
150. Respondent did not maintain, nor did it provide to EPA for review, records of testing in 2005, or in 2006 or prior to November 21 in 2007 of the automatic line leak detectors on the pressurized pipes of the UST systems located at the MMM #15 facility.
151. Respondent's failure for at least one year to perform the required annual test of the three automatic line leak detectors on the pressurized pipes of the UST systems located at the MMM #15 facility constitutes a violation of 40 C.F.R. § 280.44(a).
152. Respondent's failure for at least one year to maintain, and failure to provide to EPA for inspection, records of the annual test of the three automatic line leak detectors on the pressurized pipes of the UST systems located at the MMM #15 facility constitute a violation of 40 C.F.R. §§ 280.34 and 280.45.

#### Count 12

Failure to Conduct Annual Test of the Automatic Line Leak Detectors and to Maintain and Provide for Inspection Records of the Test for MMM #17, 215 Clinton Street, Binghamton, New York.

153. Complainant realleges each allegation contained in Paragraphs "1" through "152" with the same force and effect as if fully set forth herein.
154. Respondent's sectionalized UST at the MMM #17 facility had three pressurized pipes with automatic (mechanical) line leak detectors.
155. As of the EPA's November 9, 2006 Inspection of MMM #17 facility, Respondent had not maintained documents demonstrating its compliance with the requirement to

conduct an annual test of the three automatic line leak detectors on the pressurized pipes of the UST systems at the MMM #17 facility.

156. During the EPA's November 9, 2006 Inspection of MMM #17 facility, Respondent did not provide for inspection documents demonstrating its compliance with the requirement to conduct an annual test of the three automatic line leak detectors on the pressurized pipes of the UST systems at the MMM #17 facility.
157. To date, the only result of the testing of the automatic line leak detectors that Respondent has submitted to EPA was for testing conducted on February 23, 2007, after the 2006 inspection. This test result was submitted to EPA with Respondent's Reply.
158. To date, Respondent has not provided to EPA records demonstrating that an annual test of the automatic line leak detectors for the pressurized pipes of the UST systems was conducted at the MMM #17 facility for the years 2005 and 2006.
159. Upon information and belief, for at least one year Respondent did not perform the annual test of the three automatic line leak detectors on the pressurized pipes of the UST systems at the MMM #17 facility.
160. Respondent did not maintain, nor did it provide to EPA for review, records of testing in 2005 or 2006 of the automatic line leak detectors on the pressurized pipes of the UST systems located at the MMM #17 facility.
161. Respondent's failure for at least one year to perform the required annual test of the three automatic line leak detectors on the pressurized pipes of the UST systems located at the MMM #17 facility constitutes a violation of 40 C.F.R. § 280.44(a).
162. Respondent's failure for at least one year to maintain, and failure to provide to EPA for inspection, records of the annual test of the three automatic line leak detectors on the pressurized pipes of the UST systems located at the MMM #17 facility constitute a violation of 40 C.F.R. §§ 280.34 and 280.45.

#### 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. No. 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), and on February 13, 2004, see 69 Fed. Reg. 7121 (2004) 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

after March 15, 2004 and before January 13, 2009 is \$11,000.

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).” (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 Respondent to comply with the applicable requirements, Complainant proposes, subject to receipt and evaluation of further relevant information, to assess the following civil penalties:

Count 1: a civil penalty of \$8,799.13 was calculated against Respondent for its failure to provide either an annual tightness test or monthly monitoring to a pressurized pipe, located for MMM #2, 4005 Vestal Parkway, Vestal, NY, as required by 40 C.F.R. Section 280.41(b)(1)(ii).

Count 2: a civil penalty of \$7,367.44 was calculated against Respondent for its failure to conduct annual tests of automatic line leak detectors and to maintain records of same as required by 40 C.F.R. Section 280.44(a), for MMM #3, 1343 Front Street, Binghamton, NY.

Count 3: a civil penalty of \$9,747.25 was calculated against Respondent for its failure to conduct annual tests of automatic line leak detectors and to maintain records of same as required by 40 C.F.R. Section 280.44(a), for MMM #4, 715 Upper Court Street, Binghamton, NY.

Count 4: a civil penalty of \$4,911.63 was calculated against Respondent for its failure to conduct annual tests of automatic line leak detectors and to maintain records of same as required by 40 C.F.R. Section 280.44(a), for MMM #5, 733 Harry L. Drive, Johnson City, NY.

Count 5: a civil penalty of \$7,367.44 was calculated against Respondent for its failure to conduct annual tests of automatic line leak detectors and to maintain records of same as required by 40 C.F.R. Section 280.44(a), for MMM #9, 684 Conklin Road, Binghamton, NY.

Count 6: a civil penalty of \$7,367.44 as calculated against Respondent for its failure to conduct annual tests of automatic line leak detectors and to maintain records of same as required by 40 C.F.R. Section 280.44(a), for MMM #10, 143 Riverside Drive, Johnson City, NY.

Count 7: civil penalty of \$7,367.44 was calculated against Respondent for its failure to conduct annual tests of automatic line leak detectors and to maintain records of same as required by 40 C.F.R. Section 280.44(a), for MMM #11, 3225 East Main Street, Endwell, NY.

Count 8: civil penalty of \$9,822.25 was calculated against Respondent for its failure to conduct annual tests of automatic line leak detectors and to maintain records of same as required by 40 C.F.R. Section 280.44(a), for at MMM #13, 150-156 Conklin Avenue, Binghamton, NY.

Count 9: a civil penalty of \$14,582.88 was calculated against Respondent for its failure to conduct annual tests of automatic line leak detectors and to maintain records of same as required by 40 C.F.R. Section 280.44(a), for MMM #14, 2965 NYS Route 26, Glen Aubrey, NY.

Count 10: a civil penalty of \$7,344.44 was calculated against Respondent for its failure to provide annual tightness test or monthly monitoring to a pressurized pipe, as required by 40 C.F.R. Section 280.41(b)(1)(ii), for MMM #14, 2965 NYS Route 26, Glen Aubrey, NY.

Count 11: a civil penalty of \$7,329.44 was calculated against Respondent for its failure to conduct annual tests of automatic line leak detectors and to maintain records of same as required by 40 C.F.R. Section 280.44(a), for MMM #15, 77 Main Street, Binghamton, NY.

