UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX

In the matter of	)	U.S. EPA Docket No.
	)	RCRA- 9-2010-0009
Sunrise Valero Market aka Sunrise Oil, Inc. and Samuel Rodriguez-Ibarra	)	
	)	
	)	
Respondents.	)	

RENEWED MOTION FOR DEFAULT ORDER

The Complainant, the United States Environmental Protection Agency ("EPA"), moves for the issuance of an order under 40 C.F.R. § 22.17, finding that Respondents Sunrise Valero Market aka Sunrise Oil, Inc. and Samuel Rodriguez-Ibarra, are in default in this matter and directing Respondents to pay a penalty of $19,095.00. Complainant also moves for a finding that Respondent violated Section 9003 of RCRA, 42 U.S.C. § 6991b, and the regulations adopted pursuant thereto, as described generally in the Complaint and specifically in Counts I through V of the Complaint.

1. Title 40 of the Code of Federal Regulations ("40 CFR") § 22.17(a) provides that a party may be found in default upon failure to timely file and answer to the Complaint. The Complaint in this matter was filed on or about June 21, 2010. Pursuant to 40 CFR § 22.15(a), an Answer to the Complaint should be filed with the Regional Hearing Clerk within thirty (30) days of service of the Complaint. The Complaint was served on the Respondents on or about July 29, 2010. No Answer to the Complaint has been filed with the Regional Hearing Clerk. Thus, a finding of default is appropriate.

2. 40 CFR § 22.17(c) provides that when the Presiding Officer finds that default has occurred, he shall issue a default order as to any or all parts of the proceeding unless the record shows good cause why a default order should not be issued. Respondents have failed to present any information tending to establish good cause for their failure to file an Answer to the Complaint. Accordingly, a finding of default is appropriate.

3. On March 23, 2011, EPA filed a Motion for Default Order ("Motion"), seeking a finding of default in this case and proposing a penalty of $21,225. The Motion included an analysis of each count and a proposed penalty, applying the US EPA Penalty Guidance for Violations of UST Regulations to the counts.

On April 30, 2012, the Regional Judicial Officer returned Complainant's Motion, requesting Complainant submit a renewed motion for default order with any updates Complainant deems necessary.

5. Complainant has reviewed the file and hereby respectfully submits this Renewed Motion for Default. Complainant now amends its previous request that a penalty of $21,255.00 be assessed against the Respondents and requests a penalty of $19,095.00 be assessed against the Respondents. The request for a decreased penalty amount -- since the filing of the original Motion for Default -- is based on the factual assertions concerning the continuing nature of one of the Counts alleged in the Complaint (Count IV – Failure to Provide a Spill or Overfill Prevention System for a New Tank System). The factual assertions plead in the Complaint did not address the continuing nature of the violation after the filing of the Complaint and no other evidence as to the continuing nature of this violation beyond June 21, 2010 is presented herein by the Complainant.

6. Therefore, Respondents should be found in default for failing to file an Answer to the Complaint in a timely manner. Accordingly, the Complainant requests that the Regional Judicial Officer issue an order finding that the Respondents violated Section 9003 of RCRA, 42 U.S.C. § 6991b, and the regulations adopted pursuant thereto. An appropriate penalty should be assessed in the amount of $19,095.00 and Respondent should be compelled to comply with RCRA and submit documentation to EPA demonstrating such compliance, including that the Respondents' Facility is equipped with spill prevention equipment.

8. A Proposed Order is attached for the Regional Judicial Officer's convenience.

Respectfully submitted,

Mimi Newton
Assistant Regional Counsel
Office of Regional Counsel

June 28, 2012
Date

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX

In the matter of	)	U.S. EPA Docket No.
	)	RCRA- 09-2010-0009
Sunrise Valero Market aka Sunrise	)	
Oil, Inc. and Samuel	)	[PROPOSED] ORDER ON
Rodriguez-Ibarra	)	MOTION FOR DEFAULT
	)	JUDGMENT
Respondent.	)	

INTRODUCTION

This proceeding arises under Section 9006 of the Resource Conservation and Recovery Act (RCRA), as amended, 42 U.S.C. § 6991e. This proceeding is governed by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination, or Suspension of Permits (Consolidated Rules), 40 CFR §§ 22.1-22.32.

