



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

SEP 28 2018

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Article Number: 7016 1370 0001 3671 2856

Muhammad Raza
President
Chamba Holdings, LLC
2749 Norton St.
Rochester, NY 14609

Re: In the Matter of Chamba Holdings, LLC
Docket Number RCRA-02-2018-7504

Dear Mr. Raza:

Enclosed is the Complaint, Compliance Order and Opportunity for Hearing in the above-referenced proceeding. The Complaint alleges violations of the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901 *et seq.*

You have the right to a formal hearing to contest any of the allegations in the Complaint and/or to contest the penalty proposed in the Complaint. If you wish to contest the allegations and/or the penalty proposed in the Complaint, you must file an Answer within **thirty (30)** days of your receipt of the enclosed Complaint with the Regional Hearing Clerk of the Environmental Protection Agency ("EPA"), Region 2, at the following address:

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

If you do not file an Answer within thirty (30) days of receipt of this Complaint and have not obtained a formal extension for filing an Answer from the Regional Judicial Officer of Region 2, a default order may be entered against you and the entire proposed penalty may be assessed. Whether or not you request a formal hearing, you may request an informal conference with EPA to discuss any issue relating to the alleged violations and the amount of the proposed penalty. EPA encourages all parties against whom it files a Complaint to pursue the possibility of settlement and to have an informal conference with EPA. However, a request for an informal conference **does not** substitute for a written Answer, affect what you may choose to say in an Answer, or extend the thirty (30) days by which you must file an Answer requesting a hearing.

REGIONAL HEARING
CLERK
2018 OCT -3 AM 7:32

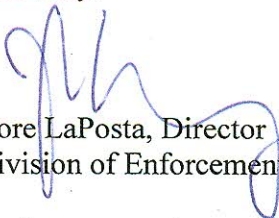
You will find enclosed a copy of the "Consolidated Rules of Practice," which govern this proceeding. (A brief discussion of some of these rules appears in the later part of the Complaint).

For your general information and use, I also enclose an Information Sheet for U.S. EPA Small Business Resources which you may find helpful.

EPA encourages the use of Supplemental Environmental Projects, where appropriate, as part of any settlement. I am enclosing a brochure on "EPA's Supplemental Environmental Projects Policy." Please note that these are only available as part of a negotiated settlement and are not available if this case has to be resolved by a formal adjudication.

If you have any questions or wish to schedule an informal conference, please contact the attorney whose name is listed in the Complaint.

Sincerely,



cc Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

Enclosures

cc: Karen Maples, Regional Hearing Clerk (without enclosures)

Russ Brauksieck, Chief
Facility Compliance Section
Bureau of Technical Support
Division of Environmental Remediation
New York State Department of Environmental Conservation
625 Broadway, 11th Floor
Albany, N.Y. 12233-7020

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 2

2018 OCT -3 AM 7:32
REGIONAL HEARINGS
CLERK

IN THE MATTER OF:

Chamba Holdings, LLC

Respondent.

Proceeding Under Section 9006
of the Solid Waste Disposal Act,
as amended

COMPLAINT, COMPLIANCE ORDER
AND
NOTICE OF OPPORTUNITY FOR HEARING

DOCKET NO. RCRA-02-2018-7504

COMPLAINT

1. This is a civil administrative proceeding instituted pursuant to Section 9006 of the Solid Waste Disposal Act, as amended, 42 U.S.C. § 6901 et seq. (the "Act").
2. Complainant in this proceeding, Dore LaPosta, Director, Division of Enforcement and Compliance Assistance of the United States Environmental Protection Agency, Region 2 ("EPA"), has been duly delegated the authority to institute this action.
3. Respondent is Chamba Holdings, LLC, a New York corporation, located at 2749 Norton St., Rochester, NY 14609
4. Respondent is a "person" within the meaning of Section 9001(5) of the Act, 42 U.S.C. § 6991(5), and 40 C.F.R. § 280.12.
5. Respondent, at all relevant times for this complaint, has been and is still the "owner" and/or "operator" of underground storage tank systems or "UST systems," as those terms are defined in Section 9001 of the Act, 42 U.S.C. § 6991, and 40 C.F.R. § 280.12, which are located at 501 Main St., East Rochester, NY (the "Facility").

