

**BEFORE THE UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 7**

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**In the Matter of:**

**TFL, Inc.  
a/k/a Mega Saver  
202 S. 73<sup>rd</sup> Street  
Omaha, Nebraska 68114**

) **Administrative Complaint, Compliance  
) Order and Notice of Opportunity for  
) Hearing  
)  
) EPA Docket No. RCRA-07-2018-0258  
)  
) Proceeding under Section 9006 of the  
) Resource Conservation and Recovery  
) Act, as amended, 42 U.S.C. § 6991e**  
**Respondent**

**COMPLAINT**

**JURISDICTION**

1. This Administrative Complaint, Compliance Order, and Notice of Opportunity for Hearing (Complaint) is issued pursuant to Section 9006 of the Solid Waste Disposal Act, as amended by Subtitle I of the Resource Conservation and Recovery Act of 1976 (RCRA), 42 U.S.C. § 6991e, and in accordance with the United States Environmental Protection Agency Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits (Consolidated Rules of Practice), Title 40 Code of Federal Regulations (C.F.R.) Part 22. A copy of the Consolidated Rules of Practice is enclosed with this Complaint.

**PARTIES**

2. The Complainant is the Branch Chief, Chemical and Oil Release Prevention Branch (CORP), Air and Waste Management Division of the EPA, Region 7, as duly delegated from the Administrator of the EPA.
3. The Respondent is TFL, Inc. a/k/a Mega Saver, a company incorporated under the laws of and authorized to conduct business in the state of Nebraska.

**STATUTORY AND REGULATORY BACKGROUND**

4. Effective September 18, 2002, pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c, and 40 C.F.R. Part 281, Subpart A, the state of Nebraska was granted final authorization to administer a state UST management program in lieu of the federal UST management program. The provisions and regulations of the Nebraska UST management program, through this final authorization, have become requirements of Subtitle I of RCRA, 42 U.S.C. §§ 6991-6991i, and are enforceable by EPA pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e.

requirement or standard promulgated by EPA under Section 9003 of RCRA, 42 U.S.C. § 6991c, or that is part of an authorized state underground storage tank program shall be liable for a civil penalty not to exceed \$10,000 for each tank for each day of violation. Pursuant to the Civil Monetary Penalty Inflation Adjustment Rule, violations of RCRA Section 9006(d)(2), 42 U.S.C. § 6991e(d)(2), which occur subsequent to November 2, 2015 and are assessed on or after January 15, 2018 are subject to a maximum civil penalty of \$23,426 for each tank for each day of violation.

In support of this Complaint, the Complainant makes the following allegations, findings of fact and conclusions of law:

## II. COMPLAINT

### Findings of Facts and Conclusions of Law

15. At all times relevant to this Complaint, TFL, Inc., a/k/a Mega Saver (Respondent) has been a Nebraska corporation doing business in the state of Nebraska.
16. As a corporation, Respondent is, and at all times herein, has been a person within the meaning of that term as provided in 159 NAC §1-003.41.
17. On August 10, 2016 and from October 24 through October 28, 2016, the EPA conducted inspections of the Underground Storage Tank (UST) systems at the TFL, Inc. facilities listed in paragraph 18 below, pursuant to RCRA Subtitle I, 42 U.S.C. §§ 6991-6991m, and 159 NAC Chapter 12.
18. From the date of the inspections and continuing through the filing date of this Complaint, Respondent has owned and or operated the UST systems, at the following facilities:
  - a) 10707 Blondo Street, Omaha, Nebraska
  - b) 4108 Dodge Street, Omaha, Nebraska
  - c) 10780 Q Street, Omaha, Nebraska
  - d) 11511 S. 36<sup>th</sup> Street, Bellevue, Nebraska
  - e) 7204 Blondo Street. Omaha, Nebraska
  - f) 7205 Lawndale Drive, Omaha, Nebraska
  - g) 8928 Maple Street, Omaha, Nebraska
  - h) 3402 S. 42<sup>nd</sup> Street, Omaha, Nebraska
  - i) 2014 L Street, Omaha, Nebraska
19. At the time of the inspections, each of the systems above were UST systems, as defined in 159 NAC 1-003.58, were in use, and contained “regulated substances,” as defined in 159 NAC 1-003.45B.
20. At the time of the inspections, each of the above UST systems was a “new UST system,” as defined by 159 NAC 1-003.33 as they were used to contain an accumulation of

is a violation of Subtitle I of RCRA, 42 U.S.C. §§ 6991-6991i, for which EPA is authorized to issue a compliance order and assess penalties under 42 U.S.C. § 6991e.

