

I. INTRODUCTION

This Administrative Complaint and Notice of Opportunity for Hearing ("Complaint") is issued by the United States Environmental Protection Agency ("EPA" or "Complainant"), pursuant to Section 9006 of the Solid Waste Disposal Act, commonly referred to as the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984 (collectively referred to hereafter as "RCRA"), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22.

EPA hereby notifies Chester Aytch and 5631 Corporation (collectively referred to as "Respondents") that EPA has determined that Respondents have violated certain provisions of Subtitle I of RCRA, 42 U.S.C. §§ 6991-6991*m*, and the Pennsylvania state underground storage tank ("UST") program, as authorized by EPA pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991*c*. Section 9006(a)-(d) of RCRA, 42 U.S.C. § 6991*e*(a)-(d) authorizes EPA to take an enforcement action whenever it is determined that a person is in violation of any requirement of RCRA Subtitle I, EPA's regulations thereunder, or any regulation of a state underground storage tank program which has been authorized by EPA. Under Section 9006(d) of RCRA, 42 U.S.C. § 6991*e*(d), EPA may assess a civil penalty against any person who, among other things, violates any requirement of the applicable federal or state UST program.

Effective September 11, 2003, pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991*c*, and 40 C.F.R. Part 281, Subpart A, the Commonwealth of Pennsylvania was granted final

authorization to administer a state UST management program *in lieu* of the Federal underground storage tank management program established under Subtitle I of RCRA. The provisions of the Pennsylvania UST management program, through this final authorization, are enforceable by EPA pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e.

The Pennsylvania authorized UST program regulations are set forth in Chapter 245 of Title 25 of the Pennsylvania Code, and will be cited herein as 25 PA Code §§ 245.1 *et seq.*

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

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. 58TH STREET SUNOCO

COUNT 1

1. Respondents 5631 Corporation (“5631”) and Chester Aytch (“Aytch”) are each a “person” as defined in Section 9001 of RCRA, 42 U.S.C. § 6991, and 25 PA Code § 245.1.
2. From at least five years prior to the date of this Complaint until at least the date of this Complaint, Respondent 5631 has been the “owner” and/or “operator,” as those terms are defined in Section 9001 of RCRA, 42 U.S.C. § 6991, and 25 PA Code § 245.1, of five “USTs” and “UST systems,” as those terms are defined in Section 9001 of RCRA, 42 U.S.C. § 6991, and 25 PA Code § 245.1, located at the 58th Street Sunoco, 5744 Woodland Avenue, Philadelphia, Pennsylvania, (“58th Street Sunoco Facility”). The USTs and UST systems at the 58th Street Sunoco were installed during 1987, and are thus “existing tank systems” as that term is defined at 25 PA Code § 245.1. The USTs at the 58th Street Sunoco Facility include the following:

- a. Three 8,000-gallon USTs (referred to herein as "Tanks 58-1, 58-2 and 58-3");
- b. One 10,000-gallon UST (referred to herein as "Tank 58-4"); and
- c. One 1,000-gallon UST (referred to herein as "Tank 58-5").

3. From at least five years prior to the date of this Complaint until at least August 1, 2008, Respondent Aytch was an "operator," as that term is defined in Section 9001 of RCRA, 42 U.S.C. § 6991, and 25 PA Code § 245.1, of the five "USTs" and "UST systems described in Paragraph 2, above.

4. At all times relevant to the violations alleged in this Complaint, Tanks 58-1, 58-2, and 58-3 have been used to store gasoline, which is a petroleum product and is a "regulated substance," as that term is defined in Section 9001 of RCRA, 42 U.S.C. § 6991, and 25 PA Code § 245.1.

5. At all times relevant to the violations alleged in this Complaint, Tank 58-4 has been used to store kerosene, which is a petroleum product and is a "regulated substance, as that term is defined in Section 9001 of RCRA, 42 U.S.C. § 6991, and 25 PA Code § 245.1.

6. At all times relevant to the violations alleged in this Complaint, Tank 58-5 has been used to store used motor oil, which is a petroleum product and is a "regulated substance," as that term is defined in Section 9001 of RCRA, 42 U.S.C. § 6991, and 25 PA Code § 245.1.

7. At all times relevant to the violations alleged in this Complaint, Tanks 58-1, 58-2, 58-3, 58-4 and 58-5 have each been part of a "petroleum UST system" as that term is defined in 25 PA Code § 245.1.

8. Pursuant to 25 PA Code § 245.441(a), owners and operators of new and existing USTs and UST systems must provide a method or combination of methods of release detection monitoring that meets the requirements described in that section. Release detection is required unless the UST system is “empty,” which is defined in 25 PA Code § 245.451(a) as when all materials have been removed using commonly employed practices so that no more than 2.5 centimeters or one inch of residue, or 0.3 percent by weight of the total capacity remains in the system.

9. At all times relevant to the violations alleged in this Count. Tanks 58-1, 58-2, 58-3, 58-4 and 58-5 routinely contained greater than 1 inch of regulated substances and 0.3 percent by weight of the total capacity, and thus were not “empty” as defined in 25 PA Code § 245.451(a).

10. Pursuant to 25 PA Code § 245.442, tanks which are part of a petroleum UST system must be monitored at least every 30 days for releases using one of the methods listed in 25 PA Code § 245.444(4) through (9), except that 25 PA Code § 245.442(1)(i) through (iv) provides exceptions which, in certain circumstances, allow alternative methods of release detection, including, in relevant part, 25 PA Code § 245.442(2)(iv), which allows tanks with a capacity of 1,000 gallons or less to be monitored using manual tank gauging in accordance with 25 PA Code § 245.444(3).

