



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

1595 Wynkoop Street
DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

June 14, 2012

Ref: ENF – L

SENT VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Ms. Margaret Eagle
P.O. Box 180
St. Michael, North Dakota 58370

Re: In the Matter of Margaret Eagle, Owner/Operator,
Belle Isle Store
Docket No. **RCRA-08-2012-0003**
Complaint and Notice of Opportunity for Hearing

Dear Ms. Eagle:

The U.S. Environmental Protection Agency Region 8 (EPA) is issuing you the enclosed Complaint and Notice of Opportunity for Hearing (Complaint) for alleged underground storage tank (UST) violations at the former Belle Isle Store facility (facility) in St. Michael, North Dakota. The Complaint is issued pursuant to section 9006 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6991e.

The EPA alleges in the Complaint that you failed as owner and/or operator of the facility to comply with the federal UST regulations codified at 40 C.F.R. Part 280, subparts C, D, G and H, in violation of RCRA § 9003, 42 U.S.C. § 6991b. According to information that you provided to the EPA, you placed the facility's single 1,000 gallon double-walled STIP 3 tank installed in 1999 into temporary closure status in or around 2001. The federal UST regulations at 40 C.F.R. § 280.70 require that a temporarily closed tank comply with specific UST requirements including, but not limited to, cathodic protection testing and financial responsibility. The Complaint alleges failure to conduct cathodic protection on the tank and piping within three years of the last test as required by 40 C.F.R. § 280.31(b); and failure to comply with the financial responsibility requirements as required by 40 C.F.R. § 280.93(a). The EPA proposes a total penalty of \$22,638 for the violations alleged.

You may assert a claim of ability to pay if you are unable to pay the proposed settlement amount. The EPA generally focuses on a review of the respondent's solvency to determine the effect a given penalty will have on a sole proprietor's or company's ability to continue in business. However, the EPA assumes that the respondent is viable and that economic impact is minimal and not sufficient to cause a reduction to the proposed settlement absent reliable information to the contrary. In order to determine whether a legitimate ability to pay claim exists, the EPA reviews financial information consisting of federal tax returns, audited financial statements and/or financial information of comparable reliability. If you believe you qualify for a penalty reduction or installment plan based on an inability to pay the penalty proposed, contact my staff listed

below to assert the claim. A copy of the EPA's "Request for Financial Information from Individuals/Sole Proprietors" detailing the types of financial information required in support of an ability to pay claim is enclosed for your consideration and use. Please be aware that while the EPA may alter the amount of a penalty based on a finding of inability to pay, any such determination does not impact your compliance obligations.

You have the right to a hearing to contest the factual allegations in the Complaint. If you admit the allegations, or the allegations are found to be true after you have had an opportunity for a hearing, you have the right to contest the penalty proposed in the Complaint. A copy of the EPA's administrative procedures is enclosed for your review. Please note the requirements for an Answer set forth in 40 C.F.R. §§ 22.15 and 22.38. If you wish to contest the allegations in the Complaint or the penalty proposed in the Complaint, you must file a written Answer within thirty (30) days of receipt of the enclosed Complaint with the EPA Regional Hearing Clerk at the following address:

Ms. Tina Artemis, Regional Hearing Clerk (8RC)
U.S. EPA, Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

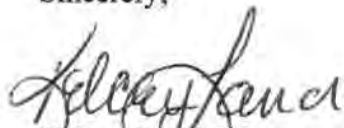
If you do not file an Answer by the applicable deadline, you will have defaulted and each allegation in the Complaint may be deemed to be admitted as true. You will have waived your right to appear in this action for any purpose and will also have waived your right to be notified of any Agency proceedings that occur before a civil penalty may be imposed. Provided that the Complaint is legally sufficient, the presiding officer may then find you liable and assess against you a civil penalty of up to \$11,000 for each tank for each day of violation.

Whether or not you request a hearing, you may confer informally with the EPA concerning the alleged violations or the amount of the proposed penalty. You have the right to be represented by an attorney at any stage of the proceedings, including any informal discussions with EPA, but it is not required. A request for an informal conference does not extend the thirty (30) day period for filing your Answer and/or requesting a hearing.

If you have any questions, the most knowledgeable people on our staff regarding this matter are Francisca Chambus and Amy Swanson. Ms. Chambus is in the Underground Storage Tank Program and can be reached at (303) 312-6782. Ms. Swanson is in the Legal Enforcement Program and can be reached at (303) 312-6906.

