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**BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103**

IN RE:

NUSTAR TERMINALS OPERATING  
PARTNERSHIP, L.P. and  
SUPPORT TERMINAL SERVICES, INC.  
Respondents

DOCKET No. CWA/RCRA-03-2009-0320

COMPLAINT AND NOTICE OF  
OPPORTUNITY FOR HEARING

Facility Address:

1800 Frankfurst Avenue  
Baltimore, Maryland 21226

**I. STATUTORY AUTHORITY**

1. The following Complaint and Notice of Opportunity for Hearing are issued pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, and the Revocation, Termination or Suspension of Permits (Consolidated Rules of Practice), 40 C.F.R. Part 22, and the authority vested in the Administrator of the Environmental Protection Agency ("EPA" or "Agency") under the authorities cited below.
2. This Administrative Complaint is issued under the authority vested in the Administrator of EPA by:
  - A. Section 309(g) of the Clean Water Act, as amended, ("CWA"), 33 U.S.C. § 1319(g). The Administrator of EPA has delegated this authority under the CWA to the Regional Administrators of EPA, and this authority has been further delegated to Complainant; and
  - B. Section 3008(a) of the Resource Conservation and Recovery Act, as amended, ("RCRA"), 42 U.S.C. § 6928(a). The Administrator of EPA has delegated this authority under RCRA to the Regional Administrators of EPA, and this authority has been further to Complainant.

**II. NOTICE**

3. EPA has given the Maryland Department of Environment, ("MDE"), prior notice of this proposed action in accordance with Section 309(a) of the CWA, 33 U.S.C. § 1319(a), and Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

### **III. RESPONDENTS**

4. NuStar Terminals Operating Partnership, L.P., and Support Terminal Services, Inc., (collectively "Respondents"), have operations at 1800 Frankfurst Avenue, Baltimore, Maryland, 21226.
5. NuStar Terminals Operating Partnership, L.P., has provided to the EPA a mailing address of P.O. Box 149, Paulsboro, NJ 08066.
6. Support Terminal Services, Inc., has provided to MDE a mailing address of 1800 Frankfurst Avenue, Baltimore, MD 21226.
7. Each Respondent is a person within the meaning of:
  - A. Section 502(5) of the CWA, 33 U.S.C. § 1362(5); and
  - B. Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), 40 C.F.R. § 260.10, Code of Maryland Regulations ("COMAR") 26.13.01.03.B.
8. Respondents are, and were at the time of the violations alleged in this Complaint, the owners and/or operators of the facility located at 1800 Frankfurst Avenue, Baltimore, Maryland 21226, which is adjacent to the Patapsco River.
9. The Respondents' facility is a bulk-liquid terminal used as a storage and handling intermediary for import/export of various liquid products.
10. Respondents are the "owners" and/or "operators" of the facility as those terms are defined at COMAR 26.13.01.03.B.
11. On October 29<sup>th</sup> and 30<sup>th</sup>, 2008, a team of inspectors from EPA's Office of Enforcement, Compliance and Environmental Justice conducted a multi-media inspection of the Frankfurst Avenue facility.

### **IV. CWA STATUTORY AND REGULATORY BACKGROUND**

12. The Frankfurst Avenue facility is adjacent to the Patapsco River which empties into the Chesapeake Bay.
13. The Patapsco River and the Chesapeake Bay are both navigable waters of the United States within the meaning of Section 502(7) of the CWA, 33 U.S.C. §1362(7), and 40 C.F.R. § 122.2.
14. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant from a point source to waters of the United States except in compliance with, among other things, a National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.
15. Section 402(a) of the CWA, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States. The discharges are subject to specific terms and conditions as prescribed in the permit.
16. Pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, MDE issued an NPDES Permit

Number MD0052191 to Support Terminal Services, Inc., on October 5, 2004, ("Permit"), for discharges from its bulk liquid storage terminal located at 1800 Frankfurst Avenue, Baltimore, Maryland. The Permit expires on October 31, 2009.

17. The Frankfurst Avenue facility is a "point source" which has "discharged" and continues to "discharge" "pollutants", as those terms are defined at Sections 502(16), (14) and (6) of the CWA, 33 U.S.C. §§ 1362(16), (14) and (6), respectively, and 40 C.F.R. § 122.2, contained storm water runoff, steam condensate and hydrostatic test water to navigable waters of the United States.

