



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF: LR-8J

CERTIFIED MAIL # 7001 0320 0005 8917 6034
RETURN RECEIPT REQUESTED

JUN 09 2010

Mr. Sukhjinker S. Virk
Virks Gas and Grocery
702 IN Highway 212
Michigan City, Indiana 46360

Re: In the Matter of: Virks Gas and Grocery, Docket No. RCRA-05-2010-0017

Dear Mr. Virk:

I have enclosed the Complaint and Compliance Order filed by the U.S. Environmental Protection Agency naming you (the owner of Virks Gas and Grocery) as Respondent, under Section 9006 of the Solid Waste Disposal Act, as amended, 42 U.S.C. § 6991e.

As provided in the Complaint, if you would like to request a hearing, you must do so in your answer to the Complaint. Please note that if you do not file an answer with the Regional Hearing Clerk (E-19J), U.S. EPA, Region 5, 77 West Jackson Blvd., Chicago, IL 60604 within thirty (30) days of your receipt of this Complaint, a default order may be issued and the proposed civil penalty will become due 30 days later.

In addition, whether or not you request a hearing, you may request an informal settlement conference. If you wish to request a conference, please contact Sandra Siler, Enforcement Officer, at (312) 886-0429. If you have any other questions about this matter, please contact Terence Branigan, Associate Regional Counsel, at 312-353-4737.

Sincerely,

A handwritten signature in cursive script, appearing to read "Mary Setnicar".

Mary Setnicar, Acting Chief
RCRA Branch
Land and Chemicals Division

Enclosures

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. RCRA-05-2010-0017
)	
Sukhjinder S. Virk, Owner)	
Virks Gas and Grocery)	Proceeding to Assess a Civil Penalty and
Michigan City, Indiana)	Issue a Compliance Order Under Section
)	9006 of the Solid Waste
)	Disposal Act, as amended,
Respondent.)	42 U.S.C. § 6991e
<hr/>		

RECEIVED
JUN - 9 2010

Complaint

**REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY**

1. This is an administrative action to assess a civil penalty under Section 9006(d) of the Solid Waste Disposal Act, as amended (SWDA), 42 U.S.C. § 6991e(d), and to issue a compliance order under SWDA Section 9006(a), 42 U.S.C. § 6991e(a).
2. Complainant is, by lawful delegation, the Director, Land and Chemicals Division, United States Environmental Protection Agency (U.S. EPA), Region 5.
3. Respondent is Sukhjinder S. Virk, an individual.

Statutory and Regulatory Background

4. Subchapter IX of SWDA, 42 U.S.C. § 6991 *et seq.*, regulates the installation and use of underground storage tanks (USTs), which are defined in Section 9001(1) of SWDA, 42 U.S.C. § 6991(1), and 40 C.F.R. § 280.12.
5. Section 9003 of SWDA, 42 U.S.C. § 6991b, requires the Administrator to promulgate release detection, prevention and correction regulations applicable to all owners and operators of USTs. These regulations are codified in 40 C.F.R. Part 280.
6. Under Section 9004 of SWDA, 42 U.S.C. § 6991c, the Administrator of U.S. EPA (the Administrator) may approve a state program to administer the UST program in lieu of the

federal program when the Administrator finds that the state program meets certain conditions. Violations of any requirement or standard of a State provision approved under SWDA Section 9004, 42 U.S.C. § 6991c, are subject to the assessment of civil penalties and issuance of compliance orders as provided in Section 9006 of SWDA, 42 U.S.C. § 6991e.

7. Pursuant to Section 9004 of SWDA, 42 U.S.C. § 6991c, the Administrator of U.S. EPA approved the State of Indiana's application to administer a state UST program in lieu of the federal government's program effective August 11, 2006. 71 Fed. Reg. 39213 (July 12, 2006). The U.S. EPA-approved Indiana regulations are codified at 329 Indiana Administrative Code (IAC) Article 9.

8. Section 9006 of SWDA, 42 U.S.C. § 6991e, authorizes U.S. EPA to initiate an enforcement action against any person found to be in violation of any requirement or standard of a State program approved pursuant to Section 9004 of SWDA, 42 U.S.C. § 6991c.