**Count 3**

31. Paragraphs 1 through 19 are incorporated by reference herein.
32. Pursuant to 159 NAC 6-006.02D, referencing 159 NAC 7-006.02, all UST system owners and operators must maintain records of release detection monitoring for a period of five years.
33. On October 26, 2016, representatives from the EPA inspected Respondent's facility located at 4108 Dodge Street, Omaha, Nebraska.
34. At the time of the EPA inspection of this facility, it was discovered that Respondent had not maintained records of all of its release detection monitoring for five years.
35. Respondent's failure to maintain its records of release detection monitoring, as required by NAC Title 159 6-006.02D, referencing 159 NAC 7-006.02, is a violation of Subtitle I of RCRA, 42 U.S.C. §§ 6991-6991i, for which EPA is authorized to issue a compliance order and assess penalties under 42 U.S.C. § 6991e.

**10780 Q Street Facility**

**Count 4**

36. Paragraphs 1 through 19 are incorporated by reference herein.
37. Pursuant to 159 NAC 6-006.02D, referencing 159 NAC 7-006.02, all UST system owners and operators must maintain records of release detection monitoring for a period of five years.
38. On October 24, 2016, representatives from the EPA inspected Respondent's facility located at 10780 Q Street, Omaha, Nebraska.
39. At the time of the EPA inspection of this facility, it was discovered that Respondent had not maintained records of all of its release detection monitoring for five years.
40. Respondent's failure to maintain records of its release detection monitoring, as required by NAC Title 159 6-006.02D, referencing 159 NAC 7-006.02, is a violation of Subtitle I of RCRA, 42 U.S.C. §§ 6991-6991i, for which EPA is authorized to issue a compliance order and assess penalties under 42 U.S.C. § 6991e.

**11511 S. 36<sup>th</sup> Street Facility**

52. Pursuant to 159 NAC 7-005.01, all UST system owners and operators with underground piping that conveys regulated substances under pressure must be equipped with an automatic line leak detector.
53. On October 26, 2016, representatives from the EPA inspected Respondent's facility located at 7204 Blondo Street, Omaha, Nebraska.
54. At the time of the EPA inspection of this facility, it was discovered that Respondent's UST system had underground piping that conveyed regulated substances under pressure, but that it did not have a working automatic line leak detector.
55. Respondent's failure to have a working automatic line leak detector at a location where it was conveying regulated substances under pressure through underground piping, as is required by NAC Title 159 7-005.01 is a violation of Subtitle I of RCRA, 42 U.S.C. §§ 6991-6991i, for which EPA is authorized to issue a compliance order and assess penalties under 42 U.S.C. § 6991e.

**Count 8**

56. Paragraphs 1 through 19 are incorporated by reference herein.
57. Pursuant to 159 NAC 6-006.02D, referencing 159 NAC 7-006.02, all UST system owners and operators must maintain records of release detection monitoring for a period of five years.
58. On October 26, 2016, representatives from the EPA inspected Respondent's facility located at, 7204 Blondo Street, Omaha, Nebraska.
59. At the time of the EPA inspection of this facility, it was discovered that Respondent had not maintained all of its records of release detection monitoring for five years.
60. Respondent's failure to maintain its records of release detection monitoring, as required by NAC Title 159 6-006.02D, referencing 159 NAC 7-006.02, is a violation of Subtitle I of RCRA, 42 U.S.C. §§ 6991-6991i, for which EPA is authorized to issue a compliance order and assess penalties under 42 U.S.C. § 6991e.

**7205 Lawndale Street Facility**

**Count 9**

61. Paragraphs 1 through 19 are incorporated by reference herein.
62. Pursuant to 159 NAC 6-002.04B, all UST system owners and operators with impressed current cathodic protection systems must maintain copies of the last two inspections

72. Pursuant to 159 NAC 6-006.02D, referencing 159 NAC 7-006.02, all UST system owners and operators must maintain records of release detection monitoring for a period of five years.
73. On October 25, 2016, representatives from the EPA inspected Respondent's facility located at 7205 Lawndale Street, Omaha, Nebraska.
74. At the time of the EPA inspection of this facility, it was discovered that Respondent had not maintained all of its records of release detection monitoring for five years.
75. Respondent's failure to maintain its records of release detection monitoring, as required by NAC Title 159 6-006.02D, referencing 159 NAC 7-006.02, is a violation of Subtitle I of RCRA, 42 U.S.C. §§ 6991-6991i, for which EPA is authorized to issue a compliance order and assess penalties under 42 U.S.C. § 6991e.