PROCEDURAL HISTORY

On June 21, 2010, the United States Environmental Protection Agency (EPA or Complainant) issued a Determination of Violation, Compliance Order and Notice of Right to Request a Hearing (Complaint) against Sunrise Valero Market AKA Sunrise Oil, Inc. (Sunrise) and Samuel Rodriguez-Ibarra (Rodriguez-Ibarra) (Respondents). The Complaint was also filed with the Regional Hearing Clerk on or about June 21, 2010. In sum, Complainant alleged five RCRA violations: (1) Count I – Failure to Maintain Records Demonstrating That Annual Line Tightness Tests Were Conducted or Monthly Monitoring on Pressurized Piping Was Performed (on two separate occasions) in violation of Section 9003 of RCRA, 42 U.S.C. § 6991b, and the regulations promulgated at 40 CFR §280.45; (2) Count II – Failure to Maintain Records Demonstrating Performance of Annual Maintenance of Leak Detection for Piping (on two separate occasions) in violation of Section 9003 of RCRA, 42 U.S.C. § 6991b, and 40 CFR §280.45; (3) Count III – Failure to Maintain Records Regarding Performance of Calibration for or Maintenance of Automatic Tank Gauge (on two separate occasions) in violation of Section 9003 of RCRA, 42 U.S.C. § 6991b, and 40 CFR §280.45; (4) Count IV – Failure to Provide a Spill or Overfill Prevention System for a New Tank System in violation of Section 9003 of RCRA, 42 U.S.C. § 6991b, and 40 CFR §280.20(c); and (5) Count V – Failure to Provide Cathodic Protection for Metal Piping in violation of Section 9003 of RCRA, 42 U.S.C. § 6991b, and 40 CFR §280.20(b)(2).

40 CFR § 22.15(a) required Respondent to file an answer to the Complaint within thirty (30) days after service of the Complaint. Complainant completed service of the Complaint on or about July 29, 2010. However, Respondent failed to answer the Complaint.

On March 23, 2011, Complainant filed a Motion for Default pursuant to 40 CFR § 22.17, seeking a finding of default in this case and proposing a penalty of $21,225.00. Respondent did not oppose Complainant's Motion for Default.

On April 30, 2012, the Regional Judicial Officer returned Complainant's Motion, requesting Complainant submit a renewed motion for default order with any updates Complainant deems necessary.

On June 29, 2012, Complainant submitted a renewed Motion for Default, and requested a penalty of $19,095.00 be assessed against the Respondents. The Complainant's request for a decreased penalty amount -- since the filing of the original Motion for Default -- was based on the factual assertions concerning the continuing nature of one of the Counts alleged in the Complaint (Count IV – Failure to Provide a Spill or Overfill Prevention System for a New Tank System). The factual assertions plead in the Complaint did not address the continuing nature of the violation after the filing of the Complaint and no other evidence as to the continuing nature of this violation beyond June 21, 2010 was presented by the Complainant.

FINDINGS OF FACT

Pursuant to 40 CFR § 22.17 and based upon the entire record in this matter, I make the following factual findings:

1. From at least May of 2007 through at least June 21, 2010, Respondent Sunrise owned and operated USTs at a gasoline service station located at 4811 East Sunrise Drive, Tucson, Arizona (the "Facility").

2. From at least May of 2007 through at least June 21, 2010, Respondent Rodriguez-Ibarra operated USTs at a gasoline service station located at the Facility.

3. From at least May of 2007 through at least June 21, 2010, there were two (2) underground storage tanks ("UST") systems located at the Facility. Although each UST system has a 20,000 gallon capacity, one of them is compartmentalized into two 10,000 gallon capacity tanks. From at least May of 2007 through at least June 21, 2010, each UST system consisted of one or more USTs and the underground pressurized piping connected to the tank(s).

4. The USTs at the Facility were installed in approximately 1999 and, from at least May of 2007 through at least June 21, 2010, the USTs at the Facility each contained petroleum

products (*i.e.*, unleaded gasoline).

5. Respondent Sunrise is a "person" as defined in Sections 1004(15) and 9001(5) of RCRA, 42 U.S.C. §§6903(15) and 6991(5), and 40 CFR §280.12. Respondent Rodriguez-Ibarra is a "person" as defined in Sections 1004(15) and 9001(5) of RCRA, 42 U.S.C. §§6903(15) and 6991(5), and 40 CFR §280.12.

6. From at least May of 2007 through at least June 21, 2010, Respondent Sunrise was an "owner" and an "operator" of the USTs at the Facility within the meaning of RCRA Sections 9001(3) and (4), 42 USC §6991(3) and (4), and 40 CFR §280.12.

7. From at least May of 2007 through at least June 21, 2010, Respondent Rodriguez-Ibarra was an "operator" of the USTs at the Facility within the meaning of RCRA Section 9001(3), 42 USC §6991(3), and 40 CFR §280.12.

8. From at least May of 2007 through at least June 21, 2010, the USTs at the Facility were each an "underground storage tank" within the meaning of RCRA Section 9001(10), 42 USC §6991(10), and 40 CFR §280.12.

9. From at least May of 2007 through at least June 21, 2010, the USTs at the Facility were each used to store and dispense "petroleum" within the meaning of RCRA Section 9001(6), 42 USC §6991(6).

10. From at least May of 2007 through at least June 21, 2010, the USTs at the Facility were each used to store and dispense a "regulated substance" within the meaning of 40 CFR §280.12.