11. Tanks 58-1, 58-2, 58-3 and 58-4 have not, at any time relevant to the violations alleged in this Complaint, met the standards for eligibility for any of the alternative methods of tank release detection set forth in 25 PA Code § 245.442(1)(i), (ii), (iii) or (iv). Tank 58-5 has not, at any time relevant to the violations alleged in this Complaint, met the standards for eligibility for

any of the alternative methods of tank release detection set forth in 25 PA Code § 245.442(1)(i), (ii), or (iii).

12. From at least five years prior to the date of this Complaint until at least October 30, 2007, Tanks 58-1, 58-2, 58-3 and 58-4 were not monitored in compliance with any of the methods set forth in 25 PA Code § 245.444(4) through (9).

13. Beginning on June 1, 2007, Respondents performed on Tanks 58-1, 58-2, 58-3 and 58-4 some of the readings necessary to conduct statistical inventory reconciliation ("SIR") as set forth in 25 PA Code § 245.444(8), but did not properly comply with 25 PA Code § 245.444(8) because reports were not available to Respondents within 20 days of the end of the monitoring period, as required by 25 PA Code § 245.444(8)(ii)(A). Respondents did not begin conducting SIR with timely reporting until at least October 30, 2007.

14. Tank 58-5 may have been eligible for the exception in 25 PA Code § 245.442(1)(iv). However, from at least five years prior to the date of this Complaint until at least August 1, 2008, Respondents did not properly perform manual tank gauging, the alternative method referenced in 25 PA Code § 245.442(1)(iv).

15. From at least five years prior to the date of this Complaint until at least August 1, 2008, Tank 58-5 was not monitored in compliance with any of the methods set forth in 25 PA Code § 245.444(4) through (9).

16. From at least five years prior to the date of this Complaint until at least October 30, 2007, Respondents violated 25 PA Code §§ 245.441(a) and 245.442 by failing to provide a method or methods of tank release detection for the UST systems designated as Tanks 58-1, 58-

2, 58-3 and 58-4 at the 58th Street Sunoco Facility which meets the requirements referenced in such regulations.

17. From at least five years prior to the date of this Complaint until at least August 1, 2008, Respondents violated 25 PA Code §§ 245.441(a) and 245.442 by failing to provide a method or methods of tank release detection for the UST system designated as Tank 58-5 at the 58th Street Sunoco Facility which meets the requirements referenced in such regulations.

COUNT 2

18. The allegations of Paragraphs 1 through 17 of this Complaint are incorporated herein by reference.

19. Pursuant to 25 PA Code § 245.442(2)(i)(B), underground piping which is part of a petroleum UST system and that routinely contains regulated substances, and conveys regulated substances under pressure, must have an annual line tightness test conducted in accordance with 25 PA Code § 245.445(2), or have monthly monitoring conducted in accordance with 25 PA Code § 245.445(3), which in turn allows the use of the monthly monitoring methods set forth in 25 PA Code § 245.444(5) through (9), so long as the method used is designed to detect a release from any portion of the underground piping that routinely contains regulated substances.

20. At all times relevant to the violations set forth in this Count the underground piping associated with Tanks 58-1, 58-2 and 58-4 routinely contained regulated substances and conveyed regulated substances under pressure.

21. Line tightness testing was performed on the underground piping associated with Tanks 58-1, 58-2 and 58-4 on September 24, 2003. Line tightness testing on the piping associated with

these USTs was not again performed until September 7, 2005, more than one year after the previous such testing. Subsequent to the September 7, 2005 testing, line tightness testing on the piping associated with these USTs was not again performed until October 2, 2007, more than one year after the previous such testing.

22. From at least five years prior to the date of this Complaint until at least October 30, 2007, the underground piping associated with Tanks 58-1, 58-2 and 58-4 was not monitored in compliance with any of the methods set forth in 25 PA Code § 245.444(5) through (9). Beginning on June 1, 2007, Respondents performed some of the readings necessary to conduct SIR for piping, as set forth in 25 PA Code § 245.444(8), but did not properly comply with 25 PA Code § 245.444(8) because reports were not available to Respondents within 20 days of the end of the monitoring period, as required by 25 PA Code § 245.444(8)(ii)(A). Respondents did not begin conducting SIR with timely reporting until at least October 30, 2007.

23. From at least five years prior to the date of this Complaint until September 7, 2005; and from September 7, 2006 (one year after the previous testing) until at least October 2, 2007, Respondents violated 25 PA Code §§ 245.442(2)(i)(B) by failing to provide a method or methods of release detection for the underground piping associated with Tanks 58-1, 58-2 and 58-4 at the 58th Street Sunoco Facility which meets the requirements referenced in such regulation.

COUNT 3

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

25. Pursuant to 25 PA Code § 245.442(2)(i)(A), underground piping which is part of a petroleum UST system and that routinely contains regulated substances, and conveys regulated substances under pressure, must be equipped with an automatic line leak detector, in accordance with 25 PA Code § 245.445(1). Pursuant to 25 PA Code § 245.445(1), the operation of the automatic line leak detector must be tested annually in accordance with the manufacturer's instructions.

26. Operational testing of the line leak detectors for the underground piping associated with Tanks 58-1, 58-2 and 58-4 was performed on September 24, 2003. Operational testing of such line leak detectors was not again performed until September 7, 2005, more than one year after the previous such testing. Subsequent to the September 7, 2005 testing, operational testing of the line leak detectors for the underground piping associated with Tanks 58-1 and 58-2 was not again performed until October 2, 2007, more than one year after the previous such testing. Subsequent to the September 7, 2005 testing, operational testing of the line leak detector for the underground piping associated with Tank 58-4 was not again performed until some time after August 1, 2008, more than one year after the previous such testing.