6. Pursuant to 40 C.F.R. § 280.12, EPA is the “implementing agency” responsible for enforcing the requirements of the Act and the regulations promulgated pursuant thereto which are the subject of this Complaint.
7. For the purposes of reporting suspected releases of regulated substances, spills, overfills, and cleanups that cannot be accomplished within 24 hours, the implementing Agency is the New York State Department of Environmental Conservation (“NYS DEC”).
8. Pursuant to Sections 2002, 9002, and 9003 of the Act, 42 U.S.C. §§ 6912, 6991a, and 6991b, EPA promulgated regulations setting forth requirements for owners and operators of UST systems, codified at 40 C.F.R. Part 280. These regulations include requirements related to release detection, overfill prevention, record-keeping, upgrade requirements, temporary and permanent closure, and financial assurance.
9. 40 C.F.R. § 280.12 defines an “Underground storage tank” or “UST” as 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 underground pipes connected thereto) is 10 percent or more beneath the surface of the ground.
10. 40 C.F.R. § 280.12 defines an “Existing tank system” as a tank system used to contain an accumulation of regulated substances or for which installation has commenced on or before December 22, 1988.
11. 40 C.F.R. § 280.12 defines a “New tank system” as a tank system used to contain an accumulation of regulated substances and for which installation has commenced after December 22, 1988.
12. 40 C.F.R. § 280.12 defines “Regulated substance” as: (a) Any substance defined in section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980 (but not including any substance regulated as a hazardous waste under subtitle C), 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).
13. Pursuant to 40 C.F.R. § 280.12, 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.
14. 40 C.F.R. § 280.12 defines “Petroleum UST system” as 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.

15. RCRA § 9005, 42 U.S.C. § 6991d provides, in relevant part, that “any owner or operator of an underground storage tank (or any tank subject to study under Section 9009 that is used for storing regulated substances) shall, upon request of any officer, employee or representative of the Environmental Protection Agency... furnish information relating to such tanks....”
16. Pursuant to 40 C.F.R. § 280.34, owners and operators of UST systems must cooperate fully with inspections by the implementing agency, as well as requests for document submission, testing, and monitoring by the owner or operator pursuant to Section 9005 of Subtitle I of the Resource Conservation and Recovery Act, as amended (“RCRA”).
17. Pursuant to 40 C.F.R. § 280.34(b)(4), owners and operators of UST systems must maintain records of recent compliance with release detection requirements. 40 C.F.R. Section 280.45 specifies records that must be maintained in accordance with 40 C.F.R. § 280.34.
18. Pursuant to 40 C.F.R. § 280.20(c)(1)(ii), owners and operators of UST systems must provide adequate overfill protection to their USTs that will: (A) Automatically shut off flow into the tank when the tank is no more than 95 percent full; or (B) Alert the transfer operator when the tank is no more than 90 percent full by restricting the flow into the tank or triggering a high-level alarm; or (C) Restrict flow 30 minutes prior to overfilling, alert the transfer operator with a high level alarm one minute before overfilling, or automatically shut off flow into the tank so that none of the fittings located on top of the tank are exposed to product due to overfilling.
19. Pursuant to 40 C.F.R. § 280.41(a), owners and operators of UST systems must conduct monthly release detection for any UST storing petroleum products using one of the approved methods listed in 40 C.F.R. § 280.43.
20. Pursuant to 40 C.F.R. § 280.45(c), owners and operators of UST systems must maintain written documentation of all calibration, maintenance, and repair of release detection equipment permanently located on-site for at least one year after the servicing work is completed, or for another reasonable time period determined by the implementing agency.
21. Pursuant to 40 C.F.R. § 280.50(c), owner and operators of UST systems must report to the implementing agency within 24 hours, or another reasonable period specified by the implementing agency, and follow the procedures in §280.52 for the following conditions: Monitoring results, including investigation of an alarm, from a release detection method required under §§280.41 and 280.42 that indicate a release may have occurred unless: (1) The monitoring device is found to be defective, and is immediately repaired, recalibrated or replaced, and additional monitoring does not confirm the initial result; (2) The leak is contained in the secondary containment and: (i) Except as provided for in §280.43(g)(2)(iv), any liquid in the interstitial space not used as part of the interstitial monitoring method (for example, brine filled) is immediately removed; and (ii) Any defective system equipment or component is immediately repaired or replaced; (3) In the