11. From at least June of 2005 through at least June 21, 2010, the USTs at the Facility were each "petroleum UST systems" within the meaning of 40 CFR §280.12.

12. From at least May of 2007 through at least June 21, 2010, the USTs at the Facility were each a "new tank system" within the meaning of 40 CFR §280.12.

13. Complainant issued a Complaint against Respondents on June 21, 2010. On or about June 21, 2010, the Complaint was filed and date-stamped by the Regional Hearing Clerk.

14. Pursuant to 40 CFR § 22.15(a), Respondent was required to file an answer to the Complaint within thirty (30) days after service of the Complaint. Complainant completed service of the Complaint on July 29, 2010.

15. To date, neither Complainant nor the Regional Judicial Clerk has received Respondent's answer to the Complaint.

16. On March 23, 2011, Complainant filed a Motion for Default Order, seeking a finding of default in this case and proposing a penalty of $21,225.00. The Motion included an analysis of each count and a proposed penalty, applying the US EPA "Penalty Guidance For Violations of UST Regulations," OSWER Directive 9610.12, November 14, 1990, (the "UST Penalty Policy"), as adjusted by the Adjusted Penalty Policy Matrices Package issued by EPA's Office of Enforcement and Compliance Assurance on November 16, 2009, and the revisions to that memorandum dated April 6, 2010, (the "OECA Penalty Memo") to the counts.

17. To date, neither Complainant nor the Regional Judicial Clerk has received a response to the Motion for Default.

DISCUSSION

The Consolidated Rules, 40 CFR § 22.17(a), apply to motions for default, and provide in pertinent part:

> (a) Default. A party may be found to be in default; after motion, upon failure to file a timely answer to the complaint;...Default by respondent constitutes, for purposes of the proceeding only, an admission of all facts alleged in the complaint and a waiver of all facts alleged in the complaint and a waiver of respondent's right to contest such factual allegations.
>
> (c) Default Order. When the Presiding Officer finds that default has occurred, he shall issue a default order against the defaulting party as to any or all parts of the proceeding unless the record shows good cause why a default order should not be issued.

The Consolidated Rules at 40 CFR § 22.17(a) require that if a default has occurred, the Presiding Officer shall issue a default order against the defaulting party as to any or all parts of the proceeding unless the record shows good cause why a default order should not be issued. Respondent has made no showing that good cause exists to defeat Complainant's Motion for Default Order.

The Motion included an analysis of each count and a proposed penalty, applying the UST Penalty Policy to the counts. Complainant's Renewed Motion for Default sought a reduction in the amount of the penalty requested for Count IV (Failure to Provide a Spill or Overfill Prevention System for a New Tank System). This request for a reduction in this amount was based on the Complainant's allegations as set forth in the Complaint and the fact that Complainant failed to offer any evidence that the violation continued after the Complaint was filed.

The Consolidated Rules, 40 CFR § 22.27(b), apply to the assessment of a civil penalty:

> If the Presiding Officer determines that a violation has occurred and the complaint seeks a civil penalty, the Presiding Officer shall determine the amount of the recommended penalty based on the evidence in the record and in accordance with any penalty criteria set forth in the Act. The Presiding Officer shall consider any civil penalty guidelines issued under the Act. ...If the respondent has defaulted, the Presiding Officer shall not assess a penalty greater than that proposed by the complainant in the complaint, the prehearing information exchange or the motion for default, whichever is less.

Section 9006 of RCRA, 42 U.S.C. § 6991e, authorizes the EPA Administrator to enforce the underground storage tank program through the issuance of orders assessing a civil penalty, requiring compliance immediately or within a specified time for any violation of any requirement of Subtitle I of RCRA, Section 9001 of RCRA *et seq.*, 42 U.S.C. § 6991 *et seq.*

Section 9006(d) of RCRA, 42 U.S.C. § 6991e(d), as amended by the Debt Collections Improvement Act of 1996, 40 CFR Part 19, authorizes a civil penalty of up to ELEVEN-THOUSAND DOLLARS ($11,000.00) for violations that occur after March 15, 2004 but prior to January 13, 2009, and up to SIXTEEN-THOUSAND DOLLARS ($16,000.00) for violations that occur after January 12, 2009, 69 Fed. Reg. 7121 (Feb. 13, 2004), and 73 Fed. Reg. 75340 (Dec. 11, 2008). Complainant requests that the Administrator assess a civil penalty against Respondent of up to $11,000.00 per day, as appropriate, for each day up through January 12, 2009 during which a violation cited in the above outlined Counts continued and up to $16,000.00 per day, as appropriate, for each day after January 12, 2009 during which a violation cited in the above outlined Counts continued.