Count 12: a civil penalty of \$7,367.44 was calculated against Respondent for its failure to conduct annual tests of automatic line leak detectors and to maintain records of same as required by 40 C.F.R. Section 280.44(a), for MMM #17, 215 Clinton Street, Binghamton, NY.

The Total Proposed Penalty Amount for these violations is \$118,695.19.

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

### 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 Respondent has 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):

1. Respondent shall, within thirty (30) days after the effective date of this Order, comply with all applicable release detection and testing requirements of 40 C.F.R. Sections 280.41(b)(1)(ii) and 280.44 for all applicable UST systems at all of Respondent's Facilities.
2. Respondent shall, within thirty (30) days after the effective date of this Order, comply with all applicable record-keeping requirements of 40 C.F.R. Sections 280.34 and 280.45 for all applicable UST systems at all of Respondent's Facilities.
3. Respondent shall, within forty-five (45) calendar days after the effective date of this Order, submit to EPA written notice of its compliance (accompanied by a copy of all appropriate supporting documentation) or noncompliance for each of the requirements set forth herein. If Respondent is in noncompliance with a particular requirement, the notice shall state the reasons

for such noncompliance and shall provide a schedule for achieving expeditious compliance with the requirement(s). Such 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 their 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.

\_\_\_\_\_  
Signature of Authorized Representative of Respondent

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Respondent shall submit the notice required to be submitted pursuant to this paragraph to:

**Dr. Dennis J. McChesney, Team Leader, UST Team  
RCRA Compliance Branch  
Division of Enforcement and Compliance Assistance  
290 Broadway, 20th Floor  
New York, NY 10007-1866**

NOTICE OF LIABILITY FOR ADDITIONAL CIVIL PENALTIES

Pursuant to Sections 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. No. 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 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 40 C.F.R. Part 22, 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" (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 30 days after service of the Complaint. 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 the Answer to the Complaint upon Complainant and any other party to the action. 40 C.F.R. § 22.15(a).

Respondents' 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 states 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 intends 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 its 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, unless Respondent requests a hearing pursuant to 40 C.F.R. § 22.15 within 30 days after such Order is served, such Order shall automatically become final. 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 Respondent fails to file a timely [*i.e.* in accordance with the 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 therefor 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 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 Respondent fails 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).

In order to appeal an initial decision to the Agency's Environmental Appeals Board [EAB; see 40 C.F.R. § 1.25(e)], Respondent 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 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 Respondent requests 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, Respondent may comment on the charges made in this Complaint, and Respondent may also provide whatever additional information that it believes is relevant to the disposition of this matter, including: (1) actions Respondent has 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 Respondents' ability to continue in business; and/or (4) any other special facts or circumstances Respondent wishes to raise.

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

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

Carl R. Howard  
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) 637-3216 (phone)  
(212) 637-3199 (fax)

The parties may engage in settlement discussions irrespective of whether Respondent has requested a hearing. 40 C.F.R. § 22.18(b)(1). Respondents' requesting a formal hearing does not prevent it 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, Respondent waives its right to contest the allegations in the Complaint and waives its right to appeal the final order that is to accompany the consent agreement. 40 C.F.R. §

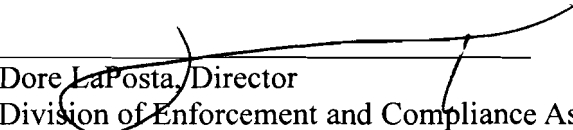
22.18(b)(2). In order to conclude the proceeding, a final order ratifying the parties' agreement to settle will be executed. 40 C.F.R. § 22.18(b)(3).

Respondent's entering into a settlement through the signing of such Consent Agreement and its 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 its 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, Respondent wishes not to contest the Compliance Order in the Complaint and wants to pay the total amount of the proposed penalty within thirty (30) days after receipt of the Complaint, Respondent should promptly contact the Assistant Regional Counsel identified above.

Dated: MAR 30, 2009

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

To: Jack Brayton, President  
Manley's Mighty-Mart LLC  
1249 Front Street  
Binghamton, NY 13905

cc: Russ Brauksieck, Chief  
Spill Prevention and Bulk Storage Section  
NYSDEC  
625 Broadway, 11<sup>th</sup> Floor  
Albany, N.Y. 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-02-2009-7503, and a copy of the Consolidated Rules of Practice, 40 C.F.R. Part 22, by certified mail, return receipt requested, to Jack Brayton, President, Manley's Mighty-Mart, L.L.C., 1249 Front Street, Binghamton, NY 13905. I hand-carried the original and a copy of the foregoing Complaint to the Office of Regional Hearing Clerk, United States Environmental Protection Agency, Region 2.

Dated: MAR 31 2009  
New York, New York

Smidred N. Bae

**Penalty Calculation Worksheet**

**Respondent: Manley's Mighty Mart Corp.**

**Count 1 – Failure to Conduct Annual Line Tightness Test or Monthly Monitoring for Pressurized Pipe and Failure to Maintain and Provide for Inspection Records of the Test or Monthly Monitoring for MMM #2, 4005 Vestal Parkway, Vestal, New York.**

- 1. Dates of noncompliance: 2-Jan-'07 14-Jan- '08
- 2. Total Days: 379
- 3. Number of pipes: 1

**Part 2 - Economic Benefit Component**

- 4. One Time Capital & Time Costs: \$0.00 See BEN computer model v. 4.3
- 5. Delay Capital & Avoided Costs: \$0.00 See BEN computer model v. 4.3
- 6. Avoided Annually Recurring Costs: \$94.00 See BEN computer model v. 4.3
- 7. Initial Economic Benefit (4-5+6): \$94.00 See BEN computer model v. 4.3
- 8. Final Economic Benefit: \$95.00 See BEN computer model v. 4.3  
at Penalty Payment Date

**Part 3 - Matrix Value For The Gravity-Based Component**

- 9. Matrix Value (MV): \$1,500.00
- 10. Per-tank MV (line 4 times line 10): \$1,500.00

Potential for Harm: Moderate

Extent of Deviation: Moderate

Justification for Potential for Harm: The Potential for Harm for this violation was determined to be Moderate. Respondent had not performed a line tightness test or monthly monitoring at the time EPA began inspecting Respondent's facilities in November 2006 and did not perform such a test or monitoring in 2007. This failure to test could have resulted in a failure to detect and respond to a release to the environment which poses a risk of harm to the environment since such a release may go unnoticed for a lengthy period of time. In addition, one of Respondent's sump sensors was not working for over one year including all of 2007. Had there been a leak, Respondent may not have had an adequate system in place to detect it. Failure to maintain and provide the required release detection records regarding tightness testing and monthly monitoring also has a substantial adverse effect on the regulatory program as it is often the only way for the regulatory agencies to ensure that release detection has been adequately performed. However, Respondent had conducted an automatic line leak detector test on January 18, 2007 and provided EPA with the results of this test result for 2007. Therefore, EPA determined that the appropriate classification for the Potential for Harm for this violation was Moderate.