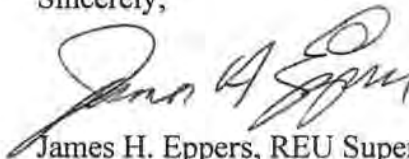
We urge your prompt attention to this matter.

Sincerely,



Kelcey Land, Director
RCRA/CERCLA Technical Enforcement Program

Sincerely,



James H. Eppers, REU Supervisory Attorney
Legal Enforcement Program

Enclosures:

Consolidated Rules of Civil Practice, 40 C.F.R. Part 22
Complaint and Notice of Opportunity for Hearing, with Exhibits 1 and 2
Request for Financial Information from Individuals/Sole Proprietors

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2012 JUN 15 AM 8:26

FILED
EPA REGION VIII
MINNAPOLIS, MINN.

IN THE MATTER OF:)
)
Margaret Eagle, Owner/Operator,)
)
Belle Isle Store)
818 Belle Isle Street)
St. Michael, ND 58370,)
)
Respondent.)

Docket No. RCRA-08-2012-0003
**COMPLAINT AND NOTICE OF
OPPORTUNITY FOR HEARING**

AUTHORITY

This is a civil administrative action issued under the authority vested in the Administrator of the Environmental Protection Agency (EPA) by section 9006 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6991e. The Administrator has properly delegated this authority to the undersigned EPA officials. 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) set forth at 40 C.F.R. Part 22, a copy of which is enclosed.

GENERAL ALLEGATIONS

1. Subtitle I of RCRA, RCRA sections 9001 - 9010, 42 U.S.C. §§ 6991 - 6991i, authorizes EPA to regulate the installation and use of "underground storage tanks" ("USTs" or "tanks") which contain "regulated substances."
2. EPA has jurisdiction over this matter pursuant to RCRA section 9006, 42 U.S.C. § 6991e.

3. Section 9003(c)(1) of RCRA, 42 U.S.C. § 6991b(c)(1), authorizes EPA to promulgate regulations setting forth requirements for maintaining a leak detection system, an inventory control system together with tank testing, or a comparable system or method designed to identify releases in a manner consistent with the protection of human health and the environment. EPA has promulgated such regulations at 40 C.F.R. Part 280, subpart D.

4. Petroleum, and any fraction thereof, is a regulated substance as defined at RCRA section 9001(2), 42 U.S.C. § 6991(2).

5. EPA is the “implementing agency” as that term is used at 40 C.F.R. § 280.12.

6. Respondent Margaret Eagle owns and/or operates one 1,000 gallon double-walled STIP 3 tank at the former Belle Isle Store facility (facility) located at 818 Belle Isle Street, St. Michaels, North Dakota, within the exterior boundaries of the Spirit Lake Indian Reservation. The Respondent installed the tank in May 1995 to store unleaded gasoline for use at the facility’s for-profit gas station.

7. The Respondent is a “person” as defined by section 9001(5) of RCRA, 42 U.S.C. § 6991(5).

8. The Respondent is an “operator” within the respective meanings of RCRA section 9001(3), 42 U.S.C. § 6991(3), and 40 C.F.R. § 280.12, of an “underground storage tank system” (UST system) as defined by RCRA section 9001(10), 42 U.S.C. § 6991(10), and 40 C.F.R. § 280.12.

9. The Respondent operated the facility, including the tank, at a minimum from 1995 to 1999.

10. The Respondent allegedly discontinued selling fuel and placed the tank in temporary closure status on October 22, 1999.

11. Pursuant to 40 C.F.R. Part 280, subpart G, a tank may continue in temporary closure status beyond 12 months if the UST meets the applicable requirements for new or upgraded USTs (except for spill and overfill), the requirements for leak detection monitoring and monitoring and maintaining any corrosion protection system are satisfied and all other pumps, manways, equipment and lines excepting the vent lines are capped and secured.

12. The Respondent's UST system meets the performance standards for new USTs described in 40 C.F.R. § 280.20.

13. The facility was inspected last by the EPA on August 18, 2005.

14. The EPA in a phone conversation with the Respondent on January 28, 2011, confirmed that Ms. Eagle is the owner of the facility and that the UST system is in temporary closure status.