27. From at least five years prior to the date of this Complaint until September 7, 2005 and from September 7, 2006 until at least October 22, 2007, Respondents violated 25 PA Code §§ 245.442(2)(i)(A) and 245.445(1) by failing to conduct operational testing of the line leak detectors for the underground piping associated with Tanks 58-1 and 58-2 at the 58th Street Sunoco Facility. From at least five years prior to the date of this Complaint until September 7, 2005 and from September 7, 2006 until at least August 1, 2008. Respondents violated 25 PA

Code §§ 245.442(2)(ii)(A) and 245.445(1) by failing to conduct operational testing of the line leak detector for the underground piping associated with Tank 58-4 at the 58th Street Sunoco Facility.

COUNT 4

28. The allegations of Paragraphs 1 through 27 of this Complaint are incorporated herein by reference.

29. Pursuant to 25 PA Code § 245.422(a), owners and operators of existing UST systems must, no later than December 22, 1998, comply with either (a) the new UST system performance standards set forth in 25 PA Code § 245.421, (b) the upgrade requirements set forth in 25 PA Code § 245.422(b) through (d), or (3) the closure requirements under 25 PA Code §§ 245.451 through 245.455.

30. The underground piping associated with Tanks 58-1, 58-2 and 58-4 has never been closed in accordance with the closure requirements under 25 PA Code §§ 245.451 through 245.455.

31. Pursuant to the new UST system standards in 25 PA Code § 245.421(2), piping that routinely contains regulated substances, and is in contact with the ground, must be protected from corrosion through one of the methods set forth in 25 PA Code § 245.421(2)(i) through (iii). Piping may be constructed of fiberglass-reinforced plastic or other noncorrodible material pursuant to 25 PA Code § 245.421(2)(i), may be constructed of steel and cathodically protected pursuant to 25 PA Code § 245.421(2)(ii), or may be constructed of metal without additional corrosion protection, pursuant to 25 PA Code § 245.421(2)(iii). In order to comply with 25 PA

Code § 245.421(2)(ii), a cathodic protection system protecting steel piping must, in relevant part, be operated and maintained in accordance with 25 PA Code § 245.432, including, in relevant part, 25 PA Code § 245.432(2)(i) which requires that cathodic protection systems be tested within 6 months after installation and at least every three years thereafter. In order to comply with 25 PA Code § 245.421(2)(iii), a corrosion expert must make a determination that the piping is installed at a site which is not corrosive enough to cause it to have a release due to corrosion during its operating life. Alternatively, pursuant to the upgrade requirements in 25 PA Code § 245.422(c), metal piping and fittings that routinely contain regulated substances and are in contact with the ground must either be replaced with piping which meet the standards for new piping in 25 PA Code § 245.421(2)(i) or (ii); cathodically protected in accordance with, in relevant part, 25 PA Code § 245.421(2)(ii)(B) through (D), which includes the requirement to comply with 25 PA Code § 245.432, including the testing requirements of 25 PA Code § 245.432(2)(i); or installed at a site where a corrosion expert has made the findings set forth in 25 PA Code § 245.421(2)(iii).

32. The underground piping associated with Tanks 58-1, 58-2 and 58-4 includes metal fittings which, at all times relevant to the violations alleged herein, were in contact with the ground and routinely contained regulated substances. These metal pipe fittings are not constructed of fiberglass-reinforced plastic or other noncorrodible material, and the site where this piping is installed has never been determined by a corrosion expert to be not corrosive enough to cause it to have a release due to corrosion during the operating life of the piping. The metal pipe fittings are cathodically protected by a system of sacrificial anodes.

33. The cathodic protection system for the metal fittings on the underground piping associated with Tanks 58-1, 58-2 and 58-4 was not tested within 6 months after installation, or at any time until May 22, 2008.

34. From at least five years prior to the date of this Complaint until May 22, 2008, Respondents violated 25 PA Code §§ 245.422(a) and 245.432(2)(i) by failing to provide corrosion protection consistent with the requirements of any of the alternatives set in 25 PA Code § 245.422(a) and the regulations referenced therein, and, specifically, by failing to test, within 6 months after installation or every three years thereafter, the cathodic protection system for the metal fittings on the underground piping associated with Tanks 58-1, 58-2 and 58-4 at the 58th Street Sunoco Facility.

COUNT 5

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

36. Pursuant to 25 PA Code § 245.421(3)(i)(A), new UST systems must be equipped with spill prevention equipment that will prevent release of product into the environment when the transfer hose is detached from the fill pipe. Pursuant to 25 PA Code § 245.422(d), existing UST systems must be upgraded to comply with the spill prevention requirements in 25 PA Code § 245.421(3).

37. Tank 58-4 was equipped with both a primary and a secondary fill pipe, beginning at least five years prior to the date of this Complaint and continuing until at least August 1, 2008. From

at least five years prior to the date of this Complaint until at least August 1, 2008, the secondary fill pipe was not equipped with spill prevention equipment.

38. From at least five years prior to the date of this Complaint until at least August 1, 2008, Respondents violated 25 PA Code § 245.422(a) by failing to equip the secondary fill pipe for Tank 58-4 at the 58th Street Sunoco Facility with spill prevention equipment that would prevent release of product into the environment when the transfer hose is detached from the fill pipe, in accordance with 25 PA Code §§ 245.421(3)(i)(A) or 245.422(d).

COUNT 6

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

40. Pursuant to 25 PA Code § 245.421(3)(i)(B), new UST systems must be equipped with overfill prevention equipment that will prevent overfilling of the tank as set forth in that section. Pursuant to 25 PA Code § 245.422(d), existing UST systems must be upgraded to comply with the overfill prevention requirements in 25 PA Code § 245.421(3).