Justification for Extent of Deviation: Respondent was required but failed to provide either line tightness testing or monthly monitoring. Respondent failed to test at least one pipe and failed to provide monthly monitoring for over a year. Respondent was not providing an acceptable method of release detection for at least one pressurized pipe. The records provided to EPA fail to show that Respondent was performing acceptable release detection on at least one pipe. However, Respondent performed an automatic line leak detection test in 2007 (the time period of

this violation) which supports a Moderate Extent of Deviation.

**Part 4 - Violator-Specific Adjustments To Matrix Value**

Inflation Adjustment Matrix Value: \$1,500 x 1.2895 (inflation adjustment for post March 15, 2004 violations) = \$1934.25

	% Change (+/-)	MV	Adjustment
11. Degree of cooperation or noncooperation:	0%	\$1934.25	\$0.00
12. Degree of willfulness or negligence:	0%	\$1934.25	\$0.00
13. History of non-compliance:	0%	\$1934.25	\$0.00
14. Unique factors:	0%	\$1934.25	\$0.00
15. Adjusted Matrix Value (line 10+ Lines 12 to 15):	\$1,934.25		

Justification for Degree of Cooperation/ Noncooperation: No adjustment was made.

Justification for Degree of Willfulness or Negligence: No adjustment was made.

Justification for History of Noncompliance: No adjustment was made.

Justification for Unique Factors: No adjustment was made.

**Part 5 - Gravity-Based Component**

16. Environmental Sensitivity:	moderate
17. Environmental Sensitivity Multiplier (ESM)	1.5
18. Days of Noncompliance Multiplier (DNM)	3.0

Justification for Environmental Sensitivity Multiplier: The facility is above a ground water aquifer that is used for drinking water.

**Calculations for Gravity Based Components (GBC) with Inflation Adjustments:**

	GBC	=	(MV)	(ESM)	(DNM)
		=	\$1,934.25	1.5	3.0
19.		=	\$8,704.13		
20.	Economic Benefit (from line 7):				\$95.00
21.	Gravity-Based Component (from line 19):				\$8,704.13
22.	Initial Penalty Target Figure (lines 20 plus line 21):				<b>\$8,799.13</b>

end of count-1



Justification for Degree of Cooperation/ Noncooperation: No adjustment was made.  
 Justification for Degree of Willfulness or Negligence: No adjustment was made.  
 Justification for History of Noncompliance: No adjustment was made.  
 Justification for Unique Factors: No adjustment was made.

**Part 5 - Gravity-Based Component**

- 16. Environmental Sensitivity: moderate
- 17. Environmental Sensitivity Multiplier (ESM) 1.5
- 18. Days of Noncompliance Multiplier (DNM) 2.5

Justification for Environmental Sensitivity Multiplier: The facility is above a ground water aquifer that is used for drinking water.

**Calculations for Gravity Based Components (GBC):**

	GBC	=	(MV)	(ESM)	(DNM)
		=	\$1,934.25	1.5	2.5
19.		=	\$7,253.44		
20.	Economic Benefit (from line 8):				\$114.00
21.	Gravity-Based Component (from line 19):				\$7,253.44
22.	Initial Penalty Target Figure (lines 20 plus line 21):				<b>\$7,367.44</b>

end of count-2

**Count 3 – Failure to Conduct Annual Tests of the Automatic Line Leak Detectors and to Maintain and Provide for Inspection Records of the Tests MMM #4, 715 Upper Court Street, Binghamton, New York.**

- 1. Dates of noncompliance: 18-Jan-06      17-Jan-07
- 2. Total Days:                                365
- 3. Number of MLLDs:                        4

**Part 2 - Economic Benefit Component**

- 4. One Time Capital & Time Costs:        \$0.00      See BEN computer model v. 4.3
- 5. Delay Capital & Avoided Costs:        \$0.00      See BEN computer model v. 4.3
- 6. Avoided Annually Recurring Costs:    \$58.00     See BEN computer model v. 4.3
- 7. Initial Economic Benefit (4-5+6):     \$58.00     See BEN computer model v. 4.3
- 8. Final Economic Benefit:  
at Penalty Payment Date                    \$76.00     See BEN computer model v. 4.3

**Part 3 - Matrix Value For The Gravity-Based Component**

- 9. Matrix Value (MV):                        \$500.00
- 10. Per-tank MV (line 3 times line 9):    \$2,000.00

Justification for Potential for Harm: violation was determined to be Moderate because annual testing of ALLDs to ensure that they function properly is necessary to detect catastrophic leaks of 3.0 gallons per hour or greater (which then results in the shut down of pumping operations in the case a catastrophic leak is detected) and Respondent was not performing this test. However, Respondent was providing monthly monitoring to the pipes which would have prevented any ongoing leaks from going completely undetected.

Justification for Extent of Deviation: violation was determined to be Moderate because the facility did not perform the annual test of the automatic line leak detectors and maintain records of the test, but the facility did provide monthly monitoring of the pressurized pipes complying with part of release detection requirements.