The penalty calculations system established through EPA's UST Penalty Policy is based upon Section 9006 of RCRA, 42 U.S.C. § 6991e. Under this section, the compliance history of an owner or operator in accordance with the statute or an approved state UST program and any other factor the Administrator considers appropriate are to be considered in assessing a penalty. RCRA Section 9006(d), 42 U.S.C. §6991e(d). The UST Penalty Policy includes Appendix A, which sets forth penalty recommendations for specific violations of the UST regulations. These recommendations are then adjusted for inflation. The Environmental Appeals Board has emphasized that the agency's penalty policies should be applied wherever possible because such policies "assure that statutory factors are taken into account and are designed to assure that penalties are assessed in a fair and consistent manner." *M.A. Bruder & Sons, Inc.*, 10 E.A.D. 598, 613 (EAB 2002).

Under the UST Penalty Guidance, a gravity-based penalty component is determined through consideration of two factors: the potential for harm and the extent of deviation from a statutory or regulatory requirement. UST Penalty Guidance, Chapter 3. Both the potential for

harm and the extent of deviation in a particular count are characterized as major, moderate or minor in accordance with a chart attached to the UST Penalty Guidance entitled "Matrix Values for Determining the Gravity Based Component of Penalty." UST Penalty Guidance, Section 3.1 and Exhibit 4. The gravity-based component is selected from this matrix values chart. Id. The matrix values chart also provides suggestions for whether the penalty associated with a specific type of violation should be assessed on a per tank basis or facility-wide basis. Id.

The UST Penalty Guidance also provides for adjustments to be made to the gravity-based component based on: (1) a multiplier for continuing violations; (2) violator-specific adjustments; and (3) an environmental sensitivity multiplier. Id., Chapter 3.

The UST Penalty Guidance includes a range of multipliers to be used for violations that existed for more than one day. For violations that occurred for more than 90 days, but no more than 180 days, the multiplier is 1.5. For violations that occurred for more than 180 days, but no more than 270 days, the multiplier is 2. For violations that occurred for more than 270 days but no more than 365, the multiplier is 2.5. For each additional 6 months or fraction thereof, the multiplier increases by an additional 0.5. Id., section 3.4.

With respect to violator-specific adjustments, after the gravity-based penalty is calculated, it may be adjusted upward by as much as 50% or downward to reflect the particular circumstances surrounding the violation, such as the degree of cooperation or non-cooperation by the respondent in response to the inspection and enforcement action, the degree of willfulness or negligence on the part of the owner/operator with respect to the violations, the owner/operator's history of noncompliance, and other unique factors. Id., section 3.2.

With respect to the environmental sensitivity multiplier, the UST Penalty Guidance allows for a 50% increase in the penalty if the area where the violations occurred is moderately environmentally sensitive or a 100% increase if the area is highly environmentally sensitive. Id., section 3.3.

The UST Penalty Guidance also mandates the recapture of any economic benefit of noncompliance that accrues to a violator, except that which is deemed "incidental" (i.e., less than $100.00). Id., section 2.1.

EPA revised the penalty matrices set forth in the UST Penalty Policy for violations that occur after March 15, 2004 and after January 12, 2009. The Penalty Policy Matrices as adjusted for inflation are included in an April 6, 2010 memo from Rosemarie A. Kelley, Director, Office of Civil Enforcement, Waste and Chemical Enforcement Division to EPA Regional Counsels, Regional Division Directors and Regional Enforcement Directors regarding "Revisions to Adjusted Penalty Policy Matrices Package Issued on November 16, 2009."

Section 22.17(c) of the Consolidated Rules, 40 CFR § 22.17(c), provides that when a

respondent is found to be in default, "The relief proposed in the complaint or the motion for default shall be ordered unless the requested relief is clearly inconsistent with the record of the proceeding or the Act." When reaching a penalty determination, Section 22.27(b) of the Consolidated Rules states that the Presiding Officer shall consider any evidence in the record and any civil penalty guidelines issued under the Act. The Presiding Officer shall explain in detail how the assessed penalty corresponds to any penalty criteria set forth in the Act. As stated above, Section 22.27(b) of the Consolidated Rules prohibits the Presiding Officer from assessing a penalty greater than that proposed in the complaint, the prehearing information exchange or the motion for default, whichever is less.

Pursuant to 40 CFR § 22.17(a), a default by a respondent constitutes an admission of all facts alleged in the Complaint. See also 40 CFR § 22.15(d) (respondent's failure to admit, deny or explain any material factual allegation contained in the Complaint constitutes an admission of the allegation); *In the Matter of K Industries, Inc.*, Docket No. RCRA-06-2003-0915, 2005 RJO Lexis 109 (March 2, 2005); *In re Matter of Aero Design, Inc.*, Docket No. RCRA-04-2002-4006, 2003 EPA RJO Lexis 12 (April 1, 2003),

COUNT I: Failure to Maintain Records Demonstrating That Annual Line Tightness Tests Were Conducted or Monthly Monitoring on Pressurized Piping Was Performed

During the May 21, 2008 inspection, the Respondents were unable to produce any records demonstrating that the pressurized piping at the Facility had had an annual line tightness test within the previous year or was being monitored monthly during that time period. During the June 23, 2009 inspection, the Respondents were again unable to produce any records demonstrating that the piping had had an annual line tightness test within the previous year or was being monitored monthly during that time period.