case of inventory control described in §280.43(a), a second month of data does not confirm the initial result or the investigation determines no release has occurred; or (4) The alarm was investigated and determined to be a non-release event (for example, from a power surge or caused by filling the tank during release detection testing).

22. Pursuant to 40 C.F.R. § 280.93(a), owners or operators of petroleum underground storage tanks must demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks in the per-occurrence amounts specified in the regulation.
23. On June 5, 2017, a duly designated representative of the EPA conducted an inspection of the USTs at Respondent's facility as described in paragraph 5 above ("EPA Inspection").

COUNT 1 – Failure to Respond to Request for Information.

24. Complainant repeats, realleges and incorporates by reference paragraphs 1 through 23 with the same force and effect as if fully set forth below.
25. EPA issued "RCRA UST IR-17-025", Notice of Violation and Request for Information pursuant to Section 9005(a) of RCRA and 40 C.F.R. § 280.34 to Respondent on October 10, 2017 (the "October 2017 NOV/IRL").
26. The October 2017 NOV/IRL informed Respondent of potential violations and included twenty-six (26) questions requesting information to evaluate the compliance status of the USTs at Respondent's Facility. EPA's questions, set forth in Enclosure II, built on observations made during the EPA Inspection and included questions about ownership and operation of the Facility, general UST requirements (e.g., registration application), overfill and spill protection, leak detection, tank closure, UST maintenance, and financial responsibility.
27. The October 2017 NOV/IRL stated that a response must be mailed to the Team Leader of the UST Team ("EPA UST Team Leader") and provided the mailing address. It also said that the response was due within thirty (30) calendar days of receipt of the October 2017 NOV/IRL.
28. Respondent received the NOV/IRL on October 13, 2017 as confirmed by the US Post Office's tracking system. Respondent's response was due on or before November 12, 2017.
29. Respondent failed to respond to the October 2017 NOV/IRL.
30. In a letter dated April 11, 2018, EPA issued a "2nd Notice – Response Overdue RCRA UST IR-17-025" ("April 2018 Overdue Notice Letter"), to Respondent. The letter informed Respondent that EPA had not received a response to the October 2017

NOV/IRL and that Respondent had to provide such response or contact EPA within 5 days of receipt of the letter.

31. EPA received a “green card” confirmation as part of certified mail delivery that the April 2018 Overdue Notice Letter was received by Respondent on April 14, 2018.
32. Respondent had to submit a response to the April 2018 Overdue Notice Letter or contact EPA not later than April 19, 2018.
33. On April 16, 2018, Muhammad Raza, on behalf of Respondent, sent an e-mail to the EPA UST Team Leader stating that the e-mail was in response to the October 2017 NOV/IR (“Respondent’s April 16, 2018 e-mail”).
34. Respondent’s April 16, 2018 e-mail focused on the five (5) violations listed in the body of the October 2017 NOV/IRL but it did not answer the questions in Enclosure II. Respondent further claimed that it had sent documents responsive to the IRL-NOV to the NYS DEC back in October 2017.
35. EPA issued a Follow-Up Request for Information letter (2nd IRL) to Respondent on May 7, 2018 (“May 2018 IRL”).
36. The May 2018 IRL had fifteen (15) questions. In addition to asking specific questions regarding EPA’s observations during the June 2017 Inspection, it had questions that followed up on Respondent’s April 16, 2018 e-mail, including questions on overfill protection, leaks and leak detection and financial responsibility. It also asked for a copy of any records provided to the NYS DEC.
37. The May 2018 IRL stated that a response to the IRL must be mailed to the “UST Team Leader” and provided the mailing address. It also said that the response was due within fifteen (15) calendar days of receipt of the letter.
38. EPA received a “green card” confirmation as part of certified mail delivery that Respondent received the May 2018 IRL on May 12, 2018.
39. Respondent’s response to the May 2018 IRL was due by May 27, 2018.
40. Respondent failed to respond to the May 2018 IRL by May 27, 2018.
41. EPA issued a notice of non-response to the May 2018 IRL to Respondent on June 4, 2018 (“June 2018 Overdue Notice”). This letter reminded Respondent of the overdue response to the May 2018 IRL and gave Respondent five (5) days to contact EPA.
42. EPA received a “green card” confirmation of certified mail that Respondent received the June 2018 Overdue Notice on June 7, 2018.
43. Respondent had to submit a response or contact EPA not later than June 12, 2018.