**Part 4 - Violator-Specific Adjustments To Matrix Value**

Inflation Adjustment Matrix Value: \$2,000.00 x 1.2895 (inflation adjustment for post March 15, 2004 violations) = \$2,579.00

	% Change (+/-)	MV	Adjustment
11. Degree of cooperation or noncooperation:	0%	\$2,579.00	\$0.00
12. Degree of willfulness or negligence:	0%	\$2,579.00	\$0.00
13. History of non-compliance:	0%	\$2,579.00	\$0.00
14. Unique factors:	0%	\$2,579.00	\$0.00
15. Adjusted Matrix Value (line 10+ Lines 12 to 15):		\$2,579.00	



Justification for Degree of Cooperation/ Noncooperation: No adjustment was made.  
 Justification for Degree of Willfulness or Negligence: No adjustment was made.  
 Justification for History of Noncompliance: No adjustment was made.  
 Justification for Unique Factors: No adjustment was made.

**Part 5 - Gravity-Based Component**

- |  |          |
|--|----------|
| 16. Environmental Sensitivity:                 | moderate |
| 17. Environmental Sensitivity Multiplier (ESM) | 1.5      |
| 18. Days of Noncompliance Multiplier (DNM)     | 2.5      |

Justification for Environmental Sensitivity Multiplier: The facility is above a ground water aquifer that is used for drinking water.

Calculations for Gravity Based Components (GBC):

	GBC	=	(MV)	(ESM)	(DNM)
		=	\$2,579.00	1.5	2.5
19.		=	\$9,671.25		
20.	Economic Benefit (from line 8):				\$76.00
21.	Gravity-Based Component (from line 19):				\$9,671.25
22.	Initial Penalty Target Figure (lines 20 plus line 21):				<b>\$9,747.25</b>

end of count-3

**Count 4 – Failure to Conduct Annual Tests of the Automatic Line Leak Detectors and to Maintain and Provide for Inspection Records of the Tests for MMM #5, 733 Harry L. Drive, Johnson City, New York.**

- 1. Dates of noncompliance: 18-Jan-06 17-Jan-07
- 2. Total Days: 365
- 3. Number of MLLDs: 2

**Part 2 - Economic Benefit Component**

- 4. One Time Capital & Time Costs: \$0.00 See BEN computer model v. 4.3
- 5. Delay Capital & Avoided Costs: \$0.00 See BEN computer model v. 4.3
- 6. Avoided Annually Recurring Costs: \$58.00 See BEN computer model v. 4.3
- 7. Initial Economic Benefit (4-5+6): \$58.00 See BEN computer model v. 4.3
- 8. Final Economic Benefit: \$76.00 See BEN computer model v. 4.3  
at Penalty Payment Date

**Part 3 - Matrix Value For The Gravity-Based Component**

Inflation Adjustment Matrix Value: \$1,000 x 1.2895 (inflation adjustment for post March 15, 2004 violations) = \$1,289.50

- 9. Matrix Value (MV): \$500.00
- 10. Per-tank MV (line 3 times line 9): \$1,000.00

Justification for Potential for Harm: violation was determined to be Moderate because annual testing of ALLDs to ensure that they function properly is necessary to detect catastrophic leaks of 3.0 gallons per hour or greater (which then results in the shut down of pumping operations in the case a catastrophic leak is detected) and Respondent was not performing this test. However, Respondent was providing monthly monitoring to the pipes which would have prevented any ongoing leaks from going completely undetected.

Justification for Extent of Deviation: violation was determined to be Moderate because the facility did not perform the annual test of the automatic line leak detectors and maintain records of the test, but the facility did provide monthly monitoring of the pressurized pipes complying with part of release detection requirements.

**Part 4 - Violator-Specific Adjustments To Matrix Value**

Matrix Value of \$1,128.00 which reflects an inflation adjustment increase of 17.23% for post-March 15, 2004 violations.

	% Change (+/-)	MV	Adjustment
11. Degree of cooperation or noncooperation:	0%	\$1,289.50	\$0.00
12. Degree of willfulness or negligence:	0%	\$1,289.50	\$0.00
13. History of non-compliance:	0%	\$1,289.50	\$0.00
14. Unique factors:	0%	\$1,289.50	\$0.00

15. Adjusted Matrix Value (line 10+ Lines 12 to 15): \$1,289.50

Justification for Degree of Cooperation/ Noncooperation: No adjustment was made.

Justification for Degree of Willfulness or Negligence: No adjustment was made.

Justification for History of Noncompliance: No adjustment was made.

Justification for Unique Factors: No adjustment was made.

### Part 5 - Gravity-Based Component

16. Environmental Sensitivity: moderate  
17. Environmental Sensitivity Multiplier (ESM) 1.5  
18. Days of Noncompliance Multiplier (DNM) 2.5

Justification for Environmental Sensitivity Multiplier: The facility is above a ground water aquifer that is used for drinking water.

Calculations for Gravity Based Components (GBC):

	GBC	=	(MV)	(ESM)	(DNM)
		=	\$1,289.50	1.5	2.5
19.		=	\$4,835.63		

20. Economic Benefit (from line 8): \$76.00  
21. Gravity-Based Component (from line 19): \$4,835.63  
22.. Initial Penalty Target Figure (lines 20 plus line 21): **\$4,911.63**

end of count-4

**Count 5 – Failure to Conduct Annual Tests of the Automatic Line Leak Detectors and to Maintain and Provide for Inspection Records of the Tests for MMM #9, 684 Conklin Road, Binghamton, New York.**

- |                            |           |           |
|----------------------------|-----------|-----------|
| 1. Dates of noncompliance: | 18-Jan-06 | 17-Jan-07 |
| 2. Total Days:             | 365       |           |
| 3. Number of MLLDs:        | 3         |           |

**Part 2 - Economic Benefit Component**

- |   |          |                               |
|---|----------|-------------------------------|
| 4. One Time Capital & Time Costs:                     | \$0.00   | See BEN computer model v. 4.3 |
| 5. Delay Capital & Avoided Costs:                     | \$0.00   | See BEN computer model v. 4.3 |
| 6. Avoided Annually Recurring Costs:                  | \$86.00  | See BEN computer model v. 4.3 |
| 7. Initial Economic Benefit (4-5+6):                  | \$86.00  | See BEN computer model v. 4.3 |
| 8. Final Economic Benefit:<br>at Penalty Payment Date | \$114.00 | See BEN computer model v. 4.3 |

**Part 3 - Matrix Value For The Gravity-Based Component**

- |  |            |
|--|------------|
| 9. Matrix Value (MV):                  | \$500.00   |
| 10. Per-tank MV (line 3 times line 9): | \$1,500.00 |

Justification for Potential for Harm: violation was determined to be Moderate because annual testing of ALLDs to ensure that they function properly is necessary to detect catastrophic leaks of 3.0 gallons per hour or greater (which then results in the shut down of pumping operations in the case a catastrophic leak is detected) and Respondent was not performing this test. However, Respondent was providing monthly monitoring to the pipes which would have prevented any ongoing leaks from going completely undetected.

