



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

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2008 APR -4 PM 2:56
REGIONAL HEARING
CLERK

MAR 31 2008

CERTIFIED MAIL- RETURN RECEIPT REQUESTED

Craig S. Howard
Medical Center Director
Canandaigua VA Medical Center
400 Fort Hill Avenue
Canandaigua, NY 14424

Re: **In the Matter of United States Veterans Administration,
Canandaigua VA Medical Center Docket No. RCRA-02-2008-7504**

Dear Mr. Howard:

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 enclose an "Information Sheet for U.S. EPA Small Business Resources." This document offers some useful information and resources.

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

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG II
2008 APR -4 PM 2:51
REGIONAL HEARING
CLERK

In the Matter of

United States Veterans Administration,
Canandaigua VA Medical Center,
Respondent

COMPLAINT, COMPLIANCE ORDER,
AND NOTICE OF OPPORTUNITY
FOR HEARING

Docket No. RCRA-02-2008-7504

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

COMPLAINT

This is a civil administrative proceeding instituted pursuant to Section 9006 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act ("RCRA"), the Hazardous and Solid Waste Amendments of 1984 ("HSWA"), the Federal Facility Compliance Act of 1992, the Superfund Amendments and Reauthorization Act of 1986 ("SARA") and the Energy Policy Act of 2005, 42 U.S.C. §§ 6901 *et seq.* (hereinafter collectively referred to as 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 the United States Veterans Administration ("the Respondent").
2. Respondent is a department, agency or instrumentality of the executive branch of the Federal government.
3. Respondent is a "person" within the meaning of Section 9001(6) of the Act, 42 U.S.C. § 6991(5), and 40 Code of Federal Regulations ("C.F.R.") § 280.12.
4. Respondent has been and remains the "owner" and "operator" of "underground storage tank" or "UST" systems, as those terms are defined in Section 9001 of the Act, 42 U.S.C. § 6991, and in 40 C.F.R. § 280.12, which are located at 400 Fort Hill Avenue, Canandaigua, New York 14424 ("the Facility").
5. Pursuant to §§ 2002, 9002, and 9003 of the Act, 42 U.S.C. §§ 6912, 6991a, and 6991b, EPA promulgated rules setting forth requirements for owners and operators of UST

systems, set forth at 40 C.F.R. Part 280. Pursuant to Section 9003(c)(2) of the Act, 42 U.S.C. §§ 6991b(c)(2), EPA was directed to include requirements to maintain records of any monitoring or leak detection system.

6. EPA is responsible for enforcing the requirements of the Act and the regulations promulgated pursuant thereto which are the subject of this Complaint. New York has not received State Program Approval pursuant to 40 C.F.R. Part 281.
7. On or about April 30, 2007, pursuant to Section 9005 of the Act, 42 U.S.C. § 6991d, an authorized representative of EPA ("Inspector") inspected the Facility to determine the Respondent's compliance with the Act and 40 C.F.R. Part 280 ("April 2007 Inspection").
8. On or about June 28, 2007, and pursuant to Section 9006 of the Act, 42 U.S.C. § 6991e, EPA sent a Notice of Violation ("NOV") and pursuant to Section 9005(a) of the Act, 42 U.S.C. § 6991d(a), and 40 C.F.R. § 280.34 sent an Information Request Letter to the Respondent to determine the status of the compliance of USTs owned and/or operated by Respondent at the Facility with the Act and 40 C.F.R. Part 280.
9. The NOV and Information Request Letter required, unless indicated otherwise, that all questions were to be answered for the one year time period ending April 29, 2007.
10. On or about August 14, 2007, EPA received from the Respondent a response to the NOV (hereinafter "NOV Response") and a response to the Information Request Letter (hereinafter "Information Request Letter Response").
11. During the April 2007 Inspection and for all time periods relevant to this Complaint, all of the UST systems at the Facility were "petroleum UST systems" as that term is defined in 40 C.F.R. § 280.12

Count 1

Failure of Respondent to Maintain Records of Release Detection Monitoring

12. Pursuant to 40 C.F.R. § 280.41(a) USTs must be monitored at least every 30 days for releases using one of the methods listed in § 280.43(d) through (h).
13. Pursuant to 40 C.F.R. § 280.45(b) the results of any sampling, testing, or monitoring must be maintained for at least 1 year. [See also 40 C.F.R. § 280.34(b)(4)]
14. On December 16, 2004, EPA and Respondent entered into an "Audit Agreement" under which Respondent was to do a self-audit, identify areas of regulatory noncompliance, and correct them in a timely manner. If Respondent took these actions, EPA agreed to waive or reduce the civil penalties that might otherwise be sought.