41. From at least five years prior to the date of this Complaint until at least August 1, 2008, the secondary fill pipe for Tank 58-4 was not equipped with overfill prevention equipment.

42. From at least five years prior to the date of this Complaint until at least August 1, 2008, Respondents violated 25 PA Code § 245.422(a), by failing to equip the secondary fill pipe for Tank 58-4 at the 58th Street Sunoco Facility with overfill prevention equipment that would prevent release of product into the environment when the transfer hose is detached from the fill pipe, as required by 25 PA Code §§ 245.421(3)(i)(B) and 245.422(d).

B. WOODLAND SUNOCO**COUNT 7**

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

44. From at least five years prior to the date of this Complaint until at least the date of this Complaint, Respondent 5631 has been the "owner" and/or "operator," as those terms are defined in Section 9001 of RCRA, 42 U.S.C. § 6991, and 25 PA Code § 245.1, of three "USTs" and "UST systems," as those terms are defined in Section 9001 of RCRA, 42 U.S.C. § 6991, and 25 PA Code § 245.1, located at the Woodland Sunoco, 5200 Woodland Avenue, Philadelphia, Pennsylvania, ("Woodland Sunoco Facility"). The USTs and UST systems at the Woodland Sunoco were installed during 1987, and are thus "existing tank systems" as that term is defined at 25 PA Code § 245.1. The USTs at the Woodland Sunoco include the following:

- a. Two 8,000-gallon USTs (referred to herein as "Tanks W-1 and W-2"); and
- b. One 10,000-gallon UST (referred to herein as "Tank W-3").

45. From at least five years prior to the date of this Complaint until at least August 1, 2008, Respondent Aytch was an "operator," as that term is defined in Section 9001 of RCRA, 42 U.S.C. § 6991, and 25 PA Code § 245.1, of the three "USTs" and "UST systems" described in Paragraph 44, above.

46. At all times relevant to the violations set forth in this Complaint, Tanks W-1 and W-2 have been used to store gasoline, which is a petroleum product and is a "regulated substance," as that term is defined in Section 9001 of RCRA, 42 U.S.C. § 6991, and 25 PA Code § 245.1.

47. At all times relevant to the violations set forth in this Complaint, Tank W-3 has been used to store kerosene, which is a petroleum product and is a "regulated substance," as that term is defined in Section 9001 of RCRA, 42 U.S.C. § 6991, and 25 PA Code § 245.1.

48. At all times relevant to the violations set forth in this Complaint, Tanks W-1, W-2 and W-3 have each been part of a "petroleum UST system" as that term is defined in 25 PA Code § 245.1.

49. At all times relevant to the violations set forth in this Count, Tanks W-1, W-2 and W-3 routinely contained greater than 1 inch of regulated substances and 0.3 percent by weight of the total capacity, and thus were not "empty" as defined in 25 PA Code § 245.451(a).

50. Tanks W-1, W-2 and W-3 have not, at any time relevant to the violations set forth in this Complaint, met the standards for eligibility for any of the alternative methods of tank release detection as set forth in 25 PA Code § 245.442(1)(i), (ii), (iii) or (iv).

51. From at least five years prior to the date of this Complaint until at least October 30, 2007, Tanks W-1, W-2 and W-3 were not monitored in compliance with any of the methods set forth in 25 PA Code § 245.444(4) through (9).

52. From June 1, 2007 until at least October 30, 2007, Respondents performed some of the readings on Tanks W-1, W-2 and W-3 necessary to conduct statistical inventory reconciliation ("SIR") as set forth in 25 PA Code § 245.444(8), but did not properly comply with 25 PA Code § 245.444(8) because reports were not available to Respondents within 20 days of the end of the monitoring period, as required by 25 PA Code § 245.444(8)(ii)(A).

53. From at least five years prior to the date of this Complaint until at least October 30, 2007, Respondents violated 25 PA Code §§ 245.441(a) and 245.442 by failing to provide a method or methods of tank release detection for the UST systems designated as Tanks W-1, W-2 and W-3 at the Woodland Sunoco Facility which meets the requirements referenced in such regulations.

COUNT 8

54. The allegations of Paragraphs 1 through 53 of this Complaint are incorporated herein by reference.

55. At all times relevant to the violations set forth in this Count the underground piping associated with Tanks W-1, W-2 and W-3 routinely contained regulated substances and conveyed regulated substances under pressure.

56. Line tightness testing was performed on the underground piping associated with Tanks W-1, W-2 and W-3 on June 22, 2000. Line tightness testing was not again performed on the underground piping associated with Tanks W-1, W-2 and W-3 until September 7, 2005, more than one year after the previous such testing. After the September 7, 2005 testing, line tightness testing on the piping associated with Tanks W-1, W-2 and W-3 was not again performed until May 22, 2008, more than one year after the previous such testing.

57. From at least five years prior to the date of this Complaint until at least October 30, 2007, the underground piping associated with Tanks W-1, W-2 and W-3 was not monitored in compliance with any of the methods set forth in 25 PA Code § 245.444(5) through (9).

Beginning on June 1, 2007, Respondents performed some of the readings necessary to conduct

SIR for piping, as set forth in 25 PA Code § 245.444(8), but did not properly comply with 25 PA Code § 245.444(8) because reports were not available to Respondents within 20 days of the end of the monitoring period, as required by 25 PA Code § 245.444(8)(ii)(A). Respondents did not begin conducting SIR with timely reporting until some time after October 30, 2007.