40 CFR §280.41(b)(1)(ii) requires that owners and operators provide release detection for underground piping that routinely contains regulated substances. Where the piping conveys such substances under pressure, the regulation requires, among other things, that the piping have an annual line tightness test conducted in accordance with 40 CFR §280.44(b) or have monthly monitoring conducted in accordance with 40 CFR §280.44(c). In addition, 40 CFR §280.45 requires that all UST system owners and operators maintain records in accordance with 40 CFR §280.34 demonstrating compliance with all applicable requirements of 40 CFR Part 280 Subpart D, including, among other things, the results of any release detection testing, sampling or monitoring for at least one year (or such other time period as the implementing agency may determine). The implementing agency (the Arizona Department of Environmental Quality) has not designated any alternative time period for the maintenance of release detection testing, sampling or monitoring records and the one year period thus applies to this Facility.

This violation presents a "major" potential for harm to the environment and the

regulatory program and is a "major" deviation from the regulatory requirement. The UST Penalty Policy dictates that a violation of 40 CFR §280.45(b), (the failure to retain results of tightness testing until the next test is conducted), be assessed as a violation posing a major potential for harm and a major deviation from the regulatory requirement. *See* UST Penalty Policy, Appendix A, Subpart D.

A major potential for harm to the environment and the regulatory program means that the violation causes or may cause a situation resulting in a substantial or continuing risk to human health and the environment and/or may have a substantial adverse effect on the regulatory program. In this case, the failure to maintain records suggests the failure to actually perform the required annual line tightness test. The failure to undertake an annual line tightness test could result in substantial risks to human health and the environment where an undetected leak in the line occurs. An undiscovered release of product from the lines could easily remain unaddressed for a significant time. The longer a release is unaddressed, for example, because no one detected the leak, the greater the risk to human health and the environment.

A major deviation from the regulatory requirement means that the violator deviated from the requirements of the regulation or statute to such an extent that there is substantial noncompliance. In this case, there are no records indicating a line tightness test was performed on the tanks at the Facility from at least May of 2008 until approximately August 25, 2009, amounting to substantial noncompliance.

The violation was detected on two separate occasions -- during both the May 21, 2008 and the June 23, 2009 inspections. For the violation occurring on or about May 21, 2008, the gravity-based component of the penalty amounts to $1,930.00. For the violation occurring on or about June 23, 2009, the gravity-based component of the penalty amounts to $2,130.00. No other adjustments are to be made to the gravity based component for these penalties.

An environmental sensitivity multiplier of 1 is then applied because the Facility is located in an urban area where drinking water is supplied by municipal systems, and where little wildlife is expected to be affected by any releases.

The appropriate total penalty to be assessed for this violation is $4,060.00.

Count II - Failure to Maintain Records Demonstrating Performance of Annual Maintenance of Leak Detection for Piping

During the May 21, 2008 inspection, Respondents were unable to produce any records demonstrating that the Facility undertook, within the year previous to the inspection, an annual test of the operation of the release detection for the piping at the Facility in accordance with the manufacturer's requirements. During the June 23, 2009 inspection, Respondents were again unable to produce any records demonstrating that the Facility undertook, within the year

previous to the inspection, an annual test of the operation of the release detection for the piping at the Facility in accordance with the manufacturer's requirements. The implementing agency for the Facility has not determined that any time frame other than a one year period is appropriate with respect to the maintenance of the records demonstrating calibration, maintenance and repair of release detection equipment.

40 CFR §280.44(a) requires, among other things, that each method of release detection for piping used to meet the requirements of 40 CFR §280.41 be conducted so that an annual test of the operation of the leak detector is performed in accordance with the manufacturer's requirements. In addition, 40 CFR §280.45 requires that all UST system owners and operators maintain records in accordance with 40 CFR §280.34 demonstrating compliance with all applicable requirements of 40 CFR Part 280 Subpart D, including, among other things, written documentation of all calibration, maintenance and repair of release detection equipment permanently located on-site for at least a year after the servicing work is completed or another reasonable time frame determined by the implementing agency.

This violation presents a "major" potential for harm to the environment and the regulatory program and is a "major" deviation from the regulatory requirement. The UST Penalty Policy dictates that a violation of 40 CFR §280.45(c), (the failure to document any calibration, maintenance and repair of release detection), be assessed as a violation posing a major potential for harm and a major deviation from the regulatory requirement. *See* UST Penalty Policy, Appendix A, Subpart D.