15. The EPA provided the Respondent by phone and certified letter dated February 14, 2011, advance notice of an EPA UST inspection planned for April 20, 2011 at the facility and a list of documents required to on site at the time of inspection.

16. On March 24, 2011, the EPA per the Respondent's request provided the Respondent a list of contractors to perform the cathodic protection test and a reminder notice of the planned inspection.

17. On April 20, 2011, EPA inspectors Francisca Chambus and Gary Wang (the inspectors) conducted an inspection at the facility with the consent of the Respondent to determine compliance with RCRA Subtitle I and the EPA regulations relating to USTs.

18. At the time of the inspection, the Respondent confirmed that the piping was safe suction and made of steel.

19. At the time of the inspection, the Respondent informed the inspectors that she had not conducted cathodic protection tests on the tank and piping and/or obtained financial responsibility for the tank as described to her in the phone calls and letter sent from the EPA prior to the inspection.

20. At the conclusion of the inspection, the inspectors informed the Respondent that the facility was out of compliance and explained the violations. The inspectors completed a "Notice of Inspection" form which was signed by and left with the Respondent.

21. At the conclusion of the inspection, the Respondent was issued a Notice of Violation and Field Citation for expedited settlement in the amount of \$420 for failing to maintain the cathodic protection system and financial responsibility for an UST system in temporary closure as required by the regulations.

22. The Respondent signed Part II.A of the Field Citation, the Settlement Agreement section, agreeing to correct the violations and pay the full amount of the \$420 payment within thirty days after the date of the inspection.

23. The EPA withdrew the Field Citation on June 29, 2011 and the Respondent's partial payment of \$200.00 was returned, and opted instead to pursue formal enforcement based

on the Respondent's failure to pay the full penalty amount and provide proof of compliance per the terms of the Field Citation.

24. Section 9006(d)(2) of RCRA, 42 U.S.C. § 6991e(d)(2), states in pertinent part that any owner or operator of an UST who fails to comply with any requirement or standard promulgated by the Administrator under section 6991b of this title shall be subject to a civil penalty not to exceed \$11,000 for each tank for each day of violation.

25. As alleged herein and pursuant to section 9006(d)(2) of RCRA, 42 U.S.C. § 6991e(d)(2), and 40 C.F.R. § 19.4, the Respondent is liable for civil penalties up to \$11,000 per day per tank during which the violation continues.

26. Paragraphs 1 through 25 are incorporated by reference in each of the counts listed below.

COUNT 1
Failure to conduct cathodic protection test every three years

27. The temporary closure regulation set forth at 40 C.F.R. § 280.70 provides, in part, that when an UST system is temporarily closed, owners and operators must continue operation and maintenance of corrosion protection in accordance with 40 C.F.R. § 280.31.

28. In accordance with 40 C.F.R. § 280.31(b), all UST systems with cathodic protection must be tested at least every three years after being tested within six months of installation.

29. The last confirmed cathodic protection test the Respondent performed on the tank and piping is dated August 20, 1999.

30. The Respondent has not provided the EPA with proof of subsequent cathodic protection testing for the tank.

31. The Respondent's failure to conduct cathodic protection on the tank and piping within three years of the last test constitutes a violation of 40 C.F.R. § 280.31(a) and section 9003(c) of RCRA, 42 U.S.C. § 6991b(c).

COUNT 2

Failure to Comply with Financial Responsibility Requirements

32. The financial responsibility requirements set forth at 40 C.F.R. subpart H, §§ 280.90-.116, apply to owners and operators of all petroleum UST systems unless otherwise excepted in the section. The section does not except tanks in temporary closure status from the financial responsibility requirement set forth at 40 C.F.R. § 280.93.

33. 40 C.F.R. § 280.113, "Release from the requirements," provides that an owner or operator is no longer required to maintain financial responsibility under this subpart for an UST after it has been properly closed, or after correction action has been completed and the tank has been properly closed per 40 C.F.R. Part 280, Subpart G.

34. In accordance with 40 C.F.R. § 280.93, owners and operators of petroleum USTs must demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs.

35. At the time of inspection, the Respondent was unable to provide written verification that the tank was covered by the North Dakota State Fund or proof of an alternative financial responsibility mechanism.

36. The Respondent does not have a financial responsibility mechanism to pay for clean up in the event of a release from the UST system.

