

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2**

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In the Matter of :  
 :  
Westchester County, New York, :  
 :  
 : COMPLAINT AND NOTICE OF  
 : OPPORTUNITY FOR HEARING  
Respondent. :  
 :  
 : Docket No. RCRA-02-2016-7504  
Proceeding Under Section 9006 :  
of the Solid Waste Disposal Act, :  
as amended. :  
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U.S. Environmental Protection Agency-Reg 2  
2016 SEP 20 PM 2:16  
REGISTRY CLERK

Complainant, on behalf of the Administrator of the United States Environmental Protection Agency (“EPA”), by and through her attorneys, hereby alleges as and for her Complaint against Respondent:

Jurisdiction and Predicate Allegations

1. This administrative proceeding is being prosecuted pursuant to Section 9006 of the Solid Waste Disposal Act, as amended (the act, as amended, henceforth referred to as the “Act”), 42 U.S.C. § 6991e.
2. This proceeding seeks to assess a civil penalty against Respondent for having failed to comply with various requirements or standards promulgated by the Administrator of EPA under the authority of Section 9003 of the Act, 42 U.S.C. § 6991b, and to require compliance with the requirements of Subchapter IX of the Act, 42 U.S.C. §§ 6991-6991m.
3. This tribunal is vested with jurisdiction over this proceeding pursuant to Section 9006(a)(1) of the Act, 42 U.S.C. § 6991e(a)(1), and 40 C.F.R. § 22.1(a)(4).
4. Complainant in this proceeding is the Director of the Division of Enforcement and Compliance Assistance of EPA, Region 2.
5. Complainant has been duly delegated the authority to institute this proceeding.

Statutory Provisions Authorizing Complainant To Prosecute This Proceeding

6. Section 9006(a)(1) of the Act, 42 U.S.C. § 6991e(a)(1), provides, in part, that “whenever on the basis of any information, the Administrator [of EPA] determines that any person is in violation of any requirement of this subchapter [Subchapter IX of the Act, 42 U.S.C. §§ 6991-6991m], the Administrator may issue an order requiring compliance within a reasonable specified time period....”

7. Section 9006(c) of the Act, 42 U.S.C. § 6991e(c), provides that “[a]ny order under this section shall state with reasonable specificity the nature of the violation, specify a reasonable time for compliance, and assess a penalty, if any, which the Administrator determines is reasonable taking into account the seriousness of the violation and any good faith efforts to comply with the applicable requirements.”

8. Pursuant to Section 9006(d)(2)(A) of the Act, 42 U.S.C. § 6991e(d)(2)(A), “[a]ny owner or operator of an underground storage tank who fails to comply with [] any requirement or standard promulgated by the Administrator [of EPA] under section 6991b of this title [Section 9003 of the Act, 42 U.S.C. § 6991b]...shall be subject to a civil penalty not to exceed \$10,000 for each tank for each day of violation.

9. Under authority of the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended through 2015, EPA has promulgated regulations, codified at 40 C.F.R. Part 19, that, *inter alia*, increase the maximum penalty EPA might obtain pursuant to Section 9006(d) of the Act, 42 U.S.C. § 6991e(d), to \$16,000 for any violation occurring after January 12, 2009, and to \$22,587 for any violations that occurred after November 2, 2015 and for which penalties were assessed on or after August 1, 2016.

10. Section 9006(e) of the Act, 42 U.S.C. § 6991e(e), provides that “[b]oth of the following may be taken into account in determining the terms of a civil penalty under [Section 9006(d), 42 U.S.C. § 6991e(d)]: (1) [t]he compliance history of an owner or operator in accordance with this subchapter [Subchapter IX, 42 U.S.C. §§ 6991 - 6991i] [and] (2) “[a]ny other factors the Administrator [of EPA] considers appropriate.”

11. Pursuant to Section 9003 of the Act, 42 U.S.C. § 6991b, EPA has promulgated regulations governing the installation, operation, maintenance and closure of “underground storage tanks” (as such term is defined in Section 9001(1) of the Act, 42 U.S.C. § 6991(1), and in 40 C.F.R. § 280.12) by the “owners” (as such term has been defined by Section 9001(3) of the Act, 42 U.S.C. § 6991(3), and 40 C.F.R. § 280.12) and/or “operators” (as such term has been defined in Section 9001(3) of the Act, 42 U.S.C. § 6991(3), and 40 C.F.R. § 280.12) of USTs.1

12. The regulations referenced in paragraph 11, above, codified at 40 C.F.R. Part 280, constitute:

(a) the “requirement[s] of this subchapter [Subchapter IX of the Act, 42 U.S.C. §§ 6991-6991m] for purposes of Section 9006(a)(1) of the Act, 42 U.S.C. § 6991e(a)(1); and

(b) the “requirement[s] or standard[s] promulgated by the Administrator [of EPA] under section 6991b of this title [Section 9003 of the Act, 42 U.S.C. § 6991b]” for purposes of Section 9006(d)(2) of the Act, 42 U.S.C. § 6991e(d)(2).

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1 Words or phrases defined in accordance with applicable statutory and/or regulatory definitions are subsequently used throughout this document as so defined.

13. The failure to comply with a regulation set forth in 40 C.F.R. Part 280 constitutes a “violation of any requirement of this subchapter [Subchapter IX, 42 U.S.C. §§ 6991 - 6991i]” for purposes of Section 9006 of the Act, 42 U.S.C. § 6991e, and also constitutes a “fail[ure] to comply with [] any requirement or standard promulgated by the Administrator [of EPA] under section 6991b of this title [Section 9003 of the Act]” for purposes of Section 9006(d)(2)(A) of the Act, 42 U.S.C. § 6991e(d)(2)(A).

14. For any violation of a regulation set forth in 40 C.F.R. Part 280, the violator(s) thereof is, *inter alia*, subject to the civil penalty set forth in Section 9006(d)(2) of the Act, 42 U.S.C. § 6991e(d)(2), as amended.

#### Applicable Statutory and Regulatory Definitions

15. The term “tank” is defined in 40 C.F.R. § 280.12 as “a stationary device designed to contain an accumulation of regulated substances and constructed of non-earthen materials (e.g., concrete, steel, plastic) that provide structural support.”

16. The term “underground storage tank” (hereinafter also referred to as “UST”) has been defined in relevant part, to mean:

(a) Pursuant to Section 9001(1) of the Act, 42 U.S.C. § 6991(1), “any one or combination of tanks (including underground pipes connected thereto) which is used to contain an accumulation of regulated substances, and the volume of which (including the volume of the underground pipes connected thereto) is 10 per centum or more beneath the surface of the ground.”

(b) Pursuant to 40 C.F.R. § 280.12, “any one or combination of tanks (including underground pipes connected thereto) that is used to contain an accumulation of regulated substances, and the volume of which (including the volume of the underground pipes connected thereto) is 10 percent or more beneath the surface of the ground.”

17. Pursuant to 40 C.F.R. § 280.12, “UST system” or “Tank system” has been defined to “mean[] an underground storage tank, connected underground piping, underground ancillary equipment, and containment system, if any.”

18. Pursuant to 40 C.F.R. § 280.12, the term “existing tank system” has been defined to “mean[] a tank system used to contain an accumulation of regulated substances or for which installation has commenced on or before December 22, 1988.

19. Pursuant to 40 C.F.R. § 280.12, the term “new tank system” has been defined to “mean[] a tank system that will be used to contain an accumulation of regulated substances and for which installation has commenced after December 22, 1988.”

20. Pursuant to 40 C.F.R. § 280.12, the term “petroleum UST system” has been defined to “mean[] an underground storage tank system that contains petroleum or a mixture of

petroleum with *de minimis* quantities of other regulated substances. Such systems include those containing motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.”

21. Pursuant to Section 9001(6) of the Act, 42 U.S.C. § 6991(6), “petroleum” has been defined to “mean[] petroleum, including crude oil or any fracture thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute).”

22. The term “regulated substance” has been defined to mean:

- (a) Pursuant to Section 9001(2) of the Act, 42 U.S.C. § 6991(2), the following: “(A) any substance defined in Section 9601(14) of this title [42 U.S.C. § 9601(14)] (but not including any substance regulated as a hazardous waste under subchapter III of this chapter [42 U.S.C. §§ 6921-6939e]), and (B) petroleum.”
- (b) Pursuant to 40 C.F.R. § 280.12, the following: “(a) Any substance defined in section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA of 1980 [42 U.S.C. § 9601(14)] (but not including any substance regulated as a hazardous waste under subtitle C [42 U.S.C. §§ 6921-6939e]), and (b) Petroleum, including crude oil or any fraction thereof that is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute).
- (c) “The term ‘regulated substance’ includes but is not limited to petroleum and petroleum-based substances comprised of a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading, and finishing, such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.”

23. The term “owner” has been defined, in relevant part, to mean:

- (a) Pursuant to Section 9001(3) of the Act, 42 U.S.C. § 6991(3), “in the case of an underground storage tank in use on November 8, 1984, or brought into use after that date, any person who owns an underground storage tank used for the storage, use, or dispensing of regulated substances....”
- (b) Pursuant to 40 C.F.R. § 280.12, “In the case of an UST system in use on November 8, 1984, or brought into use after that date, any person who owns an UST system used for the storage, use, or dispensing of regulated substances....”

24. The term “operator” has been defined to mean:

- (a) Pursuant to Section 9001(4) of the Act, 42 U.S.C. § 6991(4), “any person in control of, or having responsibility for, the daily operation of the underground storage tank.”

(b) Pursuant to 40 C.F.R. § 280.12, “any person in control of, or having responsibility for, the daily operation of the UST system.”

25. The term “person” has been defined to mean:

- (a) Pursuant to Section 9001(6) of the Act, 42 U.S.C. § 6991(6), such term “has the same meaning as provided in section 6903(15) of this title, except that such term includes a consortium, a joint venture, and a commercial entity, and the United States Government.
- (b) Pursuant to 40 C.F.R. § 280.12, a “person” is defined, in part, as “an individual, trust, firm, joint stock company, Federal agency, corporation, state, municipality, commission, political subdivision of a state, or any interstate body.”

26. Section 1004(15) of the Act, 42 U.S.C. § 6903(15), defines “person” to “mean[] an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, or any interstate body and shall include each department, agency, and instrumentality of the United States.”

27. The term “release” has been defined as:

- (a) Pursuant to Section 9001(8), 42 U.S.C. § 6991(8), to “mean[] any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an underground storage tank into ground water, surface water or subsurface oils.
- (b) Pursuant to 40 C.F.R. § 280.12, to “mean[] any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an UST into ground water, surface water or subsurface oils.”

28. Pursuant to 40 C.F.R. § 280.12, the term “release detection” has been defined to “mean[] determining whether a release of a regulated substance has occurred from the UST system to the environment or into the interstitial space between the UST system and its secondary barrier or secondary containment around it.”

29. Pursuant to 40 C.F.R. § 280.12, for purposes of enforcing the standards and requirements at issue herein, EPA is (unless expressly noted otherwise) the “implementing agency,” *i.e.* the entity responsible for enforcing the requirements and standards governing USTs and UST systems as set forth in the Act and in 40 C.F.R. Part 280.

#### Relevant Requirements and Standards of This Subchapter

30. The regulation codified at 40 C.F.R. § 280.34 provides in part that “[o]wners and operators of UST systems must cooperate fully with inspections, monitoring and testing conducted by the implementing agency, as well as requests for document submission, testing, and

monitoring by the owner and operator pursuant to Section 9005 of Subtitle I of the Resource Conservation and Recovery Act [42 U.S.C. § 6991d].”

31. Sub-paragraph “a” of 40 C.F.R. § 280.34 lists the information that owners and operators of UST systems must provide to EPA.

32. Sub-paragraph “b” of 40 C.F.R. § 280.34 lists the information that owners and operators of UST systems must maintain, which includes the provision codified at 40 C.F.R. § 280.34(b)(4) that requires that “[o]wners and operators [of UST systems] must maintain...information [concerning] [r]ecent compliance with release detection requirements (§280.45)....”

33. Sub-paragraph “c” of 40 C.F.R. § 280.34 provides, in part, that “[o]wners and operators [of UST systems] must keep the records required either”:

- (1) “At the UST site and immediately available for inspection by the implementing agency; or
- (2) “At a readily available alternative site and be provided for inspection to the implementing agency upon request.”

34. Pursuant to 40 C.F.R. § 280.40(a), “[o]wners and operators of UST systems of new and existing UST systems must provide a method or combination of methods of release detection that” meets the requirements set forth therein.

35. In relevant part, 40 C.F.R. § 280.41(a) requires that “[o]wners and operators of petroleum UST systems must provide release detection for tanks” such that the “[t]anks must be monitored at least every 30 days for releases using one of the methods listed in [40 C.F.R.] §280.43 (d) through (h)....”

36. Sub-paragraphs “d,” “g” and “h” of 40 C.F.R. § 280.43 provide as follows, respectively:

*“Automatic tank gauging.* Equipment for automatic tank gauging that test for the loss of product and conducts inventory control must meet the following requirements” that are specified in paragraphs “1” and “2” of sub-paragraph “d”;

*“Interstitial monitoring.* Interstitial monitoring between the UST system and a secondary barrier immediately around or beneath it may be used, but only if the system is designed, constructed and installed to detect a leak from any portion of the tank that routinely contains product and also meets one of the following requirements” that are specified in “1” through “3” of sub-paragraph “g”; and

“*Other methods.* Any other type of release detection method, or combination of methods, can be used” if it meets the requirements specified in either paragraph “1” or “2” of subparagraph “h.”

37. In relevant part, 40 C.F.R. § 280.41(b) requires that “[o]wners and operators of petroleum UST systems must provide release detection for...piping” in accordance with the requirement set forth in 40 C.F.R. § 280.41(b)(2) that “[u]nderground piping that routinely contains” and “conveys regulated substances under suction must either have a line tightness test conducted at least every 3 years and in accordance with [40 C.F.R.] §280.44(b), or use a monthly monitoring method conduct in accordance with [40 C.F.R.] §280.44(c).”

38. Forty C.F.R. § 280.44(b) provides that “[e]ach method of release detection for piping used to meet the requirements of [40 C.F.R.] §280.41 must be conducted in accordance with” the “[l]ine tightness testing” provision which provides that “[a] periodic test of piping may be conducted only if it can detect a 0.1 gallon per hour leak rate at one and one-half times the operating pressure.”

39. Forty C.F.R. § 280.44(c) provides that “[e]ach method of release detection for piping used to meet the requirements of [40 C.F.R.] §280.41 must be conducted in accordance with” the requirement denominated “Applicable tank methods,” which provides that “[a]ny of the methods in [40 C.F.R.] §280.43 (e) through (h) may be used if they are designed to detect a release from any portion of the underground piping that routinely contains regulated substances.”

40. The regulation codified at 40 C.F.R. § 280.45(b) requires, *inter alia*, that “[a]ll UST system owners and operators must maintain records in accordance with [40 C.F.R.] §280.34 demonstrating compliance with all applicable requirements of this subpart [Subpart D of 40 C.F.R. Part 280, “Release Detection”],” and said requirements include the provision that “[t]he results of any sampling, testing, or monitoring must be maintained for at least 1 year....”

41. Forty C.F.R. § 280.50(c) states, in part, that “[o]wners and operators of UST systems must report to the implementing agency within 24 hours...and follow the procedures in [40 C.F.R.] § 280.52 for” *inter alia*, “[m]onitoring results from a release detection method required under [40 C.F.R.] § 280.41 and [40 C.F.R.] § 280.42 that indicate that a release may have occurred....”

42. The procedures specified in 40 C.F.R. § 280.52 require that “owners and operators must immediately investigate and confirm all suspected releases of regulated substances requiring reporting under [40 C.F.R.] § 280.50 within 7 days...using either [the procedures set forth therein] or another procedure approved by the implementing agency....”

Background: Respondent and The Underground Storage Tanks at Issue, Generally

43. Respondent is Westchester County, New York, a county of and situated in the State of New York.

44. Respondent is, and has been for all times relevant to the matters alleged below, a political subdivision of the State of New York that exists (and has existed for all times relevant to the matters alleged below) under authority of the laws of the State of New York.