58. From at least five years prior to the date of this Complaint until September 7, 2005 and from September 7, 2006 until at least October 30, 2007, Respondents violated 25 PA Code §§ 245.442(2)(i)(B) by failing to provide a method or methods of release detection for the underground piping associated with Tanks W-1, W-2 and W-3 at the Woodland Sunoco Facility which meets the requirements referenced in such regulation.

COUNT 9

59. The allegations of Paragraphs 1 through 58 of this Complaint are incorporated herein by reference.

60. Operational testing of the line leak detectors for the underground piping associated with Tanks W-1, W-2 and W-3 was performed on June 22, 2000. Operational testing of the line leak detectors for the underground piping associated with Tanks W-1, W-2 and W-3 was not again performed until September 7, 2005, more than one year after the previous such testing. After the September 7, 2005 testing, operational testing of the line leak detectors for the underground piping associated with Tanks W-2 and W-3 was not again performed until May 22, 2008, more than one year after the previous such testing. Operational testing of the line leak detector for the underground piping associated with Tank W-1 was not again performed until June 3, 2008, more than one year after the previous such testing.

61. From at least five years prior to the date of this Complaint until September 7, 2005 and from September 7, 2006 until at least May 22, 2008, Respondents violated 25 PA Code §§ 245.442(2)(i)(A) and 245.445(1) by failing to conduct operational testing of the line leak detectors for the underground piping associated with Tanks W-2 and W-3 at the Woodland Sunoco Facility. From at least five years prior to the date of this Complaint until September 7, 2005 and from September 7, 2006 until at least June 3, 2008, Respondents violated 25 PA Code §§ 245.442(2)(ii)(A) and 245.445(1) by failing to conduct operational testing of the line leak detector for the underground piping associated with Tank W-1 at the Woodland Sunoco Facility.

IV. CIVIL PENALTY

Section 9006(d)(2) of RCRA, 42 U.S.C. § 6991e(d)(2), provides in relevant part that any owner or operator of an underground storage tank who fails to comply with any requirement promulgated under Section 9003 of RCRA, 42 U.S.C. § 6991b, or any requirement or standard of a State program authorized pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c, shall be liable for a civil penalty not to exceed \$10,000 for each tank for each day of violation. Pursuant to the DCIA and the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 61 *Fed. Reg.* 69360 (December 31, 1996), codified at 40 C.F.R. Part 19, violations which occur subsequent to January 30, 1997 are subject to a statutory maximum penalty of \$11,000 per violation per day. Pursuant to the DCIA and the Civil Monetary Penalty Inflation Adjustment Rule, 73 *Fed. Reg.* 75340 (December 11, 2008) violations which occur subsequent to January 12, 2009 are subject to a statutory maximum penalty of \$16,000 per violation per day.

Pursuant to 40 C.F.R. § 22.14(a)(4)(ii), Complainant is not proposing a specific penalty at this time, but will do so at a later date after an exchange of information has occurred. *See* 40 C.F.R. § 22.19(a)(4).

For purposes of determining the amount of any penalty to be assessed, Section 9006(c) and (e) of RCRA, 42 U.S.C. § 6991e(c) and (e), require EPA to take into account the seriousness of the violation, any good faith efforts to comply with the applicable requirements, the compliance history of the owner and operator, and any other appropriate factors. In developing the proposed penalty, Complainant will take into account the particular facts and circumstances of this case with specific reference to EPA's November 1990 "U.S. EPA Penalty Guidance for Violations of UST Regulations" ("UST Penalty Guidance"), the "Modifications to EPA's Penalty Policies to Implement the Civil Monetary Penalty Inflation Adjustment Rule (pursuant to the Debt Collection Improvement Act of 1996 (effective October 1, 2004))," dated September 21, 2004 ("2004 Penalty Policy Inflation Modification"), and the "Amendments to EPA's Civil Penalty Policies to Implement the 2008 Civil Monetary Penalty Inflation Adjustment Rule (Effective January 12, 2009)," dated December 29, 2008 ("2008 Penalty Policy Inflation Modification"), copies of which are enclosed with this Complaint. These policies provide a rational, consistent and equitable methodology for applying the statutory penalty factors enumerated above to particular cases.

As a basis for calculating a specific penalty pursuant to 40 C.F.R. § 22.19(a)(4), Complainant will consider, among other factors, facts or circumstances unknown to Complainant at the time of issuance of the Complaint that become known after the Complaint is issued. In

particular, EPA will consider, if raised, Respondent's ability to pay as a factor in adjusting the civil penalty. The burden of raising the issue of inability to pay rests with Respondent.

Violations

Pursuant to Section 9006(d)(2) of RCRA, 42 U.S.C. § 6991e(d)(2), EPA proposes the assessment of a civil penalty of up to \$11,000 per tank per day against Respondent for each of the violations alleged in this Complaint. **This does not constitute a "demand" as that term is defined in the Equal Access to Justice Act, 28 U.S.C. § 2412.** Pursuant to 40 C.F.R. § 22.14(a)(4)(ii), an explanation of the number of and severity of violations is given below.

COUNT 1

Failure to Perform Tank Release Detection – 58th Street Sunoco

Respondents failed to provide tank release detection for Tanks 58-1, 58-2, 58-3 and 58-4 from at least five years prior to the date of this Complaint until at least October 30, 2007, when Respondents began performing SIR monitoring. Respondents failed to provide tank release detection for Tank 58-5 from at least five years prior to the date of this Complaint until at least August 1, 2008, when a new operator took over the day-to-day operations of the facility.

Tank release detection is one of the most important elements of the UST regulations because it ensures that regulated substances are not released into the environment in large quantities. Under the UST Penalty Guidance the failure to conduct tank release detection in a proper manner is generally considered a “major” deviation from the statutory and regulatory program with a “major” potential for harm to the environment and/or the regulatory program. In this instance there is no reason to deviate from that assessment.

