



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

JAN 12 2010

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Donald F. Strickland
2425 Legion Road
Fayetteville, North Carolina 28306

RE: Administrative Complaint and Compliance Order
Docket No.: RCRA-UST-04-2010-001
DF Strickland Merchandise
2425 Legion Road, Fayetteville, North Carolina 28306

Dear Mr. Strickland:

On June 25, 2009, the United States Environmental Protection Agency (EPA) conducted an Underground Storage Tank (UST) inspection at the above referenced facility to ascertain regulatory compliance. EPA determined that you violated the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 *et seq.*, and the corresponding North Carolina regulations at N.C. ADMIN. CODE tit. 15A rr. 2N.0502, 2N.0505. In addition, you failed to comply with an information request pursuant to Section 9005 of RCRA, 42 U.S.C. § 6991d. Section 9006 of RCRA, 42 U.S.C. § 6991e, authorizes EPA to take formal enforcement action against you.

Enclosed is an Administrative Complaint and Compliance Order (Complaint) issued pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e. The Complaint states in full the bases of EPA's determinations. A proposed civil penalty of **Eight Thousand Five Hundred and Twenty Dollars (\$8,520)** is assessed in the Complaint. You are also required to certify that you are now in compliance with all applicable UST regulations.

The rules of procedure governing this civil administrative litigation are the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits" (CROP), set forth at 40 C.F.R. Part 22. A copy of these rules accompanies this Complaint. The original Complaint is being forwarded to the Regional Hearing Clerk as required by the CROP, 40 C.F.R. § 22.5(a).

You have the right to request a Hearing on the Complaint. If you desire to contest any matter of law or material fact set forth in the Complaint, the appropriateness of the proposed penalty, the terms of the Compliance Order or if you contend that you are entitled to judgment as a matter of law, **you must file a written Answer and request for**

Internet Address (URL) • <http://www.epa.gov>

Recycled/Recyclable • Printed with Vegetable Oil Based Inks on Recycled Paper (Minimum 30% Postconsumer)

a hearing with the Regional Hearing Clerk within thirty (30) days from receipt of this letter, pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e, and 40 C.F.R. § 22.15. If you do not file an Answer, you may be found in default pursuant to 40 C.F.R. § 22.17.

Any Answer to the Complaint must clearly and directly admit, deny, or explain each of the factual allegations in the Complaint, must specify the issues which are in dispute, must state the specific factual or legal grounds for your defense, and must state whether you are requesting a hearing pursuant to 40 C.F.R. § 22.15. Failure to admit, deny, or explain any material factual allegation contained in the Complaint constitutes an admission of the allegation. Address the Answer to:

Region 4 Hearing Clerk
US EPA, Region 4
61 Forsyth St., S.W.
Atlanta, Georgia 30303

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

Alfred R. Politzer
Assistant Regional Counsel
US EPA, Region 4
61 Forsyth St., S.W.
Atlanta, Georgia 30303

It is EPA's policy to encourage all parties against whom it files a Complaint to pursue the possibility of settlement. Whether or not a hearing is requested, you may request a settlement conference with EPA to discuss the allegations of the Complaint, the amount of the proposed civil penalty, and the injunctive relief required. A request for a settlement conference alone, however, will not stay the thirty (30) day period for filing an Answer and hearing request. If you desire a hearing, an Answer should be filed. If you have any questions or wish to arrange an informal settlement conference, please contact Alfred Politzer, Assistant Regional Counsel, at 404-562-9705.

Sincerely yours,



G. Alan Farmer, Director
RCRA Division

Enclosures

cc: Region 4 Hearing Clerk

RECEIVED
EPA REGION 4
2010 JUN 12 AM 7:56
HEARING CLERK

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:)	RCRA-UST-04-2010-001
)	
Donald F. Strickland)	Proceeding under Section 9006
2425 Legion Road)	of the Resource Conservation
Fayetteville, North Carolina 28306)	and Recovery Act, as amended,
)	42 U.S.C. § 6991e
)	
RESPONDENT.)	
)	

ADMINISTRATIVE COMPLAINT AND COMPLIANCE ORDER

I. INTRODUCTION

This Administrative Complaint, Compliance Order, and Notice of Opportunity for Hearing (Complaint) is issued under the authority vested in the Administrator of the United States Environmental Protection Agency (EPA), pursuant to Section 9006 of the Solid Waste Disposal Act, commonly referred to as the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984 (collectively referred to as RCRA), 42 U.S.C. § 6991e, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (CROP), 40 C.F.R. Part 22. The administrator has delegated this authority to the EPA Region 4 Regional Administrator, who has in turn delegated it to the Region 4 RCRA Division Director (Complainant).