A major potential for harm to the environment and the regulatory program means that the violation causes or may cause a situation resulting in a substantial or continuing risk to human health and the environment and/or may have a substantial adverse effect on the regulatory program. In this case, Respondents were unable to produce any records demonstrating that the Facility undertook, within each of the years previous to the inspections, any annual test of the operation of the release detection for the piping at the Facility in accordance with the manufacturer's requirements. The failure to maintain the records demonstrating the test took place suggests that no test was performed. The failure to undertake an annual test of the operation of the release detection for the piping at the Facility could result in substantial risks to human health and the environment where an undetected leak in the piping occurs. An undiscovered release of product from the piping or piping connections could easily remain unaddressed for a significant time. The longer a release is unaddressed, for example, because piping release detection was not properly operating, the greater the risk to human health and the environment.

A major deviation from the regulatory requirement means that the violator deviated from the requirements of the regulation or statute to such an extent that there is substantial noncompliance. In this case, no records of any annual test of the operation of the release

detection for the piping at the Facility during each of the years prior to the inspection were maintained at all.

On or about May 21, 2008 and on or about June 23, 2009, Respondents failed to maintain for at least a year records demonstrating compliance with the requirements relating to the required annual test of the operation of the release detection for the piping at the Facility in accordance with the manufacturer's requirements pursuant to 40 CFR § 280.44(a). Thus, the violation was detected on two separate occasions. For the violation occurring on or about May 21, 2008, the gravity based component of the penalty amounts to $1,930.00. For the violation occurring on or about June 23, 2009, the gravity based component of the penalty amounts to $2,130.00. No adjustments are to be made to the gravity based component for these penalties.

An environmental sensitivity multiplier of 1 was applied because the Facility is located in an urban area where drinking water is supplied by municipal systems, and where little wildlife is expected to be affected by any releases.

Thus the appropriate total penalty to be assessed for this violation is $4,060.00.

Count III - Failure to Maintain Records Regarding Performance of Calibration for or Maintenance of Automatic Tank Gauge

During both the May 21, 2008 inspection and the June 23, 2009 inspection, the Respondents failed to produce records demonstrating that they calibrated or maintained the automatic tank gauge release detection system at the Facility in accordance with the manufacturer's instructions.

40 CFR §280.40(a)(2) requires owners and operators of new and existing UST systems to provide a method or combination of methods of release detection that, among other things, is installed, calibrated , operated, and maintained in accordance with the manufacturer's instructions, including routine maintenance and service checks for operability or running condition.

In addition, 40 CFR §280.45 requires that all UST system owners and operators maintain records in accordance with 40 CFR §280.34 demonstrating compliance with all applicable requirements of 40 CFR Part 280 Subpart D, including, among other things, written documentation of all calibration, maintenance and repair of release detection equipment permanently located on-site for at least a year after the servicing work is completed or another reasonable time frame determined by the implementing agency.

This violation presents a "major" potential for harm to the environment and the regulatory program and is a "major" deviation from the regulatory requirement. The UST Penalty Policy dictates that a violation of 40 CFR §280.45(c), (the failure to document any calibration,

maintenance and repair of release detection), be assessed as a violation posing a major potential for harm and a major deviation from the regulatory requirement. *See* UST Penalty Policy, Appendix A, Subpart D.

A major potential for harm to the environment and the regulatory program means that the violation causes or may cause a situation resulting in a substantial or continuing risk to human health and the environment and/or may have a substantial adverse effect on the regulatory program. In this case, the Respondents failed to produce records demonstrating that they calibrated or maintained the automatic tank gauge release detection system in accordance with the manufacturer's instructions. The failure to maintain records demonstrating that the automatic tank gauge release detection system was being properly calibrated and maintained suggests a failure to perform the required calibration and maintenance. Failure to calibrate or maintain the automatic tank gauge release detection system in accordance with the manufacturer's instructions could result in substantial risks to human health and the environment where an undetected leak in the tank occurs. An undiscovered release of product from the tank could easily remain unaddressed for a significant time. The longer a release is unaddressed, for example, because no one detected the release because the automatic tank gauge release detection system was not properly maintained or calibrated, the greater the risk to human health and the environment.

A major deviation from the regulatory requirement means that the violator deviated from the requirements of the regulation or statute to such an extent that there is substantial noncompliance. In this case, no records demonstrating compliance with the requirements relating to calibration or maintenance of the automatic tank gauge release detection system in accordance with the manufacturer's instructions were maintained in accordance with 40 CFR §280.40(a)(2) and there was no evidence that the automatic tank gauge release detection system was being properly operated.

The violation was detected on two separate occasions. Therefore, for the violation occurring on or about May 21, 2008, the gravity based component of the penalty amounts to $1,930.00. For the violation occurring on or about June 23, 2009, the gravity based component of the penalty amounts to $2,130.00.