Depending on the information to be produced by Respondents in the litigation of this matter, Complainant will consider whether it is appropriate to make either upward or downward adjustments to the penalty based on Respondents' degree of cooperation with EPA, Respondents' level of culpability and in consideration of any prior history of similar violations Respondents may have had. In addition, Complainant may increase the base penalty by a multiplier to account for relative sensitivity of the environment affected by the violation.

Further, a penalty component will be added to reflect the economic benefit gained by Respondents by failing to comply with the tank release detection requirements. At the present time it appears that such economic benefit may have been gained by delaying the cost of implementing SIR monitoring and avoiding the periodic cost of such monitoring.

COUNT 2

Failure to Perform Periodic Line Release Detection -- 58th Street Sunoco

Respondents did not perform periodic line release detection for the underground piping associated with Tanks 58-1, 58-2 and 58-4 from at least September 24, 2004 (one year after testing line tightness testing conducted on September 24, 2003) until line tightness testing was performed on September 7, 2005. (The penalty for this portion of the violation will be calculated from five years prior to the date of this Complaint until September 7, 2005 due to the statute of limitations.) Respondents again failed to perform periodic line release detection for such piping from September 7, 2006 (one year after the last line tightness test) until at least October 30, 2007, when Respondents began performing SIR monitoring.

Line release detection is one of the most important elements of the UST regulations, particularly where, as here, regulated substances are conveyed in underground piping under pressure. The requirement for monthly monitoring or an annual line tightness test helps ensure that small line failures do not lead to the release of large quantities of regulated substances into the environment. Under the UST Penalty Guidance the failure to conduct periodic line release detection is generally considered a major deviation from the statutory and regulatory program with a major potential for harm to the environment and/or the regulatory program. There does not at this time appear to be any reason to deviate from that assessment.

Depending on the information to be produced by Respondents in the litigation of this matter, Complainant will consider whether it is appropriate to make either upward or downward adjustments to the penalty based on Respondents' degree of cooperation with EPA, Respondents' level of culpability and in consideration of any prior history of similar violations Respondents may have had. In addition, Complainant may increase the base penalty by a multiplier to account for relative sensitivity of the environment affected by the violation.

Further, a penalty component will be added to reflect the economic benefit gained by Respondents by failing to comply with the tank release detection requirements.

COUNT 3

Failure to Test Line Leak Detectors – 58th Street Sunoco

Respondents violated the requirement to conduct line leak detector operational testing for the piping associated with Tanks 58-1, 58-2 and 58-4 from at least September 24, 2004 (one year after testing conducted on September 24, 2003) until line leak detector testing was performed on

September 7, 2005. (The penalty for this portion of the violation will be calculated from five years prior to the date of this Complaint until September 7, 2005 due to the statute of limitations.) Respondents again violated the line leak detector operational testing requirement for the underground piping associated with Tanks 58-1 and 58-2 from September 7, 2006 (one year after the previous operational testing) until new testing was conducted on October 22, 2007, and violated the requirement for the underground piping associated with Tank 58-4 from September 7, 2006 (one year after the previous operational testing) at least until August 1, 2008, when , when a new operator took over the day-to-day operations of the facility.

Line release detection is one of the most important elements of the UST regulations, particularly where, as here, regulated substances are conveyed in underground piping under pressure. The requirement for annual operational tests on continuous line leak detectors (which continuously operate to detect high rate or “catastrophic” leaks) is an essential requirement that ensures that the line leak detectors are capable of performing their critical function of preventing massive short-term releases of the pressurized substances in the underground piping. Under the UST Penalty Guidance the failure to conduct line release detection operational testing is generally considered a major deviation from the statutory and regulatory program with a major potential for harm to the environment and/or the regulatory program. There does not at this time appear to be any reason to deviate from that assessment.

Depending on the information to be produced by Respondents in the litigation of this matter, Complainant will consider whether it is appropriate to make either upward or downward adjustments to the penalty based on Respondents’ degree of cooperation with EPA, Respondents’

level of culpability and in consideration of any prior history of similar violations Respondents may have had. In addition, Complainant may increase the base penalty by a multiplier to account for relative sensitivity of the environment affected by the violation.

Further, a penalty component will be added to reflect the economic benefit gained by Respondents by failing to comply with the line release detection requirements, specifically the costs saved by avoiding payments to contractors to conduct the required line leak detector operational tests.

COUNT 4

Failure to Timely Test Cathodic Protection System – 58th Street Sunoco

Respondents violated the requirement to test the cathodic protection system for the underground metal pipe fittings on the underground piping associated with Tanks 58-1, 58-2 and 58-4 from at least five years prior to the date of this Complaint until testing was conducted on May 22, 2008.

Periodic inspection of cathodic protection systems is necessary to ensure that the system is still adequately protecting the steel equipment, thus reducing the risk that corrosion will lead to a release of regulated substances. Under the UST Penalty Guidance, the failure to ensure that a cathodic protection system is inspected within 6 months after installation and every three years thereafter is generally considered a major deviation from the statutory and regulatory program with a moderate potential for harm to the environment and/or the regulatory program. There does not at this time appear to be any reason to deviate from that assessment.

Depending on the information to be produced by Respondents in the litigation of this matter, Complainant will consider whether it is appropriate to make either upward or downward adjustments to the penalty based on Respondents' degree of cooperation with EPA, Respondents' level of culpability and in consideration of any prior history of similar violations Respondents may have had. In addition, Complainant may increase the base penalty by a multiplier to account for relative sensitivity of the environment affected by the violation.