EPA hereby notifies Donald Strickland (Respondent) that EPA has determined that Respondent has violated certain provisions of Subtitle I of RCRA, 42 U.S.C. § 6991 *et. seq.*, EPA's regulations thereunder at 40 C.F.R. Part 280, and the State of North Carolina's Underground Storage Tank (UST) program, as authorized by EPA pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c. Section 9006 of RCRA, 42 U.S.C. § 6991e, 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 UST program which has been authorized by EPA. Under Section 9006 of RCRA, 42 U.S.C. § 6991e(d), EPA may assess a civil penalty against any person who violates any requirement of the applicable federal or state UST program.

Effective August 14, 2001, pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c, and 40 C.F.R. § 282.83, the State of North Carolina was granted final authorization to administer a state UST management program in lieu of the Federal UST

management program established under Subtitle I of RCRA, 42 U.S.C. § 6991 *et. seq.* Through this Final authorization, the provisions of the State of North Carolina's UST management program are enforceable by EPA pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e.

The North Carolina Department of Environment and Natural Resources (NCDENR) is charged with the statutory duty of enforcing state laws relating to the storage of petroleum in USTs, as specified in N.C. GEN. STAT. §§ 143-215.3(a)(15), 143-215.94T, 143B-282(a)(2)h; and N.C. ADMIN. CODE tit. 15A r. 2N.0101 *et. seq.* EPA has given NCDENR prior notice of the issuance of this Complaint in accordance with Section 9006 of RCRA, 42 U.S.C. § 6991e(a)(2).

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent is a "person" as defined in Section 9001 of RCRA, 42 U.S.C. § 6991(1)(B)(5); 40 C.F.R. § 280.12; and N.C. ADMIN. CODE tit. 15A r. 2N.0203.
2. On June 25, 2009, a representative of EPA Region 4 inspected a facility owned by Respondent and located at 2425 Legion Road in Fayetteville, North Carolina (hereinafter the "facility").
3. At the time of the inspection, Respondent was the "owner" and/or "operator" of three "USTs," as those terms are defined in Section 9001 of RCRA, 42 U.S.C. §§ 6991(1)(B)(3), (4), and (10); 40 C.F.R. § 280.12; and N.C. ADMIN. CODE tit. 15A r. 2N.0203.
4. The three USTs were installed in May 2006 and included one 10,000 gallon double walled fiberglass tank, one 4000 gallon double walled fiberglass tank, and one 2500 gallon double walled fiberglass tank.
5. At the time of the inspection, Respondent was using the 10,000 gallon tank and the 4000 gallon tank to store gasoline, and the 2500 gallon tank to store kerosene.
6. Gasoline is a petroleum product, and is a "regulated substance," as that term is defined in Section 9001 of RCRA, 42 U.S.C. § 6991(1)(B)(7); 40 C.F.R. § 280.12; and N.C. ADMIN. CODE tit. 15A r. 2N.0203.
7. Kerosene is a petroleum product, and is a "regulated substance," as that term is defined in Section 9001 of RCRA, 42 U.S.C. § 6991(1)(B)(7); 40 C.F.R. § 280.12; and N.C. ADMIN. CODE tit. 15A r. 2N.0203.
8. At the time of the inspection, all three USTs at the facility were connected to underground pressurized piping that routinely contained regulated substances.

9. At the time of the inspection, Respondent had no record of the last annual test of the operation of the facility's automatic line leak detectors for the underground piping that routinely contained regulated substances.
10. At the time of the inspection, Respondent had no record of the last annual line tightness test for the facility's underground piping that routinely contained regulated substances.
11. On June 25, 2009, during the course of EPA's inspection, Respondent was issued a Request for Information pursuant to RCRA Section 9005, 42 U.S.C. § 6991d (hereinafter "information request").
12. The information request required Respondent to reply to EPA by July 14, 2009.
13. Respondent has failed to reply to the information request.
14. On August 5, 2009, EPA issued Respondent an Expedited Enforcement Compliance Order and Settlement Agreement.
15. Respondent never responded to the Expedited Enforcement Compliance Order and Settlement Agreement.
16. On October 28, 2009, EPA sent Respondent a letter withdrawing the settlement offered in the Expedited Enforcement Compliance Order and Settlement Agreement.
17. On or about October 15, 2009, EPA sent Respondent a letter inviting him to meet with EPA representatives to show cause as to why EPA should not initiate formal enforcement actions for the violations observed during the June 25, 2009 inspection.
18. On October 27, 2009, EPA staff and Respondent participated in a show cause meeting via teleconference (hereinafter "Show Cause Meeting").
19. During the Show Cause Meeting, Respondent indicated that he would submit a Financial Data Request Form (provided by EPA) for EPA to utilize in assessing his ability to pay penalties.
20. Respondent never submitted a Financial Data Request Form to EPA.