37. The Respondent's failure to demonstrate financial responsibility for the UST systems constitute a violation of 40 C.F.R. § 280.93(a) and section 9003(c) of RCRA, 42 U.S.C. § 6991b(c).

PROPOSED CIVIL PENALTY

RCRA section 9006(d)(2)(C), 42 U.S.C. § 6991e(d)(2)(C), authorizes the assessment of a civil penalty of up to \$11,000 for each UST for each day of violation. Based upon the facts alleged in this Complaint and taking into account the factors prescribed by statute, i.e., the seriousness of the violations and any good faith efforts by Respondents to comply with the applicable requirements, Complainant proposes to assess a civil penalty of **\$22,638** as follows:

COUNT	VIOLATION	PROPOSED PENALTY
Count 1	Failure to operate and maintain corrosion protection system continuously, 40 C.F.R. § 280.31(a)	\$17,777
Count 2	Failure to maintain copies of financial assurance mechanism, 40 C.F.R. § 280.93	\$4,861

TOTAL PROPOSED PENALTY: \$22,638

The proposed civil administrative penalty above has been calculated in accordance with the U.S. EPA Penalty Guidance for Violations of UST Regulations (November 1990) (Exhibit 1). This policy is used by EPA to provide a rational and consistent application of the statutory factors to the facts and circumstances of a specific case. The Penalty Calculation Worksheets for the alleged RCRA UST violation in support of the assessment of civil penalties proposed in this Complaint are attached hereto (Exhibit 2).

TERMS OF PAYMENT

If the Respondent does not contest the findings and penalty proposal set forth above, this action may be resolved by paying the proposed penalty in full. If such payment is made within thirty (30) calendar days of receipt of this Complaint, then no Answer need be filed. For more time for payment, the Respondent may file a statement agreeing to pay the penalty within thirty (30) days of receipt of the Complaint, then pay the money within sixty (60) days of such receipt. Payment is to be made by sending a certified or cashier's check payable to "Treasurer, United States of America," to:

EPA Region 8 (Regional Hearing Clerk)
Mellon Bank
P.O. Box 360859M
Pittsburgh, PA 15251

A copy of the check must be mailed simultaneously to:

Amy Swanson, Enforcement Attorney
U.S. EPA Region 8 (8ENF-L)
1595 Wynkoop Street
Denver, Colorado 80202-1129

Payment of the penalty in this manner shall constitute consent by the Respondent to the assessment of the proposed penalty and a waiver of the Respondent's right to a hearing on this matter.

OPPORTUNITY TO REQUEST A HEARING

As provided in RCRA section 9006(b), 42 U.S.C. § 6991e(b), you have the right to request a public hearing within thirty (30) calendar days after the Complaint is served. If you (1) contest the factual claims made in this Complaint; (2) wish to contest the appropriateness of the

proposed penalty; or (3) assert that you are entitled to judgment as a matter of law, you must file a written Answer in accordance with 40 C.F.R §§ 22.15 and 22.37 within thirty (30) calendar days after this Complaint is received. Your answer must (1) clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint; (2) state all facts and circumstances, if any, which constitute grounds for defense; (3) state the facts intended to be placed at issue; and (4) specifically request an administrative hearing, if desired. The denial of any material fact or the raising of any affirmative defense in your Answer shall be construed as a request for a hearing. Failure to deny any of the factual allegations in this Complaint constitutes an admission of the undenied allegations.

The answer and one copy must be sent to the EPA Region 8 Regional Hearing Clerk (8RC), 1595 Wynkoop Street, Denver, Colorado 80202-1129, and a copy must be sent to the enforcement attorney listed below.

IF YOU FAIL TO REQUEST A HEARING, YOU MAY WAIVE YOUR RIGHT TO FORMALLY CONTEST ANY OF THE ALLEGATIONS SET FORTH IN THE COMPLAINT.

IF YOU FAIL TO FILE A WRITTEN ANSWER WITHIN THE 30 CALENDAR DAY TIME LIMIT, A DEFAULT JUDGMENT MAY BE ENTERED PURSUANT TO 40 C.F.R § 22.17. THIS JUDGMENT MAY IMPOSE THE PENALTY PROPOSED IN THE COMPLAINT.