44. Respondent failed to respond to the May 2018 IRL or contact EPA by June 12, 2018.
45. On June 14, 2018, EPA Enforcement Officer, Paul Sacker called and spoke with Mr. Raza by telephone about responding to the June 2018 Overdue Notice and the May 2018 IRL. Mr. Raza indicated he would have a response to EPA shortly.
46. To date, EPA has not received a response to the May 2018 IRL.
47. Respondent's failure to respond to the May 2018 IRL constitutes a violation of 40 C.F.R. § 280.34 and Section 9005 of the Act, 42 U.S.C. § 6991d.
48. Respondent is liable for civil penalties pursuant to Section 9006 of RCRA for its failure to respond to the IRL between at least May 27, 2018 to present.

Count 2 – Failure to Provide Adequate Overfill Prevention

49. Complainant repeats, realleges and incorporates by reference paragraphs 1 through 48 with the same force and effect as if fully set forth below.
50. At the time of the EPA Inspection, the NYDEC Petroleum Bulk Storage Certificate (“PBS”) at the Facility showed that there were two (2) active USTs at the Facility:

Tank 001: 12,000-gallon UST for regular gasoline storage, and
Tank 002: 6,000-gallon UST for premium gasoline.
51. The USTs at the Facility were installed in August 1994, making them new tanks as defined by 40 C.F.R. § 280.12.
52. During the EPA Inspection there was an audible alarm that was reportedly being used for overfill prevention of the two USTs. However, the alarm did not sound when the inspector tested it. The alarm did not appear to be connected to the electronic tank release detection monitor.
53. EPA's October 2017 NOV-IRL requested that Respondent provide documentation showing that a functioning overfill device was installed and operating for the two USTs at this Facility on the day of the EPA Inspection. The IRL also stated that if the overfill device was repaired or replaced to provide documentation showing such repair or replacement or to state why such documentation could not be provided.
54. Respondent's April 16, 2018 e-mail to EPA only provided a copy of what seems to be an overdue invoice, dated March 6, 2018, for unspecified work that occurred on June 15, 2017, as evidence that an overfill prevention device was “connected to the Veeder Root TLS 350.” However, the invoice did not specify what type of work was done. Also, the invoice provided was addressed to Speedy Mart LLC at 1662 St. Paul St., Rochester, NY,

which is a different location.

55. The May 2018 IRL requested that Respondent provide more detailed documentation that the overfill prevention device was repaired or replaced, including an exact date when the work was completed or that Respondent state why it could not provide such documentation.
56. To date, Respondent has not provided any documentation showing that the two USTs at the Facility had a working overfill prevention device on the date of the EPA inspection or that it was later repaired or replaced.
57. Respondent failed to provide an adequate overfill prevention device for its two USTs at the Facility for at least June 5, 2017.
58. Respondent's failure to provide an adequate overfill prevention device for the two USTs at the Facility on at least June 5, 2017 constitutes a violation of 40 C.F.R. §280.20(c)(1)(ii).