**8928 Maple Street Facility**

**Count 12**

76. Paragraphs 1 through 19 are incorporated by reference herein.
77. Pursuant to 159 NAC 6-006.02D, referencing 159 NAC 7-006.02, all UST system owners and operators must maintain records of release detection monitoring for a period of five years.
78. On October 25, 2016, representatives from the EPA inspected Respondent's facility located at 8928 Maple Street, Omaha, Nebraska.
79. At the time of the EPA inspection of this facility, it was discovered that Respondent had not maintained all of its records of release detection monitoring for five years.
80. Respondent's failure to maintain its records of release detection monitoring, as required by NAC Title 159 6-006.02D, referencing 159 NAC 7-006.02, is a violation of Subtitle I of RCRA, 42 U.S.C. §§ 6991-6991i, for which EPA is authorized to issue a compliance order and assess penalties under 42 U.S.C. § 6991e.

**3402 South 42<sup>nd</sup> Street Facility**

**Count 13**

81. Paragraphs 1 through 19 are incorporated by reference herein.
82. Pursuant to NAC Title 159 7-004.02, all UST system owners and operators who rely on manual tank gauging for release detection must meet extensive requirements prescribed

and operators must maintain records of release detection monitoring for a period of five years.

94. On October 27, 2016, representatives from the EPA inspected Respondent's facility located at 2014 L Street, Omaha, Nebraska.
95. At the time of the EPA inspection of this facility, it was discovered that Respondent had not maintained all of its records of release detection monitoring for five years.
96. Respondent's failure to maintain records of the release detection monitoring required by NAC Title 159 6-006.02D, referencing 159 NAC 7-006.02, is a violation of Subtitle I of RCRA, 42 U.S.C. §§ 6991-6991i, for which EPA is authorized to issue a compliance order and assess penalties under 42 U.S.C. § 6991e.

### **Count 16**

97. Paragraphs 1 through 19 are incorporated by reference herein.
98. Pursuant to 159 NAC 6-002.03, all UST system owners and operators with impressed current cathodic protection systems must inspect the systems every 60 days to ensure the equipment is running properly.
99. On October 27, 2016, representatives from the EPA inspected Respondent's facility located at 2014 L Street, Omaha, Nebraska.
100. At the time of the EPA inspection of this facility, it was discovered that there were USTs at the facility with an impressed current cathodic protection system, but Respondent had not inspected its impressed current cathodic protection system as required by state and federal regulations.
101. Respondent's failure to inspect the systems at this facility every 60 days as required by NAC Title 159 6-002.03 is a violation of Subtitle I of RCRA, 42 U.S.C. §§ 6991-6991i, for which EPA is authorized to issue a compliance order and assess penalties under 42 U.S.C. § 6991e.

## **RELIEF REQUESTED**

### **Civil Penalty**

102. The EPA proposes a penalty for Counts 1 through 16 of One Hundred Fifty-One Thousand One Hundred Eighty-Eight Dollars (\$151,188). In developing this proposed penalty for the violations alleged in this Complaint, EPA has taken into account the particular facts and circumstances of this case with specific reference to Sections 9006(c) and (e) of RCRA, 42 U.S.C. § 6991e(c) and (e), and EPA's November 1990 U.S. EPA Penalty Guidance for Violations of UST Regulations ("UST Penalty Guidance"), the Civil

Field Tag 4200 of the Fedwire message should read  
“D 68010727 Environmental Protection Agency”

A copy of the check or other payment must simultaneously be sent to:

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219;

and to:

Raymond C. Bosch  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219.

Payment should reference the name and docket number of this Complaint.

#### **Payment of Proposed Penalty in Lieu of an Answer**

106. Respondent may resolve this proceeding by paying the proposed penalty in full instead of filing an answer to the Complaint within thirty (30) days of receipt of the Complaint, in accordance with the procedures set forth above. If Respondent wishes to resolve this proceeding by paying the proposed penalty in full instead of filing an answer but needs additional time to pay the penalty, Respondent may file a written statement with the Regional Hearing Clerk within thirty (30) days of receipt of the Complaint, in accordance with Rule 22.18(a)(1) of the Consolidated Rules of Practice. The written statement shall state that Respondent agrees to pay the proposed penalty in full within sixty (60) days of receipt of the Complaint. The written statement need not contain any response to, or admission of, the allegations in the Complaint. Respondent must then pay the full amount of the proposed penalty within sixty (60) days of receipt of the Complaint. Failure to pay the full penalty within sixty (60) days of receipt of the Complaint may subject Respondent to default, as set forth below.