45. Respondent is, and has been for all times relevant to the matters alleged below, a “person.”

46. Respondent is, and has been for all times relevant to the matters alleged below, the owner and/or operator of underground storage tanks located on the property of the following facilities identified below (as more specifically alleged subsequently for each count of this complaint):

- (a) Valhalla Campus – DPW&T, 35 Woods Road, Valhalla, New York (the “Valhalla facility”);
- (b) Sprout Brook Ashfill, 5729 Albany Post Road, Cortland Manor, New York (the “Sprout Brook facility”);
- (c) Dunwoodie Golf Course, 1 Wasylenko Road, Yonkers, New York (the “Dunwoodie facility”);
- (d) Tibbetts Brook Park, Midlands Avenue, Yonkers, New York (the “Tibbetts facility”);
- (e) Playland Park, Playland Parkway, Rye, New York (the “Playland facility”);
- (f) Saxon Woods Golf Course, 315 Mamaroneck Road, Mamaroneck, New York (the “Saxon Woods facility”);
- (g) PRC General Maintenance, Thompson Street, Tuckahoe, New York (the “PRC facility”);
- (h) Mountain Lakes Camp, 200 Hawley Road, North Salem, New York (the “Mountain Lakes facility”);
- (i) Bronx River Parkway Maintenance Area, Crane Road, Scarsdale, New York (the “Bronx River facility”);
- (j) Sprain Lake Golf Course, 290 East Grassy Sprain Road, Yonkers, New York (the “Sprain Lake facility”);
- (k) Mohansic Golf Course, Baldwin Road, Yorktown Heights, New York (the “Mohansic facility”);
- (l) Westchester County Airport, 240 Airport Road, White Plains, New York (the “Airport facility”); and



(m)Ridge Road Park, Ridge Road, Greenburgh, New York (the “Ridge Road facility”).

47. The New York State Department of Environmental Conservation (“NYSDEC”) has issued a Petroleum Bulk Storage (“PBS”) certificate to Respondent for tanks at each of the aforementioned (¶ 46, above) facilities, as follows: (a) the Valhalla facility, PBS Number 3-177555; (b) the Sprout Brook facility, PBS Number 3-174165; (c) the Dunwoodie facility, PBS Number 3-185779; (d) the Tibbetts facility, PBS Number 3-185582; (e) the Playland facility, PBS Number 3-185159; (f) the Saxon Woods facility, PBS Number 3-185795; (g) the PRC facility, PBS Number 3-185752; (h) the Mountain Lakes facility, PBS Number 185671; (i) the Bronx River facility, PBS Number 3-185647; (j) the Sprain Lake facility, PBS Number 3-185787; (k) the Mohansic facility, PBS Number 3-185809; (l) the Airport facility, PBS Number 3-177768; and (m) the Ridge Road facility, PBS Number 3-185612.

48. Each of gasoline and diesel fuel constitutes a “regulated substance.”

#### Interactions and Communications Between Respondent and EPA

49. Pursuant to Section 9005(a) of the Act, 42 U.S.C. § 6991d(a), a duly designated representative of EPA conducted an inspection of the aforementioned (¶46, above) facilities on the following dates, as more specifically set forth below: (a) July 8, 2013; (b) July 10, 2013; (c) July 11, 2013; (d) July 12, 2013; (e) July 15, 2013; (f) July 16, 2013; (g) July 17, 2013; and (h) July 22, 2013.

50. The purpose of the each of the aforementioned (¶49, above) EPA inspections was for EPA to obtain information regarding Respondent’s compliance with the requirements of the Act and with the regulations codified at 40 C.F.R. Part 280 in its ownership and operation of the USTs at the aforementioned (¶46, above) facilities.

51. On or about each of the following dates, EPA issued to Respondent, pursuant to Section 9005(a) of the Act, 42 U.S.C. § 6991d(a), an “information request letter” (hereinafter, “IRL”): (a) October 21, 2013 (hereinafter the “October 2013 EPA IRL”) and (b) April 18, 2014; (hereinafter, the “April 2014 EPA IRL”); and (c) April 19, 2016 (hereinafter, “the April 2016 EPA IRL”).

52. Each of the October 2013 EPA IRL, the April 2014 EPA IRL and the April 2016 EPA IRL sought information regarding Respondent’s compliance with the requirements of the Act and with the regulations codified at 40 C.F.R. Part 280 in its ownership and operation of the USTs at one or more the aforementioned (¶46, above) facilities.

53. Respondent submitted responses to the questions in the EPA IRLs as follows:

- (a) On or about January 24, 2014, in response to the October 2013 EPA IRL;
- (b) On or about February 24, 2014, in response to the October 2013 EPA IRL;

(c) On or about May 23, 2014, in response to the April 2014 EPA IRL; and

(d) On or about each of the following dates in response to the April 2016 EPA IRL: (1) July 22, 2016, (2) August 19, 2016 and (3) September 15, 2016.

54. Each of the aforementioned (¶53, above) Westchester IRL responses was prepared and certified to be true and accurate by an employee or official of Respondent as part, and in the course, of carrying out his/her official duties and responsibilities as an employee or official of Respondent.

**COUNT 1: Valhalla Facility – Failure to Maintain Release Detection Records**

55. Complainant repeats, realleges and incorporates by reference paragraphs 1 through 45, 46(a), 47(a), and 48 through 54 with the same force and effect as if said paragraphs had been expressly and fully set forth below.

56. Pursuant to Section 9005(a) of the Act, 42 U.S.C. § 6991d(a), a duly designated representative of EPA conducted an inspection of the Valhalla facility on July 8, 2013.

57. As of the date of the EPA inspection of the Valhalla facility, there were two underground storage tanks at said facility, as follows: (a) a 4,000-gallon gasoline storage tank, identified on the aforementioned (¶47(a), above) PBS certificate, as “GGG1”; and (b) a 2,000-gallon diesel fuel storage tank, identified on the aforementioned (¶47(a), above) PBS certificate as “GGD1.”

58. Each of GGG1 and GGD1 had been installed in January 1998.

59. Each of GGG1 and GGD1 constitutes a “new tank system.”

60. Each of GGG1 and GGD1 constitutes a “petroleum UST system.”

61. Respondent has been the owner since the time of the installation of each of (a) GGG1 and (b) GGD1, and Respondent continues to be the owner of each such tank at the present time.

62. Respondent has been the operator since the time of the installation of each of (a) GGG1 and (b) GGD1, and Respondent continues to be the operator of each such tank at the present time.

63. As of the date of the EPA inspection of the Valhalla facility and also for a period of at least one year prior and subsequent thereto (but not necessarily limited to such period), each of the following tanks was in use: (a) GGG1 and (b) GGD1.

64. Each of the following tanks continues to be in use at the present time: (a) GGG1 and (b) GGD1.

65. As of the date of the EPA inspection of the Valhalla facility: (a) GGG1 contained gasoline and (b) GGD1 contained diesel fuel.

66. For a period of at least one year prior and subsequent to the date of the EPA inspection of the Valhalla facility (but not necessarily limited to such period): (a) GGG1 routinely contained gasoline and (b) GGD1 routinely contained diesel fuel.

67. At the present time: (a) GGG1 routinely contains gasoline and (b) GGD1 routinely contains diesel fuel.

68. Pursuant to 40 C.F.R. § 280.41(a), Respondent was required to “provide release detection for” GGG1 and GGD1 such that these “[t]anks must be monitored at least every 30 days for releases using one of the methods listed in [40 C.F.R.] §280.43 (d) through (h). . . .”

69. As of the date of EPA’s July 2013 inspection of the Valhalla facility (and for some period of time before that), Respondent had been monitoring each of GGG1 and GGD1 for releases therefrom using an automatic tank gauge that conducts electronic interstitial monitoring.

70. Pursuant to 40 C.F.R. § 280.34(c), Respondent was required for each of GGG1 and GGD1 to “keep the records required” either at “the UST site and immediately for inspection by the implementing agency” or “a readily available alternative site and be provided for inspection to the implementing agency upon request.”

71. Pursuant to 40 C.F.R. § 280.45(b), Respondent was required for each of GGG1 and GGD1 to, *inter alia*, “maintain records in accordance with [40 C.F.R.] §280.34 demonstrating compliance with all applicable requirements of this subpart [Subpart D of 40 C.F.R. Part 280, “Release Detection”],” and said requirements include the provision that “[t]he results of any sampling, testing, or monitoring must be maintained for at least 1 year. . . .”

72. Respondent failed to produce and provide to EPA records of the required release detection monitoring results for each of GGG1 and GGD1 for the months of August 2012 and September 2012 despite:

- (a) the EPA representative having requested release detection monitoring records at the time of his July 2013 inspection of the Valhalla facility;
- (b) EPA having requested such records in its October 2013 EPA IRL; and
- (c) EPA having requested such records in its April 2014 EPA IRL.

73. Respondent failed to maintain for a period of at least one year the required records attesting that release detection monitoring had been provided for (a) GGG1 and (b) GGD1 for the months of August 2012 and September 2012.

74. Each aforementioned (§73, above) failure constitutes a failure to comply with (a) 40 C.F.R. § 280.34(c) and (b) 40 C.F.R. § 280.45(b).

75. Each of the aforementioned (§s 73 and 74, above) failures of Respondent (for each tank for each month) constitutes a “violation of any requirement of this subchapter [Subchapter IX, 42 U.S.C. §§ 6991 - 6991i]” for purposes of Section 9006 of the Act, 42 U.S.C. § 6991e, and also constitutes a “fail[ure] to comply with [] any requirement or standard promulgated by the Administrator [of EPA] under section 6991b of this title [Section 9003 of the Act]” for purposes of Section 9006(d)(2)(A) of the Act, 42 U.S.C. § 6991e(d)(2)(A).

## **COUNT 2: Sprout Brook Facility – Failure to Maintain Release Detection Records**

76. Complainant repeats, realleges and incorporates by reference paragraphs 1 through 45, 46(b), 47(b), and 48 through 54 with the same force and effect as if said paragraphs had been expressly and fully set forth below.

77. Pursuant to Section 9005(a) of the Act, 42 U.S.C. § 6991d(a), a duly designated representative of EPA conducted an inspection of the Sprout Brook facility on July 8, 2013.

78. As of the date of the EPA inspection of the Sprout Brook facility, there were two underground storage tanks at said facility, as follows: (a) an 8,000-gallon diesel fuel storage tank, identified on the aforementioned (§47(b), above) PBS certificate, as “Tank 1”; and (b) a 1,000-gallon tank used for the storage of waste/used oil, identified on the aforementioned (§47(b), above) PBS certificate as “Tank 3.”

79. Tank 1 was installed in May 1997.<sup>2</sup>

80. Tank 3 was installed in January 1997.

81. Each of Tank 1 and Tank 3 constitutes a “new tank system.”

82. Each of Tank 1 and Tank 3 constitutes a “petroleum UST system.”

83. Respondent has been the owner since the time of the installation of each of (a) Tank 1 and (b) Tank 3, and Respondent continues to be the owner of each such tank at the present time.

84. Respondent has been the operator since the time of the installation of each of (a) Tank 1 and (b) Tank 3, and Respondent continues to be the operator of each such tank at the present time.

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<sup>2</sup> Tanks referenced in the paragraphs of each count refer to the tanks pertaining to that count, *i.e.* the tanks located at the facility that is the subject of the specific count. Thus, for example, references to Tank 1 and Tank 3 in count 2 specifically refer to Tank 1 and Tank 3, respectively, at the Sprout Brook facility.

85. As of the date of EPA's July 2013 inspection of the Sprout Brook facility and also for a period of at least one year prior and subsequent thereto (but not necessarily limited to such period), each of the following tanks was in use: (a) Tank 1 and (b) Tank 3.

86. Each of the following tanks continues to be in use at the present time: (a) Tank 1 and (b) Tank 3.

87. As of the date of EPA's July 2013 inspection of the Sprout Brook facility: (a) Tank 1 contained diesel fuel and (b) Tank 3 contained waste/used oil.

88. For a period of at least one year prior and subsequent to the date of the EPA inspection of the Sprout Brook facility (but not necessarily limited to such period): (a) Tank 1 routinely contained diesel fuel and (b) Tank 3 routinely contained waste/used oil.

89. At the present time: (a) Tank 1 routinely contains diesel fuel and (b) Tank 3 routinely contains waste/used oil.

90. Waste/used oil constitutes a "regulated substance."

91. Pursuant to 40 C.F.R. § 280.41(a) Respondent was required to "provide release detection for" each of Tank 1 and Tank 3 such that these "[t]anks must be monitored at least every 30 days for releases using one of the methods listed in [40 C.F.R.] §280.43 (d) through (h)...."

92. As of the date of EPA's July 2013 inspection of the Sprout Brook facility (and for some period of time before that), Respondent had been monitoring each of Tank 1 and Tank 3 for releases therefrom using an automatic tank gauge that conducts electronic interstitial monitoring.

93. Pursuant to 40 C.F.R. § 280.34(c), Respondent was required for each of Tank 1 and Tank 3 to "keep the records required" either at "the UST site and immediately for inspection by the implementing agency" or "a readily available alternative site and be provided for inspection to the implementing agency upon request."

94. Pursuant to 40 C.F.R. § 280.45(b), Respondent was required for each of Tank 1 and Tank 3 to, *inter alia*, "maintain records in accordance with [40 C.F.R.] §280.34 demonstrating compliance with all applicable requirements of this subpart [Subpart D of 40 C.F.R. Part 280, "Release Detection"]," and said requirements include the provision that "[t]he results of any sampling, testing, or monitoring must be maintained for at least 1 year...."

95. Respondent failed to produce and provide to EPA records of the required release detection monitoring results for each of Tank 1 and Tank 3 for the months of July 2012 through (at least) April 2013 despite:

- (a) the EPA representative having requested release detection monitoring records at the time of his July 2013 inspection of the Sprout Brook facility; and

(b) EPA having requested such records in its October 2013 EPA IRL.

96. Respondent failed to maintain for a period of at least one year the required records attesting that release detection monitoring had been provided for (a) Tank 1 and (b) Tank 3 for the months of July 2012 through (at least) April 2013.

97. Each aforementioned (¶96, above) constitutes a failure to comply with (a) 40 C.F.R. § 280.34(c) and (b) 280.45(b).

98. Each of the aforementioned (¶s 96 and 97, above) failures of Respondent (for each tank for each month) constitutes a “violation of any requirement of this subchapter [Subchapter IX, 42 U.S.C. §§ 6991 - 6991i]” for purposes of Section 9006 of the Act, 42 U.S.C. § 6991e, and also constitutes a “fail[ure] to comply with [] any requirement or standard promulgated by the Administrator [of EPA] under section 6991b of this title [Section 9003 of the Act]” for purposes of Section 9006(d)(2)(A) of the Act, 42 U.S.C. § 6991e(d)(2)(A).

### **COUNT 3: Dunwoodie Facility – Failure to Maintain Release Detection Records**

99. Complainant repeats, realleges and incorporates by reference paragraphs 1 through 45, 46(c), 47(c), and 48 through 54 with the same force and effect as if said paragraphs had been expressly and fully set forth below.

100. Pursuant to Section 9005(a) of the Act, 42 U.S.C. § 6991d(a), a duly designated representative of EPA conducted an inspection of the Dunwoodie facility on July 10, 2013.

101. As of the date of the EPA inspection of the Dunwoodie facility, there were two underground storage tanks at said facility, as follows: (a) a 1,000-gallon gasoline storage tank, identified on the aforementioned (¶47(c), above) PBS certificate as “Tank 1” and (b) a 500-gallon diesel fuel storage tank, identified on the aforementioned (¶47(c), above) PBS certificate as “Tank 2.”

102. Each of Tank 1 and Tank 2 was installed in January 1998.

103. Each of Tank 1 and Tank 2 constitutes a “new tank system.”

104. Each of Tank 1 and Tank 2 constitutes a “petroleum UST system.”

105. Respondent has been the owner since the time of the installation of each of (a) Tank 1 and (b) Tank 2, and Respondent continues to be the owner of each such tank at the present time.

106. Respondent has been the operator since the time of the installation of each of (a) Tank 1 and (b) Tank 2, and Respondent continues to be the operator of each such tank at the present time.