Count 3 – Failure to Monitor an UST for Releases Every Thirty Days.

59. Complainant repeats, realleges and incorporates by reference paragraphs 1 through 58 with the same force and effect as if fully set forth below.
60. During the June 2017 Inspection the regular gasoline UST had no visible monthly release detection monitoring method despite the presence of a Veeder Root TLS 350 monitor. The Veeder Root had no set-up for any sensor for the regular gasoline UST.
61. During the June 2017 Inspection, the inspector requested records showing that the regular gasoline UST had been monitored for releases for the previous twelve months but the Facility had no records.
62. EPA's October 2017 NOV-IRL requested that Respondent provide documentation that the regular gasoline UST was monitored monthly for releases via a method approved by federal regulations.
63. Respondent's April 16, 2018 e-mail only states that it had submitted four months of leak detection monitoring records from the Veeder Root TLS 350 for the regular gasoline UST, from July 2017 through October 2017, to the NYS DEC. There was no other information provided as to why the regular gasoline UST was not being monitored during the June 2017 Inspection.
64. EPA's May 2018 IRL requested that Respondent submit the documents it claimed to have sent to the NYS DEC and also asked that Respondent include additional monthly monitoring records through the date of receipt of the May 2018 IRL. The letter additionally requested Respondent provide documentation showing the date when the

work to connect the regular gasoline UST to the Veeder Root TLS 350 was conducted and to include any receipts.

65. To date, Respondent has not provided EPA with any documentation to show that: (a) the regular gasoline UST at the Facility had a release detection system on the date of the Inspection, or (b) that it was later repaired and that the UST is being monitored monthly for releases.
66. Respondent failed to provide a release detection method or failed to provide release detection records of release detection monitoring for the regular gasoline UST at the Facility for at least June 5, 2016.
67. Respondent's failure to provide a release detection monitoring system for the regular gasoline UST at the Facility for at least June 5, 2016.
68. Respondent's failure to maintain and provide release detection monitoring records for the regular gasoline UST at the Facility from at least June 5, 2016 through May 12, 2018 constitutes violations of 40 C.F.R. §§ 280.34 and 280.45

Count 4 – Failure to Maintain and Provide Records of Release Detection Monitoring.

69. Complainant repeats, realleges and incorporates by reference paragraphs 1 through 68 with the same force and effect as if fully set forth below.
70. During the June 2017 Inspection, Respondent used electronic interstitial monitoring (EIM) as the release detection method for the premium gasoline UST.
71. During the June 2017 Inspection, the inspector requested records showing that the premium gasoline UST had been monitored for releases for the previous twelve (12) months but the Facility had no records.
72. EPA's October 2017 NOV-IRL requested that Respondent provide EIM records for the premium gasoline UST for the period from June 5, 2016 (twelve months prior to the inspection) through receipt of the October 2017 NOV/IRL (October 13, 2017).
73. Respondent's April 16, 2018 e-mail states that at the time of the June 2017 Inspection the records were "at accountant office."
74. EPA's May 2018 IRL requested Respondent to confirm it cannot provide monitoring records for the premium gasoline UST for the period from June 2016 through June 2017 and to provide to EPA monthly release detection monitoring records from June 5, 2017 through the date of receipt of the May 2018 IRL (May 12, 2018).
75. To date, Respondent has not provided to EPA any records for release detection monitoring for the premium gasoline UST.

76. Respondent failed to provide release detection records of release detection monitoring for the premium gasoline UST at the Facility from at least June 5, 2017 to May 12, 2018.
77. Respondent's failure to provide release detection monitoring records for the premium gasoline UST at the Facility from at least June 5, 2017 through May 12, 2018 constitutes violations of 40 C.F.R. §§ 280.34 and 280.45.

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 inflationary adjustments. The adjustments were made pursuant to the June 11, 2018 document entitled "Amendments to the U.S. Environmental Protection Agency's Civil Penalty Policies to Account for Inflation (effective January 15, 2018). This policy is applicable where violations occurred after November 2, 2015 and penalties are assessed on or after January 15, 2018."