15. Pursuant to the December 16, 2004 Audit Agreement between EPA and the Respondent, Respondent disclosed in a June 15, 2005 letter regarding regulatory violations discovered during the audit that for UST Tank #019 at the Facility the “[l]eak detection system is not maintained or calibrated: has been out of service for over a year” and with regard to “Release detection recordkeeping” identified the following corrective action: “Document and maintain results of any sampling, testing or release detection monitoring for at least one year.”
16. Pursuant to the terms of the Audit Agreement described in paragraph 14 above, Respondent had until December of 2005 to repair and reinstate its leak detection system for UST Tank #019 and this meant Respondent would have to have commenced generating records of monitoring results by no later than January 2006.
17. During the April 2007 Inspection, the inspector made an oral request for release detection records for UST Tank 019 for the past 12 months.
18. During the April 2007 Inspection, in response to the oral request for release detection records, a representative of the Respondent informed the Inspector there were no release detection records available before January 2007.
19. In its Information Request Letter described in paragraph 8 above, EPA requested release detection records for the twelve month period ending April 29, 2007.
20. In its Information Request Letter Response received by EPA on or about August 14, 2007, Respondent stated that “[d]ocumentation showing ... monitoring inspection for Tank #019 is complete starting January 2007. Inspection sheets with one year’s documentation will be fully compliant January 2008.”
21. In an electronic mail message dated December 13, 2007 from Mark A. Cotter at the Veterans Administration to Charles Zafonte at EPA Region 2, Mr. Cotter indicated that, as of the date of the electronic mail, there were no monitoring records available for Tank #019 for the calendar year 2006. Furthermore, Mr. Cotter informed EPA that Respondent initially had records of its release detection during the early part of 2006, but that these records had been discarded around April of 2006.
22. At the time of the April 2007 Inspection, Respondent had not maintained records for the leak detection monitoring of Tank #019 prior to January 2007.
23. The failure of Respondent to maintain, for at least one year, records of release detection for the period January 1, 2006 to December 31, 2006 for UST Tank 019 constitutes a violation of 40 C.F.R. § 280.45(b).

PROPOSED CIVIL PENALTY

Sections 9007 and 9006(d)(2)(A) of the Act, 42 U.S.C. § 6991e (d)(2)(A), authorizes the assessment of a civil penalty against a federal department or agency 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 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. § 6991e (d)(2) for each tank for each day of violation occurring between January 30, 1997 and March 15, 2004 is \$11,000. No change was made in the maximum civil penalties for violations occurring after March 15, 2004.

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 violation and any good faith efforts by Respondent to comply with the applicable requirements, the Complainant proposes, subject to receipt and evaluation of further relevant information, to assess the following civil penalties:

<u>Count 1:</u>	Failure to Maintain Records of Release Detection Monitoring	
	UST System 019	\$10,878.75
Total Proposed Penalty Amount		\$10,878.75

Penalty Computation Worksheets for the proposed civil penalties are provided with this Complaint as an enclosure.

COMPLIANCE ORDER

Based on the foregoing, and pursuant to the authority of Section 9006 and 9007 of the Act, 42 U.S.C. § 6991e and § 6991f, Complainant issues the following Compliance Order against the Respondent:

1. Respondent shall maintain its USTs in compliance with the applicable regulations found in 40 C.F.R. Part 280, including, but not limited to, 40 C.F.R. § 280.45.
2. In all documents or reports submitted to EPA pursuant to this Compliance Order, the Respondent shall, by its officials, certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading, by including and signing the following statement:

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: _____

Name: _____

Title: _____

Respondent shall send any submittal to:

**Charles Zafonte
Enforcement Officer
U.S. EPA Region 2
Compliance Assistance and Program Support Branch
290 Broadway, 21st Floor
New York, NY 10007-1866**

This Compliance Order shall take effect with respect to the Respondent thirty (30) days after service of the Order, 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).

NOTICE OF LIABILITY FOR ADDITIONAL CIVIL PENALTIES

Pursuant to Sections 9006(a)(3) and 9007 of the Act, 42 U.S.C. § 6991e(a)(3) and § 6991(f), 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, 61 Fed. Reg. 69630 (December 31, 1996) and 69 Fed. Reg. 7121 (February 13, 2004), 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 \$32,500 for each day of continued noncompliance.