Further, a penalty component will be added to reflect the economic benefit gained by Respondents by failing to comply with the cathodic protection testing requirements, specifically the costs saved by avoiding payments to contractors to conduct the required cathodic protection tests.

COUNT 5

Failure to Provide Spill Protection – 58th Street Sunoco

Respondents violated the requirement to provide spill protection equipment for the secondary fill on Tank 58-4 from at least five years prior to the date of this Complaint until at least August 1, 2008, when , when a new operator took over the day-to-day operations of the facility.

Spill prevention is an important safeguard in preventing releases of regulated substances into the environment. Spill prevention prevents the buildup of chronic small spills, and serves as a critical backup if overfill prevention equipment were to malfunction. Under the UST Penalty Guidance the failure to install spill prevention equipment is a major deviation from the regulatory

requirements, with a major potential for harm to the environment and the regulatory program.

There does not at this time appear to be any reason to deviate from that assessment.

Depending on the information to be produced by Respondents in the litigation of this matter, Complainant will consider whether it is appropriate to make either upward or downward adjustments to the penalty based on Respondents' degree of cooperation with EPA, Respondents' level of culpability and in consideration of any prior history of similar violations Respondents may have had. In addition, Complainant may increase the base penalty by a multiplier to account for relative sensitivity of the environment affected by the violation.

Further, a penalty component will be added to reflect the economic benefit, if any, gained by Respondents by failing to comply with the spill prevention requirements.

COUNT 6

Failure to Provide Overfill Protection – 58th Street Sunoco

Respondents violated the requirement to provide overfill protection equipment for the secondary fill on Tank 58-4 from at least five years prior to the date of this Complaint until at least August 1, 2008, when , when a new operator took over the day-to-day operations of the facility.

Overfill prevention is an important safeguard in preventing releases of regulated substances into the environment. Under the UST Penalty Guidance the failure to provide overfill prevention equipment is a major deviation from the regulatory requirements, with a moderate potential for harm to the environment and the regulatory program. There does not at this time appear to be any reason to deviate from that assessment.

Depending on the information to be produced by Respondents in the litigation of this matter, Complainant will consider whether it is appropriate to make either upward or downward adjustments to the penalty based on Respondents' degree of cooperation with EPA, Respondents' level of culpability and in consideration of any prior history of similar violations Respondents may have had. In addition, Complainant may increase the base penalty by a multiplier to account for relative sensitivity of the environment affected by the violation.

Further, a penalty component will be added to reflect the economic benefit, if any, gained by Respondents by failing to comply with the overfill prevention requirements.

COUNT 7

Failure to Perform Tank Release Detection – Woodland Sunoco

Respondents failed to provide tank release detection for Tanks W-1, W-2 and W-3 from at least five years prior to the date of this Complaint until at least October August 30, 2007, when Respondents began performing SIR monitoring.

As noted above, tank release detection is one of the most important elements of the UST regulations, and under the UST Penalty Guidance the failure to comply with the tank release detection requirements is generally considered a "major" deviation from the statutory and regulatory program with a "major" potential for harm to the environment and/or the regulatory program. In this instance there is no reason to deviate from that assessment.

Depending on the information to be produced by Respondents in the litigation of this matter, Complainant will consider whether it is appropriate to make either upward or downward adjustments to the penalty based on Respondents' degree of cooperation with EPA, Respondents'

level of culpability and in consideration of any prior history of similar violations Respondents may have had. In addition, Complainant may increase the base penalty by a multiplier to account for relative sensitivity of the environment affected by the violation.

Further, a penalty component will be added to reflect the economic benefit gained by Respondents by failing to comply with the tank release detection requirements. At the present time it appears that this economic benefit was gained by delaying the cost of implementing SIR monitoring and avoiding the periodic cost of such monitoring.

COUNT 8

Failure to Perform Periodic Line Release Detection – Woodland Sunoco

Respondents did not perform periodic line release detection for the underground piping associated with Tanks W-1, W-2 and W-3 from at least June 22, 2001 (one year after line tightness testing conducted on June 22, 2000) until line tightness testing was performed on September 7, 2005. (The penalty for this portion of the violation will be calculated from five years prior to the date of this Complaint until September 7, 2005 due to the statute of limitations.) Respondents again failed to perform periodic line release detection for such piping from September 7, 2006 (one year after the last line tightness test) until at least October 30, 2007, when Respondents began performing SIR monitoring.

As discussed above, line release detection is one of the most important elements of the UST regulations, and under the UST Penalty Guidance the failure to conduct periodic line release detection is generally considered a major deviation from the statutory and regulatory

program with a major potential for harm to the environment and/or the regulatory program.

There does not at this time appear to be any reason to deviate from that assessment.

Depending on the information to be produced by Respondents in the litigation of this matter, Complainant will consider whether it is appropriate to make either upward or downward adjustments to the penalty based on Respondents' degree of cooperation with EPA, Respondents' level of culpability and in consideration of any prior history of similar violations Respondents may have had. In addition, Complainant may increase the base penalty by a multiplier to account for relative sensitivity of the environment affected by the violation.

Further, a penalty component will be added to reflect the economic benefit gained by Respondents by failing to comply with the line release detection requirements.

COUNT 9

Failure to Test Line Leak Detectors – Woodland Sunoco

Failure to Perform Periodic Line Release Detection – Woodland Sunoco

Respondents violated the requirement to conduct line leak detector operational testing for the piping associated with Tanks W-1, W-2 and W-3 from at least June 22, 2001 (one year after testing conducted on June 22, 2000) until line leak detector testing was performed on September 7, 2005. (The penalty for this portion of the violation will be calculated from five years prior to the date of this Complaint until September 7, 2005 due to the statute of limitations.)