COUNT 1

21. The allegations of Paragraphs 1 through 20 of this Complaint are incorporated herein by reference.
22. Pursuant to 40 C.F.R. § 280.44(a) and N.C. ADMIN. CODE tit. 15A r. 2N.0505, owners and operators of USTs must conduct an annual test of the operation of automatic line leak detectors for underground piping that routinely contains regulated substances.

23. At the time of the June 25, 2009, inspection, the facility's most recent annual test of the operation of its automatic line leak detectors for underground piping was conducted on January 22, 2008.

24. Respondent failed to conduct an annual test of the operation of the facility's automatic line leak detectors for underground piping on or before January 22, 2009.

25. Respondent violated Section 9003 of RCRA, 42 U.S.C. § 6991b; 40 C.F.R. § 280.44(a); and N.C. ADMIN. CODE tit. 15A r. 2N.0505.

COUNT 2

26. The allegations of Paragraphs 1 through 25 of this Complaint are incorporated herein by reference.

27. Pursuant to 40 C.F.R. §§ 280.41(b)(1)(ii), 280.44(b), and N.C. ADMIN. CODE tit. 15A rr. 2N.0502, 2N.0505, owners and operators of USTs must conduct an annual line tightness test or perform monthly monitoring of underground pressurized piping that routinely contains regulated substances.

28. At the time of the June 25, 2009, inspection, the facility's most recent annual line tightness test of underground pressurized piping that routinely contains regulated substances was conducted on January 22, 2008.

29. Respondent failed to conduct an annual line tightness test of the facility's underground pressurized piping on or before January 22, 2009.

30. At the time of the June 25, 2009, inspection, monthly monitoring of underground pressurized piping that routinely contains regulated substances was not being performed.

31. Respondent violated Section 9003 of RCRA, 42 U.S.C. § 6991b; 40 C.F.R. §§ 280.41(b)(1)(ii), 280.44(b); and N.C. ADMIN. CODE tit. 15A rr. 2N.0502, 2N.0505.

COUNT 3

32. The allegations of Paragraphs 1 through 31 of this Complaint are incorporated herein by reference.

33. Pursuant to 40 C.F.R. § 280.34 and N.C. ADMIN. CODE tit. 15A r. 2N.0405, owners and operators of UST systems must cooperate fully with inspections, monitoring, and testing conducted by the implementing agency, as well as requests for document submission, testing, and monitoring by the owner or operator pursuant to Section 9005 of RCRA, 42 U.S.C. § 6991d.

34. Respondent failed to reply to the information request issued by EPA pursuant to Section 9005 of RCRA, 42 U.S.C. § 6991d.

35. Respondent violated of Section 9005 of RCRA, 42 U.S.C. § 6991d; 40 C.F.R. § 280.34; and N.C. ADMIN. CODE tit. 15A r. 2N.0405.

III. PROPOSED CIVIL PENALTY

Section 9006 of RCRA, 42 U.S.C. § 6991e(d), authorizes EPA to assess a civil penalty of up to Ten Thousand Dollars (\$10,000) per tank for each day of noncompliance with any requirement promulgated under Section 9003 of RCRA, 42 U.S.C. § 6991(b). Pursuant to the Debt Collection and Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321 (1996), and the regulations set forth at 40 C.F.R. Part 19 (Adjustment of Civil Monetary Penalties for Inflation), for violations occurring on and after January 13, 2009, the statutory maximum penalty for each tank for each day of violation is Sixteen Thousand Dollars (\$16,000). Based upon the facts alleged in this Complaint and taking into account the seriousness of the violations and any good faith efforts by Respondent to comply with the applicable requirements, Complainant proposes, subject to receipt and evaluation of further relevant information, a civil penalty of **\$8,520 (Eight Thousand Five Hundred and Twenty Dollars)** against Respondent.