#### **V. RCRA STATUTORY AND REGULATORY BACKGROUND**

18. RCRA establishes a comprehensive program to be administered by the Administrator of EPA for regulating the generation, transportation, treatment, storage, and disposal of hazardous waste. 42 U.S.C. §§ 6901 *et seq.*
19. Pursuant to its authority under RCRA, EPA has promulgated regulations at 40 C.F.R. Parts 260 through 273 applicable to hazardous waste generators, transporters, and treatment, storage and disposal facilities. These regulations generally prohibit treatment, storage and disposal of hazardous waste without a permit or "interim status." They prohibit land disposal of certain hazardous wastes, and provide detailed requirements to govern the activities of those who are lawfully permitted to store, treat and dispose of hazardous waste.
20. Under Section 3006 of RCRA, 42 U.S.C. § 6926, state hazardous waste programs may be authorized by EPA to operate in lieu of the federal hazardous waste program. The requirements of the authorized state hazardous waste management programs apply in lieu of federal RCRA regulations to persons who generate, treat, store, transport or dispose of hazardous wastes in a state which has received authorization to administer a state hazardous waste program.
21. Where a Respondent has violated RCRA Subtitle C, 42 U.S.C. §§ 6921-6939e, the regulations promulgated thereunder at 40 C.F.R. Parts 260-266, 268, and 270 or 273, or the authorized State of Maryland Hazardous Waste Management Regulations (MdHWMR) set forth at COMAR, Title 26, Subtitle 13 *et seq.*, Section 3008(a) of RCRA authorizes EPA to take enforcement action. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), authorizes the assessment of a civil penalty against any person who violates any requirement of Subtitle C of RCRA.
22. On February 11, 1985, pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), and 40 C.F.R. Part 271, Subpart A, the State of Maryland was granted final authorization to administer its hazardous waste management program set forth at the COMAR, Title 10, Subtitle 51 *et seq.* in lieu of the federal hazardous waste management program established under RCRA Subtitle C, 42 U.S.C. §§ 6921-6939e. Through this final authorization, the provisions of MdHWMR (Original Authorized Program) became requirements of RCRA Subtitle C and are, accordingly, enforceable by EPA on and after that date pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a). A revised Maryland hazardous waste management program set forth at COMAR, Title 26, Subtitle 13 (Revised Authorized Program) was authorized by EPA on July 31, 2001, and accordingly, the provisions of the Revised Authorized program are enforceable by EPA on and after that date pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).
23. To the extent that factual allegations or legal conclusions in this Complaint are based on provisions of Maryland's final authorized hazardous waste management program, those

provisions are cited as authority for such allegations or conclusions, with the corresponding federal regulatory provisions cited as reference. Factual allegations or legal conclusions based solely on the provisions of the federal hazardous waste management program cite those federal provisions as authority for such allegations or conclusions.

24. Respondents' Frankfurst Avenue facility is a "facility" as that term is defined at COMAR 26.13.01.03B.
25. Respondents are "generators" of and have been engaged in the "storage" in "containers" of materials that are "solid wastes" and "hazardous wastes" at a "facility" as those terms are defined at COMAR 26.13.01.03B.

## **VI. ADMINISTRATIVE COMPLAINT**

### **COUNT I** **(CWA - Failure To Monitor)**

26. The allegations contained in Paragraphs 1 through 25 of this Complaint are incorporated herein by reference.
27. Respondents' Frankfurst Avenue facility discharges pollutants directly into the Patapsco River, which is a "water of the United States," as that term is defined at 40 C.F.R. § 122.2.
28. On October 5, 2004, Respondents, through Support Terminal Services, Inc., were issued the Permit by MDE, which became effective on November 1, 2004, for discharges to the Patapsco River from their Frankfurst Avenue facility.
29. The Permit contains certain terms and conditions, *inter alia*, the requirement that Respondents monitor their discharge at least once a month for biochemical oxygen demand, (BOD), and once a quarter for total nitrogen, (N), and the sum of the concentrations of benzene, toluene, ethylbenzene and xylene, (BTEX). See Permit Section A on Effluent Limitations and Monitoring Requirements.
30. From January through March of 2007, Respondents failed to monitor their discharge for BOD as required by the Permit.
31. From April through June of 2007, Respondents failed to monitor their discharge for N and BTEX as required by the Permit.
32. From January through June of 2007, Respondents failure to comply with the monitoring requirements of the Permit under Section A on Effluent Limitations and Monitoring Requirements is a violation of Section 301 of the CWA, 33 U.S.C. § 1311, for which a penalty may be assessed pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

### **COUNT II** **(CWA - Failure To Meet Effluent Limitations)**

33. The allegations contained in Paragraphs 1 through 32 of this Complaint are incorporated herein by reference.
34. Respondents' Frankfurst Avenue facility discharges pollutants directly into the Patapsco River, which is a "water of the United States," as that term is defined at 40 C.F.R. § 122.2.

35. On October 5, 2004, Respondents, through Support Terminal Services, Inc., were issued the Permit by MDE, which became effective on November 1, 2004, for discharges to the Patapsco River from their Frankfurst Avenue facility.
36. The Permit contains certain terms and conditions, *inter alia*, the requirement that Respondents' discharge contain a concentration of no greater than 60 mg/L per day of Total Suspended Solids, ("TSS"), and an average concentration of no greater than 30 mg/L per month of TSS. See Permit Section A on Effluent Limitations and Monitoring Requirements.
37. From April through June of 2007, Respondents' discharge contained a daily maximum concentration of 67 mg/L of TSS and a monthly average concentration of 67 mg/L of TSS which are in excess of the maximum TSS concentration set by the Permit.
38. From July through September of 2007, Respondents' discharge contained a monthly average concentration of 36 mg/L of TSS which is in excess of the maximum TSS concentration set by the Permit.
39. From April through September of 2007, Respondents failure to meet the TSS discharge limitations of the Permit under Section A on Effluent Limitations and Monitoring Requirements is a violation of Section 301 of the CWA, 33 U.S.C. § 1311, for which a penalty may be assessed pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