9. U.S. EPA has provided notice of the issuance of this Administrative Complaint and Compliance Order to the State of Indiana pursuant to SWDA Section 9006(a)(2), 42 U.S.C. § 6991e(a)(2).

General Allegations

At all times relevant to this Complaint, unless otherwise indicated:

10. Respondent, Sukhjinder S. Virk, is a "person," as defined in 329 IAC 9-1-35.2 [40 C.F.R. § 280.12].

11. Respondent is the owner of the Virks Gas and Grocery facility, Facility I.D. # 11687, at 702 IN Highway 212, Michigan City, Indiana.

12. There are three 8,000 gallon underground tanks at the Virks Gas and Grocery facility for holding gasoline. All three are made of fiberglass and have fiberglass piping.

13. The three 8,000 gallon tanks at the Virks Gas and Grocery facility are “underground storage tanks,” as defined in 42 U.S.C. § 6991(10) and 329 IAC 9-1-47.1 [40 C.F.R. § 280.12].

14. The three 8,000 gallon tanks at the Virks Gas and Grocery facility, along with their connected underground piping, underground ancillary equipment, and containment system (if any) constitute UST systems, as defined in 329 IAC 9-1-49 [40 C.F.R. § 280.12].

15. The three 8,000 gallon tanks at the Virks Gas and Grocery facility, along with their connected underground piping, underground ancillary equipment, and containment system (if any) constitute petroleum UST systems, as defined by 329 IAC 9-1-36 [40 C.F.R. § 280.12].

16. Respondent is the owner, as defined in 329 IAC 9-1-35.1 [40 C.F.R. § 280.12], of the three underground storage tanks, their connected underground piping, underground ancillary equipment, and containment system (if any) at the Virks Gas and Grocery facility.

17. The Indiana Department of Environmental Management (IDEM) inspected the Virks Gas and Grocery facility on July 9, 2008.

18. U.S. EPA conducted compliance inspections at the Virks Gas and Grocery facility on October 14, 2008 and again on December 9, 2008.

19. Pursuant to Section 9006 of SWDA, 42 U.S.C. § 6991e, and based on the information alleged in this Complaint, Respondent violated State requirements approved pursuant to Section 9004 of SWDA, 42 U.S.C. § 6991c.

Count 1

At all times relevant to this Complaint, unless otherwise indicated:

20. Paragraphs 1 through 19 of this Complaint are realleged and incorporated here by reference.

21. 329 IAC 9-7-1(a)(1) [40 C.F.R. §280.40(a)(1)] requires owners and operators of UST systems to provide a release detection method capable of detecting a release from tank or piping that routinely contains product. 329 IAC 9-7-2 [40 C.F.R. § 280.41] includes additional release detection requirements applicable to petroleum UST systems.

22. All three of the tanks at the Virks Gas and Grocery facility were connected to an automatic tank gauging system that is designed to detect releases from all three of the underground storage tanks and associated piping. At no time relevant to this complaint has there been any other method for detecting releases from the tanks or associated piping in use at the Virks Gas and Grocery facility that met the requirements of 329 IAC 9-7-1(a) and 329 IAC 9-7-2 [40 C.F.R. §§ 280.40(a) and 280.41].

23. At the time of the IDEM inspection that took place on July 9, 2008 at the Virks Gas and Grocery facility, the automatic tank gauging system was malfunctioning and did not provide a method for detecting releases.

24. At the time of the U.S. EPA inspection that took place on October 14, 2008, the automatic tank gauging system at the Virks Gas and Grocery facility was still malfunctioning and did not provide a method for detecting releases.

25. On October 14, 2008, U.S. EPA issued the facility a Field Citation for inadequate operation or maintenance of automatic tank gauging.

26. At the time of the U.S. EPA inspection that took place on December 9, 2009, the automatic tank gauging system at the Virk's Gas and Grocery facility was still malfunctioning and did not provide a method for detecting releases.

27. On February 5, 2009, U.S. EPA withdrew the Field Citation due to Respondent's failure to comply within 30 days.

28. Respondent's failure to provide a release detection method capable of detecting a release from tank or piping that routinely contains product at the Virks Gas and Grocery facility violates 329 IAC 9-7-1(a)(1) and 329 IAC 9-7-2 [40 C.F.R. §§ 280.40(a)(1) and 280.41], and is subject to the assessment of civil penalties and issuance of compliance orders as provided in Section 9006 of SWDA, 42 U.S.C. § 6991e.