No other adjustments are to be made to the gravity based component for these penalties.

An environmental sensitivity multiplier of 1 was applied because the Facility is located in an urban area where drinking water is supplied by municipal systems, and where little wildlife is expected to be affected by any releases.

Thus the appropriate total penalty to be assessed for this violation is $4,060.00.

Count IV - Failure to Provide a Spill or Overfill Prevention System for a New Tank System

During the June 23, 2009 inspection, the inspectors observed that the spill bucket for part of the compartmentalized tank was damaged and needed to be repaired or replaced. As of the date the Complaint in this matter was filed, Respondents had failed to provide any documentation or evidence that the spill bucket at the Facility had been repaired.

40 CFR §280.20(c) requires, among other things, that owners and operators of new tank systems (*i.e.*, those tank systems installed after December 22, 1988 per 40 CFR §280.12) use spill prevention equipment that will prevent a release of product to the environment when the transfer hose is detached from the fill pipe.

This violation presents a "major" potential for harm to the environment and the regulatory program and is a "major" deviation from the regulatory requirement. The UST Penalty Policy dictates that a violation of 40 CFR §280.20(c)(1)(i), (the installation of inadequate spill prevention equipment in a new tank), be assessed as a violation posing a major potential for harm and a major deviation from the regulatory requirement. *See* UST Penalty Policy, Appendix A, Subpart B.

A major potential for harm to the environment and the regulatory program means that the violation causes or may cause a situation resulting in a substantial or continuing risk to human health and the environment and/or may have a substantial adverse effect on the regulatory program. In this case, during the June 23, 2009 inspection, the inspectors observed that the spill bucket for part of the compartmentalized tank was damaged and needed to be repaired or replaced. A spill bucket ensures that releases are contained when product is transferred or delivered to an UST. A non-functioning spill bucket could allow for repeated spills. The failure to repair the spill bucket for an extended time could allow repeated spills to go undetected and unaddressed. A release from a non-functional spill bucket would have a direct impact on the environment.

A major deviation from the regulatory requirement means that the violator deviated from the requirements of the regulation or statute to such an extent that there is substantial noncompliance. In this case, the damage to the spill bucket – a crack in the bucket -- rendered it nearly completely ineffective in preventing a release of product directly to the environment whenever the transfer hose was detached from the fill pipe.

At no time has the Respondent provided any evidence to EPA demonstrating that the damaged spill bucket was repaired or replaced. Therefore, on or about June 23, 2009 and continuing to date the Complaint was filed in this matter, Respondents failed to use spill prevention equipment that will prevent a release of product to the environment when the transfer hose is detached from the fill pipe. Pursuant to the UST Penalty Policy, the "days of non-

compliance multiplier" for a violation that continues over a period of between 271 to 365 days amounts to 2.5. Multiplying 2.5 times the gravity based penalty amount of $2,130.00 (for the first day of violation occurring on or about June 23, 2009), yields a penalty amount of $5,325.00.

No other adjustments need be made to the gravity based component for this penalty.

An environmental sensitivity multiplier of 1 was applied because the Facility is located in an urban area where drinking water is supplied by municipal systems, and where little wildlife is expected to be affected by any releases.

The appropriate total penalty to be assessed for this violation is $5,325.00.

Count V – Failure to Provide Cathodic Protection for Metal Piping

During the June 23, 2009 inspection, the inspectors observed that the turbine sump for part of the compartmentalized UST system contained 21 inches of standing water. The inspectors observed that the metal connector piping in the sump had had corrosion. Respondents provided documentation to EPA demonstrating that standing water in the turbine sump for part of the compartmentalized UST system had been removed as of at least October 1, 2009.

40 CFR §280.20(b)(2) requires that, for new tank systems, the piping that routinely contains regulated substances and is in contact with the ground be properly designed constructed and protected from corrosion in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory.

This violation presents a "moderate" potential for harm to the environment and the regulatory program and is a "major" deviation from the regulatory requirement. The UST Penalty Policy dictates that a violation of 40 CFR §280.20(b)(2), (the improper operation and maintenance of a cathodic protection system for piping), be assessed as a violation posing a moderate potential for harm and a major deviation from the regulatory requirement. *See* UST Penalty Policy, Appendix A, Subpart B.

A moderate potential for harm to the environment and the regulatory program means that the violation causes or may cause a situation resulting in a significant risk to human health and the environment and/or may have a significant adverse effect on the regulatory program. In this case, allowing water to accumulate in the turbine sump nullifies the utility of the turbine sump with respect to preventing corrosion in the metal connector piping. Corrosion of the metal components could lead to a release and thus could result in a significant risk to human health and the environment.