107. As of the date of the EPA inspection of the Dunwoodie facility and also for a period of at least one year prior and subsequent thereto (but not necessarily limited to such period), each of the following tanks was in use: (a) Tank 1 and (b) Tank 2.

108. Each of the following tanks continues to be in use at the present time: (a) Tank 1 and (b) Tank 2.

109. As of the date of the EPA inspection of the Dunwoodie facility: (a) Tank 1 contained gasoline and (b) Tank 2 contained diesel fuel.

110. For a period of at least one year prior and subsequent to the date of the EPA inspection of the Dunwoodie facility (but not necessarily limited to such period): (a) Tank 1 routinely contained gasoline and (b) Tank 2 routinely contained diesel fuel.

111. At the present time: (a) Tank 1 routinely contains gasoline and (b) Tank 2 routinely contains diesel fuel.

112. Pursuant to 40 C.F.R. § 280.41(a) Respondent was required to “provide release detection for” each of Tank 1 and Tank 2 such that these “[t]anks must be monitored at least every 30 days for releases using one of the methods listed in [40 C.F.R.] §280.43 (d) through (h)....”

113. As of the date of the EPA inspection of the Dunwoodie facility (and for some period of time before that), Respondent had been monitoring each of Tank 1 and Tank 2 for releases therefrom using System Status Reports/Inventory Control, and a 10-day reconciliation method.

114. Pursuant to 40 C.F.R. § 280.34(c), Respondent was required for each of Tank 1 and Tank 2 to “keep the records required” either at “the UST site and immediately for inspection by the implementing agency” or “a readily available alternative site and be provided for inspection to the implementing agency upon request.”

115. Pursuant to 40 C.F.R. § 280.45(b), Respondent was required for each of Tank 1 and Tank 2 to, *inter alia*, “maintain records in accordance with [40 C.F.R.] §280.34 demonstrating compliance with all applicable requirements of this subpart [Subpart D of 40 C.F.R. Part 280, “Release Detection”],” and said requirements include the provision that “[t]he results of any sampling, testing, or monitoring must be maintained for at least 1 year....”

116. Respondent failed to produce and provide to EPA records of the required release detection monitoring results for each of Tank 1 and Tank 2 for the months of August 2012, December 2012, February 2013, April 2013 and June 2013 despite:

- (a) the EPA representative having requested release detection monitoring records at the time of his July 2013 inspection of the Dunwoodie facility; and

(b) EPA having requested such records in its October 2013 EPA IRL.

117. Respondent failed to maintain for a period of at least one year the required records attesting that release detection monitoring had been provided for each of Tank 1 and Tank 2 for the months of August 2012, December 2012, February 2013, April 2013 and June 2013.

118. The aforementioned (§117, above) failure constitutes a failure to comply with (a) 40 C.F.R. § 280.34(c) and (b) 40 C.F.R. § 280.45(b).

119. Each of the aforementioned (§s 117 and 118, above) failures of Respondent constitutes a “violation of any requirement of this subchapter [Subchapter IX, 42 U.S.C. §§ 6991 - 6991i]” for purposes of Section 9006 of the Act, 42 U.S.C. § 6991e, and also constitutes a “fail[ure] to comply with [] any requirement or standard promulgated by the Administrator [of EPA] under section 6991b of this title [Section 9003 of the Act]” for purposes of Section 9006(d)(2)(A) of the Act, 42 U.S.C. § 6991e(d)(2)(A).

#### **COUNT 4: Tibbetts Facility – Failure to Maintain Release Detection Records**

120. Complainant repeats, realleges and incorporates by reference paragraphs 1 through 45, 46(d), 47(d), and 48 through 54 with the same force and effect as if said paragraphs had been expressly and fully set forth below.

121. Pursuant to Section 9005(a) of the Act, 42 U.S.C. § 6991d(a), a duly designated representative of EPA conducted an inspection of the Tibbetts facility on July 10, 2013.

122. As of the date of the EPA inspection of the Tibbetts facility, there were two underground storage tanks at said facility, as follows: (a) a 2,000-gallon gasoline storage tank, identified on the aforementioned (§47(d), above) PBS certificate as “Tank 10” and (b) a 2,000-gallon diesel fuel storage tank, identified on the aforementioned (§47(d), above) PBS certificate as “Tank 20.”

123. Each of Tank 10 and Tank 20 was installed in July 1995.

124. Each of Tank 10 and Tank 20 constitutes a “new tank system.”

125. Each of Tank 10 and Tank 20 constitutes a “petroleum UST system.”

126. Respondent has been the owner since the time of the installation of each of (a) Tank 10 and (b) Tank 20, and Respondent continues to be the owner of each such tank at the present time.

127. Respondent has been the operator since the time of the installation of each of (a) Tank 10 and (b) Tank 20, and Respondent continues to be the operator of each such tank at the present time.



128. As of the date of the EPA inspection of the Tibbetts facility and also for a period of at least one year prior and subsequent thereto (but not necessarily limited to such period), each of the following tanks was in use: (a) Tank 10 and (b) Tank 20.

129. Each of the following tanks continues to be in use at the present time: (a) Tank 10 and (b) Tank 20.

130. As of the date of the EPA inspection of the Tibbetts facility: (a) Tank 10 contained gasoline and (b) Tank 20 contained diesel fuel.

131. For a period of at least one year prior and subsequent to the date of the EPA inspection of the Tibbetts facility (but not necessarily limited to such period): (a) Tank 10 routinely contained gasoline and (b) Tank 20 routinely contained diesel fuel.

132. At the present time: (a) Tank 10 routinely contains gasoline and (b) Tank 20 routinely contains diesel fuel.

133. Pursuant to 40 C.F.R. § 280.41(a) Respondent was required to “provide release detection for” each of Tank 10 and Tank 20 such that these “[t]anks must be monitored at least every 30 days for releases using one of the methods listed in [40 C.F.R.] §280.43 (d) through (h)....”

134. As of the date of the EPA inspection of the Tibbetts facility (and for some period of time before that), Respondent had been monitoring for releases therefrom each of Tank 10 and Tank 20 using a Veeder-Root TLS-300 automatic tank gauge that conducted electronic interstitial monitoring.

135. Pursuant to 40 C.F.R. § 280.34(c), Respondent was required for each of Tank 10 and Tank 20 to “keep the records required” either at “the UST site and immediately for inspection by the implementing agency” or “a readily available alternative site and be provided for inspection to the implementing agency upon request.”

136. Pursuant to 40 C.F.R. § 280.45(b), Respondent was required for each of Tank 10 and Tank 20 to, *inter alia*, “maintain records in accordance with [40 C.F.R.] §280.34 demonstrating compliance with all applicable requirements of this subpart [Subpart D of 40 C.F.R. Part 280, “Release Detection”],” and said requirements include the provision that “[t]he results of any sampling, testing, or monitoring must be maintained for at least 1 year....”

137. Respondent failed to produce and provide to EPA records of the required release detection monitoring results for each of Tank 10 and Tank 20 for the months of July 2012 through June 2013 despite:

- (a) the EPA representative having requested release detection monitoring records at the time of his July 2013 inspection of the Tibbetts facility; and

(b) EPA having requested such records in its October 2013 EPA IRL.

138. Respondent failed to maintain for a period of at least one year the required records attesting that release detection monitoring had been provided for each of Tank 10 and Tank 20 for the months of July 2012 through June 2013.

139. The aforementioned (§138, above) failure constitutes a failure to comply with (a) 40 C.F.R. § 280.34(c) and 40 C.F.R. § 280.45(b).

140. Each of the aforementioned (§s 138 and 139, above) failures of Respondent constitutes a “violation of any requirement of this subchapter [Subchapter IX, 42 U.S.C. §§ 6991 - 6991i]” for purposes of Section 9006 of the Act, 42 U.S.C. § 6991e, and also constitutes a “fail[ure] to comply with [] any requirement or standard promulgated by the Administrator [of EPA] under section 6991b of this title [Section 9003 of the Act]” for purposes of Section 9006(d)(2)(A) of the Act, 42 U.S.C. § 6991e(d)(2)(A).

#### **COUNT 5: Tibbetts Facility – Failure to Provide 30-Day Release Detection Monitoring**

141. Complainant repeats, realleges and incorporates by reference paragraphs 1 through 45, 46(d), 47(d), 48 through 54, 121 through 132, and 134 with the same force and effect as if said paragraphs had been expressly and fully set forth below.

142. Pursuant to 40 C.F.R. § 280.41(a), Respondent was required to provide release detection for each of Tank 10 and Tank 20 such that said tanks were required to “be monitored at least every 30 days for releases using one of the methods listed in [40 C.F.R.] §280.43 (d) through (h)....”

143. Respondent monitored each of Tank 10 and Tank 20 on a basis exceeding 30 days between each recording of release detection results.

144. With regard to each of Tank 10 and Tank 20, during the period from August 3, 2013 through November 12, 2013, Respondent failed to provide the 30-day monthly monitoring for releases required by 40 C.F.R. § 280.41(a).

145. The aforementioned (§144, above) failure constitutes a failure to comply with 40 C.F.R. § 280.41(a).

146. Each of the aforementioned (§s 144 and 145, above) failures of Respondent constitutes a “violation of any requirement of this subchapter [Subchapter IX, 42 U.S.C. §§ 6991 - 6991i]” for purposes of Section 9006 of the Act, 42 U.S.C. § 6991e, and also constitutes a “fail[ure] to comply with [] any requirement or standard promulgated by the Administrator [of EPA] under section 6991b of this title [Section 9003 of the Act]” for purposes of Section 9006(d)(2)(A) of the Act, 42 U.S.C. § 6991e(d)(2)(A).

**COUNT 6: Playland Facility – Failure to Maintain Release Detection Records**

147. Complainant repeats, realleges and incorporates by reference paragraphs 1 through 45, 46(e), 47(e), and 48 through 54 with the same force and effect as if said paragraphs had been expressly and fully set forth below.

148. Pursuant to Section 9005(a) of the Act, 42 U.S.C. § 6991d(a), a duly designated representative of EPA conducted an inspection of the Playland facility on July 11, 2013.

149. As of the date of the EPA inspection of the Playland facility, there were three underground storage tanks at said facility, as follows: (a) a 2,000-gallon gasoline storage tank, identified on the aforementioned (¶47(e), above) PBS certificate as “Tank PU1920,” (b) a 1,000-gallon diesel fuel storage tank, identified on the aforementioned (¶47(e), above) PBS certificate as “Tank PU2920” and (c) a 550-gallon gasoline storage tank, identified on the aforementioned (¶47(e), above) PBS certificate as “Tank Lake BT 2809.”

150. Each of Tank PU1920 and Tank PU2920 was installed in May 1992.

151. Tank Lake BT 2809 was installed in March 1997.

152. Each of Tank PU1920, Tank PU2920 and Tank Lake BT 2809 constitutes a “new tank system.”

153. Each of Tank PU1920, Tank PU2920 and Tank Lake BT 2809 constitutes a “petroleum UST system.”

154. Respondent has been the owner since the time of the installation of each of (a) Tank PU1920, (b) PU2920 and (c) Tank Lake BT 2809, and Respondent continues to be the owner of each such tank at the present time.

155. Respondent has been the operator since the time of the installation of each of (a) Tank PU1920, (b) PU2920 and (c) Tank Lake BT 2809, and Respondent continues to be the operator of each such tank at the present time.

156. As of the date of the EPA inspection of the Playland facility and also for a period of at least one year prior and subsequent thereto (but not necessarily limited to such period), each of the following tanks was in use: (a) Tank PU1920 and (b) Tank PU2920.

157. Each of the following tanks continues to be in use at the present time: (a) Tank PU1920 and (b) Tank PU2920.

158. As of the date of the EPA inspection of the Playland facility, Tank Lake BT 2809 was out of service.

159. As of the date of the EPA inspection of the Playland facility: (a) Tank PU1920 contained gasoline and (b) Tank PU2920 contained diesel fuel.

160. For a period of at least one year prior and subsequent to the date of the EPA inspection of the Playland facility (but not necessarily limited to such period): (a) Tank PU1920 routinely contained gasoline and (b) Tank PU2920 routinely contained diesel fuel.

161. At the present time: (a) Tank PU1920 routinely contains gasoline and (b) Tank PU2920 routinely contains diesel fuel.

162. As of the date of the EPA inspection of the Playland facility and for some time prior thereto, Tank Lake BT 2809 contained gasoline.

163. Pursuant to 40 C.F.R. § 280.41(a) Respondent was required to “provide release detection for” each of Tank PU1920, Tank PU2920 and Tank Lake BT 2809 such that these “[t]anks must be monitored at least every 30 days for releases using one of the methods listed in [40 C.F.R.] §280.43 (d) through (h). . . .”

164. As of the date of EPA’s July 2013 inspection of the Playland facility (and for some period of time before that), Respondent had been monitoring for releases from each of Tank PU1920, Tank PU2920 and Tank Lake BT 2809 using a Veeder-Root TLS-300 automatic tank gauge that conducted electronic interstitial monitoring.

165. Pursuant to 40 C.F.R. § 280.34(c), Respondent was required for each of Tank PU1920, Tank PU2920 and Tank Lake BT 2809 to “keep the records required” either at “the UST site and immediately for inspection by the implementing agency” or “a readily available alternative site and be provided for inspection to the implementing agency upon request.”

166. Pursuant to 40 C.F.R. § 280.45(b), Respondent was required for each of Tank PU1920, Tank PU2920 and Tank Lake BT 2809 to, *inter alia*, “maintain records in accordance with [40 C.F.R.] §280.34 demonstrating compliance with all applicable requirements of this subpart [Subpart D of 40 C.F.R. Part 280, “Release Detection”],” and said requirements include the provision that “[t]he results of any sampling, testing, or monitoring must be maintained for at least 1 year. . . .”

167. Respondent failed to produce and provide to EPA records of the required release detection monitoring results for each of Tank PU1920 and Tank PU2920 for the months of July 2012, August 2012 and November 2012 despite:

- (a) the EPA representative having requested release detection monitoring records at the time of his July 2013 inspection of the Playland facility; and
- (b) EPA having requested such records in its October 2013 EPA IRL.

168. Respondent failed to produce and provide to EPA records of the required release detection monitoring results for Tank Lake BT 2809 for the month of June 2013:

- (a) EPA representative having requested release detection monitoring records at the time of his July 2013 inspection of the Playland facility; and
- (b) EPA having requested such records in its October 2013 EPA IRL.

169. Respondent failed to maintain for a period of at least one year the required records attesting that release detection monitoring had been provided for: (a) Tank PU1920 for the months of July 2012, August 2012 and November 2012; (b) Tank PU2920 for the months of July 2012, August 2012 and November 2012; and (c) Tank Lake BT 2809 for the month of June 2013.

170. Each of the aforementioned (¶ 169, above) failures constitutes a failure to comply with (a) 40 C.F.R. § 280.34(c) and 40 C.F.R. § 280.45(b).

171. Each of the aforementioned (¶s 169 and 170, above) failures (for each tank for each month) of Respondent constitutes a “violation of any requirement of this subchapter [Subchapter IX, 42 U.S.C. §§ 6991 - 6991i]” for purposes of Section 9006 of the Act, 42 U.S.C. § 6991e, and also constitutes a “fail[ure] to comply with [] any requirement or standard promulgated by the Administrator [of EPA] under section 6991b of this title [Section 9003 of the Act]” for purposes of Section 9006(d)(2)(A) of the Act, 42 U.S.C. § 6991e(d)(2)(A).

#### **COUNT 7: Playland Facility – Failure to Report and Investigate Suspected Releases**

172. Complainant repeats, realleges and incorporates by reference paragraphs 1 through 45, 46(e), 47(e), 48 through 54, and 148 through 162 with the same force and effect as if said paragraphs had been expressly and fully set forth below.

173. For the period including that between September 2012 and July 2013 (and for an additional period of time prior and subsequent thereto), the New York State Department of Environmental Conservation (“NYSDEC”) was, for purposes, *inter alia*, relating to reporting and investigating releases (including suspected releases) in accordance with the requirements of 40 C.F.R. Part 280, Subpart E, the “implementing agency” within the meaning of 40 C.F.R. § 280.12.

174. Each of Tank PU1920, Tank PU2920 and Tank Lake BT 2809 constituted for the aforementioned (¶173, above) period (and continues to constitute) an “UST system” for purposes of 40 C.F.R. § 280.50.