**COUNT III**  
**(CWA - Failure To Report Proper BTEX Concentrations)**

40. The allegations contained in Paragraphs 1 through 39 of this Complaint are incorporated herein by reference.
41. Respondents' Frankfurst Avenue facility discharges pollutants directly into the Patapsco River, which is a "water of the United States," as that term is defined at 40 C.F.R. § 122.2.
42. On October 5, 2004, Respondents, through Support Terminal Services, Inc., were issued the Permit by MDE, which became effective on November 1, 2004, for discharges to the Patapsco River from their Frankfurst Avenue facility.
43. The Permit contains certain terms and conditions, *inter alia*, the requirement to report, within 28 days of the conclusion of each calendar quarter, the monitoring results for BTEX, which is calculated by taking the sum of the concentrations of benzene, toluene, ethylbenzene and xylene.
44. On their April 19, 2006 submission to MDE, Respondents reported a BTEX concentration that was not the sum of benzene, toluene, ethylbenzene and xylene on their quarterly Discharge Monitoring Report for the Monitoring Period from January 1, 2006 to March 31, 2006.
45. On their July 21, 2006 submission to MDE, Respondents reported a BTEX concentration that was not the sum of benzene, toluene, ethylbenzene and xylene on their quarterly Discharge Monitoring Report for the Monitoring Period from April 1, 2006 to June 30, 2006.
46. On their October 6, 2006 submission to MDE, Respondents reported a BTEX

concentration that was not the sum of benzene, toluene, ethylbenzene and xylene on their quarterly Discharge Monitoring Report for the Monitoring Period from July 1, 2006 to September 30, 2006.

47. On their January 15, 2007 submission to MDE, Respondents reported a BTEX concentration that was not the sum of benzene, toluene, ethylbenzene and xylene on their quarterly Discharge Monitoring Report for the Monitoring Period from October 1, 2006 to December 31, 2006.
48. On their April 13, 2007 submission to MDE, Respondents reported a BTEX concentration that was not the sum of benzene, toluene, ethylbenzene and xylene on their quarterly Discharge Monitoring Report for the Monitoring Period from January 1, 2007 to March 31, 2007.
49. By reporting incorrect BTEX concentrations on April 19, 2006, July 21, 2006, October 6, 2006, January 15, 2007, and April 13, 2007, Respondents failed to comply with the reporting requirements of the Permit for the monitoring period from January 1, 2006 through March 31, 2007 in violation of Section 301 of the CWA, 33 U.S.C. § 1311, for which a penalty may be assessed pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

**COUNT IV**  
**(CWA - Failure To Report Monthly Monitoring Results)**

50. The allegations contained in Paragraphs 1 through 49 of this Complaint are incorporated herein by reference.
51. Respondents' Frankfurst Avenue facility discharges pollutants directly into the Patapsco River, which is a "water of the United States," as that term is defined at 40 C.F.R. § 122.2.
52. On October 5, 2004, Respondents, through Support Terminal Services, Inc., were issued the Permit by MDE, which became effective on November 1, 2004, for discharges to the Patapsco River from their Frankfurst Avenue facility.
53. The Permit contains certain terms and conditions, *inter alia*, the requirement to report the monthly monitoring results, within 28 days of the conclusion of each calendar quarter, for the following parameters: flow, BOD, Oil & Grease, TSS, and pH.
54. On their April 19, 2006 submission to MDE, Respondents failed to report the monthly monitoring results for flow, BOD, Oil & Grease, TSS, and pH on their quarterly Discharge Monitoring Report for the Monitoring Period from January 1, 2006 to March 31, 2006.
55. On their July 21, 2006 submission to MDE, Respondents failed to report the monthly monitoring results for flow, BOD, Oil & Grease, TSS, and pH on their quarterly Discharge Monitoring Report for the Monitoring Period from April 1, 2006 to June 30, 2006.
56. On their October 6, 2006 submission to MDE, Respondents failed to report the monthly monitoring results for flow, BOD, Oil & Grease, TSS, and pH on their quarterly Discharge Monitoring Report for the Monitoring Period from July 1, 2006 to September 30, 2006.

57. On their January 15, 2007 submission to MDE, Respondents failed to report the monthly monitoring results for flow, BOD, Oil & Grease, TSS, and pH on their quarterly Discharge Monitoring Report for the Monitoring Period from October 1, 2006 to December 31, 2006.
58. On their April 13, 2007 submission to MDE, Respondents failed to report the monthly monitoring results for flow, BOD, Oil & Grease, TSS, and pH on their quarterly Discharge Monitoring Report for the Monitoring Period from January 1, 2007 to March 31, 2007.
59. On their July 16, 2007 submission to MDE, Respondents failed to report the monthly monitoring results for flow, BOD, Oil & Grease, TSS, and pH on their quarterly Discharge Monitoring Report for the Monitoring Period from April 1, 2007 to June 30, 2007.
60. On their October 25, 2007 submission to MDE, Respondents failed to report the monthly monitoring results for flow, BOD, Oil & Grease, TSS, and pH on their quarterly Discharge Monitoring Report for the Monitoring Period from July 1, 2007 to September 30, 2007.
61. On their January 28, 2008 submission to MDE, Respondents failed to report the monthly monitoring results for flow, BOD, Oil & Grease, TSS, and pH on their quarterly Discharge Monitoring Report for the Monitoring Period from October 1, 2007 to December 31, 2007.
62. On their April 14, 2008 submission to MDE, Respondents failed to report the monthly monitoring results for flow, BOD, Oil & Grease, TSS, and pH on their quarterly Discharge Monitoring Report for the Monitoring Period from January 1, 2008 to March 31, 2008.
63. On their July 16, 2008 submission to MDE, Respondents failed to report the monthly monitoring results for flow, BOD, Oil & Grease, TSS, and pH on their quarterly Discharge Monitoring Report for the Monitoring Period from April 1, 2008 to June 30, 2008.
64. On their October 8, 2008 submission to MDE, Respondents failed to report the monthly monitoring results for flow, BOD, Oil & Grease, TSS, and pH on their quarterly Discharge Monitoring Report for the Monitoring Period from July 1, 2008 to September 30, 2008.
65. On their January 9, 2009 submission to MDE, Respondents failed to report the monthly monitoring results for flow, BOD, Oil & Grease, TSS, and pH on their quarterly Discharge Monitoring Report for the Monitoring Period from October 1, 2008 to December 31, 2008.
66. The failure to provide the monthly monitoring results for flow, BOD, Oil & Grease, TSS, and pH as required by the Permit on the quarterly Discharge Monitoring Reports, for the period beginning January 1, 2006 through March 31, 2009, is a violation of Section 301 of the CWA, 33 U.S.C. § 1311, for which a penalty may be assessed pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