SETTLEMENT CONFERENCE

EPA encourages the exploration of settlement possibilities through an informal settlement conference. Please note that a request for, scheduling of, or participation in a settlement conference does not extend the period for filing an answer and request for hearing as set forth above. The settlement process, however, may be pursued simultaneously with the administrative litigation procedures found in 40 C.F.R. Part 22. If a settlement can be reached, its terms shall

be expressed in a written consent agreement, signed by the parties and incorporated into a final order signed by the regional judicial officer. A request for a settlement conference or any questions that you may have regarding this Complaint should be directed to the attorney-of-record listed below.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8,
Complainant.

Date: 6/11/12

By: 
James H. Eppers, REU Supervisory Attorney
Legal Enforcement Program

Date: 6/14/12

By: 
Kelcey Land, Director
Technical Enforcement Program

Date: 6.14.2012

By: 
Amy Swanson, Enforcement Attorney
U.S. EPA, Region 8 (8ENF-L)
1595 Wynkoop Street
Denver, CO 80202-1129
Telephone: 303/312-6905
Facsimile: 303/312-6953
Email: swanson.amy@epa.gov

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and one copy of the COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING with Exhibits 1 and 2 were hand-carried to the Regional Hearing Clerk, EPA, Region 8, 1595 Wynkoop Street, Denver, Colorado, and that a true copy of the same was mailed by certified mail to:

Ms. Margaret Eagle
P.O. Box 180
St. Michael, ND 58370

Date: June 15, 2012

By: Judith M. McTernan

Request for Financial Information from Individuals / Sole Proprietors

1. Provide a written statement and documentation supporting Respondent's claim of ability to pay.
2. Provide complete and signed copies of the U.S. Federal Income Tax Returns Form 1040 or Form 1041 submitted to the Internal Revenue Service including any and all schedules and attachments for the past three (3) years.
 - a. If any of the income, loss, or gain reported on any return was derived from a partnership, trust, or subchapter S source, please provide completed and signed copies of the Form 1065, Form 1041 or Form 1120S Federal Income Tax Returns submitted to the Internal Revenue Service including all schedules and attachments for the last three (3) years.
3. Sign and date the IRS Form 4506-T "Request for Transcript of Tax Return" which authorizes EPA to request information from the Internal Revenue Service regarding the individual's federal income tax returns.
4. For sole proprietors, provide five (5) years of year-end financial statements, including balance sheets, income statements, statements of cash flow, supplemental notes and auditor's opinion (if available).
 - a. Please submit current year-to-date financial information such as balance sheet and income statement.
5. Complete, sign and date the questionnaire entitled "Individual Ability to Pay Claim".

(Rev. January 2011)

Department of the Treasury
Internal Revenue Service

▶ Request may be rejected if the form is incomplete or illegible.

Tip. Use Form 4506-T to order a transcript or other return information free of charge. See the product list below. You can quickly request transcripts by using our automated self-help service tools. Please visit us at IRS.gov and click on "Order a Transcript" or call 1-800-908-9946. If you need a copy of your return, use **Form 4506, Request for Copy of Tax Return.** There is a fee to get a copy of your return.

✓ **1a** Name shown on tax return. If a joint return, enter the name shown first. **1b** First social security number on tax return, individual taxpayer identification number, or employer identification number (see instructions)

2a If a joint return, enter spouse's name shown on tax return. **2b** Second social security number or individual taxpayer identification number if joint tax return

✓ **3** Current name, address (including apt., room, or suite no.), city, state, and ZIP code (See instructions)

4 Previous address shown on the last return filed if different from line 3 (See instructions)

5 If the transcript or tax information is to be mailed to a third party (such as a mortgage company), enter the third party's name, address, and telephone number. The IRS has no control over what the third party does with the tax information.

DANIELA GOLDEN, MAIL CODE: 8ENF-RC 1595 WYNKOOP STREET
U.S. ENVIRONMENTAL PROTECTION AGENCY DENVER, COLORADO 80202-1129

Caution. If the transcript is being mailed to a third party, ensure that you have filled in line 6 and line 9 before signing. Sign and date the form once you have filled in these lines. Completing these steps helps to protect your privacy.