PROCEDURES GOVERNING THIS ADMINISTRATIVE LITIGATION

The rules of procedure governing this civil administrative litigation have been set forth in 64 Fed. Reg. 40138 (July 23, 1999), entitled, "CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENTS OF CIVIL PENALTIES, ISSUANCE OF COMPLIANCE OR CORRECTIVE ACTION ORDERS, AND THE REVOCATION, TERMINATION OR SUSPENSION OF PERMITS", and which are codified at 40 C.F.R. Part 22. A copy of these rules accompanies this "Complaint, Compliance Order and Notice of Opportunity for Hearing" (hereinafter referred to as 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 or Answers to the Complaint, and such Answer or Answers must be filed within 30 days after service of the Complaint. See 40 C.F.R. §§ 22.15(a) and 22.7(c). The address of the Regional Hearing Clerk of EPA, Region 2, is:

**Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 17th floor
New York, New York 10007-1866**

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

Respondent's Answers to the Complaint must clearly and directly admit, deny, or explain each of the factual allegations that are contained in the Complaint 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. See 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. See 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 the Respondent in its Answers, a hearing upon the issues raised by the Complaint and Answer may be held. See 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 Answers raise issues appropriate for adjudication. See 40 C.F.R. § 22.15(c). With regard to compliance orders in the Complaint, unless Respondent requests a hearing pursuant to 40 C.F.R. § 22.15 within 30 days after such orders are served, such orders shall automatically become final. See 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 applicable 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 Answers to admit, deny, or explain any material factual allegation contained in the Complaint, such failure constitutes an admission of the allegation. See 40 C.F.R. § 22.15(d). If Respondent fails to file timely [*i.e.* in accordance with the thirty (30)-day period set forth in 40 C.F.R. § 22.15(a)] Answers to the Complaint, Respondent may be found in default upon motion. See 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. See 40 C.F.R. § 22.17(a). Following a default by Respondent for a failure to timely file an Answer to the Complaint, any default order shall be issued pursuant to 40 C.F.R. § 22.17(c).

Any penalty assessed in the default order shall become due and payable by Respondent without further proceedings thirty (30) days after the default order becomes final under 40 C.F.R. § 22.27(c). See 40 C.F.R. § 22.17(d). If necessary, EPA may then seek to enforce such final default order 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). See 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), Respondent waives its opportunity to confer with the Administrator. See 40 C.F.R. § 22.31(e).

In order to appeal an initial decision to EPA'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". See 40 C.F.R. § 22.30(a). Pursuant to 40 C.F.R. § 22.07(c), where service is effected by mail, "five days shall be added to the time allowed by these rules for the filing of a responsive pleading or 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. See 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 Respondent's 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:

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

The parties may engage in settlement discussions irrespective of whether Respondent has requested a hearing. See 40 C.F.R. § 22.18(b)(1). Respondent's 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. See 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 waive its right to appeal the final order that is to accompany the consent agreement. See 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. See 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 terminate 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 30 days after receipt of the Complaint, Respondent should promptly contact the Assistant Regional Counsel identified on the previous page.

Dated: 3/28, 2008



Dore LaPosta, Director
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency - Region 2
290 Broadway, 21st Floor
New York, NY 10007-1866

TO: Craig S. Howard
Medical Center Director
Canandaigua VA Medical Center
400 Fort Hill Avenue
Canandaigua, NY 14424

cc: Russ Brauksieck, Chief
Spill Prevention and Bulk Storage Section
NYSDEC
625 Broadway – 11th Floor
Albany, NY 12233

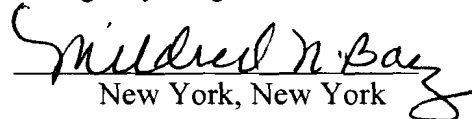
CERTIFICATE OF SERVICE

This is to certify that I have this day caused to be mailed a copy of the foregoing Complaint, Compliance Order, and Notice of Opportunity for Hearing, bearing Docket Number RCRA-02-2008- 7504, and a copy of the Consolidated Rules of Practice, 40 C.F.R. Part 22, by certified mail, return receipt requested, to:

Craig S. Howard
Medical Center Director
Canandaigua VA Medical Center
400 Fort Hill Avenue
Canandaigua, NY 14424

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: APR - 3 | , 2008


New York, New York

PENALTY COMPUTATION WORKSHEET

Count 1: Respondents' Failure to Maintain Records of Release Detection Monitoring