**COUNT V**  
**(RCRA - Failure To Provide Proper Manifest Information)**

67. The allegations contained in Paragraphs 1 through 66 of this Complaint are incorporated herein by reference.
68. Respondents hold EPA identification number MDD069371847 and submit biennial reports under the name, NuStar Terminals Operating Partnership, L.P., for the Frankfurst Avenue facility.
69. COMAR 26.13.03.04(A)(1) requires a generator who offers a hazardous waste for transportation for off-site treatment, storage, or disposal prepare an approved manifest on EPA Form 8700-22 or an equivalent state form.
70. COMAR 26.13.03.04(C)(1)(b) requires, *inter alia*, the generator's name and EPA identification number on the manifest.
71. On July 31, 2007, Respondents did not provide EPA identification number MDD069371847 on EPA Form 8700-22 with Manifest Tracking Number 000178743.
72. On August 3, 2007, Respondents did not provide EPA identification number MDD069371847 on EPA Form 8700-22 with Manifest Tracking Number 000178740.
73. On September 19, 2007, Respondents did not provide EPA identification number MDD069371847 on EPA Form 8700-22 with Manifest Tracking Number 000178708.
74. On January 16, 2008, Respondents did not provide EPA identification number MDD069371847 on EPA Form 8700-22 with Manifest Tracking Number 000178705.
75. On May 28, 2008, Respondents did not provide EPA identification number MDD069371847 on EPA Form 8700-22 with Manifest Tracking Number 000178415.
76. On August 29, 2008, Respondents did not provide EPA identification number MDD069371847 on EPA Form 8700-22 with Manifest Tracking Number 000178646.
77. On July 31, 2007, August 3, 2007, September 19, 2007, January 16, 2008, May 28, 2008, and August 29, 2008, Respondents' failure to provide the proper EPA identification number on EPA Form 8700-22 constitutes a violation of COMAR 26.13.03.04(C)(1)(b) for which a penalty can be assessed pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g).

**COUNT VI**  
**(RCRA - Operation Without A Permit Or Interim Status)**

78. The allegations contained in Paragraphs 1 through 77 of the Complaint are incorporated herein by reference as though fully set forth at length.
79. At the time of the inspection on October 29<sup>th</sup> and 30<sup>th</sup>, 2008, and at all times relevant to this Complaint, Respondents were storing the following hazardous waste at the Frankfurst Avenue facility: caustic drippings, phosphoric acid slop, glacial acrylic acid slop and spent caustic cleaning sponges.
80. Caustic drippings are a "hazardous waste" within the meaning of RCRA Section 1004(5), 42 U.S.C. § 6903(5), and COMAR 26.13.02.03, and exhibit the characteristic of



corrosivity under 40 C.F.R. § 261.22 and COMAR 26.13.02.12, which is identified by EPA Hazardous Waste Number D002.

81. Phosphoric acid slop is a “hazardous waste” within the meaning of RCRA Section 1004(5), 42 U.S.C. § 6903(5), and COMAR 26.13.02.03(31), and exhibits the characteristic of corrosivity under 40 C.F.R. § 261.22 and COMAR 26.13.02.12, which is identified by EPA Hazardous Waste Number D002.
82. Glacial acrylic acid slop is a “hazardous waste” within the meaning of RCRA Section 1004(5), 42 U.S.C. § 6903(5), and COMAR 26.13.02.03(31), and exhibits the characteristic of ignitability under 40 C.F.R. § 261.21 and COMAR 26.13.02.11, which is identified by EPA Hazardous Waste Number D001, the characteristic of corrosivity under 40 C.F.R. § 261.22 and COMAR 26.13.02.12, which is identified by EPA Hazardous Waste Number D002, and is listed hazardous waste under 40 C.F.R. § 261.33 and COMAR 26.13.02.19, which is identified by EPA Hazardous Waste Number U008.
83. Spent caustic cleaning sponges are a “hazardous waste” within the meaning of RCRA Section 1004(5), 42 U.S.C. § 6903(5), and COMAR 26.13.02.03(31), and exhibit the characteristic of corrosivity under 40 C.F.R. § 261.22 and COMAR 26.13.02.12, which is identified by EPA Hazardous Waste Number D002.
84. During 2006, 2007, and October 2008, Respondents were engaged in the “storage” of hazardous waste at the Frankfurst Avenue facility within the meaning of RCRA Section 1004(33), 42 U.S.C. § 6903(33), COMAR 26.13.01.03(76), and 40 C.F.R. § 260.10.
85. COMAR 26.13.03.05(E)(1) provides that a generator may accumulate hazardous waste on-site without a permit for 90 days or less, if, *inter alia*:
  - A. Containers are clearly and visibly marked with their accumulation start dates in accordance with COMAR 26.13.03.05(E)(1)(e), see also 40 C.F.R. § 262.34(a)(2);
  - B. Containers are always closed during storage, except when it is necessary to add or remove waste in accordance with COMAR 26.13.05.09(D), see also 40 C.F.R. § 265.173(a);
  - C. The owner or operator inspects areas where containers are stored, at least weekly, for leaks and deterioration of containers and the containment system caused by corrosion or other factors in accordance with COMAR 26.13.05.09(E), see also 40 C.F.R. § 265.174;