#### **NOTICE OF OPPORTUNITY FOR HEARING**

##### Answer and Request for Hearing

107. Respondent must file a written answer within thirty (30) days of receipt of this Complaint if Respondent: (a) contests any material fact upon which this Complaint is based; (b) contends that the penalty proposed in this Complaint is inappropriate; or (c) contends that it is entitled to judgment as a matter of law. The answer shall clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint with

Hearing Clerk  
U.S. Environmental Protection Agency  
Office of Administrative Law Judges  
Ronald Reagan Building, Room M1200  
1300 Pennsylvania Avenue NW  
Washington, D.C. 20460

Default

109. If, within thirty (30) days of receipt of a Complaint, Respondent fails to: (a) submit full payment of the proposed penalty; (b) submit a written statement to the Regional Hearing Clerk that Respondent agrees to pay the penalty within sixty (60) days of receipt of the Complaint; or (c) file a written answer to the Complaint, Respondent may be found in default. Default by Respondent constitutes, for the purposes of this proceeding, an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations. A Default Order may thereafter be issued by the Presiding Officer and the civil penalty proposed in the Complaint shall be assessed unless the Presiding Officer finds that the proposed penalty is clearly inconsistent with the record of the proceeding or TSCA.

Informal Settlement Conference

110. The EPA encourages settlement of a proceeding at any time if the settlement is consistent with the provisions and objectives of TSCA and the regulations upon which this action is based. Regardless of whether Respondent requests a hearing, Respondent may request an informal settlement conference to discuss the facts of this case, the proposed penalty, and the possibility of settlement. To request an informal settlement conference please contact:

Raymond C. Bosch  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219  
Office: (913) 551-7501

111. Any settlement which may be reached as a result of such a conference shall be recorded in a written consent agreement signed by all parties or their representatives and shall conform with the provisions of Section 22.18(b)(2) of the Consolidated Rules of Practice. No settlement or consent agreement shall dispose of this proceeding without a final order from the Regional Judicial Officer or the Regional Administrator.
112. Please note that a request for an informal settlement conference does not extend the thirty (30) day period during which a written answer must be filed.



Attachment 1 – Penalty Calculation Worksheet

<b>Count</b>	<b>Violation</b>	<b>Deviation from Requirement</b>	<b>Potential for Harm</b>	<b>Gravity Based Penalty</b>
1	Failure to have overfill prevention equipment.	Major	Moderate	\$5,544.00
2	Failure to inspect the UST system with an impressed current system at the facility within the 60 days prior to the inspection.	Major	Moderate	\$3,118.50
3	Failure to maintain records of release detection monitoring.	Moderate	Minor	\$555.00
4	Failure to maintain records of release detection monitoring.	Moderate	Minor	\$370.00
5	Failure to maintain records of release detection monitoring.	Moderate	Minor	\$370.00
6	Failure to maintain records of the last two inspections of its impressed current cathodic protection system.	Major	Moderate	\$27,861.00
7	Failure to have a working automatic line leak detector at a location where it was conveying regulated substances under pressure through underground piping.	Major	Major	\$4,158.00
8	Failure to maintain records of release detection monitoring.	Moderate	Minor	\$10,395.00
9	Failure to maintain records of the last two inspections of its impressed current cathodic protection system.	Moderate	Minor	\$2,497.50
10	Failure to have the required spill and overfill prevention equipment.	Major	Moderate	\$4,158.00
11	Failure to maintain records of release detection monitoring.	Moderate	Minor	\$370.00
12	Failure to maintain records of release detection monitoring.	Major	Major	\$10,395.00
13	Failure to comply with manual tank gauging requirements.	Major	Major	\$16,632.00
14	Failure to maintain Cathodic Protection testing results from the last two inspections.	Major	Moderate	\$54,853.00
15	Failure to maintain records of release detection monitoring.	Moderate	Minor	\$555.00
16	Failure to inspect the impressed current systems every 60 days.	Major	Moderate	\$9,355.50
<b>Total</b>				<b>\$151,187.50</b>

CERTIFICATE OF SERVICE

I hereby certify that the original and one true and correct copy of the foregoing Complaint, Compliance Order, and Notice of Opportunity for Hearing were hand delivered to the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 7, 11201 Renner Boulevard, Lenexa, Kansas 66219; and a true and correct copy together with a copy of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits were sent on November 7, 2018 by UPS Overnight Delivery, return receipt requested, to:

Abdurashid Samiev  
Registered Agent  
TFL, Inc.  
202 S. 73rd Street  
Omaha, NE 68114

  
Signature