6 Transcript requested. Enter the tax form number here (1040, 1065, 1120, etc.) and check the appropriate box below. Enter only one tax form number per request. ▶ 1040, 1041 or 1065

a Return Transcript, which includes most of the line items of a tax return as filed with the IRS. A tax return transcript does not reflect changes made to the account after the return is processed. Transcripts are only available for the following returns: Form 1040 series, Form 1065, Form 1120, Form 1120A, Form 1120H, Form 1120L, and Form 1120S. Return transcripts are available for the current year and returns processed during the prior 3 processing years. Most requests will be processed within 10 business days

b Account Transcript, which contains information on the financial status of the account, such as payments made on the account, penalty assessments, and adjustments made by you or the IRS after the return was filed. Return information is limited to items such as tax liability and estimated tax payments. Account transcripts are available for most returns. Most requests will be processed within 30 calendar days.

c Record of Account, which is a combination of line item information and later adjustments to the account. Available for current year and 3 prior tax years. Most requests will be processed within 30 calendar days

7 Verification of Nonfiling, which is proof from the IRS that you **did not** file a return for the year. Current year requests are only available after June 15th. There are no availability restrictions on prior year requests. Most requests will be processed within 10 business days . . .

8 Form W-2, Form 1099 series, Form 1098 series, or Form 5498 series transcript. The IRS can provide a transcript that includes data from these information returns. State or local information is not included with the Form W-2 information. The IRS may be able to provide this transcript information for up to 10 years. Information for the current year is generally not available until the year after it is filed with the IRS. For example, W-2 information for 2007, filed in 2008, will not be available from the IRS until 2009. If you need W-2 information for retirement purposes, you should contact the Social Security Administration at 1-800-772-1213. Most requests will be processed within 45 days . . .

Caution. If you need a copy of Form W-2 or Form 1099, you should first contact the payer. To get a copy of the Form W-2 or Form 1099 filed with your return, you must use Form 4506 and request a copy of your return, which includes all attachments.

9 Year or period requested. Enter the ending date of the year or period, using the mm/dd/yyyy format. If you are requesting more than four years or periods, you must attach another Form 4506-T. For requests relating to quarterly tax returns, such as Form 941, you must enter each quarter or tax period separately.

12/31/2007

12/31/2008

12/31/2009

12/31/2010

Signature of taxpayer(s). I declare that I am either the taxpayer whose name is shown on line 1a or 2a, or a person authorized to obtain the tax information requested. If the request applies to a joint return, either husband or wife must sign. If signed by a corporate officer, partner, guardian, tax matters partner, executor, receiver, administrator, trustee, or party other than the taxpayer, I certify that I have the authority to execute Form 4506-T on behalf of the taxpayer. **Note.** For transcripts being sent to a third party, this form must be received within 120 days of signature date.

Telephone number of taxpayer on line 1a or 2a

➤ **Signature** (see instructions) _____ Date _____

Sign Here ➤ **Title** (if line 1a above is a corporation, partnership, estate, or trust) _____

➤ **Spouse's signature** _____ Date _____

INDIVIDUAL ABILITY TO PAY CLAIM

Financial Data Request Form

This form requests information regarding your financial status. The data will be used to evaluate your ability to pay for environmental cleanup or penalties. If you need more space for your answers, please attach additional sheets of paper. Note that further documentation may be requested of any of your responses. Any other information you wish to provide supporting your case is welcome, particularly if you feel your situation is not adequately described through the information requested here.

Certification

Under penalties of perjury, I declare that this statement of assets, liabilities, and other information is true, correct, and complete to the best of my knowledge and belief. I further understand that I will be subject to prosecution by the U.S. Environmental Protection Agency to the fullest extent possible under the law should I provide any information that is not true, correct, and complete to the best of my knowledge.

Signature:		Date:	
Name:			
Spouse's Name:			
Names of Additional Household Members:			
Street Address:			
City:		State:	Zip:
County:			

Household Living Expenses

List household living expenses typical of last year, indicating if any are likely to change significantly in the current year. If you own an operating business, exclude any business expenses; instead, attach any available financial statements for your business.

Expense	Amount	Period			
		W	M	Q	Y
Rent					
Home maintenance					
Transportation (inc. auto maint.)					
Home heating oil, gas, etc.					
Electricity					
Water & sewer					
Telephone					
Food					
Clothing, personal care					
Medical (other than premiums)					
Mortgage payments (principal and interest only)					
Car payments					
Credit card interest					
Educational loan payments					
Other debt payments					
Home insurance					
Life insurance					
Auto insurance					
Medical insurance					
Property taxes					
Federal income taxes (net of any refunds)					
State & local income taxes (net of any refunds)					
FICA					
Other taxes					
Childcare					
Tuition					
Legal or professional fees					
Other (attach description)					

Net Worth

Provide the following information to the best of your ability. Data should be as current as possible. Estimates are acceptable; if you wish note such items with an "E". If you are the sole proprietor of a business, please list business assets and liabilities to the extent that the information sought is not already provided in your tax returns, in addition to personal assets and liabilities. Mark these entries with a "B" to identify them as business assets and liabilities.