Justification for Extent of Deviation: violation was determined to be Moderate because the facility did not perform the annual test of the automatic line leak detectors and maintain records of the test, but the facility did provide monthly monitoring of the pressurized pipes complying with part of release detection requirements.

**Part 4 - Violator-Specific Adjustments To Matrix Value**

Inflation Adjustment Matrix Value:  $\$1,500 \times 1.2895$  (inflation adjustment for post March 15, 2004 violations) = \$1,934.00

	% Change (+/-)	MV	Adjustment
11. Degree of cooperation or noncooperation:	0%	\$1,934.00	\$0.00
12. Degree of willfulness or negligence:	0%	\$1,934.00	\$0.00
13. History of non-compliance:	0%	\$1,934.00	\$0.00
14. Unique factors:	0%	\$1,934.00	\$0.00
15. Adjusted Matrix Value (line 10+ Lines 12 to 15):		\$1,934.00	

Justification for Degree of Cooperation/ Noncooperation: No adjustment was made.  
 Justification for Degree of Willfulness or Negligence: No adjustment was made.  
 Justification for History of Noncompliance: No adjustment was made.  
 Justification for Unique Factors: No adjustment was made.

**Part 5 - Gravity-Based Component**

- 16. Environmental Sensitivity: moderate
- 17. Environmental Sensitivity Multiplier (ESM) 1.5
- 18. Days of Noncompliance Multiplier (DNM) 2.5

Justification for Environmental Sensitivity Multiplier: The facility is above a ground water aquifer that is used for drinking water.

**Calculations for Gravity Based Components (GBC):**

	GBC	=	(MV)	(ESM)	(DNM)
		=	\$1,934.00	1.5	2.5
19.		=	\$7,253.44		
20.	Economic Benefit (from line 8):				\$114.00
21.	Gravity-Based Component (from line 19):				\$7,253.44
22.	Initial Penalty Target Figure (lines 20 plus line 21):				<b>\$7,367.44</b>

end of count-5

**Count 6 – Failure to Conduct Annual Tests of the Automatic Line Leak Detectors and to Maintain and Provide for Inspection Records of the Tests for MMM #10, 143 Riverside Drive, Johnson City, New York.**

- 1. Dates of noncompliance: 25-Jan-06 24-Jan-07
- 2. Total Days: 365
- 3. Number of MLLDs: 3

**Part 2 - Economic Benefit Component**

- 4. One Time Capital & Time Costs: \$0.00 See BEN computer model v. 4.3
- 5. Delay Capital & Avoided Costs: \$0.00 See BEN computer model v. 4.3
- 6. Avoided Annually Recurring Costs: \$86.00 See BEN computer model v. 4.3
- 7. Initial Economic Benefit (4-5+6): \$86.00 See BEN computer model v. 4.3
- 8. Final Economic Benefit: \$114.00 See BEN computer model v. 4.3  
at Penalty Payment Date

**Part 3 - Matrix Value For The Gravity-Based Component**

- 9. Matrix Value (MV): \$500.00
- 10. Per-tank MV (line 3 times line 9): \$1,500.00

Justification for Potential for Harm: violation was determined to be Moderate because annual testing of ALLDs to ensure that they function properly is necessary to detect catastrophic leaks of 3.0 gallons per hour or greater (which then results in the shut down of pumping operations in the case a catastrophic leak is detected) and Respondent was not performing this test. However, Respondent was providing monthly monitoring to the pipes which would have prevented any ongoing leaks from going completely undetected.

Justification for Extent of Deviation: violation was determined to be Moderate because the facility did not perform the annual test of the automatic line leak detectors and maintain records of the test, but the facility did provide monthly monitoring of the pressurized pipes complying with part of release detection requirements.

**Part 4 - Violator-Specific Adjustments To Matrix Value**

Inflation Adjustment Matrix Value:  $\$1,500 \times 1.2895$  (inflation adjustment for post March 15, 2004 violations) = \$1,934.25

	% Change (+/-)	MV	Adjustment
11. Degree of cooperation or noncooperation:	0%	\$1,934.25	\$0.00
12. Degree of willfulness or negligence:	0%	\$1,934.25	\$0.00
13. History of non-compliance:	0%	\$1,934.25	\$0.00
14. Unique factors:	0%	\$1,934.25	\$0.00
15. Adjusted Matrix Value (line 10+ Lines 12 to 15):	\$1,934.25		

Justification for Degree of Cooperation/ Noncooperation: No adjustment was made.  
 Justification for Degree of Willfulness or Negligence: No adjustment was made.  
 Justification for History of Noncompliance: No adjustment was made.  
 Justification for Unique Factors: Based on information presently available to EPA, no adjustment was made.

**Part 5 - Gravity-Based Component**

- 16. Environmental Sensitivity: moderate
- 17. Environmental Sensitivity Multiplier (ESM) 1.5
- 18. Days of Noncompliance Multiplier (DNM) 2.5

Justification for Environmental Sensitivity Multiplier: The facility is above a ground water aquifer that is used for drinking water.