175. For the period including that between September 2012 and July 2013 (and for an additional period of time prior and subsequent thereto), Respondent had been monitoring each of Tank PU1920, Tank PU2920 and Tank Lake BT 2809 using a Veeder-Root TLS-300 automatic tank gauge that conducted electronic interstitial monitoring (which included monitoring for the associated piping of such tanks).

176. On or about each of the following dates, various sensors connected to and/or otherwise associated with each of Tank PU1920 and Tank PU2920 (including on the piping associated with each such tank) were in alarm: (a) September 12, 2012; (b) October 19, 2012; (c) December 16, 2012; (d) January 2, 2013; (e) February 1, 2013; (f) March 30, 2013; (g) April 30, 2013; (h) May 31, 2013; (i) June 30, 2013; and (j) July 13, 2013.

177. On or about each of the following dates, various sensors connected to and/or otherwise associated with Tank Lake BT 2809 (including on the piping associated with such tank) were in alarm: (a) September 12, 2012; (b) December 16, 2012; (c) January 2, 2013; (e) February 4, 2013; (f) March 30, 2013; (g) April 30, 2013; (h) May 1, 2013; and (i) July 9, 2013.

178. The aforementioned (§s 176 and 177, above) sensors in alarm indicated that a release of a regulated substance from each of these UST systems may have occurred.

179. Respondent was required, pursuant to 40 C.F.R. § 280.50(c), to “report to [the NYSDEC], and follow the procedures in [40 C.F.R.] § 280.52” when the “[m]onitoring from a release detection method required under [*inter alia*] [40 C.F.R.] § 280.41...indicate that a release may have occurred.”

180. Respondent was required, pursuant to 40 C.F.R. § 280.52, to “immediately investigate...all suspected releases of regulated substances requiring reporting under [40 C.F.R.] §280.50....”

181. With regard to Tank PU1920 and Tank PU2920, Respondent failed to report to the NYSDEC within 24 hours of each date listed in paragraph 176, above, that the alarms on such sensors had been triggered.

182. With regard to Tank Lake BT 2809, Respondent failed to report to the NYSDEC within 24 hours of each date listed in paragraph 177, above, that the alarms on such sensors had been triggered.

183. With regard to Tank PU1920 and Tank PU2920, Respondent failed immediately (*i.e.* within the ensuing 24-hour period of each of the dates listed in paragraph 176, above) to investigate whether the alarms on the sensors having been triggered involved a release of a regulated substance from either of said tanks.

184. With regard to Tank Lake BT 2809, Respondent failed immediately (*i.e.* within the ensuing 24-hour period of each of the dates listed in paragraph 177, above) to investigate whether the alarms on the sensors having been triggered involved a release of a regulated substance from said tank.

185. Each of the aforementioned (§s 181 and 182, above) failures constitutes a failure to comply with 40 C.F.R. § 280.50(c).

186. Each of the aforementioned (§s 183 and 184, above) failures constitutes a failure to comply with 40 C.F.R. § 280.52.

187. Each of the aforementioned (§s 181 through 186, above) failures by Respondent constitutes a “violation of any requirement of this subchapter [Subchapter IX, 42 U.S.C. §§ 6991 - 6991i]” for purposes of Section 9006 of the Act, 42 U.S.C. § 6991e, and also constitutes a “fail[ure] to comply with [] any requirement or standard promulgated by the Administrator [of EPA] under section 6991b of this title [Section 9003 of the Act]” for purposes of Section 9006(d)(2)(A) of the Act, 42 U.S.C. § 6991e(d)(2)(A).

### **COUNT 8: Saxon Woods Facility – Failure to Maintain Release Detection Records**

188. Complainant repeats, realleges and incorporates by reference paragraphs 1 through 45, 46(f), 47(f), and 48 through 54 with the same force and effect as if said paragraphs had been expressly and fully set forth below.

189. Pursuant to Section 9005(a) of the Act, 42 U.S.C. § 6991d(a), a duly designated representative of EPA conducted an inspection of the Saxon Woods facility on July 11, 2013.

190. As of the date of the EPA inspection of the Saxon Woods facility, there were two underground storage tanks at said facility, as follows: (a) a 1,000-gallon gasoline storage tank, identified on the aforementioned (§47(f), above) PBS certificate as “Tank 1,” and (b) a 500-gallon diesel fuel storage tank, identified on the aforementioned (§47(f), above) PBS certificate as “Tank 2.”

191. Each of Tank 1 and Tank 2 was installed in April 1996.

192. Each of Tank 1 and Tank 2 constitutes a “new tank system.”

193. Each of Tank 1 and Tank 2 constitutes a “petroleum UST system.”

194. Respondent has been the owner since the time of the installation of each of (a) Tank 1 and (b) Tank 2, and Respondent continues to be the owner of each such tank at the present time.

195. Respondent has been the operator since the time of the installation of each of (a) Tank 1 and (b) Tank 2, and Respondent continues to be the operator of each such tank at the present time.

196. As of the date of the EPA inspection of the Saxon Woods facility and also for a period of at least one year prior and subsequent thereto (but not necessarily limited to such period), each of the following tanks was in use: (a) Tank 1 and (b) Tank 2.

197. Each of the following tanks continues to be in use at the present time: (a) Tank 1 and (b) Tank 2.

198. As of the date of the EPA inspection of the Saxon Woods facility: (a) Tank 1 contained gasoline and (b) Tank 2 contained diesel fuel.

199. For a period of at least one year prior and subsequent to the date of the EPA inspection of the Saxon Woods facility (but not necessarily limited to such period): (a) Tank 1 routinely contained gasoline and (b) Tank 2 routinely contained diesel fuel.

200. At the present time: (a) Tank 1 routinely contains gasoline and (b) Tank 2 routinely contains diesel fuel.

201. Pursuant to 40 C.F.R. § 280.41(a) Respondent was required to “provide release detection for” each of Tank 1 and Tank 2 such that these “[t]anks must be monitored at least every 30 days for releases using one of the methods listed in [40 C.F.R.] §280.43 (d) through (h)....”

202. As of the date of EPA’s July 2013 inspection of the Saxon Woods facility (and for some period of time before that), Respondent had been monitoring for releases from each of Tank 1 and Tank 2 using a Veeder-Root TLS-350 automatic tank gauge that conducted electronic interstitial monitoring.

203. Pursuant to 40 C.F.R. § 280.34(c), Respondent was required for each of Tank 1 and Tank 2 to “keep the records required” either at “the UST site and immediately for inspection by the implementing agency” or “a readily available alternative site and be provided for inspection to the implementing agency upon request.”

204. Pursuant to 40 C.F.R. § 280.45(b), Respondent was required for each of Tank 1 and Tank 2 to, *inter alia*, “maintain records in accordance with [40 C.F.R.] §280.34 demonstrating compliance with all applicable requirements of this subpart [Subpart D of 40 C.F.R. Part 280, “Release Detection”],” and said requirements include the provision that “[t]he results of any sampling, testing, or monitoring must be maintained for at least 1 year....”

205. Respondent failed to produce and provide to EPA records of the required release detection monitoring results for each of Tank 1 and Tank 2 for the months of July 2012 through June 2013 despite:

- (a) the EPA representative having requested release detection monitoring records at the time of his July 2013 inspection of the Saxon Woods facility; and
- (b) EPA having requested such records in its October 2013 EPA IRL.

206. Respondent failed to maintain for a period of at least one year the required records attesting that release detection monitoring had been provided for each of Tank 1 and Tank 2 for the months of July 2012 through June 2013.



207. Each aforementioned (§206, above) failure constitutes a failure to comply with (a) 40 C.F.R. § 280.34(c) and (b) 40 C.F.R. § 280.45(b).

208. Each of the aforementioned (§s 206 and 207, above) failures (for each tank for each month) of Respondent constitutes a “violation of any requirement of this subchapter [Subchapter IX, 42 U.S.C. §§ 6991 - 6991i]” for purposes of Section 9006 of the Act, 42 U.S.C. § 6991e, and also constitutes a “fail[ure] to comply with [] any requirement or standard promulgated by the Administrator [of EPA] under section 6991b of this title [Section 9003 of the Act]” for purposes of Section 9006(d)(2)(A) of the Act, 42 U.S.C. § 6991e(d)(2)(A).

### **COUNT 9: PRC Facility – Failure to Maintain Release Detection Records**

209. Complainant repeats, realleges and incorporates by reference paragraphs 1 through 45, 46(g), 47(g), and 48 through 54 with the same force and effect as if said paragraphs had been expressly and fully set forth below.

210. Pursuant to Section 9005(a) of the Act, 42 U.S.C. § 6991d(a), a duly designated representative of EPA conducted an inspection of the PRC facility on July 11, 2013.

211. As of the date of the EPA inspection of the PRC facility, there were two underground storage tanks at said facility, as follows: (a) a 2,000-gallon diesel fuel storage tank, identified on the aforementioned (§47(g), above) PBS certificate as “Tank 2,” and (b) a 3,000-gallon gasoline storage tank, identified on the aforementioned (§47(g), above) PBS certificate as “Tank 3.”

212. Each of Tank 2 and Tank 3 was installed in April 1994.

213. Each of Tank 2 and Tank 3 constitutes a “new tank system.”

214. Each of Tank 2 and Tank 3 constitutes a “petroleum UST system.”

215. Respondent has been the owner since the time of the installation of each of (a) Tank 2 and (b) Tank 3, and Respondent continues to be the owner of each such tank at the present time.

216. Respondent has been the operator since the time of the installation of each of (a) Tank 2 and (b) Tank 3, and Respondent continues to be the operator of each such tank at the present time.

217. As of the date of the EPA inspection of the PRC facility and also for a period of at least one year prior and subsequent thereto (but not necessarily limited to such period), each of the following tanks was in use: (a) Tank 2 and (b) Tank 3.

218. Each of the following tanks continues to be in use at the present time: (a) Tank 2 and (b) Tank 3.

219. As of the date of the EPA inspection of the PRC facility: (a) Tank 2 contained diesel fuel and (b) Tank 3 contained gasoline.

220. For a period of at least one year prior and subsequent to the date of the EPA inspection of the PRC facility (but not necessarily limited to such period): (a) Tank 2 routinely contained diesel fuel and (b) Tank 3 routinely contained gasoline.

221. At the present time: (a) Tank 2 routinely contains diesel fuel and (b) Tank 3 routinely contains gasoline.

222. Pursuant to 40 C.F.R. § 280.41(a) Respondent was required to “provide release detection for” each of Tank 2 and Tank 3 such that these “[t]anks must be monitored at least every 30 days for releases using one of the methods listed in [40 C.F.R.] §280.43 (d) through (h)...”

223. As of the date of EPA’s July 2013 inspection of the PRC facility (and for some period of time before that), Respondent had been monitoring for releases from each of Tank 2 and Tank 3 using a Veeder-Root TLS-350 automatic tank gauge that conducted electronic interstitial monitoring.

224. Pursuant to 40 C.F.R. § 280.34(c), Respondent was required for each of Tank 1 and Tank 2 to “keep the records required” either at “the UST site and immediately for inspection by the implementing agency” or “a readily available alternative site and be provided for inspection to the implementing agency upon request.”

225. Pursuant to 40 C.F.R. § 280.45(b), Respondent was required for each of Tank 2 and Tank 3 to, *inter alia*, “maintain records in accordance with [40 C.F.R.] §280.34 demonstrating compliance with all applicable requirements of this subpart [Subpart D of 40 C.F.R. Part 280, “Release Detection”],” and said requirements include the provision that “[t]he results of any sampling, testing, or monitoring must be maintained for at least 1 year....”

226. Respondent failed to produce and provide to EPA records of the required release detection monitoring results for each of Tank 2 and Tank 3 for the months of July 2012 through June 2013 despite:

- (a) the EPA representative having requested release detection monitoring records at the time of his July 2013 inspection of the PRC facility; and
- (b) EPA having requested such records in its October 2013 EPA IRL.

227. Respondent failed to maintain for a period of at least one year the required records attesting that release detection monitoring had been provided for each of Tank 2 and Tank 3 for months of July 2012 through June 2013.

228. Each aforementioned (¶227, above) failure constitutes a failure to comply with (a) 40 C.F.R. § 280.34(c) and (b) 40 C.F.R. § 280.45(b).

229. Each of the aforementioned (¶s 227 and 228, above) failures (for each tank for each month) of Respondent constitutes a “violation of any requirement of this subchapter [Subchapter IX, 42 U.S.C. §§ 6991 - 6991i]” for purposes of Section 9006 of the Act, 42 U.S.C. § 6991e, and also constitutes a “fail[ure] to comply with [] any requirement or standard promulgated by the Administrator [of EPA] under section 6991b of this title [Section 9003 of the Act]” for purposes of Section 9006(d)(2)(A) of the Act, 42 U.S.C. § 6991e(d)(2)(A).

**COUNT 10: PRC Facility – Failure to Report and Investigate Suspected Releases**

230. Complainant repeats, realleges and incorporates by reference paragraphs 1 through 45, 46(g), 47(g), 48 through 54, 210 through 221, and 223 with the same force and effect as if said paragraphs had been expressly and fully set forth below.

231. For the period including the month of July 2013 (and for an additional period of time prior and subsequent thereto), the NYSDEC was, for purposes, *inter alia*, relating to reporting and investigating releases (including suspected releases) in accordance with the requirements of 40 C.F.R. Part 280, Subpart E, the “implementing agency” within the meaning of 40 C.F.R. § 280.12.

232. For the period including the month of July 2013 (and for an additional period of time prior and subsequent thereto) Tank 3 routinely contained gasoline.

233. Tank 3 constituted for the aforementioned (¶231, above) period (and continues to constitute) an “UST system” for purposes of 40 C.F.R. § 280.50.

234. For the period including the month of July 2013 (and for an additional period of time prior and subsequent thereto), Respondent had been monitoring, *inter alia*, Tank 3 using a Veeder-Root TLS-300 automatic tank gauge that conducted electronic interstitial monitoring (which included monitoring for the associated piping of said tank).

235. On or about July 11, 2013, various sensors connected to and/or otherwise associated with Tank 3 (including on the piping associated with said tank) were in alarm.

236. The aforementioned (¶ 235, above) sensors in alarm indicated that a release of a regulated substance from said UST system may have occurred.

237. Respondent was required, pursuant to 40 C.F.R. § 280.50(c), to “report to [the NYSDEC], and follow the procedures in [40 C.F.R.] § 280.52” when the “[m]onitoring from a release detection method required under [*inter alia*] [40 C.F.R.] § 280.41...indicate that a release may have occurred.”

238. Respondent was required, pursuant to 40 C.F.R. § 280.52, to “immediately investigate...all suspected releases of regulated substances requiring reporting under [40 C.F.R.] §280.50....”

239. With regard to Tank 3, Respondent failed to report to the NYSDEC within 24 hours of July 11, 2013 that the alarms on such sensors had been triggered.

240. The aforementioned (¶239, above) failure constitutes a failure to comply with 40 C.F.R. § 280.50(c).

241. With regard to Tank 3, Respondent failed immediately (*i.e.* within the ensuing 24-hour period of July 11, 2013) to investigate whether the aforementioned the alarms on the sensors having been triggered involved a release of a regulated substance from said tanks.

242. The aforementioned (¶241, above) failure constitutes a failure to comply with 40 C.F.R. § 280.52.

243. Each of the aforementioned (¶s 239, 240, 241 and 242, above) failures by Respondent constitutes a “violation of any requirement of this subchapter [Subchapter IX, 42 U.S.C. §§ 6991 - 6991i]” for purposes of Section 9006 of the Act, 42 U.S.C. § 6991e, and also constitutes a “fail[ure] to comply with [] any requirement or standard promulgated by the Administrator [of EPA] under section 6991b of this title [Section 9003 of the Act]” for purposes of Section 9006(d)(2)(A) of the Act, 42 U.S.C. § 6991e(d)(2)(A).

#### **COUNT 11: Mountain Lakes Facility – Failure to Maintain Release Detection Records**

244. Complainant repeats, realleges and incorporates by reference paragraphs 1 through 45, 46(h), 47(h), and 48 through 54 with the same force and effect as if said paragraphs had been expressly and fully set forth below.