	Assets	Liabilities	Comments
Bank Accounts	Balance		
<i>Checking, NOW, Savings, Money Market, CDs etc.</i>			
Financial Investments (stocks, bonds, etc.)	Market Value		
Retirement Funds and Accounts	Market Value		
<i>IRA, 401(k), Keogh, vested interest in company retirement fund, etc.</i>			
Life Insurance Policies (with cash value)	Cash Value		
<i>Whole life, universal life, etc.</i>			
Vehicles Used for Commuting	Market Value	Loan Balance	
<i>Cars, trucks, motorcycles, etc.: list up to two vehicles used for commuting purposes.</i>			
Vehicles (other than for commuting)	Market Value	Loan Balance	
<i>Cars, trucks, motorcycles, recreational vehicles, motor homes, boats, airplanes.</i>			
Primary Residence	Market Value	Mortgage Balance	
Real Estate (other than primary residence)	Market Value	Mortgage Balance	
<i>Lands, buildings, land with buildings.</i>			
Personal Property	Market Value	Debt Balance	

Household Goods and Furniture, Jewelry, Art, Antiques, Collections, Precious Metals, etc.; list only items with a value greater than \$500.

<u>Credit Cards and Lines of Credit</u>		<u>Balance Due</u>	
<u>Other Debts and/or Assets</u>	<u>Market Value</u>	<u>Debt Balance</u>	
<i>Any other assets and any debts on those assets, plus any other debts owed to individuals, fixed obligations, taxes owed, overdue alimony or child support, etc.</i>			

Additional Information

For any question that you check off as applicable, provide additional information below or on separate pages.

Reason to believe financial situation will change during the next year?	
Currently selling or purchasing any real estate?	
Property held by other person/entity on applicant's behalf?	
Party in pending lawsuit (other than this enforcement action)?	
Any belongings repossessed in last three years?	
Is applicant a Trustee, Executor, or Administrator?	
Participant or beneficiary of estate or profit-sharing plan?	
Declared bankruptcy in last seven years?	
Receive any type of federal aid or public assistance?	

develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input to the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on State, local or tribal governments. This rule does not impose any enforceable duties on these entities. Instead, it merely revises the procedural rules governing EPA's administrative enforcement proceedings.

F. Executive Order 13045

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to the E.O. 13045 because it is not "economically significant" as defined in E.O. 12866, and because it does not involve decisions based on environmental health or safety risks.

G. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the

development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104-113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA requires EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

I. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 22

Environment protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Hazardous waste, Penalties, Pesticides and pests, Poison prevention, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

Dated: June 30, 1999.

Carol M. Browner, Administrator.

Therefore, 40 CFR part 22 is revised to read as follows:

PART 22—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

Subpart A—General

- Sec. 22.1 Scope of this part. 22.2 Use of number and gender. 22.3 Definitions. 22.4 Powers and duties of the Environmental Appeals Board, Regional Judicial Officer and Presiding Officer; disqualification; withdrawal, and reassignment. 22.5 Filing, service, and form of all filed documents; business confidentiality claims. 22.6 Filing and service of rulings, orders and decisions. 22.7 Computation and extension of time. 22.8 Ex parte discussion of proceeding. 22.9 Examination of documents filed.

Subpart B—Parties and Appearances

- 22.10 Appearances. 22.11 Intervention and non-party briefs. 22.12 Consolidation and severance.

Subpart C—Prehearing Procedures

- 22.13 Commencement of a proceeding. 22.14 Complaint. 22.15 Answer to the complaint. 22.16 Motions. 22.17 Default. 22.18 Quick resolution; settlement; alternative dispute resolution. 22.19 Prehearing information exchange; prehearing conference; other discovery. 22.20 Accelerated decision; decision to dismiss.

Subpart D—Hearing Procedures

- 22.21 Assignment of Presiding Officer; scheduling the hearing. 22.22 Evidence. 22.23 Objections and offers of proof. 22.24 Burden of presentation; burden of persuasion; preponderance of the evidence standard. 22.25 Filing the transcript. 22.26 Proposed findings, conclusions, and order.