This proposed penalty takes into account the particular facts and circumstances of this case pursuant to the November 14, 1990, U.S. EPA Penalty Guidance for Violations of UST Requirements, a copy of which is attached to this Complaint. This policy provides a rational, consistent, and equitable calculation methodology for applying the statutory penalty factors to particular cases. The proposed penalty was calculated pursuant to the aforementioned penalty guidance and in conformity with the factors described in Section 9006e(e), 42 U.S.C. § 6991e(e).

EPA determined that the potential for harm and the extent of deviation from the regulations was major for the violations cited above. The environmental sensitivity multiplier is low for the violations identified at the facility, because the facility is not located in an area known to be environmentally sensitive. The days of non-compliance multiplier is based on the number of days of non-compliance for each violation. EPA also examined the economic benefit to the Respondent from the avoided costs and/or the delayed costs of compliance in determining the reasonableness of the proposed penalty.

The total penalty proposed against Respondent breaks down as follows:

Count 1: failure to comply with line leak detector requirements	\$3,195
Count 2: failure to comply with line tightness requirements	\$3,195
Count 3: failure to respond to information request	<u>\$2,130</u>

TOTAL PENALTY AMOUNT	\$8,520
-----------------------------	----------------

IV. COMPLIANCE ORDER

A. At all times after the effective date of this Compliance Order, Respondent must ensure that all USTs identified in the Complaint, that are currently owned or operated by him, are in compliance with the line leak detector requirements for underground piping found at 40 C.F.R. § 280.44(a); and the line tightness requirements for underground piping found at 40 C.F.R. §§ 280.41(b)(1)(ii), 280.44(b). Alternatively, Respondent may close any or all of such USTs pursuant to 40 C.F.R. §§ 280.70 - 280.74.

B. Within sixty (60) days after the effective date of this Compliance Order, Respondent shall submit to EPA a Report detailing all measures taken to comply with Paragraph A of this Compliance Order and providing written documentation that Respondent has conducted the annual line leak detector and line tightness tests or monthly monitoring as required. Such Report shall clearly indicate which of the various regulatory options or combination of options is being utilized for each such requirement for each UST, and provide documentation that such option(s) is being utilized.

C. Any notice, report, certification, data presentation, or other document submitted by Respondent pursuant to this Compliance Order which discusses, describes, demonstrates, supports any finding, or makes any representation concerning Respondent's compliance or noncompliance with any requirement of this Compliance Order shall be certified by a responsible representative of Respondent, as provided in 40 C.F.R. § 270.11(a). The certification shall be in the following form:

I certify that the information contained in or accompanying this [type of submission] is true, accurate, and complete. As to [the/those] identified portions of this [type of submission] for which I cannot personally verify [its/their] accuracy, I certify under penalty of law that this [type of submission] and all attachments were prepared in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

Signature: _____
Name: _____
Title: _____

D. All documents submitted pursuant to this Compliance Order shall be sent to:

1. Documents to be submitted to EPA in connection with this Compliance Order shall be sent certified mail, return receipt requested, or by overnight delivery with signature verification, to:

Bill Truman, Chief
Underground Storage Tank Section
U.S. EPA, Region 4
61 Forsyth St., S.W.
Atlanta, Georgia 30303

2. A copy of all documents submitted to EPA shall also be sent to:

Michael Phelps
NCDENR Winston-Salem Regional Office
Division of Waste Management, UST Section
585 Waughtown St.
Winston-Salem, North Carolina 27107

- E. The term "days" as used herein means calendar days unless specified otherwise.

Respondent is hereby notified that failure to comply with any of the terms of this Compliance Order may subject Respondent to a civil penalty of up to \$37,500 for each day of continued noncompliance, pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e(a)(3), the Debt Collection and Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321 (1996), and 40 C.F.R. Part 19.

V. OPPORTUNITY TO REQUEST A HEARING

Pursuant to 40 C.F.R. § 22.15(c), Respondent has the right to request a hearing to contest any matter of law or material fact in this Complaint and the appropriateness of the proposed penalty. To request a hearing, Respondent must file a written Answer to the Complaint with the Regional Hearing Clerk, U.S. EPA Region 4, 61 Forsyth Street, Atlanta, Georgia 30303-8909, **within thirty (30) days of receipt of this Complaint**. The Answer must clearly and directly admit, deny, or explain each of the factual allegations in the Complaint of which Respondent has any knowledge. If 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 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. Failure of the Respondent to admit, deny, or explain any material allegation in the Complaint shall constitute an admission of such allegations.