245. Pursuant to Section 9005(a) of the Act, 42 U.S.C. § 6991d(a), a duly designated representative of EPA conducted an inspection of the Mountain Lakes facility on July 12, 2013.

246. As of the date of the EPA inspection of the Mountain Lakes facility, there were two underground storage tanks at said facility, as follows: (a) a 1,000-gallon gasoline storage tank, identified on the aforementioned (¶47(h), above) PBS certificate as “Tank 20,” and (b) a 500-gallon diesel fuel storage tank, identified on the aforementioned (¶47(h), above) PBS certificate as “Tank 30.”

247. Each of Tank 20 and Tank 30 was installed in January 1996.

248. Each of Tank 20 and Tank 30 constitutes a “new tank system.”

249. Each of Tank 20 and Tank 30 constitutes a “petroleum UST system.”

250. Respondent has been the owner since the time of the installation of each of (a) Tank 20 and (b) Tank 30, and Respondent continues to be the owner of each such tank at the present time.

251. Respondent has been the operator since the time of the installation of each of (a) Tank 20 and (b) Tank 30, and Respondent continues to be the operator of each such tank at the present time.

252. As of the date of the EPA inspection of the Mountain Lakes facility and also for a period of at least one year prior and subsequent thereto (but not necessarily limited to such period), each of the following tanks was in use: (a) Tank 20 and (b) Tank 30.

253. Each of the following tanks continues to be in use at the present time: (a) Tank 20 and (b) Tank 30.

254. As of the date of the EPA inspection of the Mountain Lakes facility: (a) Tank 20 contained gasoline and (b) Tank 30 contained diesel fuel.

255. For a period of at least one year prior and subsequent to the date of the EPA inspection of the Mountain Lakes (but not necessarily limited to such period): (a) Tank 20 routinely contained gasoline and (b) Tank 30 routinely contained diesel fuel.

256. At the present time: (a) Tank 20 routinely contains gasoline and (b) Tank 30 routinely contains diesel fuel.

257. Pursuant to 40 C.F.R. § 280.41(a) Respondent was required to “provide release detection for” each of Tank 20 and Tank 30 such that these “[t]anks must be monitored at least every 30 days for releases using one of the methods listed in [40 C.F.R.] §280.43 (d) through (h). . . .”

258. As of the date of EPA’s July 2013 inspection of the Mountain Lakes facility (and for some period of time before that), Respondent had been monitoring for releases from each of Tank 20 and Tank 30 using a Veeder-Root TLS-350 automatic tank gauge that conducted electronic interstitial monitoring.

259. Pursuant to 40 C.F.R. § 280.34(c), Respondent was required for each of Tank 20 and Tank 30 to “keep the records required” either at “the UST site and immediately for inspection by the implementing agency” or “a readily available alternative site and be provided for inspection to the implementing agency upon request.”

260. Pursuant to 40 C.F.R. § 280.45(b), Respondent was required for each of Tank 20 and Tank 30 to, *inter alia*, “maintain records in accordance with [40 C.F.R.] §280.34 demonstrating compliance with all applicable requirements of this subpart [Subpart D of 40 C.F.R. Part 280, “Release Detection”],” and said requirements include the provision that “[t]he results of any sampling, testing, or monitoring must be maintained for at least 1 year. . . .”

261. Respondent failed to produce and provide to EPA records of the required release detection monitoring results for each of Tank 20 and Tank 30 for the months of November 2012, April 2013 and June 2013 despite:

- (a) the EPA representative having requested release detection monitoring records at the time of his July 2013 inspection of the Mountain Lakes facility; and
- (b) EPA having requested such records in its October 2013 EPA IRL.

262. Respondent failed to maintain for a period of at least one year the required records attesting that release detection monitoring had been provided for each of Tank 20 and Tank 30 for the months of November 2012, April 2013 and June 2013.

263. The aforementioned failure (§262, above) constitutes a failure to comply with (a) 40 C.F.R. § 280.34(c) and (b) 40 C.F.R. § 280.45(b).

264. Each of the aforementioned (§s 262 and 263, above) failures (for each tank for each month) of Respondent constitutes a “violation of any requirement of this subchapter [Subchapter IX, 42 U.S.C. §§ 6991 - 6991i]” for purposes of Section 9006 of the Act, 42 U.S.C. § 6991e, and also constitutes a “fail[ure] to comply with [] any requirement or standard promulgated by the Administrator [of EPA] under section 6991b of this title [Section 9003 of the Act]” for purposes of Section 9006(d)(2)(A) of the Act, 42 U.S.C. § 6991e(d)(2)(A).

#### **COUNT 12: Mountain Lakes – Failure to Conduct Release Detection (Suction Piping)**

265. Complainant repeats, realleges and incorporates by reference paragraphs 1 through 45, 46(h), 47(h), 48 through 54, 245 through 256, and 258 with the same force and effect as if said paragraphs had been expressly and fully set forth below.

266. As of the date of the EPA inspection of the Mountain Lakes facility, for a period of at least one year prior thereto (but not necessarily limited to such period), and also continuing at the present time, the underground piping connected to Tank 20 routinely contained (and continues routinely to contain) and conveyed (and continues to convey) gasoline under suction.

267. As of the date of the EPA inspection of the Mountain Lakes facility, for a period of at least one year prior thereto (but not necessarily limited to such period), and also continuing at the present time, the underground piping connected to Tank 30 routinely contained (and continues routinely to contain) and conveyed (and continues to convey) diesel fuel under suction.

268. Pursuant to 40 C.F.R. § 280.41(b), Respondent was required to “provide release detection for” the underground piping connected to each of Tank 20 and Tank 30 in order that such piping “must either have a line tightness test conducted at least every 3 years and in accordance with [40 C.F.R.] §280.44(b), or use a monthly monitoring method conduct in accordance with [40 C.F.R.] §280.44(c).”

269. With regard to the underground piping connected to each of Tank 20 and Tank 30, Respondent failed to produce and provide to EPA any evidence of either the required line tightness test conducted every three years or the monthly monitoring method for the period that includes (but is not necessarily limited to) the months of July 2012 through April 2016 despite EPA having requested such evidence in its April 2016 EPA IRL.

270. For each of Tank 20 and Tank 30, Respondent failed to perform the aforementioned (§268, above) line tightness testing/monthly monitoring method for the period that includes (but is not necessarily limited to) the months of July 2012 through April 2016.

271. The aforementioned failure (§270, above) constitutes a failure to comply with 40 C.F.R. § 280.41(b)(2).

272. Each of the aforementioned (§s 270 and 271, above) failures (for the connected underground piping of each tank) of Respondent constitutes a “violation of any requirement of this subchapter [Subchapter IX, 42 U.S.C. §§ 6991 - 6991i]” for purposes of Section 9006 of the Act, 42 U.S.C. § 6991e, and also constitutes a “fail[ure] to comply with [] any requirement or standard promulgated by the Administrator [of EPA] under section 6991b of this title [Section 9003 of the Act]” for purposes of Section 9006(d)(2)(A) of the Act, 42 U.S.C. § 6991e(d)(2)(A).

### **COUNT 13: Bronx River Facility – Failure to Maintain Release Detection Records**

273. Complainant repeats, realleges and incorporates by reference paragraphs 1 through 45, 46(i), 47(i), and 48 through 54 with the same force and effect as if said paragraphs had been expressly and fully set forth below.

274. Pursuant to Section 9005(a) of the Act, 42 U.S.C. § 6991d(a), a duly designated representative of EPA conducted an inspection of the Bronx River facility on July 15, 2013.

275. As of the date of the EPA inspection of the Bronx River facility, there were two underground storage tanks at said facility, as follows: (a) a 2,000-gallon gasoline storage tank, identified on the aforementioned (§47(i), above) PBS certificate as “Tank 10,” and (b) a 2,000-gallon diesel fuel storage tank, identified on the aforementioned (§47(i), above) PBS certificate as “Tank 20.”

276. Each of Tank 10 and Tank 20 was installed in June 1995.

277. Each of Tank 10 and Tank 20 constitutes a “new tank system.”

278. Each of Tank 10 and Tank 20 constitutes a “petroleum UST system.”

279. Respondent has been the owner since the time of the installation of each of (a) Tank 10 and (b) Tank 20, and Respondent continues to be the owner of each such tank at the present time.

280. Respondent has been the operator since the time of the installation of each of (a) Tank 10 and (b) Tank 20, and Respondent continues to be the operator of each such tank at the present time.

281. As of the date of the EPA inspection of the Bronx River facility and also for a period of at least one year prior and subsequent thereto (but not necessarily limited to such period), each of the following tanks was in use: (a) Tank 10 and (b) Tank 20.

282. Each of the following tanks continues to be in use at the present time: (a) Tank 10 and (b) Tank 20.

283. As of the date of the EPA inspection of the Bronx River facility: (a) Tank 10 contained gasoline and (b) Tank 20 contained diesel fuel.

284. For a period of at least one year prior and subsequent to the date of the EPA inspection of the Bronx River facility (but not necessarily limited to such period): (a) Tank 10 routinely contained gasoline and (b) Tank 20 routinely contained diesel fuel.

285. At the present time: (a) Tank 10 routinely contains gasoline and (b) Tank 20 routinely contains diesel fuel.

286. Pursuant to 40 C.F.R. § 280.41(a) Respondent was required to “provide release detection for” each of Tank 10 and Tank 20 such that these “[t]anks must be monitored at least every 30 days for releases using one of the methods listed in [40 C.F.R.] §280.43 (d) through (h)....”

287. As of the date of EPA’s July 2013 inspection of the Bronx River facility (and for some period of time before that), Respondent had been monitoring for releases from each of Tank 10 and Tank 20 using a Veeder-Root TLS-350 automatic tank gauge that conducted electronic interstitial monitoring.

288. Pursuant to 40 C.F.R. § 280.34(c), Respondent was required for each of Tank 10 and Tank 20 to “keep the records required” either at “the UST site and immediately for inspection by the implementing agency” or “a readily available alternative site and be provided for inspection to the implementing agency upon request.”

289. Pursuant to 40 C.F.R. § 280.45(b), Respondent was required for each of Tank 10 and Tank 20 to, *inter alia*, “maintain records in accordance with [40 C.F.R.] §280.34 demonstrating compliance with all applicable requirements of this subpart [Subpart D of 40 C.F.R. Part 280, “Release Detection”],” and said requirements include the provision that “[t]he results of any sampling, testing, or monitoring must be maintained for at least 1 year....”



290. Respondent failed to produce and provide to EPA records of the required release detection monitoring results for each of Tank 10 and Tank 20 for the months of July 2012, September 2012 and June 2013 despite:

- (a) the EPA representative having requested release detection monitoring records at the time of his July 2013 inspection of the Bronx River facility; and
- (b) EPA having requested such records in its October 2013 EPA IRL.

291. Respondent failed to maintain for a period of at least one year the required records attesting that release detection monitoring had been provided for each of Tank 10 and Tank 20 for the months July 2012, September 2012 and June 2013.

292. The aforementioned failure (§291, above) constitutes a failure to comply with (a) 40 C.F.R. § 280.34(c) and (b) 40 C.F.R. § 280.45(b).

293. Each of the aforementioned (§s 291 and 292, above) failures (for each tank for each month) of Respondent constitutes a “violation of any requirement of this subchapter [Subchapter IX, 42 U.S.C. §§ 6991 - 6991i]” for purposes of Section 9006 of the Act, 42 U.S.C. § 6991e, and also constitutes a “fail[ure] to comply with [] any requirement or standard promulgated by the Administrator [of EPA] under section 6991b of this title [Section 9003 of the Act]” for purposes of Section 9006(d)(2)(A) of the Act, 42 U.S.C. § 6991e(d)(2)(A).

**COUNT 14: Bronx River Facility--Failure to Provide 30-Day Release Detection Monitoring**

294. Complainant repeats, realleges and incorporates by reference paragraphs 1 through 45, 46(i), 47(i), 48 through 54, 274 through 285, and 287 with the same force and effect as if said paragraphs had been expressly and fully set forth below.

295. Pursuant to 40 C.F.R. § 280.41(a), Respondent was required to provide release detection for each of Tank 10 and Tank 20 such that said tanks were required to “be monitored at least every 30 days for releases using one of the methods listed in [40 C.F.R.] §280.43 (d) through (h)....”

296. Respondent monitored each of Tank 10 and Tank 20 on a basis exceeding 30 days between each recording of release detection results.

297. With regard to each of Tank 10 and Tank 20, Respondent failed to provide the 30-day monthly monitoring for releases required by 40 C.F.R. § 280.41(a) within the 30-day period commencing (a) February 1, 2013; (b) March 28, 2013; and (c) May 31, 2013.

298. Each of the aforementioned (§s 297, above) failures (for each tank, for each 30-day period) constitutes a failure to comply with 40 C.F.R. § 280.41(a).

299. Each aforementioned (§s 297 and 298, above) failures of Respondent constitutes a “violation of any requirement of this subchapter [Subchapter IX, 42 U.S.C. §§ 6991 - 6991i]” for purposes of Section 9006 of the Act, 42 U.S.C. § 6991e, and also constitutes a “fail[ure] to comply with [] any requirement or standard promulgated by the Administrator [of EPA] under section 6991b of this title [Section 9003 of the Act]” for purposes of Section 9006(d)(2)(A) of the Act, 42 U.S.C. § 6991e(d)(2)(A).

**COUNT 15: Sprain Lake Facility – Failure to Maintain Release Detection Records**

300. Complainant repeats, realleges and incorporates by reference paragraphs 1 through 45, 46(j), 47(j), and 48 through 54 with the same force and effect as if said paragraphs had been expressly and fully set forth below.

301. Pursuant to Section 9005(a) of the Act, 42 U.S.C. § 6991d(a), a duly designated representative of EPA conducted an inspection of the Sprain Lake facility on July 15, 2013.

302. As of the date of the EPA inspection of the Sprain Lake facility, there were two underground storage tanks at said facility, as follows: (a) a 500-gallon gasoline storage tank, identified on the aforementioned (§47(j), above) PBS certificate as “Tank 1,” and (b) a 500-gallon diesel fuel storage tank, identified on the aforementioned (§47(j), above) PBS certificate as “Tank 2.”

303. Each of Tank 1 and Tank 2 was installed in January 1998.

304. Each of Tank 1 and Tank 2 constitutes a “new tank system.”

305. Each of Tank 1 and Tank 2 constitutes a “petroleum UST system.”

306. Respondent has been the owner since the time of the installation of each of (a) Tank 1 and (b) Tank 2, and Respondent continues to be the owner of each such tank at the present time.

307. Respondent has been the operator since the time of the installation of each of (a) Tank 1 and (b) Tank 2, and Respondent continues to be the operator of each such tank at the present time.

308. As of the date of the EPA inspection of the Sprain Lake facility and also for a period of at least one year prior and subsequent thereto (but not necessarily limited to such period), each of the following tanks was in use: (a) Tank 1 and (b) Tank 2.

309. Each of the following tanks continues to be in use at the present time: (a) Tank 1 and (b) Tank 2.

310. As of the date of the EPA inspection of the Sprain Lake facility: (a) Tank 1 contained gasoline and (b) Tank 2 contained diesel fuel.

311. For a period of at least one year prior and subsequent to the date of the EPA inspection of the Sprain Lake facility (but not necessarily limited to such period): (a) Tank 1 routinely contained gasoline and (b) Tank 2 routinely contained diesel fuel.

312. At the present time: (a) Tank 1 routinely contains gasoline and (b) Tank 2 routinely contains diesel fuel.

313. Pursuant to 40 C.F.R. § 280.41(a) Respondent was required to “provide release detection for” each of Tank 1 and Tank 2 such that these “[t]anks must be monitored at least every 30 days for releases using one of the methods listed in [40 C.F.R.] §280.43 (d) through (h)....”

314. As of the date of EPA’s July 2013 inspection of the Sprain Lake facility (and for some period of time before that), Respondent had been monitoring for releases from each of Tank 1 and Tank 2 using a Veeder-Root TLS-350 automatic tank gauge that conducted electronic interstitial monitoring.

315. Pursuant to 40 C.F.R. § 280.34(c), Respondent was required for each of Tank 1 and Tank 2 to “keep the records required” either at “the UST site and immediately for inspection by the implementing agency” or “a readily available alternative site and be provided for inspection to the implementing agency upon request.”