***Failure to Mark Container with Accumulation Start Date***

86. At the time of the inspection on October 29<sup>th</sup> and 30<sup>th</sup>, 2008, Respondents were storing phosphoric acid slop, which is a D002 hazardous waste, in a 55-gallon container approximately 25-30 feet from the entrance to the building where this hazardous waste was generated.
87. At the time of the inspection on October 29<sup>th</sup> and 30<sup>th</sup>, 2008, Respondents had not marked this 55-gallon container of phosphoric acid slop with an accumulation start date.
88. To qualify for “satellite accumulation” under COMAR 26.13.03.06(E)(3), containers must be located at or near the point of generation, under the control of the operator of the process generating the waste, and comply with, *inter alia*, COMAR 26.13.05.09(D),

which requires containers to be closed, except when necessary to add or remove waste.

89. The phosphoric acid slop container's location 25-30 feet from the entrance to the building where this waste is being generated is not at or near the point of generation nor is this location under the control of the operator of the process generating the waste nor was this container kept closed except when necessary to add or remove waste.
90. At the time of the inspection on October 29<sup>th</sup> and 30<sup>th</sup>, 2008, Respondents had not marked a 55-gallon container of phosphoric acid slop that did not qualify as "satellite accumulation" under COMAR 26.13.03.06(E)(3) with its accumulation start date as required by COMAR 26.13.03.05(E)(1)(e), see also 40 C.F.R. § 262.34(a)(2).

#### ***Failure to Keep Container Closed***

91. At the time of the inspection on October 29<sup>th</sup> and 30<sup>th</sup>, 2008, Respondents had not closed a 55-gallon container of phosphoric acid slop, which is a D002 hazardous waste, as required by COMAR 26.13.05.09(D), see also 40 C.F.R. § 265.173(a).

#### ***Failure to Conduct Weekly Inspections***

92. For the weeks ending January 13, 2007, January 20, 2007, January 27, 2007, February 3, 2007, February 17, 2007, February 24, 2007, March 3, 2007, March 17, 2007, March 24, 2007, March 31, 2007, April 3, 2007, April 14, 2007, and April 21, 2007, Respondents failed to inspect areas where containers of hazardous waste were stored as required by COMAR 26.13.05.09(E), see also 40 C.F.R. § 265.174.

#### ***Failure to Qualify for Ninety Day Storage Exemption***

93. Respondents failed to qualify for the less than 90 day generator accumulation exemption of COMAR 26.13.03.05(E)(1) by failing to satisfy the conditions for that exemption as set forth in COMAR 26.13.03.05(E).
94. During January 2007, February 2007, March 2007, April 2007, and October 2008, Respondents owned and operated a hazardous waste storage facility without a permit or interim status in violation of COMAR 26.13.05, 40 C.F.R. § 270.1(c), and Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), for which a penalty can be assessed pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g).

### **COUNT VII**

#### **(RCRA - Failure To Mark Container With Accumulation Start Date)**

95. The allegations contained in Paragraphs 1 through 94 of the Complaint are incorporated herein by reference as though fully set forth at length.
96. COMAR 26.13.03.05(E)(1)(e) and 40 C.F.R. § 265.262.34(a)(2) require generators such as Respondents to clearly and visibly mark containers of hazardous waste with their accumulation start dates.
97. At the time of the inspection on October 29<sup>th</sup> and 30<sup>th</sup>, 2008, Respondents were storing phosphoric acid slop, which is a D002 hazardous waste, in a 55-gallon container approximately 25-30 feet from the entrance to the building where this hazardous waste was generated.
98. At the time of the inspection on October 29<sup>th</sup> and 30<sup>th</sup>, 2008, Respondents had not marked

this 55-gallon container of phosphoric acid slop with an accumulation start date.

99. To qualify for "satellite accumulation" under COMAR 26.13.03.06(E)(3), containers must be located at or near the point of generation, under the control of the operator of the process generating the waste, and comply with, *inter alia*, COMAR 26.13.05.09(D), which requires containers to be closed, except when necessary to add or remove waste.
100. The phosphoric acid slop container's location 25-30 feet from the entrance to the building where this waste is being generated is not at or near the point of generation nor is this location under the control of the operator of the process generating the waste nor was this container kept closed except when necessary to add or remove waste.
101. At the time of the inspection on October 29<sup>th</sup> and 30<sup>th</sup>, 2008, Respondents had not marked a 55-gallon container of phosphoric acid slop that did not qualify as "satellite accumulation" under COMAR 26.13.03.06(E)(3) with its accumulation start date as required by COMAR 26.13.03.05(E)(1)(e), see also 40 C.F.R. § 262.34(a)(2).
102. At the time of the inspection on October 29<sup>th</sup> and 30<sup>th</sup>, 2008, Respondents violated COMAR 26.13.03.05(E)(1)(e) and 40 C.F.R. § 262.34(a)(2) by failing to mark a container with its accumulation start date for which a penalty can be assessed pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g).

**COUNT VIII**  
**(RCRA - Failure To Keep Container Closed)**

103. The allegations contained in Paragraphs 1 through 102 of the Complaint are incorporated herein by reference as though fully set forth at length.
104. COMAR 26.13.05.09(D) and 40 C.F.R. § 265.173(a) require containers holding hazardous waste remain closed, except when it is necessary to add or remove waste.
105. At the time of the inspection on October 29<sup>th</sup> and 30<sup>th</sup>, 2008, Respondents had not closed a 55-gallon container of phosphoric acid slop, which is a D002 hazardous waste, nor was it necessary to keep the container open to add or remove waste.
106. At the time of the inspection on October 29<sup>th</sup> and 30<sup>th</sup>, 2008, Respondents violated COMAR 26.13.05.09(D) and 40 C.F.R. § 265.173(a) by failing to close a container of hazardous waste for which a penalty can be assessed pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g).