Pursuant to the Inflation Adjustment Act, the maximum statutory civil penalty under Section 9006(d)(2) of RCRA, 42 U.S.C. § 6991e(d)(2), is \$23,426 per day for each violation occurring after November 2, 2015, where the penalty is assessed on or after January 15, 2018. See 40 C.F.R. Part 19 and 83 *Fed Reg* 1190 (January 10, 2018).

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

The Complainant proposes, subject to the receipt and evaluation of further relevant information (including a demonstration to EPA's satisfaction that Respondent is unable to pay the proposed penalty) that the Respondent be assessed the following civil penalty for the violations alleged in the Complaint:

Total Proposed Penalty: **\$ 16, 703.00**

Facility/Violation Number	UST(s) at issue	40 CFR Part 280 requirement violated	Violation summary failure to:	Proposed penalty for count
Count 1	N/A	280.34 and Section 9005(a) of RCRA	Failure to respond to IRL	\$ 4,158.00
Count 2	001, 002	280.20(c)(1)(ii)	Failure to provide adequate overfill prevention device.	\$ 2,772.00
Count 3	Tank 001	280.41(a) or 280.34 & .45	Failure to monitor monthly an UST for releases or to maintain/provide release detection records.	\$ 2,773.00
Count 4	Tank 002	280.34 & .45	Failure to maintain/provide release detection records	\$ 7,000.00
Total Penalty				\$16,703.00

EPA reserves its authority to seek additional penalties if Respondent's failure to respond to the Information Request Letter continues.

COMPLIANCE ORDER

Based on the foregoing, and pursuant to the authority of Section 9006 of the Act, 42 U.S.C. § 6991e, Complainant issues the following Compliance Order to Respondent, which shall take effect thirty (30) days after service of this Order (i.e., the effective date), unless by that date, the Respondent has requested a hearing pursuant to 40 C.F.R. § 22.15. See 42 U.S.C. § 6991(e)(b)

and 40 C.F.R. §§ 22.37(b) and 22.7(c):

Respondent shall certify compliance with all requirements of 40 C.F.R. Part 280 for each federally regulated UST system at the facility located at 501 Main St., East Rochester, NY (the Facility). Specifically, Respondent shall:

- a.) Ensure that all USTs at the Facility have operating overfill prevention devices installed in accordance with 40 C.F.R. § 280.20(c).
- b.) Ensure that all USTs at the Facility are monitored monthly for releases in accordance with 40 C.F.R. § 280.41(a).
- c.) Ensure that it maintains all monthly release detection records for the tanks at the Facility in accordance with 40 C.F.R. §§ 280.34 and 280.45.
- d.) Provide to EPA within thirty (30) days after service of this Order, a full investigation of the June 5, 2017 fuel alarm noted for the regular gasoline UST at the Facility and report any confirmed releases to the NYSDEC immediately in accordance with 40 C.F.R. § 280.50(c) including receipts and records for any maintenance or repairs conducted on the regular gasoline UST release detection monitoring system.
- e.) Provide within thirty (30) days after service of this Order a complete response to EPA's October 10, 2017 and May 7, 2018 information request letters (copies enclosed) in accordance with 40 C.F.R. § 280.34 and Section 9005 of the Act, 42 U.S.C. § 6991d. As part of its full response, Respondent shall include: (a) proof of all repairs to release detection equipment on site (repair records have to be maintained for at least a year after work is completed) and (b) documentation that the USTs at the Facility are covered for third party bodily injury liability resulting from any releases from the USTs in accordance with 40 C.F.R. § 280.93(a).