Part 1: Background

Facility in violation: Veterans Administration Medical Center, Canandaigua, New York

<u>Violation:</u>	<u>Regulation</u> 40 C.F.R. §280.45(b)	<u>Non-compliance</u> Failure to maintain results of sampling, testing, or monitoring for at least 1 year
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Previous Violations: N/A

Penalty Calculation Period:

Date Gravity-based Penalty Calculations Started: January 1, 2006 (first day of complete month when failure to maintain twelve months of release detection records commenced)

Date Gravity-based Penalty Calculations Ended: Dec. 31, 2006 (the day before the month when release detection recordkeeping actually resumed)

Days of Noncompliance for Gravity-Based Penalty: 365

Number of Tanks: 1

Part 2: Economic Benefit Component / Cost Savings

1. Capital Costs:	\$0	Basis: None for recordkeeping
2. One-Time Non-depreciable Expenditure:	\$0	Basis: None for recordkeeping
3. Avoided Costs (Annual Expenditure):	\$0	Basis: Nominal for recordkeeping
4. Economic Benefit Component:	\$0	Basis: Sum is nominal

Part 3: Matrix Value for the Gravity-Based Component

Potential for Harm: Major

Extent of Deviation: Major

Justification for Potential for Harm:

The potential for harm resulting from this violation was determined to be "major" inasmuch as the Respondent's failure to maintain release detection monitoring results can result in a release of product going unnoticed for a lengthy period of time with detrimental consequences.

Justification for Extent of Deviation:

The extent of deviation for this violation was determined to be "major" inasmuch as the Respondents exhibited a total lack of compliance with this requirement for the time period in

which the penalty is being sought.

5. Matrix Value: \$1,500
6. Total Matrix Value (TMV) = (MV x Number of tanks): \$1,500

Inflation Adjustment Matrix Value:

- 6.a. \$1,500 x 1.2895 (inflation adjustment for post March 15, 2004 violations) = \$1934

[See "Modifications to EPA Penalty Policies to Implement the Civil Monetary Penalty Inflation Adjustment Rule (Pursuant to the Debt Collection Improvement Act of 1996, Effective October 1, 2004)]

Part 4: Violator-Specific Adjustments to Matrix Value

	% Change (+/-) IAMV	Inflation Adjustment Matrix Value	Dollar Adjustments
7. Degree of cooperation or non-cooperation:	N/A	N/A	N/A
8. Degree of willfulness or negligence:	+50	\$1,934	\$967
9. History of noncompliance:	N/A	N/A	N/A
10. Unique factors:	N/A	N/A	N/A
11. Total Violator-specific Adjustments:			\$967

Justification for Degree of Cooperation/ Non-cooperation: No adjustments were made. EPA is unaware of any cooperative or good faith efforts on the part of the Respondent in resolving this violation, other than resuming recordkeeping in January 2007, before EPA's inspection in April 2007. This, however, followed the time when the violation was to have been corrected pursuant to the Audit Agreement.

Justification for Degree of Willfulness or Negligence: A 50% upward adjustment was made for two reasons: (1) because the release detection requirements have been a longstanding component of the program and EPA has made special efforts to remind federal agencies of the need to comply with UST requirements; and (2) because previously the Respondent and EPA entered into an Audit Policy Agreement under which the Respondent had the opportunity to identify and correct violations without being subject to gravity-based penalties. Under the Audit Policy, Respondent was required to take steps to prevent repetition of any noncompliance. Accordingly, the penalty is increased by 50%.

Justification for History of Noncompliance: No adjustments made.

Justification for Unique Factors: No adjustments made.

Adjusted Matrix Value = Inflation Adjustment MV (\$1,934) + Dollar Adjustments (\$967) = \$2,901

Part 5: Gravity-Based Component

Level of Environmental Sensitivity: Moderate

Justification for Level of Environmental Sensitivity:

The Environmental Sensitivity Multiplier for this violation was determined to be “moderate”, corresponding to a sensitivity level of 1.5.

- 12. Environmental Sensitivity Multiplier (ESM): 1.5
- 13. Days of Noncompliance Multiplier (DNM): 2.5
- 15. Gravity-based Component: \$10,878.75

$$\text{Gravity-based Component} = \text{AMV} \times \text{ESM} \times \text{DNM}$$

Part 6: Initial Penalty Target Figure

- 15. Economic Benefit Component: \$0.00
- 16. Gravity-Based Component: \$10,878.75

- 17. Initial Penalty Target Figure: \$10,878.75