**COUNT IX**  
**(RCRA - Failure To Conduct Weekly Inspections)**

107. The allegations contained in Paragraphs 1 through 106 of the Complaint are incorporated herein by reference as though fully set forth at length.
108. COMAR 26.13.05.09(E) and 40 C.F.R. § 265.174 require the owner or operator to inspect areas where containers are stored, at least weekly, for leaks and deterioration of containers and the containment system caused by corrosion or other factors.
109. For the weeks ending January 13, 2007, January 20, 2007, January 27, 2007, February 3, 2007, February 17, 2007, February 24, 2007, March 3, 2007, March 17, 2007, March 24, 2007, March 31, 2007, April 3, 2007, April 14, 2007, and April 21, 2007, Respondents failed to inspect areas where containers of hazardous waste were stored for leaks and

deterioration of containers. of containers as required by COMAR 26.13.05.09(E), see also 40 C.F.R. § 265.174.

110. For the weeks ending January 13, 2007, January 20, 2007, January 27, 2007, February 3, 2007, February 17, 2007, February 24, 2007, March 3, 2007, March 17, 2007, March 24, 2007, March 31, 2007, April 3, 2007, April 14, 2007, and April 21, 2007, Respondents violated COMAR 26.13.05.09(E) and 40 C.F.R. § 265.174 by failing to inspect areas where containers of hazardous waste were stored for leaks and deterioration of containers for which a penalty can be assessed pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g).

#### **COUNT X**

##### **(RCRA - Failure To Provide EPA Id. No. For Treatment, Storage Or Disposal Facility)**

111. The allegations contained in Paragraphs 1 through 110 of the Complaint are incorporated herein by reference as though fully set forth at length.
112. COMAR 26.13.03.06(B)(1)(d)(iii) and 40 C.F.R. § 262.41(a)(3) require the person who generates hazardous waste to submit a biennial report with the EPA identification number, name, and address for each off-site treatment, storage, or disposal facility to which waste was shipped during the reporting period.
113. For the biennial report submitted April 1, 2008 concluding the prior two year reporting period, Respondents provided an EPA identification number for the destination of waste acrylic acid that contradicts manifest tracking numbers 000178787, 000178743, 000178708, 000178740, 000178705, 000178415, and 000178646, in violation of COMAR 26.13.03.06(B)(1)(d)(iii), see also 40 C.F.R. § 262.41(a)(3).
114. For 2006 and 2007, Respondents violated COMAR 26.13.03.06(B)(1)(d)(iii) and 40 C.F.R. § 262.41(a)(3) by failing to provide accurate EPA identification numbers for the destination of waste acrylic acid for which a penalty can be assessed pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g).

#### **COUNT XI**

##### **(RCRA - Failure To Provide Name And EPA Identification Number For Transporter)**

115. The allegations contained in Paragraphs 1 through 114 of the Complaint are incorporated herein by reference as though fully set forth at length.
116. COMAR 26.13.03.06(B)(1)(d)(iv) and 40 C.F.R. § 262.41(a)(4) require the person who generates hazardous waste to submit a biennial report with the name and EPA identification number of each transporter used during the reporting period for shipments to a treatment, storage, or disposal facility.
117. For the biennial report submitted April 1, 2008, concluding the prior two year reporting period, Respondents failed to provide the name and EPA identification number of each transporter used for shipments of hazardous waste to a treatment, storage, or disposal facility as required by COMAR 26.13.03.06(B)(1)(d)(iv), see also 40 C.F.R. § 262.41(a)(4).
118. For 2006 and 2007, Respondents violated COMAR 26.13.03.06(B)(1)(d)(iv) and 40 C.F.R. § 262.41(a)(4) by failing to provide the name and EPA identification number of each transporter used for shipments of hazardous waste to a treatment, storage, or disposal facility for which a penalty can be assessed pursuant to Section 3008(g) of

RCRA, 42 U.S.C. § 6928(g).

**COUNT XII**  
**(RCRA - Failure To Keep Universal Waste Container Closed)**

119. The allegations contained in Paragraphs 1 through 118 of the Complaint are incorporated herein by reference as though fully set forth at length.
120. COMAR 26.13.01.03 defines “Lamp” as “the bulb or tube portion of an electric lighting device and specifically designed to produce radiant energy. . . .”
121. A used lamp becomes a waste on the date it is discarded and an unused lamp becomes a waste on the date the handler decides to discard it under COMAR 26.13.10.09. See also 40 C.F.R. § 273.5.
122. Lamps that meet the description for waste under COMAR 26.13.10.09 are “universal waste” by definition under COMAR 26.13.01.03 and universal waste is considered hazardous waste under COMAR 26.13.01.03 to be managed under the requirements of COMAR 26.13.10.06-.25.
123. COMAR 26.13.10.15 requires containers or packages of any lamp being handled as universal waste be closed except when adding waste to, or removing waste from the container or package. See also 40 C.F.R. § 273.13(d)(1).
124. At the time of the inspection on October 29<sup>th</sup> and 30<sup>th</sup>, 2008, Respondents were storing the universal waste of spent fluorescent lamps.
125. At the time of the inspection on October 29<sup>th</sup> and 30<sup>th</sup>, 2008, Respondents had not closed two containers of spent fluorescent lamps, which are a universal waste, nor was the container open for purposes of adding or removing waste from the container.
126. At the time of the inspection on October 29<sup>th</sup> and 30<sup>th</sup>, 2008, Respondents violated COMAR 26.13.10.15 and 40 C.F.R. § 273.13(d)(1) by failing to close a container of universal waste for which a penalty can be assessed pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g).