Compliance Order

Based on the foregoing allegations in this Complaint, and based on authority in Section 9006(a) of SWDA, 42 U.S.C. § 6991e(a), within 15 days of its receipt of this Complaint, Respondent is hereby ordered to comply with the following requirements:

- 1) Demonstrate that Respondent's automatic tank gauging system at the Virks Gas and Grocery facility has been repaired and meets the standards for adequate release detection.
- 2) Submit the documentation required to demonstrate compliance with paragraph 1) of this section within 15 days of the receipt of this Compliance Order to:

Janet Arnold, Section Chief
Office of Enforcement

Indiana Department of Environmental Management
100 N. Senate Avenue
Indianapolis, Indiana 46206

3) Submit the documentation required to demonstrate compliance with paragraph 1) of this section within 15 days of the receipt of this Complaint to:

U.S. EPA Region 5 (LR-8J)
Underground Storage Tank Section
Attention: Enforcement Officer, Sandra L. Siler
77 West Jackson Blvd.
Chicago, Illinois 60604-3590

Respondent must achieve and maintain compliance with all requirements and prohibitions governing the storage of regulated substances in underground storage tank systems applicable to owners and/or operators of petroleum UST systems as codified at 329 IAC Article 9 [40 C.F.R. Part 280].

Civil Penalty

Section 9006(d)(2) of SWDA, 42 U.S.C. § 6991e(d)(2), authorizes the Administrator of U.S. EPA to assess a civil penalty of up to \$10,000 per tank per day for each violation of any state requirement or standard approved pursuant to Section 9004 of SWDA, 42 U.S.C. § 6991c. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and its implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to \$11,000 per tank per day of violation that occurred after January 31, 1997, and to \$16,000 per tank per day of violation that occurred after January 12, 2009. In determining the amount of the proposed penalty, Section 9006(c) of SWDA, 42 U.S.C. § 6991e(c), requires U.S. EPA to take into

account the seriousness of the violations and any good faith efforts to comply with the applicable requirements.

U.S. EPA determined the proposed penalty by evaluating the facts and circumstances of this case with specific reference to the “U.S. EPA Penalty Guidance for Violations of UST Regulations” (OSWER Directive 9610.12, dated November 14, 1990), a copy of which is enclosed with this Complaint. This guidance provides a rational, consistent, and equitable calculation methodology for applying the statutory penalty factors enumerated above to particular cases.

Based on an evaluation of the facts alleged in this Complaint, the statutory factors enumerated above, and the guidelines referenced above, Complainant proposes that the Administrator assess the following penalties against Respondent for the violations alleged in the Complaint:

Count 1: 329 IAC 9-7-1(a)(1)/329 IAC 9-7-2.....\$ 20,312
TOTAL:\$ 20,312

Notice of Potential Liability for Additional Civil Penalties

Under Section 9006(a)(3) of SWDA, 42 U.S.C. § 6991e(a)(3), a Respondent that fails to comply with a Compliance Order within the time specified in the Order shall be liable for an additional penalty of up to \$32,500 for each day of continued noncompliance. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and its implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to \$37,500 for each day of continued noncompliance after January 12, 2009. Such continued noncompliance may also result

in the institution of a civil judicial action.

Rules Governing This Proceeding

The “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits” (Consolidated Rules) at 40 C.F.R. Part 22 govern this civil administrative penalty proceeding. Enclosed with the complaint is a copy of the Consolidated Rules.

Filing and Service of Documents

Respondent must file with the Regional Hearing Clerk the original and one copy of each document Respondent intends to include as part of the record in this proceeding. The Regional Hearing Clerk’s address is:

Regional Hearing Clerk (E-19J)
U.S. EPA Region 5
77 West Jackson Boulevard
Chicago, IL 60604

Respondent must serve a copy of each document filed in this proceeding on each party pursuant to Section 22.5 of the Consolidated Rules. Complainant has authorized Terry Branigan to receive any answer and subsequent legal documents that Respondent serves in this proceeding.