Calculations for Gravity Based Components (GBC):

	GBC	=	(MV)	(ESM)	(DNM)
		=	\$1,934.25	1.5	2.5
19.		=	\$7,253.44		
20.	Economic Benefit (from line 8):				\$114.00
21.	Gravity-Based Component (from line 19):				\$7,253.44
22.	Initial Penalty Target Figure (lines 20 plus line 21):				<b>\$7,367.44</b>

end of count- 6

**Count 7 – Failure to Conduct Annual Tests of the Automatic Line Leak Detectors and to Maintain and Provide for Inspection Records of the Tests for MMM #11, 3225 East Main Street, Endwell, New York.**

- 1. Dates of noncompliance: 1-Feb-06 31-Jan-07
- 2. Total Days: 365
- 3. Number of MLLDs: 3

**Part 2 - Economic Benefit Component**

- 4. One Time Capital & Time Costs: \$0.00 See BEN computer model v. 4.3
- 5. Delay Capital & Avoided Costs: \$0.00 See BEN computer model v. 4.3
- 6. Avoided Annually Recurring Costs: \$86.00 See BEN computer model v. 4.3
- 7. Initial Economic Benefit (4-5+6): \$86.00 See BEN computer model v. 4.3
- 8. Final Economic Benefit: \$114.00 See BEN computer model v. 4.3  
at Penalty Payment Date

**Part 3 - Matrix Value For The Gravity-Based Component**

- 9. Matrix Value (MV): \$500.00
- 10. Per-tank MV (line 3 times line 9): \$1,500.00

Justification for Potential for Harm: violation was determined to be Moderate because annual testing of ALLDs to ensure that they function properly is necessary to detect catastrophic leaks of 3.0 gallons per hour or greater (which then results in the shut down of pumping operations in the case a catastrophic leak is detected) and Respondent was not performing this test. However, Respondent was providing monthly monitoring to the pipes which would have prevented any ongoing leaks from going completely undetected.

Justification for Extent of Deviation: violation was determined to be Moderate because the facility did not perform the annual test of the automatic line leak detectors and maintain records of the test, but the facility did provide monthly monitoring of the pressurized pipes complying with part of release detection requirements.

**Part 4 - Violator-Specific Adjustments To Matrix Value**

Inflation Adjustment Matrix Value:  $\$1,500 \times 1.2895$  (inflation adjustment for post March 15, 2004 violations) = \$1,934.00

	% Change (+/-)	MV	Adjustment
11. Degree of cooperation or noncooperation:	0%	\$1,934.00	\$0.00
12. Degree of willfulness or negligence:	0%	\$1,934.00	\$0.00
13. History of non-compliance:	0%	\$1,934.00	\$0.00
14. Unique factors:	0%	\$1,934.00	\$0.00
15. Adjusted Matrix Value (line 10+ Lines 12 to 15):		\$1,934.00	



Justification for Degree of Cooperation/ Noncooperation: No adjustment was made.  
 Justification for Degree of Willfulness or Negligence: No adjustment was made.  
 Justification for History of Noncompliance: No adjustment was made.  
 Justification for Unique Factors: Based on information presently available to EPA, no adjustment was made.

**Part 5 - Gravity-Based Component**

- 16. Environmental Sensitivity: moderate
- 17. Environmental Sensitivity Multiplier (ESM) 1.5
- 18. Days of Noncompliance Multiplier (DNM) 2.5

Justification for Environmental Sensitivity Multiplier: The facility is above a ground water aquifer that is used for drinking water.

**Calculations for Gravity Based Components (GBC):**

	GBC	=	(MV)	(ESM)	(DNM)
		=	\$1,934.00	1.5	2.5
19.		=	\$7,253.44		
20.	Economic Benefit (from line 8):				\$114.00
21.	Gravity-Based Component (from line 19):				\$7,253.44
22.	Initial Penalty Target Figure (lines 20 plus line 21):				<b>\$7,367.44</b>

end of count- 7

**Count 8 – Failure to Conduct Annual Tests of the Automatic Line Leak Detectors and to Maintain and Provide for Inspection Records of the Tests for MMM #13, 150-156 Conklin Avenue, Binghamton, New York.**

- 1. Dates of noncompliance: 18-Jan-06 17-Jan-07
- 2. Total Days: 365
- 3. Number of MLLDs: 4

**Part 2 - Economic Benefit Component**

- 4. One Time Capital & Time Costs: \$0.00 See BEN computer model v. 4.3
- 5. Delay Capital & Avoided Costs: \$0.00 See BEN computer model v. 4.3
- 6. Avoided Annually Recurring Costs: \$115.00 See BEN computer model v. 4.3
- 7. Initial Economic Benefit (4-5+6): \$115.00 See BEN computer model v. 4.3
- 8. Final Economic Benefit: \$151.00 See BEN computer model v. 4.3  
at Penalty Payment Date

**Part 3 - Matrix Value For The Gravity-Based Component**

- 9. Matrix Value (MV): \$500.00
- 10. Per-tank MV (line 3 times line 9): \$2,000.00

Justification for Potential for Harm: violation was determined to be Moderate because annual testing of ALLDs to ensure that they function properly is necessary to detect catastrophic leaks of 3.0 gallons per hour or greater (which then results in the shut down of pumping operations in the case a catastrophic leak is detected) and Respondent was not performing this test. However, Respondent was providing monthly monitoring to the pipes which would have prevented any ongoing leaks from going completely undetected.

Justification for Extent of Deviation: violation was determined to be Moderate because the facility did not perform the annual test of the automatic line leak detectors and maintain records of the test, but the facility did provide monthly monitoring of the pressurized pipes complying with part of release detection requirements.

**Part 4 - Violator-Specific Adjustments To Matrix Value**

Inflation Adjustment Matrix Value:  $\$2,000 \times 1.2895$  (inflation adjustment for post March 15, 2004 violations) = \$2,579.00

	% Change (+/-)	MV	Adjustment
11. Degree of cooperation or noncooperation:	0%	\$2,579.00	\$0.00
12. Degree of willfulness or negligence:	0%	\$2,579.00	\$0.00
13. History of non-compliance:	0%	\$2,579.00	\$0.00
14. Unique factors:	0%	\$2,579.00	\$0.00
15. Adjusted Matrix Value (line 10+ Lines 12 to 15):		\$2,579.00	

Justification for Degree of Cooperation/ Noncooperation: No adjustment was made.  
 Justification for Degree of Willfulness or Negligence: No adjustment was made.  
 Justification for History of Noncompliance: No adjustment was made.  
 Justification for Unique Factors: No adjustment was made.

**Part 5 - Gravity-Based Component**

16. Environmental Sensitivity:	moderate
17. Environmental Sensitivity Multiplier (ESM)	1.5
18. Days of Noncompliance Multiplier (DNM)	2.5

Justification for Environmental Sensitivity Multiplier: The facility is above a ground water aquifer that is used for drinking water.