316. Pursuant to 40 C.F.R. § 280.45(b), Respondent was required for each of Tank 1 and Tank 2 to, *inter alia*, “maintain records in accordance with [40 C.F.R.] §280.34 demonstrating compliance with all applicable requirements of this subpart [Subpart D of 40 C.F.R. Part 280, “Release Detection”],” and said requirements include the provision that “[t]he results of any sampling, testing, or monitoring must be maintained for at least 1 year....”

317. Respondent failed to produce and provide to EPA records of the required release detection monitoring results for each of Tank 1 and Tank 2 for the months of July 2012 through June 2013 despite:

- (a) the EPA representative having requested release detection monitoring records at the time of his July 2013 inspection of the Sprain Lake facility; and
- (b) EPA having requested such records in its October 2013 EPA IRL.

318. Respondent failed to maintain for a period of at least one year the required records attesting that release detection monitoring had been provided for each of Tank 1 and Tank 2 for the months of July 2012 through June 2013.

319. The aforementioned failure (¶318, above) constitutes a failure to comply with (a) 40 C.F.R. § 280.34(c) and (b) 40 C.F.R. § 280.45(b).

320. Each of the aforementioned (§s 318 and 319, above) failures (for each tank for each month) of Respondent constitutes a “violation of any requirement of this subchapter [Subchapter IX, 42 U.S.C. §§ 6991 - 6991i]” for purposes of Section 9006 of the Act, 42 U.S.C. § 6991e, and also constitutes a “fail[ure] to comply with [] any requirement or standard promulgated by the Administrator [of EPA] under section 6991b of this title [Section 9003 of the Act]” for purposes of Section 9006(d)(2)(A) of the Act, 42 U.S.C. § 6991e(d)(2)(A).

**COUNT 16: Sprain Lake Facility – Failure to Conduct Release Detection (Suction Piping)**

321. Complainant repeats, realleges and incorporates by reference paragraphs 1 through 45, 46(j), 47(j), 48 through 54, 301 through 312, and 314 with the same force and effect as if said paragraphs had been expressly and fully set forth below.

322. As of the date of the EPA inspection of the Sprain Lake facility, for a period of at least one year prior thereto (but not necessarily limited to such period), and also continuing at the present time, the underground piping connected to Tank 1 routinely contained (and continues routinely to contain) and conveyed (and continues to convey) gasoline under suction.

323. As of the date of the EPA inspection of the Sprain Lake facility, for a period of at least one year prior thereto (but not necessarily limited to such period), and also continuing at the present time, the underground piping connected to Tank 2 routinely contained (and continues routinely to contain) and conveyed (and continues to convey) diesel fuel under suction.

324. Pursuant to 40 C.F.R. § 280.41(b), Respondent was required to “provide release detection for” the underground piping connected to each of Tank 1 and Tank 2 in order that such piping “must either have a line tightness test conducted at least every 3 years and in accordance with [40 C.F.R.] §280.44(b), or use a monthly monitoring method conduct in accordance with [40 C.F.R.] §280.44(c).”

325. With regard to the underground piping connected to each of Tank 1 and Tank 2, Respondent failed to produce and provide to EPA records any evidence of either the required line tightness test conducted every three years or the monthly monitoring method for the period that includes (but is not necessarily limited to) the months of July 2012 through April 2016 despite EPA having requested such evidence in its April 2016 EPA IRL.

326. For each of Tank 1 and Tank 2, Respondent failed to perform the aforementioned (§324, above) line tightness testing/monthly monitoring method for the period that includes (but is not necessarily limited to) the months of July 2012 through April 2016.

327. The aforementioned failure (§326, above) constitutes a failure to comply with 40 C.F.R. § 280.41(b)(2).

328. Each of the aforementioned (§s 326 and 327, above) failures (for the connected underground piping of each tank) of Respondent constitutes a “violation of any requirement of this subchapter [Subchapter IX, 42 U.S.C. §§ 6991 - 6991i]” for purposes of Section 9006 of the

Act, 42 U.S.C. § 6991e, and also constitutes a “fail[ure] to comply with [] any requirement or standard promulgated by the Administrator [of EPA] under section 6991b of this title [Section 9003 of the Act]” for purposes of Section 9006(d)(2)(A) of the Act, 42 U.S.C. § 6991e(d)(2)(A).

**COUNT 17: Mohansic Facility – Failure to Maintain Release Detection Records**

329. Complainant repeats, realleges and incorporates by reference paragraphs 1 through 45, 46(k), 47(k), and 48 through 54 with the same force and effect as if said paragraphs had been expressly and fully set forth below.

330. Pursuant to Section 9005(a) of the Act, 42 U.S.C. § 6991d(a), a duly designated representative of EPA conducted an inspection of the Mohansic facility on July 16, 2013.

331. As of the date of the EPA inspection of the Mohansic facility, there was an underground storage tanks at said facility, *i.e.* a 1,000-gallon gasoline storage tank, identified on the aforementioned (¶47(k), above) PBS certificate as “Tank 1.”

332. Tank 1 was installed in June 1994.

333. Tank 1 and constitutes a “new tank system.”

334. Tank 1 constitutes a “petroleum UST system.”

335. Respondent has been the owner since the time of the installation of Tank 1 and Respondent continues to be the owner of such tank at the present time.

336. Respondent has been the operator since the time of the installation of Tank 1, and Respondent continues to be the operator of such tank at the present time.

337. As of the date of the EPA inspection of the Mohansic facility and also for a period of at least one year prior and subsequent thereto (but not necessarily limited to such period), Tank 1 was in use.

338. Tank 1 continues to be in use at the present time.

339. As of the date of the EPA inspection of the Mohansic facility, Tank 1 contained gasoline.

340. For a period of at least one year prior and subsequent to the date of the EPA inspection of the Mohansic facility (but not necessarily limited to such period), Tank 1 routinely contained gasoline.

341. At the present time, Tank 1 routinely contains gasoline .

342. Pursuant to 40 C.F.R. § 280.41(a) Respondent was required to “provide release detection for” Tank 1 such that this “[t]ank[] must be monitored at least every 30 days for releases using one of the methods listed in [40 C.F.R.] §280.43 (d) through (h). . . .”

343. As of the date of the EPA inspection of the Mohansic facility (and for some period of time before that), Respondent had been monitoring for releases from Tank 1 using a Veeder-Root TLS-350 automatic tank gauge that conducted electronic interstitial monitoring.

344. Pursuant to 40 C.F.R. § 280.34(c), Respondent was required for Tank 1 to “keep the records required” either at “the UST site and immediately for inspection by the implementing agency” or “a readily available alternative site and be provided for inspection to the implementing agency upon request.”

345. Pursuant to 40 C.F.R. § 280.45(b), Respondent was required for Tank 1 to, *inter alia*, “maintain records in accordance with [40 C.F.R.] §280.34 demonstrating compliance with all applicable requirements of this subpart [Subpart D of 40 C.F.R. Part 280, “Release Detection”],” and said requirements include the provision that “[t]he results of any sampling, testing, or monitoring must be maintained for at least 1 year. . . .”

346. Respondent failed to produce and provide to EPA records of the required release detection monitoring results for Tank 1 for the months of July 2012 through June 2013 despite:

- (a) the EPA representative having requested release detection monitoring records at the time of his July 2013 inspection of the Mohansic facility; and
- (b) EPA having requested such records in its October 2013 EPA IRL.

347. Respondent failed to maintain for a period of at least one year the required records attesting that release detection monitoring had been provided for Tank 1 for the months of July 2012 through June 2013.

348. The aforementioned failure (¶347, above) failure constitutes a failure to comply with (a) 40 C.F.R. § 280.34(c) and (b) 40 C.F.R. § 280.45(b).

349. Each of the aforementioned (¶s 347 and 348, above) failures (for each month) of Respondent constitutes a “violation of any requirement of this subchapter [Subchapter IX, 42 U.S.C. §§ 6991 - 6991i]” for purposes of Section 9006 of the Act, 42 U.S.C. § 6991e, and also constitutes a “fail[ure] to comply with [] any requirement or standard promulgated by the Administrator [of EPA] under section 6991b of this title [Section 9003 of the Act]” for purposes of Section 9006(d)(2)(A) of the Act, 42 U.S.C. § 6991e(d)(2)(A).

**COUNT 18: Airport Facility – Failure to Maintain Release Detection Records**

350. Complainant repeats, realleges and incorporates by reference paragraphs 1 through 45, 46(1), 47(1), and 48 through 54 with the same force and effect as if said paragraphs had been expressly and fully set forth below.

351. Pursuant to Section 9005(a) of the Act, 42 U.S.C. § 6991d(a), a duly designated representative of EPA conducted an inspection of the Airport facility on July 17, 2013.

352. As of the date of the EPA inspection of the Airport facility, there were a number of underground storage tanks at said facility, including a 550-gallon waste oil storage tank, identified on the aforementioned (¶47(1), above) PBS certificate as “Tank 156.”

353. Tank 156 was installed in April 1994.

354. Tank 156 constitutes a “new tank system.”

355. Tank 156 constitutes a “petroleum UST system.”

356. Respondent has been the owner since the time of the installation of Tank 156, and Respondent continues to be the owner of such tank at the present time.

357. Respondent has been the operator since the time of the installation of Tank 156, and Respondent continues to be the operator of such tank at the present.

358. As of the date of the EPA inspection of the Airport facility and also for a period of at least one year prior and subsequent thereto (but not necessarily limited to such period), Tank 156 was in use.

359. Tank 156 continues to be in use at the present time.

360. As of the date of the EPA inspection of the Airport facility, Tank 156 contained waste oil.

361. For a period of at least one year prior and subsequent to the date of the EPA inspection of the Airport facility (but not necessarily limited to such period), Tank 156 routinely contained waste oil.

362. At the present time, Tank 156 routinely contains waste oil.

363. Waste oil is a “regulated substance.”

364. Pursuant to 40 C.F.R. § 280.41(a) Respondent was required to “provide release detection for” Tank 156 such that this “[t]ank[] must be monitored at least every 30 days for releases using one of the methods listed in [40 C.F.R.] §280.43 (d) through (h)....”

365. As of the date of the EPA inspection of the Airport facility (and for some period of time before that), Respondent had been monitoring for releases from, *inter alia*, Tank 156 using a Veeder-Root TLS-350 automatic tank gauge that conducted electronic interstitial monitoring.

366. Pursuant to 40 C.F.R. § 280.34(c), Respondent was required for Tank 156 to “keep the records required” either at “the UST site and immediately for inspection by the implementing agency” or “a readily available alternative site and be provided for inspection to the implementing agency upon request.”

367. Pursuant to 40 C.F.R. § 280.45(b), Respondent was required for, *inter alia*, Tank 156 to, *inter alia*, “maintain records in accordance with [40 C.F.R.] §280.34 demonstrating compliance with all applicable requirements of this subpart [Subpart D of 40 C.F.R. Part 280, “Release Detection],” and said requirements include the provision that “[t]he results of any sampling, testing, or monitoring must be maintained for at least 1 year....”

368. Respondent failed to produce and provide to EPA records of the required release detection monitoring results for Tank 156 for the months of July 2012 through September 2012 despite:

- (a) the EPA representative having requested release detection monitoring records at the time of his July 2013 inspection of the Airport facility;
- (b) EPA having requested such records in its October 2013 EPA IRL; and
- (c) EPA having requested such records in its April 2014 EPA IRL.

369. Respondent failed to maintain for a period of at least one year the required records attesting that release detection monitoring had been provided for Tank 156 for the months of July 2012 through September 2012.

370. The aforementioned failure (¶369, above) constitutes a failure to comply with (a) 40 C.F.R. § 280.34(c) and (b) 40 C.F.R. § 280.45(b).

371. Each of the aforementioned (¶s 369 and 370, above) failures (for each month) of Respondent constitutes a “violation of any requirement of this subchapter [Subchapter IX, 42 U.S.C. §§ 6991 - 6991i]” for purposes of Section 9006 of the Act, 42 U.S.C. § 6991e, and also constitutes a “fail[ure] to comply with [] any requirement or standard promulgated by the Administrator [of EPA] under section 6991b of this title [Section 9003 of the Act]” for purposes of Section 9006(d)(2)(A) of the Act, 42 U.S.C. § 6991e(d)(2)(A).



**COUNT 19: Airport Facility --- Failure to Report and Investigate Suspected Releases**

372. Complainant repeats, realleges and incorporates by reference paragraphs 1 through 45, 46(l), 47(l), 48 through 54, and 351 with the same force and effect as if said paragraphs had been expressly and fully set forth below.

373. As of the date of the EPA inspection of the Airport facility, there were a number of underground storage tanks at said facility, including (a) a 5,000-gallon diesel fuel storage tank, identified on the aforementioned (¶47(l), above) PBS certificate as “Tank 119” and (b) a 3,000-gallon gasoline storage tank, identified on the aforementioned (¶47(l), above) PBS certificate as “Tank 120.”

374. Each of Tank 119 and Tank 120 was installed in January 1991.

375. Each of Tank 119 and Tank 120 constitutes a “new tank system.”

376. Each of Tank 119 and Tank 120 constitutes a “petroleum UST system.”

377. Respondent has been the owner since the time of the installation of each of Tank 119 and Tank 120, and Respondent continues to be the owner of each such tank at the present time.

378. Respondent has been the operator since the time of the installation of each of Tank 119 and 120, and Respondent continues to be the operator of each such tank at the present.

379. As of the date of the EPA inspection of the Airport facility and also for a period of at least one year prior and subsequent thereto (but not necessarily limited to such period), each of Tank 119 and Tank 120 was in use.

380. Each of Tank 119 and Tank 120 continues to be in use at the present time.

381. As of the date of the EPA inspection of the Airport facility: (a) Tank 119 contained diesel fuel and (b) Tank 120 contained gasoline.

382. For a period of at least one year prior and subsequent to the date of the EPA inspection of the Airport facility (but not necessarily limited to such period): (a) Tank 119 routinely contained diesel fuel and (b) Tank 120 routinely contained gasoline.

383. At the present time: (a) Tank 119 routinely contains diesel fuel and (b) Tank 120 routinely contains gasoline.

384. For the period including that between July 2012 and July 2013 (and for an additional period of time prior and subsequent thereto), the NYSDEC was, for purposes, *inter alia*, relating to reporting and investigating releases (including suspected releases) in accordance

with the requirements of 40 C.F.R. Part 280, Subpart E, the “implementing agency” within the meaning of 40 C.F.R. § 280.12.

385. Each of Tank 119 and Tank 120 constituted for the aforementioned (§384, above) period (and continues to constitute) an “UST system” for purposes of 40 C.F.R. § 280.50.

386. For the period including that between July 2012 and July 2013 (and for an additional period of time prior and subsequent thereto), Respondent had been monitoring, *inter alia*, each of Tank 119 and Tank 120 using a Veeder-Root TLS-300 automatic tank gauge that conducted electronic interstitial monitoring (which included monitoring for the associated piping of said tank).

387. On or about each of the following dates, various sensors connected to and/or otherwise associated with each of Tank 119 and Tank 120 (including on the piping associated with each such tank) were in alarm: (a) July 20, 2012; (b) August 24, 2012; (c) September 5, 2012; (d) October 9, 2012; (e) November 21, 2012; (f) December 31, 2012; (g) January 28, 2013; and (h) February 4, 2013.

388. On or about July 17, 2013, various sensors connected to and/or otherwise associated with Tank 119 (including on the piping associated with said tank) were in alarm.

389. On or about each of the following dates, various sensors connected to and/or otherwise associated with Tank 120 (including on the piping associated with said tank) were in alarm: (a) March 25, 2013; (b) April 21, 2013; (c) May 19, 2013; and (d) June 9, 2013.

390. The aforementioned (§s 387, 388 and 389, above) sensors in alarm indicated that a release of a regulated substance from each of these UST system(s) may have occurred.

391. Respondent was required, pursuant to 40 C.F.R. § 280.50(c), to “report to [the NYSDEC], and follow the procedures in [40 C.F.R.] § 280.52” when the “[m]onitoring from a release detection method required under [*inter alia*] [40 C.F.R.] § 280.41...indicate that a release may have occurred.”