Within forty-five (45) days of the effective date of this Compliance Order, if the Respondent is in noncompliance with the provisions of this Compliance Order, the Respondent shall submit to EPA written notice stating the reasons for noncompliance and shall provide a schedule for achieving expeditious compliance with the requirement. Such written 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: _____

Respondent shall submit the notice required to be submitted pursuant to this paragraph to:

**Claudia Gutierrez, Team Leader
UST Team, RCRA Compliance Branch
Division of Enforcement and Compliance Assistance
RCRA Compliance Branch
290 Broadway, 20th Floor
New York, NY 10007
Attn: Paul Sacker**

NOTICE OF LIABILITY FOR ADDITIONAL CIVIL PENALTIES

Pursuant to Section 9006(a)(3) of the Act, 42 U.S.C. §6991e(a)(3), and in accordance with the 82 Fed. Reg.3633 (January 10, 2018) codified at 40 C.F.R. Part 19), a violator failing to comply with the requirements of a Compliance Order that has taken effect within the time specified in the Order is liable for a civil penalty up to \$58,562 for each day of continued noncompliance.

PROCEDURES GOVERNING THIS ADMINISTRATIVE LITIGATION

The rules of procedure governing this civil administrative litigation were originally 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 COMPLIANCE ORDERS, AND THE REVOCATION, TERMINATION OR SUSPENSION OF PERMITS (“Consolidated Rules of Practice”), and which are codified at 40 C.F.R. Part 22. These rules were amended to simplify the administrative processing of cases by expanding the availability of electronic filing and service procedures and eliminating inconsistencies. 82 Fed. Reg. 2230, January 9, 2017. These amendments became effective on May 22, 2017 and applied to all new case filings after that date. A copy of the current Consolidated Rules of Practice, incorporating these amendments, accompanies this “Amended Complaint, Compliance Order, and Notice of Opportunity for Hearing” (hereinafter the “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). The 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 RCRA Section 9006(b), 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. § 22.15(a). Such Answer must be filed within 30 days after service of a Complaint. 40 C.F.R. §§ 22.15(a) and 22.7(c). 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**

(NOTE: Any documents that are filed after the Answer has been filed should be filed as specified in "D" below)

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). With regard to the Compliance Order in the Complaint, unless Respondent requests a hearing pursuant to 40 C.F.R. § 22.15 within 30 days after such Order is served, such Order shall automatically become final. 40 C.F.R. § 22.37.

Any hearing in this proceeding will be held at a location determined in accordance with 40 C.F.R. § 22.21(d). 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 the 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 the Respondent, and to collect the assessed penalty amount. Any default order requiring compliance action shall be effective and enforceable against Respondent without further proceedings on the date the default order becomes final under 40 C.F.R. § 22.27(c). 40 C.F.R. § 22.17(d).

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:

Headquarters Hearing Clerk
Office of the Administrative Law Judges
U.S. Environmental Protection Agency
Mail Code 1900R
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

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

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 to the Environmental Appeals

Board 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 Agency's Environmental Appeals Board [EAB; see 40 C.F.R. § 1.25(e)], Respondent must do so "within thirty (30) days after the initial decision is served" upon the parties. 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 Consolidated Rules of Practice 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:

Rudolph Perez
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, New York 10007-1866
(212) 637-3220 (phone)
perez.rudolph@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 waive their right to appeal 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 and its complying with the terms and conditions set forth in the 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 their 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 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: 9/28/18



Dore LaPosta, Director
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency -Region 2
290 Broadway
New York, NY 10007-1866

To: Muhammad Raza
President
Chamba Holdings, LLC
2749 Norton St.
Rochester, NY 14445

cc: Russ Brauksieck, Chief
Facility Compliance Section
Bureau of Technical Support
Division of Environmental Remediation
New York State Department of Environmental Conservation
625 Broadway, 11th Floor
Albany, N.Y. 12233-7020

CERTIFICATE OF SERVICE

This is to certify that I have this day caused to be mailed a copy of the foregoing Complaint, Compliance Order, and Notice of Opportunity for Hearing, bearing docket number RCRA-02-2018-7504, and a copy of the Consolidated Rules of Practice, 40 C.F.R. Part 22, by certified mail, return receipt requested, to:

Muhammad Raza
President
Chamba Holdings, LLC
2749 Norton St.
Rochester, NY 14445

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

Dated: Oct. 2, 2018
New York, New York

Yolanda R. [Signature]