**Calculations for Gravity Based Components (GBC):**

	GBC	=	(MV)	(ESM)	(DNM)
		=	\$2,579.00	1.5	2.5
19.		=	\$9,671.25		
20.	Economic Benefit (from line 8):				\$151.00
21.	Gravity-Based Component (from line 19):				\$9,671.25
22.	Initial Penalty Target Figure (lines 20 plus line 21):				<b>\$9,822.25</b>

end of count- 8



Justification for Degree of Cooperation/ Noncooperation: No adjustment was made.  
 Justification for Degree of Willfulness or Negligence: No adjustment was made.  
 Justification for History of Noncompliance: No adjustment was made.  
 Justification for Unique Factors: No adjustment was made.

**Part 5 - Gravity-Based Component**

- 16. Environmental Sensitivity: moderate
- 17. Environmental Sensitivity Multiplier (ESM) 1.5
- 18. Days of Noncompliance Multiplier (DNM) 2.5

Justification for Environmental Sensitivity Multiplier: The facility is above a ground water aquifer that is used for drinking water.

**Calculations for Gravity Based Components (GBC):**

	GBC	=	(MV)	(ESM)	(DNM)
		=	\$3,868.50	1.5	2.5
19.		=	\$14,506.88		
20.	Economic Benefit (from line 8):				\$ 76.00
21.	Gravity-Based Component (from line 19):				\$14,506.88
22.	Initial Penalty Target Figure (lines 20 plus line 21):				<b>\$14,582.88</b>

end of count- 9

**Count 10 – Failure to Conduct Annual Line Tightness Test or Monthly Monitoring for Pressurized Pipe and Failure to Maintain and Provide for Inspection Records of the Test or Monthly Monitoring for MMM #14, 2965 NYS Route 26, Glen Aubrey, New York.**

- 1. Dates of noncompliance: 09-Nov-06 19-Nov-07
- 2. Total Days: 365
- 3. Number of Pipes: 1

**Part 2 - Economic Benefit Component**

- 4. One Time Capital & Time Costs: \$0.00 See BEN computer model v. 4.3
- 5. Delay Capital & Avoided Costs: \$0.00 See BEN computer model v. 4.3
- 6. Avoided Annually Recurring Costs: \$90.00 See BEN computer model v. 4.3
- 7. Initial Economic Benefit (4-5+6): \$90.00 See BEN computer model v. 4.3
- 8. Final Economic Benefit: \$91.00 See BEN computer model v. 4.3  
at Penalty Payment Date

**Part 3 - Matrix Value For The Gravity-Based Component**

- 9. Matrix Value (MV): \$1,500.00
- 10. Per-tank MV (line 3 times line 9): \$1,500.00

Potential for Harm: Major

Extent of Deviation: Major

Justification for Potential for Harm: The Potential for Harm for this violation was determined to be Major because a majority of leaks from UST systems come from pipes and Respondent failed to test at least one of its two pressurized pipes. Respondent had not performed an annual line tightness test at the time of the EPA inspection in November 2006 and did not perform such a test until November 20, 2007. In addition, one of Respondent's sump sensors was not working for over one year, and Respondent was not conducting monthly monitoring. Had there been a leak prior to November 20, 2007, and/or during the period when Respondent's sump sensor was inoperable, Respondent did not have an adequate system in place to detect it. Such a failure to test and monitor could lead to a failure to detect and respond to a release to the environment which poses a substantial risk of harm since such a release may go unnoticed for a lengthy period of time. Failure to maintain and provide the required release detection records also has a substantial adverse effect on the regulatory program as it is often the only way for the regulatory agencies to ensure that release detection has been adequately performed. (There were several months during the time period of this alleged violation in which Respondent had not performed the automatic line leak detector test, which might have otherwise mitigated somewhat the potential for harm from this violation.)

Justification for Extent of Deviation: Respondent was required but failed to provide either line tightness testing or monthly monitoring. Respondent failed to test at least one of its pipes and failed to provide monthly monitoring for over a year, long after EPA's November 2006 inspection.

**Part 4 - Violator-Specific Adjustments To Matrix Value**

Inflation Adjustment Matrix Value: \$1,500 x 1.2895 (inflation adjustment for post March 15, 2004 violations) = \$1,934.25

	% Change (+/-)	MV	Adjustment
11. Degree of cooperation or noncooperation:	0%	\$1,934.25	\$0.00
12. Degree of willfulness or negligence:	0%	\$1,934.25	\$0.00
13. History of non-compliance:	0%	\$1,934.25	\$0.00
14. Unique factors:	0%	\$1,934.25	\$0.00
15. Adjusted Matrix Value (line 10+ Lines 12 to 15):		\$1,934.25	

Justification for Degree of Cooperation/ Noncooperation: No adjustment was made.  
 Justification for Degree of Willfulness or Negligence: No adjustment was made.  
 Justification for History of Noncompliance: No adjustment was made.  
 Justification for Unique Factors: No adjustment was made.

**Part 5 - Gravity-Based Component**

16. Environmental Sensitivity:	moderate
17. Environmental Sensitivity Multiplier (ESM)	1.5
18. Days of Noncompliance Multiplier (DNM)	2.5

Justification for Environmental Sensitivity Multiplier: The facility is located above an aquifer that is used for drinking water.

**Calculations for Gravity Based Components (GBC) with Inflation Adjustments:**

	GBC	=	(MV)	(ESM)	(DNM)
		=	\$1,934.25	1.5	2.5
19.		=	\$7,253.44		
20.	Economic Benefit (from line 7):				\$91.00
21.	Gravity-Based Component (from line 19):				\$7,253.44
22.	Initial Penalty Target Figure (lines 20 plus line 21):				<b>\$7,344.44</b>

end of count-10

**Count 11 – Failure to Conduct Annual Tests of the Automatic Line Leak Detectors and to Maintain and Provide for Inspection Records of the Tests for MMM #15, 77 Main Street, Binghamton, New York.**

- 1. Dates of noncompliance: 21-Nov-06 20-Nov-07
- 2. Total Days: 365
- 3. Number of MLLDs: 3

**Part 2 - Economic Benefit Component**

- 4. One Time Capital & Time Costs: \$0.00 See BEN computer model v. 4.3
- 5. Delay Capital & Avoided Costs: \$0.00 See BEN computer model v. 4.3
- 6. Avoided Annually Recurring Costs: \$58.00 See BEN computer model v. 4.3
- 7. Initial Economic Benefit (4-5+6): \$58.00 See BEN computer model v. 4.3
- 8. Final Economic Benefit: \$76.00 See BEN computer model v. 4.3  
at Penalty Payment Date

**Part 3 - Matrix Value For The Gravity-Based Component**

- 9. Matrix Value (MV): \$500.00
- 10. Per-tank MV (line 3 times line 9): \$1,500.00

Justification for Potential for Harm: violation was determined to be Moderate because annual testing of ALLDs to ensure that they function properly is necessary to detect catastrophic leaks of 3.0 gallons per hour or greater (which then results in the shut down of pumping operations in the case a catastrophic leak is detected) and Respondent was not performing this test. However, Respondent was providing monthly monitoring to the pipes which would have prevented any ongoing leaks from going completely undetected.