Subpart E—Initial Decision and Motion to Reopen a Hearing

- 22.27 Initial decision. 22.28 Motion to reopen a hearing.

Subpart F—Appeals and Administrative Review

- 22.29 Appeal from or review of interlocutory orders or rulings. 22.30 Appeal from or review of initial decision.

1st Page only

**U.S. EPA PENALTY GUIDANCE
FOR VIOLATIONS OF
UST REGULATIONS**

November 1990

Office of Underground Storage Tanks
U.S. Environmental Protection Agency

Exhibit 1

PENALTY CALCULATION WORKSHEET

DATE: 26-Sep-11

RESPONDENT: Margaret Eagle
 ADDRESS: Indian Country
 CITY, STATE: Region 8

FACILITY NAME: Belle Isle Store
 UST NAME/NO.: 3020005

COUNT ID: 1 Unit Assessment: By Facility 1 Tank at facility

VIOLATION 40CFR280.31(a) Failure to operate and maintain CP System

1. ECONOMIC BENEFIT COMPONENT

Avoided Expense: \$500
 Delayed Expense: \$0
 Interest Rate: 0.078
 Marginal Tax Rate: 0.15
 Days of Violation: 1095

Net Avoided Costs: \$524
 Net Delayed Costs: \$0

Total Economic Benefit: \$524

2. GRAVITY BASED COMPONENT

Potential for Harm: Major
 Extent of Deviation: Major
 Matrix Value: \$2,130
 Cooperation (-25%/+50%): 0.00
 Willfulness (-25%/+50%): 0.10
 History (+50%): 0.10
 Unique Factors (-25%/+50%): 0.00

Adjusted Matrix Value: \$2,556
 DNM: 4.5
 ESM: 1.5

Total Gravity Based Component: \$17,253

UNADJUSTED PENALTY: \$17,777
 ABILITY TO PAY REDUCTION: \$0
 TOTAL PROPOSED PENALTY: \$17,777

EXPLANATIONS:

Violation Start Date: 04/20/08 Violation End Date: 04/20/11
 Avoided Costs: Cost of CP Test
 Violation Start Date:
 Delayed Costs: None

ESM: 1.5, because facility is in Indian Country

DNM: 1095 Days

Cooperat'n: No change

Willfulness: .10 - Numerous attempts to get facility in compliance

History: .10 - Previous Violation

Unique: No change

Ability to Pay: Not evaluated

PENALTY CALCULATION WORKSHEET

DATE: 26-Sep-11

RESPONDENT: Margaret Eagle
 ADDRESS: Indian Country
 CITY, STATE: Region 8

FACILITY NAME: Belle Isle Store
 UST NAME/NO.: 3020005

COUNT ID: 2 Unit Assessment: By Facility 1 Tank at facility

VIOLATION 40CFR280.93(a) Failure to comply with Financial Responsibility Requirements

1 ECONOMIC BENEFIT COMPONENT

Avoided Expense: \$100
 Delayed Expense: \$0
 Interest Rate: 0.073
 Marginal Tax Rate: 0.15
 Days of Violation: 365

Net Avoided Costs: \$91
 Net Delayed Costs: \$0

Total Economic Benefit: \$91

2 GRAVITY BASED COMPONENT

Potential for Harm: Moderate
 Extent of Deviation: Major
 Matrix Value: \$1,060
 Cooperation (-25%/+50%): 0.00
 Willfulness (-25%/+50%): 0.10
 History (+50%): 0.10
 Unique Factors (-25%/+50%): 0.00

Adjusted Matrix Value: \$1,272
 DNM: 2.5
 ESM: 1.5

Total Gravity Based Component: \$4,770

UNADJUSTED PENALTY: \$4,861
 ABILITY TO PAY REDUCTION: \$0
 TOTAL PROPOSED PENALTY: \$4,861

EXPLANATIONS:
 Violation Start Date: 04/20/10 Violation End Date: 04/20/11
 Avoided Costs: Cost of State Fund
 Violation Start Date:
 Delayed Costs: None

ESM: 1.5, because facility is in Indian Country

DNM: 365 Days

Cooperat'n: No change

Willfulness: .10 - Numerous attempts to get facility in compliance

History: .10 - Previous Violation

Unique: No change

Ability to Pay: Not evaluated