392. Respondent was required, pursuant to 40 C.F.R. § 280.52, to “immediately investigate...all suspected releases of regulated substances requiring reporting under [40 C.F.R.] §280.50....”

393. With regard to Tank 119, Respondent failed to report to the NYSDEC within 24 hours of the date listed in paragraphs 387 and 388, above, that the alarms on such sensors had been triggered.

394. With regard to Tank 120, Respondent failed to report to the NYSDEC within 24 hours of the date listed in paragraphs 387 and 389, above, that the alarms on such sensors had been triggered.

395. Each of the aforementioned (§s 393 and 394, above) failure constitutes a failure to comply with 40 C.F.R. § 280.50(c).

396. With regard to Tank 119, Respondent failed immediately (*i.e.* within the ensuing 24-hour period of each of the dates listed in paragraphs 387 and 388, above) to investigate whether the alarms on the sensors having been triggered involved a release of a regulated substance from said tank.

397. With regard to Tank 120, Respondent failed immediately (*i.e.* within the ensuing 24-hour period of each of the dates listed in paragraphs 387 and 389, above) to investigate whether the alarms on the sensors having been triggered involved a release of a regulated substance from said tank.

398. Each of the aforementioned (§s 396 and 397, above) failures constitutes a failure to comply with 40 C.F.R. § 280.52.

399. Each of the aforementioned (§s 393 through 398, above) failures by Respondent constitutes a “violation of any requirement of this subchapter [Subchapter IX, 42 U.S.C. §§ 6991 - 6991i]” for purposes of Section 9006 of the Act, 42 U.S.C. § 6991e, and also constitutes a “fail[ure] to comply with [] any requirement or standard promulgated by the Administrator [of EPA] under section 6991b of this title [Section 9003 of the Act]” for purposes of Section 9006(d)(2)(A) of the Act, 42 U.S.C. § 6991e(d)(2)(A).

#### **COUNT 20: Airport Facility – Failure to Provide 30-Day Release Detection Monitoring**

400. Complainant repeats, realleges and incorporates by reference paragraphs 1 through 45, 46(l), 47(l), 48 through 54, 351 through 363, 365, 373 through 383, 385 and 386 with the same force and effect as if said paragraphs had been expressly and fully set forth below.

401. Pursuant to 40 C.F.R. § 280.41(a), Respondent was required to provide release detection for each of Tank 119, Tank 120 and Tank 156 such that each such tank was required to “be monitored at least every 30 days for releases using one of the methods listed in [40 C.F.R.] §280.43 (d) through (h)....”

402. Respondent monitored each of Tank 119, Tank 120 and Tank 156 on a basis exceeding 30 days between each recording of release detection results.

403. With regard to each of Tank 119, Tank 120 and Tank 156, Respondent failed to provide the 30-day monthly monitoring for releases required by 40 C.F.R. § 280.41(a) within the 30-day period commencing (a) October 9, 2012; (b) November 21, 2012; (c) February 4, 2013; (d) March 25, 2013; and (e) June 9, 2013.

404. Each of the aforementioned (§s 403, above) failures (for each 30-day period) constitutes a failure to comply with 40 C.F.R. § 280.41(a).

405. Each aforementioned (§s 403 and 404, above) failures of Respondent constitutes a “violation of any requirement of this subchapter [Subchapter IX, 42 U.S.C. §§ 6991 - 6991i]” for purposes of Section 9006 of the Act, 42 U.S.C. § 6991e, and also constitutes a “fail[ure] to comply with [] any requirement or standard promulgated by the Administrator [of EPA] under section 6991b of this title [Section 9003 of the Act]” for purposes of Section 9006(d)(2)(A) of the Act, 42 U.S.C. § 6991e(d)(2)(A).

**COUNT 21: Ridge Road Facility – Failure to Maintain Release Detection Records**

406. Complainant repeats, realleges and incorporates by reference paragraphs 1 through 45, 46(m), 47(m), and 48 through 54 with the same force and effect as if said paragraphs had been expressly and fully set forth below.

407. Pursuant to Section 9005(a) of the Act, 42 U.S.C. § 6991d(a), a duly designated representative of EPA conducted an inspection of the Ridge Road facility on July 22, 2013.

408. As of the date of the EPA inspection of the Ridge Road facility, there were two underground storage tanks at said facility, as follows: (a) a 1000-gallon gasoline storage tank, identified on the aforementioned (§47(m), above) PBS certificate as “Tank 10” and (b) a 500-gallon diesel fuel storage tank, identified on the aforementioned (§47(m), above) PBS certificate as “Tank 20.”

409. Each of Tank 10 and Tank 20 was installed in January 1997.

410. Each of Tank 10 and Tank 20 constitutes a “new tank system.”

411. Each of Tank 10 and Tank 20 constitutes a “petroleum UST system.”

412. Respondent has been the owner since the time of the installation of each of (a) Tank 10 and (b) Tank 20, and Respondent continues to be the owner of each such tank at the present time.

413. Respondent has been the operator since the time of the installation of each of (a) Tank 10 and (b) Tank 20, and Respondent continues to be the operator of each such tank at the present.

414. As of the date of the EPA inspection of the Ridge Road facility and also for a period of at least one year prior and subsequent thereto (but not necessarily limited to such period), each of Tank 10 and Tank 20 was in use.

415. Each of Tank 10 and Tank 20 continues to be in use at the present time.

416. As of the date of the EPA inspection of the Ridge Road facility: (a) Tank 10 contained gasoline and (b) Tank 20 contained diesel fuel.

417. For a period of at least one year prior and subsequent to the date of the EPA inspection of the Ridge Road facility (but not necessarily limited to such period): (a) Tank 10 routinely contained gasoline and (b) Tank 20 routinely contained diesel fuel.

418. At the present time: (a) Tank 10 routinely contains gasoline and (b) Tank 20 routinely contains diesel fuel.

419. Pursuant to 40 C.F.R. § 280.41(a) Respondent was required to “provide release detection for” each of Tank 10 and Tank 20 such that these “[t]anks must be monitored at least every 30 days for releases using one of the methods listed in [40 C.F.R.] §280.43 (d) through (h)....”

420. As of the date of the EPA inspection of the Ridge Road facility (and for some period of time before that), Respondent had been monitoring for releases from each of Tank 10 and Tank 20 using a Veeder-Root TLS-300 automatic tank gauge that conducted electronic interstitial monitoring.

421. Pursuant to 40 C.F.R. § 280.34(c), Respondent was required for each of Tank 10 and Tank 20 to “keep the records required” either at “the UST site and immediately for inspection by the implementing agency” or “a readily available alternative site and be provided for inspection to the implementing agency upon request.”

422. Pursuant to 40 C.F.R. § 280.45(b), Respondent was required for, *inter alia*, each of Tank 10 and Tank 20 to, *inter alia*, “maintain records in accordance with [40 C.F.R.] §280.34 demonstrating compliance with all applicable requirements of this subpart [Subpart D of 40 C.F.R. Part 280, “Release Detection”],” and said requirements include the provision that “[t]he results of any sampling, testing, or monitoring must be maintained for at least 1 year....”

423. Respondent failed to produce and provide to EPA records of the required release detection monitoring results for each of Tank 10 and Tank 20 for the months of August 2012 through December 2012 despite:

- (a) the EPA representative having requested release detection monitoring records at the time of his July 2013 inspection of the Ridge Road facility; and
- (b) EPA having requested such records in its October 2013 EPA IRL.

424. Respondent failed to maintain for a period of at least one year the required records attesting that release detection monitoring had been provided for each of each of Tank 10 and Tank 20 for the months of August 2012 through December 2012.

425. The aforementioned failure (¶424, above) constitutes a failure to comply with (a) 40 C.F.R. § 280.34(c) and (b) 40 C.F.R. § 280.45(b).

426. Each of the aforementioned (§s 424 and 425, above) failures (for each tank for each 30-day period) of Respondent constitutes a “violation of any requirement of this subchapter [Subchapter IX, 42 U.S.C. §§ 6991 - 6991i]” for purposes of Section 9006 of the Act, 42 U.S.C. § 6991e, and also constitutes a “fail[ure] to comply with [] any requirement or standard promulgated by the Administrator [of EPA] under section 6991b of this title [Section 9003 of the Act]” for purposes of Section 9006(d)(2)(A) of the Act, 42 U.S.C. § 6991e(d)(2)(A).

**COUNT 22: Ridge Road Facility – Failure to Provide 30-Day Release Detection Monitoring**

427. Complainant repeats, realleges and incorporates by reference paragraphs 1 through 45, 46(m), 47(m), 48 through 54, 407 through 418, and 420 with the same force and effect as if said paragraphs had been expressly and fully set forth below.

428. Pursuant to 40 C.F.R. § 280.41(a), Respondent was required to provide release detection for each of Tank 10 and Tank 20 such that said tanks were required to “be monitored at least every 30 days for releases using one of the methods listed in [40 C.F.R.] §280.43 (d) through (h)....”

429. Respondent monitored each of Tank 10 and Tank 20 on a basis exceeding 30 days between each recording of release detection results.

430. With regard to each of Tank 10 and Tank 20, Respondent failed to provide the 30-day monthly monitoring for releases required by 40 C.F.R. § 280.41(a) within the 30-day period commencing (a) August 2, 2013; (b) September 15, 2013; and (c) November 1, 2013.

431. Each of the aforementioned (§s 430, above) failures (for each tank, for each 30-day period) constitutes a failure to comply with 40 C.F.R. § 280.41(a).

432. Each of the aforementioned (§s 430 and 431, above) failures of Respondent constitutes a “violation of any requirement of this subchapter [Subchapter IX, 42 U.S.C. §§ 6991 - 6991i]” for purposes of Section 9006 of the Act, 42 U.S.C. § 6991e, and also constitutes a “fail[ure] to comply with [] any requirement or standard promulgated by the Administrator [of EPA] under section 6991b of this title [Section 9003 of the Act]” for purposes of Section 9006(d)(2)(A) of the Act, 42 U.S.C. § 6991e(d)(2)(A).

**PROPOSED CIVIL PENALTY**

The proposed civil penalty has been determined in accordance with Section 9006(d)(2)(A) of the Act, 42 U.S.C. § 6991e(d)(2)(A). For purposes of determining the amount of any penalty to be assessed, Section 9006(c) of the Act, 42 U.S.C. § 6991e(c)14, states that, “Any order issued under this section shall... assess a penalty, if any, which the Administrator [of EPA] determines is reasonable taking into account the seriousness of the violation and any good faith efforts to comply with the applicable requirements.” Additionally, Sections 9006(e)(1) and (2) of the Act, 42 U.S.C. § 6991e(e)(1) and (2), provide that EPA “may...take[] into account in determining the terms of a civil penalty [the] compliance history of an owner or operator” of underground storage

tanks and “[a]ny other factor the Administrator [of EPA] considers appropriate[,]” respectively. To develop the proposed penalty in this Complaint, Complainant has taken into account the particular facts and circumstances of this case, to the extent known at the time of its filing, and has used “US EPA Penalty Guidance for Violations of UST Requirements” (EPA’s “UST Penalty Policy”), dated November 14, 1990. EPA’s UST Penalty Policy is available upon request and also publicly available on the Internet at <http://www.epa.gov/swerust1/directiv/od961012.htm>.

EPA’s UST Penalty Policy provides guidance to effect a rational, consistent and equitable calculation methodologies for applying the statutory penalty criteria (enumerated above) to particular cases.

Section 9006(d)(2)(A) of the Act, 42 U.S.C. § 6991e(d)(2)(A), authorizes the assessment of a civil penalty up to \$10,000 for each tank for each day of violation of any requirement or standard promulgated by the Administrator of EPA. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended through 2015 (the “Inflation Adjustment Act”), 28 U.S.C. § 245, required EPA to adjust its penalties for inflation on a periodic basis. Consistent with this statutory mandate, EPA has amended the penalty amounts in the November 1990 UST Penalty Policy to reflect adjustments. The adjustments were made pursuant to the December 29, 2008 document entitled “Amendments to EPA’s Civil Penalty Policies to Implement the 2008 Civil Penalty Monetary Inflation Adjustment Rule (effective January 12, 2009)”; guidance entitled “Revision to Adjusted Penalty Policy Matrices on November 16, 2009” (issued on April 6, 2010); the December 6, 2013 document entitled “Amendments to the U.S. Environmental Protection Agency’s Civil Penalties Policies to Account for Inflation (applicable to violations that occurred between December 7, 2013 and November 2, 2015);” and the July 27, 2016 document entitled “Amendments to the U.S. Environmental Protection Agency’s Civil Penalty Policies to Account for Inflation (applicable to violations that occurred after November 2, 2015).”

Pursuant to the Inflation Adjustment Act, the maximum statutory civil penalty under Section 9006(d)(2) of the Act, 42 U.S.C. § 6991e(d)(2), is \$16,000 per day for each violation occurring after January 12, 2009 through November 2, 2015; and \$22,587 per day for each violation occurring after November 2, 2015. *See* 40 C.F.R. Part 19 and 81 *Fed. Reg.* 42,091 (July 1, 2016).

A penalty calculation worksheet to support the penalty figure for each violation cited in this Complaint is included in Attachment 1, below.

Complainant proposes, subject to the receipt and evaluation of further relevant information, that Respondent be assessed the following civil penalties for the violations alleged in the Complaint:

**Count 1, Valhalla Facility ---**

**Failure to comply with 40 C.F.R. §§ 280.34(c) and 280.45(b): \$240.00**

**Count 2, Sprout Brook Facility ---**

**Failure to comply with 40 C.F.R. §§ 280.34(c) and 280.45(b): \$5,388.00**

**Count 3, Dunwoodie Facility ---  
Failure to comply with 40 C.F.R. §§ 280.34(c) and 280.45(b): \$535.00**

**Count 4, Tibbetts Facility ---  
Failure to comply with 40 C.F.R. §§ 280.34(c) and 280.45(b): \$6,475.00**

**Count 5, Tibbetts Facility ---  
Failure to comply with 40 C.F.R. § 280.41(a): \$4,261.00**

**Count 6, Playland Facility ---  
Failure to comply with 40 C.F.R. §§ 280.34(c) and 280.45(b): \$535.00**

**Count 7, Playland Facility ---  
Failure to comply with 40 C.F.R. §§ 280.50(c) and 280.52: \$12,921.00**

**Count 8, Saxon Woods Facility ---  
Failure to comply with 40 C.F.R. §§ 280.34(c) and 280.45(b): \$6,475.00**

**Count 9, PRC Facility ---  
Failure to comply with 40 C.F.R. §§ 280.34(c) and 280.45(b): \$6,475.00**

**Count 10, PRC Facility ---  
Failure to comply with 40 C.F.R. §§ 280.50(c) and 280.52: \$23,499.44**

**Count 11, Mountain Lakes Facility ---  
Failure to comply with 40 C.F.R. §§ 280.34(c) and 280.45(b): \$535.00**

**Count 12, Mountain Lakes Facility ---  
Failure to comply with 40 C.F.R. § 280.41(b)(2): \$20,171.06**

**Count 13, Bronx River Facility ---  
Failure to comply with 40 C.F.R. §§ 280.34(c) and 280.45(b): \$520.00**

**Count 14, Bronx River Facility ---  
Failure to comply with 40 C.F.R. §§ 28.41(a): \$6,400.00**

**Count 15, Sprain Lake Facility ---  
Failure to comply with 40 C.F.R. §§ 280.34(c) and 280.45(b): \$6,475.00**

**Count 16, Sprain Lake Facility ---  
Failure to comply with 40 C.F.R. § 280.41(b)(2): \$24,398.85**

**Count 17, Mohansic Facility ---  
Failure to comply with 40 C.F.R. §§ 280.34(c) and 280.45(b): \$6,475.00**



Count 18, Airport Facility ---  
Failure to comply with 40 C.F.R. §§ 280.34(c) and 280.45(b): \$156.00

Count 19, Airport Facility ---  
Failure to comply with 40 C.F.R. §§ 280.50(c) and 280.52: \$10,714.00

Count 20, Airport Facility ---  
Failure to comply with 40 C.F.R. §§ 280.41(a): \$12,814.00

Count 21, Ridge Road Facility ---  
Failure to comply with 40 C.F.R. §§ 280.34(c) and 280.45(b): \$486.00

Count 22, Ridge Road Facility ---  
Failure to comply with 40 C.F.R. §§ 280.41(a): \$6,393.00

Total: \$162,342.35

**TOTAL PENALTY (ROUNDED TO NEAREST \$100): \$162,300.00**

#### **COMPLIANCE ORDER**

Pursuant to the authority granted EPA in Section 9006 of the Act, 42 U.S.C. § 6991e, Complainant issues the following Compliance Order against Respondent. This Compliance Order shall become final (*i.e.* take effect) thirty (30) days after service of this Compliance Order (henceforth, the “effective date”) unless, by said date, Respondent has requested a hearing as provided for in 40 C.F.R. § 22.15. *See* 42 U.S.C. § 6991e(b) and 40 C.F.R. §§ 22.37(b) and 22.7. Pursuant to this Compliance Order:

- 1) **Re TANKS:** Starting no later than thirty (30) days of the effective date of this Compliance Order, Respondent shall comply with the applicable release detection requirements set forth in 40 C.F.R. § 280.41(a) for all underground storage tanks presently in use at the facilities identified in paragraph 46, above, and Respondent shall maintain such compliance for each such UST in use, or, alternatively, if Respondent is unable or unwilling to attain (and maintain) such compliance within this 30-day period, it shall cease and desist operation of said USTs and permanently close them in accordance with the requirements set forth in Subpart G of 40 C.F.R. Part 280.
- 2) **Re PIPING:** Starting no later than thirty (30) days of the effective date of this Compliance Order, Respondent shall comply with the applicable release detection requirements set forth in 40 C.F.R. § 280.41(b)(2) for all underground storage tank systems presently in use at the facilities identified in paragraph 46, above, that utilize suction piping to convey regulated substances, or, alternatively, if Respondent is unable or unwilling to attain (and maintain) such compliance within this 30-day period, it shall cease and desist the use of said UST systems and permanently close them in accordance with the

requirements set forth in Subpart G of 40 C.F.R. Part 280.