A major deviation from the regulatory requirement means that the violator deviated from the requirements of the regulation or statute to such an extent that there is substantial

noncompliance. In this case, the turbine sump was sitting in approximately 21 inches of water and the metal connector piping had had corrosion. This represents a significant amount of water and the existing corrosion indicates that the wet conditions of the turbine sump had continued over some significant period of time.

The violation continued from at least on or about June 23, 2009 until approximately October 1, 2009. Pursuant to the UST Penalty Policy, the "days of non-compliance multiplier" for a violation that continues for more than 91 days but less than 180 days amounts to 1.5. Multiplying 1.5 times the gravity based penalty amount of $1,060.00, yields a penalty amount of $1,590.00.

No other adjustments need be made to the gravity based component for this penalty.

An environmental sensitivity multiplier of 1 was applied because the Facility is located in an urban area where drinking water is supplied by municipal systems, and where little wildlife is expected to be affected by any releases.

Thus the appropriate total penalty to be assessed for this violation is $1,590.00.

PENALTY MODIFICATION

The UST Penalty Policy provides for downward adjustments to the proposed penalty for a violator's degree of cooperation, limited ability to pay, performance of environmental projects, or other unique factors. *See* UST Penalty Policy, Chapters 3 and 4. Complainant did not propose any adjustments to the proposed penalty because none were supported by the circumstances of the violations. Respondent failed to submit any evidence that would support any downward adjustment. Therefore, Complainant's position is consistent with the record and RCRA.

CONCLUSION

After considering the record and the Penalty Policy, I assess a penalty in the amount of $19,095.00.

ORDER

RESPONDENTS ARE HEREBY ORDERED to immediately stop all UST-related activities except those in compliance with Sections 9001 *et seq.* of RCRA, 42 U.S.C. §§6991 *et seq.*; and 40 CFR Part 280. Specifically, within thirty (30) days after this order becomes final, Respondents shall provide evidence of a return to compliance with respect to the repair of the spill bucket at the Facility by transmitting such evidence to the following address:

Steven Linder, Manager

Underground Storage Tank Program Office

US Environmental Protection Agency (WST-8)

75 Hawthorne St.

San Francisco, CA 94105

RESPONDENTS ARE HEREBY ORDERED to pay a civil penalty in the amount of NINETEEN THOUSAND AND NINETY-FIVE DOLLARS ($19,095.00). This penalty shall become due and payable, without further proceedings, thirty (30) days after this order becomes final. This Order shall become final within forty-five (45) days after its service upon the parties and without further proceedings, unless (1) a party appeals the Initial Decision to the Environmental Appeals Board, (2) a party moves to set aside the order, or (3) the Environmental Appeals Board elects to review this Initial Decision on its own initiative. See 40 CFR § 22.27(c). Procedures for appealing this Initial Decision are listed in the Consolidated Rules at 40 CFR § 22.30.

Payment shall be made by forwarding a money order, cashier's check, or certified check, in the amount of $19,095.00 payable to "Treasurer of the United States of America" to:

U.S. Environmental Protection Agency

Fines and Penalties

Cincinnati Finance Center

P.O. Box 979077

St. Louis, MO 63197-9000

All payments shall indicate the name of the facility, any EPA identification number of the facility, Respondent's name and address, and the EPA docket number for this action. At the time payment is made, Respondent shall send a copy of the payment transmittal to:

Regional Hearing Clerk

U.S. Environmental Protection Agency

Region IX, ORC

75 Hawthorne Street

San Francisco, CA 94105

If the civil penalty is not paid within the prescribed time period, interest will be assessed pursuant to Section 11 of the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3717, based on the present value of funds owed to the United States Treasury at the time the Initial Order becomes final, and such rate will remain in effect until full payment is received. A six percent (6%) per annum late payment penalty will also be applied on any principle amount not paid within ninety (90) days of the due date.

IT IS SO ORDERED

Date:

_____

Steven L. Jawgiel
Regional Judicial Officer
U.S. EPA, Region IX

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing RENEWED MOTION FOR DEFAULT ORDER In the Matter of Sunrise Valero Market aka Sunrise Oil, Inc. and Samuel Rodriguez-Ibarra, Docket No. RCRA-09-2010-0009 and accompanying [PROPOSED] ORDER ON MOTION FOR DEFAULT JUDGMENT in this matter were sent to the following persons in the manner indicated:

Hand Delivery:
Regional Hearings Clerk (original plus one copy)
EPA Region IX
75 Hawthorne St.
San Francisco, CA 94105

Overnight Delivery:
Samuel Rodriguez-Ibarra
Sunrise Oil, Inc.
4811 E. Sunrise Drive
Suite 165
Tucson, AZ
85718

Samuel Rodriguez-Ibarra
Sunrise Oil, Inc.
4725 E. Sunrise Drive
413
Tucson, AZ
85718

Dated: 06/29/2012

Signed: _____
John Blais