You may telephone Mr. Branigan at (312) 353-4737. His address is:

Terry Branigan (C-14J)
Associate Regional Counsel
U.S. EPA Region 5
77 West Jackson Boulevard
Chicago, IL 60604

Answer and Opportunity to Request a Hearing

If Respondent contests any material fact upon which the Complaint is based or the appropriateness of any penalty amount, or contends that it is entitled to judgment as a matter of law, Respondent may request a hearing before an Administrative Law Judge. To request a hearing, Respondent must file a written Answer within 30 days of receiving this Complaint and must include in that written Answer a request for a hearing. Any hearing will be conducted in accordance with the Consolidated Rules.

In counting the 30-day period, the date of receipt is not counted, but Saturdays, Sundays, and federal legal holidays are counted. If the 30-day time period expires on a Saturday, Sunday, or federal legal holiday, the time period extends to the next business day.

To file an Answer, Respondent must file the original written Answer and one copy with the Regional Hearing Clerk at the address specified above.

Respondent's written Answer must clearly and directly admit, deny, or explain each of the factual allegations in the Complaint; or must state clearly that Respondent has no knowledge of a particular factual allegation. Where Respondent states that it has no knowledge of a particular factual allegation, the allegation is deemed denied. Respondent's failure to admit, deny, or explain any material factual allegation in the Complaint constitutes an admission of the allegation.

Respondent's answer must also state:

- a. the circumstances or arguments which Respondent alleges constitute grounds of defense;
- b. the facts that Respondent disputes;
- c. the basis for opposing the proposed penalty; and
- d. whether Respondent requests a hearing.

If Respondent does not file a written Answer within 30 calendar days after receiving this Complaint, the Presiding Officer may issue a default order, after motion, under Section 22.17 of the Consolidated Rules. Default by Respondent constitutes an admission of all factual allegations in the Complaint and a waiver of the right to contest the factual allegations. Respondent must pay any penalty assessed in a default order, without further proceedings, 30 days after the order becomes the final order of the Administrator of U.S. EPA under Section 22.27(c) of the Consolidated Rules.

Settlement Conference

Whether or not Respondent requests a hearing, Respondent may request an informal conference to discuss the facts alleged in the Complaint and to discuss settlement. To request an informal settlement conference, Respondent may contact Ms. Sandra Siler at (312) 886-0429. Respondent's request for an informal settlement conference will not extend the 30-day period for filing a written Answer to this Complaint. Respondent may simultaneously pursue both an informal settlement conference and the adjudicatory hearing process. Complainant encourages all parties against whom it proposes to assess a civil penalty to pursue settlement through an informal conference. However, Complainant will not reduce the penalty simply because the parties hold an informal settlement conference.

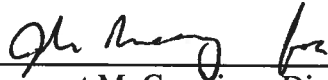
Continuing Obligation to Comply

Neither the assessment nor payment of a civil penalty will affect Respondents' continuing obligation to comply with the UST regulations and any other applicable federal, state, or local law.

Consent Agreement and Final Order

If U.S. EPA and Respondent agree to settle the claims in this Complaint, the terms of the settlement would be embodied in a Consent Agreement and Final Order. A Consent Agreement signed by both parties is effective when the Regional Administrator signs the Consent Order and it is filed with the Regional Hearing Clerk.

6/4/10
Date



Margaret M. Guerfiero, Director
Land and Chemicals Division

CASE NAME: Virks Gas and Grocery
DOCKET NO: RCRA-05-2010-0017


CERTIFICATE OF SERVICE

I hereby certify that I have caused a copy of the foregoing **Complaint** to be served upon the persons designated below, on the date below, by causing true and correct copies to be deposited in the U.S. Mail, First Class and certified-return receipt requested, postage prepaid, at Chicago, Illinois, in envelopes addressed to the following:

Sukhjinker S. Virk
Virks Gas and Grocery
702 IN Highway 212
Michigan City, Indiana 46360

I hereby further certify that I filed the original and one copy of this **Complaint** and this **Certificate of Service** with the Regional Hearing Clerk (E-19J), U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590, on the date below.

June 9, 2010
Date


Sandra L. Siler, Enforcement Officer
Land and Chemicals Division
U.S. EPA Region 5

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U.S. ENVIRONMENTAL
PROTECTION AGENCY.