- 3) **Re RECORDKEEPING:** Starting no later than thirty (30) days of the effective date of this Compliance Order, Respondent shall comply with the applicable release detection recordkeeping requirements set forth in 40 C.F.R. §§ 280.34 and 280.45 for all underground storage tanks presently operating at the facilities identified in paragraph 46.
- 4) **Re REPORTING AND INVESTIGATING SUSPECTED LEAKS:** Starting no later than the effective date of this Compliance Order, Respondent shall comply with the applicable requirements of (a) 40 C.F.R. § 280.50(c) to report to the New York State Department of Environmental Conservation and follow the procedures prescribed in 40 C.F.R. § 280.52 when the monitoring from a required release detection method indicates a release of a regulated substance may have occurred, and (b) 40 C.F.R. § 280.52 to immediately investigate all suspected releases of regulated substances that Respondent is required to report pursuant to 40 C.F.R. § 280.50.
- 5) **Re CORRECTING PRIOR VIOLATIONS:** To the extent it has not already done so and to the extent such action has not been pre-empted or is otherwise impossible to effect, starting no later than thirty (30) days of the effective date of this Compliance Order, Respondent shall correct any other violations referenced in the counts of the complaint (if such violation(s) has(have) not been already addressed in another provision of this Compliance Order).
- 6) **Re COMPLIANCE WITH OTHER APPLICABLE REQUIREMENTS:** With regard to the underground storage tanks (including any connected piping or equipment) identified in paragraph 46, above, that it owns or operates, Respondent shall maintain full compliance with all other applicable requirements set forth in 40 C.F.R. Part 280.
- 7) **Re RESPONDENT NOTIFYING EPA:** Within forty-five (45) days of the effective date of this Compliance Order, Respondent shall submit to EPA written notice of its compliance or non-compliance with the provisions of this Compliance Order. If Respondent is in non-compliance with a particular requirement(s), such notice shall state the reason(s) for non-compliance and shall provide a schedule for achieving expeditious compliance with such requirement(s). Such notice shall contain the following certification:

I certify that the information contained in this written notice and the accompanying supporting documentation is true, accurate and complete to the best of my knowledge and belief. As to the identified portions of this response for which I am unable personally to verify their truthfulness, accuracy and/or completeness, I certify that this response and all accompanying supporting documentation were prepared in accordance with a system designed to assure that qualified personnel gather and evaluate the information submitted. I am aware that there are significant penalties for submitting false, misleading and/or incomplete information,

and such penalties might include criminal fines and imprisonment for knowing violations.

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

The notice required pursuant to this Compliance Order (including any accompanying supporting documentation) should be sent to:

**Paul Sacker, Acting Team Leader  
UST Team  
Division of Enforcement and Compliance Assistance  
U.S. Environmental Protection Agency - Region 2  
290 Broadway, 20<sup>th</sup> Floor  
New York, New York 10007-1866**

- 8) **Re NO RELEASE FROM LIABILITY/EXPRESS RETENTION EPA AUTHORITY:** Compliance with the provisions of this Compliance Order is neither intended nor shall be construed to release Respondent from liability for any past violations of 40 C.F.R. Part 280 that occurred at any of the facilities identified in paragraph 46, above. In addition, nothing herein is intended or is to be construed to waive, prejudice, pre-empt, negate or otherwise affect EPA's authority (or the authority of the United States on behalf of EPA) to enforce any applicable provision of 40 C.F.R. Part 280 with regard to any UST system at any of the facilities identified in paragraph 46, above, and further to seek and obtain any appropriate penalty or other remedy permitted under law in connection with Respondent's ownership and operation of any UST at any of the facilities identified in paragraph 46, above.
- 9) **Re SEPARABILITY:** If a court of competent jurisdiction were to stay, enjoin enforcement or invalidate any provision of this Compliance Order, and such ruling were to remain in effect, the other provisions of this Compliance Order shall remain in full force and effect, and for said remaining provisions EPA (or the United States on behalf of EPA) retains its authority to seek and obtain any sanction or remedy provided for in and pursuant to Section 9006(a)(3) of the Act, 42 U.S.C. § 6991e(a)(3), or any other provision(s) of applicable law.

**PROCEDURES GOVERNING THIS ADMINISTRATIVE LITIGATION**

The rules of procedure governing this civil administrative litigation have been set forth in

64 Fed. Reg. 40138 (July 23, 1999), entitled, CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENTS OF CIVIL PENALTIES, ISSUANCE OF COMPLIANCE OR CORRECTIVE ACTION ORDERS, AND THE REVOCATION, TERMINATION OR SUSPENSION OF PERMITS, and which are codified at 40 C.F.R. Part 22. A copy of these rules accompanies this Complaint.

Upon receipt of a compliance order issued under Section 9006(a) of the Act, 42 U.S.C. § 6991e(a), Respondent may seek administrative review in accordance with 40 C.F.R. §§ 22.15 and 22.37(b). Respondent may seek judicial review of the compliance order pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701 – 706, once it is final and reviewable pursuant to Section 9006(b) of RCRA, 42 U.S.C. § 6991e(b), and 40 C.F.R. §§ 22.31 and 22.37(b).

#### A. Answering the Complaint

Where Respondent intends to contest any material fact upon which the Complaint is based, to contend that the proposed penalty is inappropriate or to contend that Respondent is entitled to judgment as a matter of law, Respondent must file with the Regional Hearing Clerk of EPA, Region 2, both an original and one copy of a written Answer to the Complaint (40 C.F.R.

i 22.15(a)). Such Answer must be filed within 30 days after service of a Complaint. The address of the Regional Hearing Clerk of EPA, Region 2, is:

**Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16th floor  
New York, N.Y. 10007-1866**

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

Respondent's Answer to the Complaint must clearly and directly admit, deny, or explain each of the factual allegations that are contained in the Complaint and with regard to which Respondent has any knowledge (40 C.F.R. § 22.15(b)). Where Respondent lacks knowledge of a particular factual allegation and so states in its Answer, the allegation is deemed denied (40 C.F.R. § 22.15(b)). The Answer shall also set forth: (1) the circumstances or arguments that are alleged to constitute the grounds of defense, (2) the facts that Respondent disputes (and thus intends to place at issue in the proceeding), and (3) whether Respondent requests a hearing (40 C.F.R. § 22.15(b)).

Respondent's failure affirmatively to raise in the Answer facts that constitute or that might constitute the grounds of its defense may preclude Respondent, at a subsequent stage in this proceeding, from raising such facts and/or from having such facts admitted into evidence at a hearing.

## B. Opportunity to Request a Hearing

If requested by Respondent in its Answer, a hearing upon the issues raised by the Complaint and Answer may be held (40 C.F.R. § 22.15(c)). If, however, Respondent does not request a hearing, the Presiding Officer (as defined in 40 C.F.R. § 22.3) may hold a hearing if the Answer raises issues appropriate for adjudication (40 C.F.R. § 22.15(c)).

Any hearing in this proceeding will be held at a location determined in accordance with 40 C.F.R. § 22.35(b). A hearing of this matter will be conducted in accordance with the applicable provisions of the Administrative Procedure Act, 5 U.S.C. §§ 551-59, and the procedures set forth in Subpart D of 40 C.F.R. Part 22.

## C. Failure to Answer

If Respondent fails in its Answer to admit, deny, or explain any material factual allegation contained in the Complaint, such failure constitutes an admission of the allegation (40 C.F.R. § 22.15(d)). If Respondent fails to file a timely (*i.e.* in accordance with the 30-day period set forth in 40 C.F.R. § 22.15(a)) Answer to the Complaint, Respondent may be found in default upon motion (40 C.F.R. § 22.17(a)). Default by Respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations (40 C.F.R. § 22.17(a)). Following a default by Respondent for a failure to timely file an Answer to the Complaint, any order issued therefore shall be issued pursuant to 40 C.F.R. § 22.17(c).

Any penalty assessed in the default order shall become due and payable by Respondent without further proceedings 30 days after the default order becomes final pursuant to 40 C.F.R. § 22.27(c). (40 C.F.R. § 22.17(d)). If necessary, EPA may then seek to enforce such final order of default against Respondent, and to collect the assessed penalty amount, in federal court.

## D. Filing Of Documents Filed After the Answer

Unless otherwise ordered by the Presiding Officer for this proceeding, all documents filed after Respondent has filed an Answer should be filed with the Headquarters Hearing Clerk acting on behalf of the Regional Hearing Clerk, addressed as follows:

If filing by the United States Postal Service:

Sybil Anderson  
Headquarters Hearing Clerk  
Office of the Administrative Law Judges  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Mail Code 1900R

Washington, D.C. 20460

If filing by UPS, FedEx, DHL or other courier or personal delivery, address to:

Sybil Anderson  
Headquarters Hearing Clerk  
Office of the Administrative Law Judges  
Ronald Reagan Building, Room M1200  
U.S. Environmental Protection Agency  
1300 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

#### E. Exhaustion of Administrative Remedies

Where Respondent fails to appeal an adverse “initial decision” (as defined in 40 C.F.R. § 22.3) to the Environmental Appeals Board [EAB; see 40 C.F.R. § 1.25(e)], pursuant to 40 C.F.R. § 22.30, and that initial decision thereby becomes a final order pursuant to the terms of 40 C.F.R. § 22.27(c), Respondent waives its right to judicial review (40 C.F.R. § 22.27(d)).

In order to appeal an initial decision to the EAB Respondent must do so within “30 days after the initial decision is served” (40 C.F.R. § 22.30(a)). Pursuant to 40 C.F.R. § 22.7(c), where service is effected by mail, “5 days shall be added to the time allowed by these [rules] for the filing of a responsive document.” Note that the 45-day period provided for in 40 C.F.R. § 22.27(c) (discussing when an initial decision becomes a final order) does not pertain to or extend the time period prescribed in 40 C.F.R. § 22.30(a) for a party to file an appeal to the EAB of an adverse initial decision.

#### **INFORMAL SETTLEMENT CONFERENCE**

Whether or not Respondent requests a formal hearing, EPA encourages settlement of this proceeding consistent with the provisions of the Act and its applicable regulations (40 C.F.R. § 22.18(b)). At an informal conference with representative(s) of Complainant, Respondent may comment on the charges made in this Complaint, and Respondent may also provide whatever additional information that it believes is relevant to the disposition of this matter, including: (1) actions Respondent has taken to correct any or all of the violations herein alleged, (2) any information relevant to Complainant’s calculation of the proposed penalty, (3) the effect the proposed penalty would have on Respondent’s ability to continue in business, and (4) any other special facts or circumstances Respondent wishes to raise.

Complainant has the authority to modify the amount of the proposed penalty, where appropriate, to reflect any settlement agreement reached with Respondent or any relevant information previously not known to Complainant, or to dismiss any or all of the charges if Respondent can demonstrate that the relevant allegations are without merit and that no cause of action as herein alleged exists. Respondent is referred to 40 C.F.R. § 22.18.

Any request for an informal conference or any questions that Respondent may have regarding this complaint should be directed to:

**Lee A. Spielmann**  
**Assistant Regional Counsel**  
**U.S. Environmental Protection Agency, Region 2**  
**290 Broadway, 16th floor**  
**New York, N.Y. 10007-1866**  
**212-637-3222**  
**spielmann.lee@epa.gov**

The parties may engage in settlement discussions irrespective of whether Respondent has requested a hearing (40 C.F.R. § 22.18(b)(1)). Respondent's requesting a formal hearing does not prevent it from also requesting an informal settlement conference; the informal conference procedure may be pursued simultaneously with the formal adjudicatory hearing procedure. A request for an informal settlement conference constitutes neither an admission nor a denial of any of the matters alleged in the Complaint. Complainant does not deem a request for an informal settlement conference as a request for a hearing as specified in 40 C.F.R. § 22.15(c).

A request for an informal settlement conference does not affect Respondent's obligation to file a timely Answer to the Complaint pursuant to 40 C.F.R. § 22.15. No penalty reduction, however, will be made simply because an informal settlement conference is held.

Any settlement that may be reached as a result of an informal settlement conference shall be embodied in a written consent agreement (40 C.F.R. § 22.18(b)(2)). In accepting the Consent Agreement, Respondent waives its right to contest the allegations in the Complaint and waives any right it might possess to obtain judicial review of the Final Order that is to accompany the Consent Agreement (40 C.F.R. § 22.18(b)(2)). In order to conclude the proceeding, a Final Order ratifying the parties' agreement to settle will be executed (40 C.F.R. § 22.18(b)(3)).

Respondent's entering into a settlement through the signing of such Consent Agreement terminates this administrative litigation and civil proceedings arising out of the allegations made in the Complaint. Respondent's entering into a settlement does not extinguish, waive, satisfy or otherwise affect its obligation and responsibility to comply with all applicable statutory and regulatory requirements governing the installation, operation, maintenance and closure of underground storage tanks (including associated equipment, such as piping), and to maintain such compliance.

#### **RESOLUTION OF THIS PROCEEDING WITHOUT HEARING OR CONFERENCE**

If, instead of filing an Answer, Respondent wishes not to contest the Compliance Order and seeks to pay the total amount of the proposed penalty within thirty (30) days after receipt of the Complaint, Respondent should promptly contact the Assistant Regional Counsel identified above.

Dated: 9/29/, 2016  
New York, New York

COMPLAINANT:



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Dore LaPosta, Director  
Division of Enforcement and  
Compliance Assistance  
U.S. E.P.A. Region 2

**TO:**

The Honorable Robert P. Astorino  
County Executive  
Westchester County  
900 Michaelian Building  
148 Martine Avenue  
White Plains, New York 10601



**CERTIFICATE OF SERVICE**

This is to certify that I have this day caused to be mailed a copy of the foregoing Complaint, captioned *In the Matter of Westchester County, New York*, and bearing docket number **RCRA-02-2016-7504**, and a copy of the Consolidated Rules of Practice, 40 C.F.R. Part 22, by certified mail, return receipt requested, to:

The Honorable Robert P. Astorino  
County Executive  
Westchester County  
900 Michaelian Building  
148 Martine Avenue  
White Plains, New York 10601

I hand-carried the original and a copy of the foregoing Complaint to the office of the Regional Hearing Clerk, United States Environmental Protection Agency, Region 2.

Dated 9/30, 2016  
New York, New York