**COUNT XIII**  
**(RCRA - Failure To Label Or Mark Universal Waste Container)**

127. The allegations contained in Paragraphs 1 through 126 of the Complaint are incorporated herein by reference as though fully set forth at length.
128. COMAR 26.13.01.03 defines “Lamp” as “the bulb or tube portion of an electric lighting device and specifically designed to produce radiant energy. . . .”
129. A used lamp becomes a waste on the date it is discarded and an unused lamp becomes a waste on the date the handler decides to discard it under COMAR 26.13.10.09. See also 40 C.F.R. § 273.5.
130. Lamps that meet the description for waste under COMAR 26.13.10.09 are “universal waste” by definition under COMAR 26.13.01.03 and universal waste is considered hazardous waste under COMAR 26.13.01.03 to be managed under the requirements of COMAR 26.13.10.06-.25.

131. COMAR 26.13.10.17(A)(2)(e) requires containers of universal waste lamps to be clearly labeled or marked with one of the following phrases: "Universal Waste-Lamp(s)"; "Waste Lamp(s)"; or "Used Lamp(s)". See also 40 C.F.R. § 274.14(e).
132. At the time of the inspection on October 29<sup>th</sup> and 30<sup>th</sup>, 2008, Respondents were storing the universal waste of spent fluorescent lamps.
133. At the time of the inspection on October 29<sup>th</sup> and 30<sup>th</sup>, 2008, Respondents had not labeled or marked two containers of spent fluorescent lamps with "Universal Waste-Lamp(s)"; "Waste Lamp(s)"; or "Used Lamp(s)".
134. At the time of the inspection on October 29<sup>th</sup> and 30<sup>th</sup>, 2008, Respondents violated COMAR 26.13.10.17(A)(2)(e) and 40 C.F.R. § 274.14(e) by failing to label or mark a container of universal waste lamps with "Universal Waste-Lamp(s)"; "Waste Lamp(s)"; or "Used Lamp(s)" for which a penalty can be assessed pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g).

## **VII. PROPOSED CIVIL PENALTY CALCULATIONS**

109. In accordance with 40 C.F.R. § 22.14(a)(4)(I), Complainant is proposing a total specific civil penalty of \$199,400.00 for Counts I to XIII, which are discussed below.
110. Based on the foregoing allegations, a penalty may be assessed pursuant to the authority of Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and Section 3008(g) of RCRA, 42 U.S.C. §§ 6928(g).
111. In accordance with 40 C.F.R. § 22.14(a)(4)(ii), for each violation alleged in this Complaint there is an indication (where applicable) of the duration of the violation, a brief explanation of the severity of each violation, and a recitation of the statutory penalty authority applicable for each violation. This does not constitute a demand as that term is defined in the Equal Access to Justice Act, 28 U.S.C. § 2412.
112. To the extent that facts or circumstances unknown to Complainant at the time of issuance of the Complaint become known after the issuance of the Complaint, such facts and circumstances may also be considered as a basis for calculating a specific civil penalty pursuant to 40 C.F.R. § 22.19(a)(4).

### **CWA PENALTY** **(Counts I to IV)**

113. In determining the amount of any penalty assessed under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), EPA is required to take into account the nature, circumstances, extent and gravity of the violation, or violations, and with respect to the violator, the ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such matters as justice may require. Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3).
114. Based on the foregoing allegations and pursuant to the authority of Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and the Penalty Inflation Rule, 40 C.F.R. Part 19, Complainant proposes that the Regional Administrator assess an administrative penalty against Respondents in the amount of \$139,400.00.

**RCRA PENALTY**  
**(Counts V to XIII)**

115. For the purpose of determining the amount of a RCRA civil penalty. RCRA Section 3008(a)(3), 42 U.S.C. § 6928(a)(3), requires EPA to take into account the seriousness of the violation and any good faith efforts by Respondents to comply with applicable requirements (i.e., the statutory factors). In developing a civil penalty, Complainant will take into account the particular facts and circumstances of this case with specific reference to the aforementioned statutory factors and EPA's June 2003 RCRA Civil Penalty Policy (RCRA Penalty Policy). This RCRA Penalty Policy provides a rational, consistent and equitable methodology for applying the statutory factors enumerated above to particular cases.
116. Based on the foregoing allegations, and pursuant to the authority of Section 3008(a)(1), (3) and (g) of RCRA, 42 U.S.C. § 6928(a)(1), (3), and (g) and the Penalty Inflation Rule, 40 C.F.R. Part 19, Complainant proposes that the Regional Administrator assess an administrative penalty against Respondent in the amount of \$60,000.00.

**VIII. NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

Respondents may request, within thirty (30) days of receipt of this Complaint, a hearing before an EPA Administrative Law Judge on the Complaint and at such hearing may contest any material fact and the appropriateness of any penalty amount. To request a hearing, Respondent must file a written answer (Answer) within thirty (30) days of receipt of this Complaint. The Answer should comply with the requirements of 40 C.F.R. § 22.15. The Answer shall clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint with regard to which the Respondents have any knowledge. Where Respondents have no knowledge of a particular factual allegation and so state, the allegation is deemed denied. The Answer shall also state: the circumstances or arguments which are alleged to constitute the grounds of any defense; the facts which Respondents dispute; the basis for opposing any proposed relief; and whether a hearing is requested.