Respondent's failure to file a written Answer within (30) days of receipt of this Complaint may result in the filing of a Motion for Default and the issuance of a Default Order. Default by the Respondent constitutes, for purposes of the pending proceedings, an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations. Any penalty assessed in the Default Order shall become due thirty (30) days after the Default Order becomes final.

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

The original and one copy of Respondent's Answer, and all other documents that Respondent files in this action should be filed with the Regional Hearing Clerk. Such Answer and other documents must be sent to:

Regional Hearing Clerk
U.S. EPA Region 4
61 Forsyth St., S.W.
Atlanta, Georgia 30303

A copy of the Answer and all other documents that Respondent files in this action shall be sent to the following EPA attorney representing EPA in this matter:

Alfred Politzer
Assistant Regional Counsel
U.S. EPA Region 4
Office of Environmental Accountability
61 Forsyth St, S.W.
Atlanta, Georgia 30303

VI. SETTLEMENT CONFERENCE

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

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

If you wish to arrange a settlement conference, you or your legal counsel should contact Alfred Politzer, Assistant Regional Counsel, at (404) 562-9705, prior to the expiration of the thirty (30) day period following receipt of this Complaint. However, such a request for settlement conference does not relieve you of your responsibility to file an Answer within thirty (30) days following your receipt of this Complaint.


VII. EXHAUSTION OF ADMINISTRATIVE REMEDIES

The decision issued by the Presiding Officer after a hearing constitutes an initial decision. Likewise, a Default Order issued by the Presiding Officer constitutes an initial decision. Respondent has the right to appeal an adverse initial decision to the Environmental Appeals Board (EAB). In accordance with 40 C.F.R. § 22.30(a)(1), this appeal must be made within thirty (30) days after the initial decision is served. Pursuant to 40 C.F.R. § 22.7(c), "[w]here a document is served by first class mail or commercial delivery service, but not by overnight or same-day delivery, five (5) days shall be added to the time allowed by these Consolidated Rules of Practice for the filing of a responsive document." Therefore, the maximum time period to file an appeal under 40 C.F.R. § 22.30 is thirty-five (35) days unless an extension is granted by the EAB. The forty-five (45) day period provided in 40 C.F.R. § 22.27(c) (discussing when an initial decision becomes a final order) does not pertain to, nor extend, the thirty (30) days for filing an appeal as provided in 40 C.F.R. § 22.30(a)(1). If Respondent fails to properly appeal an adverse initial decision, and that initial decision thereby becomes a final order pursuant to 40 C.F.R. § 22.27(c), Respondent will have waived its rights to judicial review. 40 C.F.R. § 22.27(d).

VIII. EX PARTE COMMUNICATIONS

Respondent is advised that, after the Complaint is issued, the CROP prohibits any *ex parte* (unilateral) discussion of the merits of this action with the Administrator, the Environmental Appeals Board, the Regional Administrator, or the Presiding Officer, or any person likely to advise these officials in the decision of this case.

Date: 1/5/2010


G. Alan Farmer, Director
RCRA Division
Complainant

ENCLOSURES:

Consolidated Rules of Practice
Civil Monetary Penalty Adjustment Rule (40 C.F.R. Part 19)
UST Penalty Guidance

IN THE MATTER OF: Donald F. Strickland, RCRA-UST-04-2010-001

CERTIFICATE OF SERVICE

I certify that a copy of the cover letter, the Complaint and Compliance Order, and the Certificate of Service for the above referenced matter, together with a copy of The Consolidated Rules of Practice (40 C.F.R. Part 22); the Civil Monetary Penalty Adjustment Rule (40 C.F.R. Part 19); and the UST Penalty Guidance was sent this day, January 12, 2010, to the following person in the following manner:

Certified Mail – Return Receipt Requested


Donald F. Strickland
2425 Legion Road
Fayetteville, North Carolina 28306

I further certify that the cover letter, the Complaint and Compliance Order, and the Certificate of Service, was filed this day, January 12, 2010, with the Regional Hearing Clerk, as specified below:

Hand Delivery – Original and one copy

Patricia Bullock
Regional Hearing Clerk
U.S. EPA Region 4
61 Forsyth St, S.W.
Atlanta, Georgia 30303

January 12, 2010


Alfred Politzer
Assistant Regional Counsel
U.S. EPA Region 4
Office of Environmental Accountability
61 Forsyth St, S.W.
Atlanta, Georgia 30303