Justification for Extent of Deviation: violation was determined to be Moderate because the facility did not perform the annual test of the automatic line leak detectors and maintain records of the test, but the facility did provide monthly monitoring of the pressurized pipes complying with part of release detection requirements.

**Part 4 - Violator-Specific Adjustments To Matrix Value**

Inflation Adjustment Matrix Value:  $\$1,500 \times 1.2895$  (inflation adjustment for post March 15, 2004 violations) = \$1,934.25

	% Change (+/-)	MV	Adjustment
11. Degree of cooperation or noncooperation:	0%	\$1,934.25	\$0.00
12. Degree of willfulness or negligence:	0%	\$1,934.25	\$0.00
13. History of non-compliance:	0%	\$1,934.25	\$0.00
14. Unique factors:	0%	\$1,934.25	\$0.00
15. Adjusted Matrix Value (line 10+ Lines 12 to 15):		\$1,934.25	



Justification for Degree of Cooperation/ Noncooperation: No adjustment was made.  
 Justification for Degree of Willfulness or Negligence: No adjustment was made.  
 Justification for History of Noncompliance: No adjustment was made.  
 Justification for Unique Factors: No adjustment was made.

**Part 5 - Gravity-Based Component**

- 16. Environmental Sensitivity: moderate
- 17. Environmental Sensitivity Multiplier (ESM) 1.5
- 18. Days of Noncompliance Multiplier (DNM) 2.5

Justification for Environmental Sensitivity Multiplier: The facility is above a ground water aquifer that is used for drinking water.

**Calculations for Gravity Based Components (GBC):**

	GBC	=	(MV)	(ESM)	(DNM)
		=	\$1,934.25	1.5	2.5
19.		=	\$7,253.44		
20.	Economic Benefit (from line 8):				\$76.00
21.	Gravity-Based Component (from line 22):				\$7,253.44
22.	Initial Penalty Target Figure (lines 23 plus line 24):				<b>\$7,329.44</b>

end of count-11

**Count 12 –Failure to Conduct Annual Tests of the Automatic Line Leak Detectors and to Maintain and Provide for Inspection Records of the Tests for MMM #17, 215 Clinton Street, Binghamton, New York.**

- 1. Dates of noncompliance: 23-Feb-06 22-Feb-07
- 2. Total Days: 365
- 3. Number of MLLDs: 3

**Part 2 - Economic Benefit Component**

- 4. One Time Capital & Time Costs: \$0.00 See BEN computer model v. 4.3
- 5. Delay Capital & Avoided Costs: \$0.00 See BEN computer model v. 4.3
- 6. Avoided Annually Recurring Costs: \$86.00 See BEN computer model v. 4.3
- 7. Initial Economic Benefit (4-5+6): \$86.00 See BEN computer model v. 4.3
- 8. Final Economic Benefit: \$114.00 See BEN computer model v. 4.3  
at Penalty Payment Date

**Part 3 - Matrix Value For The Gravity-Based Component**

- 9. Matrix Value (MV): \$500.00
- 10. Per-tank MV (line 3 times line 9): \$1,500.00

Justification for Potential for Harm: violation was determined to be Moderate because annual testing of ALLDs to ensure that they function properly is necessary to detect catastrophic leaks of 3.0 gallons per hour or greater (which then results in the shut down of pumping operations in the case a catastrophic leak is detected) and Respondent was not performing this test. However, Respondent was providing monthly monitoring to the pipes which would have prevented any ongoing leaks from going completely undetected.

Justification for Extent of Deviation: violation was determined to be Moderate because the facility did not perform the annual test of the automatic line leak detectors and maintain records of the test, but the facility did provide monthly monitoring of the pressurized pipes complying with part of release detection requirements.

**Part 4 - Violator-Specific Adjustments To Matrix Value**

Inflation Adjustment Matrix Value:  $\$1,500 \times 1.2895$  (inflation adjustment for post March 15, 2004 violations) = \$1,934.25

	% Change (+/-)	MV	Adjustment
11. Degree of cooperation or noncooperation:	0%	\$1,934.25	\$0.00
12. Degree of willfulness or negligence:	0%	\$1,934.25	\$0.00
13. History of non-compliance:	0%	\$1,934.25	\$0.00
14. Unique factors:	0%	\$1,934.25	\$0.00
15. Adjusted Matrix Value (line 10+ Lines 12 to 15):		\$1,934.25	

Justification for Degree of Cooperation/ Noncooperation: No adjustment was made.  
 Justification for Degree of Willfulness or Negligence: No adjustment was made.  
 Justification for History of Noncompliance: No adjustment was made.  
 Justification for Unique Factors: No adjustment was made.

**Part 5 - Gravity-Based Component**

- 16. Environmental Sensitivity: moderate
- 17. Environmental Sensitivity Multiplier (ESM) 1.5
- 18. Days of Noncompliance Multiplier (DNM) 2.5

Justification for Environmental Sensitivity Multiplier: The facility is above a ground water aquifer that is used for drinking water.

Calculations for Gravity Based Components (GBC):

	GBC	=	(MV)	(ESM)	(DNM)
		=	\$1,934.25	1.5	2.5
19.		=	\$7,253.44		
20.	Economic Benefit (from line 8):				\$114.00
21.	Gravity-Based Component (from line 19):				\$7,253.44
22.	Initial Penalty Target Figure (lines 20 plus line 21):				<b>\$7,367.44</b>

end of count-12