If Respondents fail to file a written Answer or statement within thirty (30) days of receipt of this Complaint, such failure shall constitute an admission of all facts alleged in the Complaint and a waiver of the right to a hearing. Failure to file a written Answer or statement may result in the filing of a Motion for Default Order and the possible issuance of a Default Order imposing the penalties proposed herein without further proceedings.

Any hearing requested by Respondents will be conducted in accordance with EPA's Consolidated Rules of Practice. Hearings will be held in a location to be determined at a later date pursuant to the Consolidated Rules of Practice at 40 C.F.R. § 22.21(d).

Respondents' Answer and all other documents that Respondents file in this action should be sent to the following address:

Regional Hearing Clerk (3RC00)  
U.S. EPA, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

and a copy should be sent to T. Chris Minshall, Assistant Regional Counsel, the attorney assigned to represent EPA in this matter at the following address:

U.S. EPA, Region III (3EC00)  
1650 Arch Street  
Philadelphia, PA 19103

### **IX. SETTLEMENT CONFERENCE**

EPA encourages settlement of the proceedings at any time after issuance of a Complaint if such settlement is consistent with the provisions and objectives of the CWA and RCRA. Whether or not a hearing is requested, Respondents may confer with Complainant regarding the allegations of the Complaint and the amount of the proposed civil penalty.

In the event settlement is reached, its terms shall be expressed in a written Consent Agreement prepared by Complainant, signed by the parties, and incorporated into a Final Order signed by the Regional Administrator or his delegatee. Settlement conferences shall not affect the requirement to file a timely Answer to the Complaint.

If you wish to arrange a settlement conference, please contact T. Chris Minshall, Assistant Regional Counsel, at (215) 814-2473, prior to the expiration of the thirty (30) day period following the receipt of this Complaint. Once again, however, such a request for a settlement conference does not relieve Respondents of the responsibility to file an Answer within thirty (30) days following receipt of this Complaint.

### **X. SEPARATION OF FUNCTIONS AND EX PARTE COMMUNICATIONS**

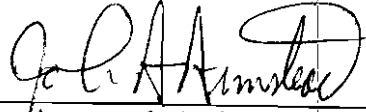
The following Agency offices, and the staffs thereof, are designated as the trial staff to represent the Agency as a party in this case: the Region III Office of Enforcement, Compliance and Environmental Justice; the Region III Office of Regional Counsel; the Region III Hazardous Site Cleanup Division; the Region III Land and Chemicals Division; the Region III Water Protection Division; and the EPA Assistant Administrator for Enforcement and Compliance Assurance. Commencing from the date of the issuance of this Complaint until issuance of a final agency decision in this case, neither the Administrator, members of the Environmental Appeals Board, Presiding Officer, Regional Administrator, nor the Regional Judicial Officer, may have an *ex parte* communication with the trial staff on the merits of any issue involved in this proceeding. Please be advised that the Consolidated Rules of Practice prohibit any unilateral discussion or *ex parte* communication of the merits of a case with the Administrator, members of the Environmental Appeals Board, Presiding Officer, Regional Administrator, or the Regional Judicial Officer after issuance of a Complaint. See Consolidated Rules of Practice at § 22.8.

### **XI. PUBLIC NOTICE**

Pursuant to Section 309(g)(4)(A) of the CWA, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45(b) the Complainant is providing public notice of this Complaint assessing administrative penalties against Respondents. If a hearing is held on this matter, members of the public who submitted timely comments on this penalty proposal shall have the right under 309(g)(4)(B) and (C) of the CWA, 33 U.S.C. § 1319(g)(4)(B) and (C), to be heard and present evidence at the hearing. In addition, pursuant to Section 309(g)(1), 33 U.S.C. § 1319(g)(1), EPA has consulted with the State of Maryland regarding this action, and in addition will mail a copy of this document to the appropriate Maryland State official.



9.30.09  
Date



John Armstead, Acting Director  
Office of Enforcement, Compliance,  
and Environmental Justice

FILED

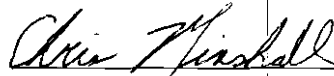
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**CERTIFICATE OF SERVICE**

I certify that on the date provided below, I hand-delivered the original and one copy of the Administrative Complaint and Opportunity to Request a Hearing in the case captioned IN RE: NUSTAR TERMINALS OPERATING PARTNERSHIP, L.P. and SUPPORT TERMINAL SERVICES, INC. ("Complaint") to Lydia Guy, Regional Hearing Clerk, U.S. EPA, Region III, 1650 Arch Street, Philadelphia, PA 19103-2029, and sent one copy of the signed original of the Complaint by certified mail, return receipt requested, together with a copy of 40 CFR Part 22, the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits," to NUSTAR TERMINALS OPERATING PARTNERSHIP, L.P. and SUPPORT TERMINAL SERVICES, INC.<sup>2</sup>

Dated:

9/30/2009



Chris Minshall  
U.S. EPA Region III

<sup>1</sup> The filing and service rules are set forth at 40 CFR § 22.5(a)(1) and (b), and a Certificate of Service for these actions is required by 40 CFR § 22.5(a)(3).

<sup>2</sup> Delivery to an Agency mail room is not equivalent to mailing at a US post office. However, a certification of delivery to an Agency mail room may be insufficient to satisfy the certification requirement of 40 CFR § 22.5(a)(3). The best practice would be for the signer of the certification to deposit the Complaint in a US mail box on the date stated in order to avoid any conflicts between the date on the Certificate of Service and the postmark on the mailing.