Respondents again violated the requirement to conduct line leak detector operational testing for the piping associated with Tanks W-2 and W-3 from at least September 7, 2006 (one year after testing conducted on September 7, 2005) until line leak detector testing was performed for these

USTs on May 22, 2008. Respondents violated the requirement to conduct line leak detector operational testing for the piping associated with Tank W-1 from at least September 7, 2006 (one year after testing conducted on September 7, 2005) until line leak detector testing was performed for this USTs on June 3, 2008.

As noted above, line release detection is one of the most important elements of the UST regulations, and under the UST Penalty Guidance the failure to conduct line release detection operational testing is generally considered a major deviation from the statutory and regulatory program with a major potential for harm to the environment and/or the regulatory program. There does not at this time appear to be any reason to deviate from that assessment.

Depending on the information to be produced by Respondents in the litigation of this matter, Complainant will consider whether it is appropriate to make either upward or downward adjustments to the penalty based on Respondents' degree of cooperation with EPA, Respondents' level of culpability and in consideration of any prior history of similar violations Respondents may have had. In addition, Complainant may increase the base penalty by a multiplier to account for relative sensitivity of the environment affected by the violation.

Further, a penalty component will be added to reflect the economic benefit gained by Respondents by failing to comply with the line release detection requirements, specifically the costs saved by avoiding payments to contractors to conduct the required line leak detector operational tests.

V. OPPORTUNITY TO REQUEST A HEARING

Respondents each have the right to request a hearing to contest any matter of law or material fact set forth in this Complaint and the appropriateness of any penalty. **To request a hearing, each Respondent must file a written Answer to the Complaint with the Regional Hearing Clerk, *within thirty (30) days of receipt of this Complaint*, at the following address:**

**Regional Hearing Clerk
Mail Code 3RC00
U.S. EPA Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029**

Each Answer must clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint of which such Respondent has any knowledge. Where such Respondent has no knowledge of a particular factual allegation, the Answer should so state. The Answer should contain: (1) the circumstances or arguments which are alleged to constitute the grounds of any defense; (2) the facts which such Respondent disputes; (3) the basis for opposing any proposed relief; and (4) a statement as to whether a hearing is requested. The denial of any material fact or the raising of any affirmative defense shall be construed as a request for a hearing. All material facts not denied in the Answer will be considered as admitted.

Both Respondents may file a joint Answer, so long as such joint Answer clearly states that it is a joint Answer on behalf of both Respondents.

If either Respondent fails to file a written Answer within (30) days of receipt of this Complaint, such failure shall constitute an admission of all facts alleged in the Complaint and a waiver of such Respondent's right to a hearing on such factual allegations. Failure to file a

written Answer may result in the filing of a Motion for Default Order imposing the penalties herein without further proceedings.

Any hearing requested by either Respondent will be conducted in accordance with the provisions of the Consolidated Rules of Practice. A copy of these rules is enclosed with this Complaint.

A copy of each Respondent's Answer and all other documents that each Respondent files in this action should be sent to the attorney assigned to represent EPA in this matter, as follows:

**Benjamin D. Fields
Senior Assistant Regional Counsel
Mail Code 3RC30
U.S. EPA - Region III
1650 Arch Street
Philadelphia, PA 19103-2029**

VI. SETTLEMENT CONFERENCE

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

The procedures in the Consolidated Rules of Practice for quick resolution of a proceeding do not apply in this case because a specific penalty is not proposed. *See* 40 C.F.R. § 22.18(a).

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

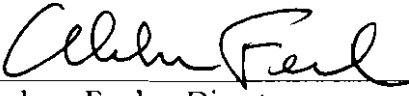
If you wish to arrange a settlement conference, please contact Benjamin D. Fields, Senior Assistant Regional Counsel, at (215) 814-2629. Please note that a request for a settlement conference does not relieve any Respondent of its responsibility to file an Answer within thirty (30) days following its receipt of this Complaint.

SEPARATION OF FUNCTIONS AND EX PARTE COMMUNICATIONS

The following Agency offices and officers, and their staffs, are designated as the trial staff to represent the Agency as a party in this case: U.S. EPA, Region III, Office of Regional Counsel; U.S. EPA, Region III, Land and Chemicals Division; and the EPA Assistant Administrator for Enforcement and Compliance Assurance. Commencing from the date of the issuance of this Complaint until issuance of a final agency decision in this case, neither the Administrator, members of the Environmental Appeals Board, Presiding Officer, Regional Administrator, nor the Regional Judicial Officer, may have an *ex parte* communication with the trial staff or any representative of any Respondent on the merits of any issue involved in this proceeding. Please be advised that the Consolidated Rules of Practice prohibit any unilateral discussion or *ex parte* communication of the merits of a case with the Administrator, members of

the Environmental Appeals Board, Presiding Officer, Regional Administrator, or the Regional
Judicial Officer after issuance of a Complaint.

Date: 9/30/09


Abraham Ferdas, Director
Land and Chemicals Division

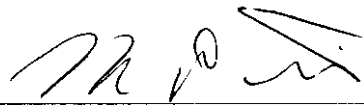
CERTIFICATE OF SERVICE

I hereby certify that on the date below I hand-delivered the original and one copy of the attached Complaint and Notice of Opportunity for Hearing to the Regional Hearing Clerk, and caused true and correct copies to be sent via Federal Express to:

Chester Aytch
Individually and as President
5631 Corporation
1313 N. 52nd Street
Philadelphia, Pennsylvania 19131

Chester Aytch
Individually and as President
5631 Corporation
34 Pritchard Lane
Sicklerville, NJ 08081

9/30/09
Date



Benjamin D. Fields
Senior Assistant Regional Counsel