

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029**

In the Matter of:	)	
	)	Administrative Complaint, Compliance
Silky Associates, LLC	)	Order and Notice of Opportunity for
200 E Williamsburg Road	)	Hearing
Sandston, VA 23150	)	
	)	Docket No: RCRA-03-2018-0131
Respondent,	)	
	)	Proceeding Under Section 9006 of the
Lucky Mart	)	Resource Conservation and Recovery
200 E Williamsburg Road	)	Act, as amended, 42 U.S.C. Section
Sandston, VA 23150	)	6991e
	)	
Facility.	)	

**U.S. EPA-REGION 3-RHC**  
FILED-24JUL2018AM11:04

**I. INTRODUCTION**

This Administrative Complaint, Compliance Order and Notice of Opportunity for Hearing (“Complaint”) is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency (“EPA” or the “Agency”) by Section 9006 of the Solid Waste Disposal Act, commonly referred to as the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984 (collectively “RCRA”), 42 U.S.C. § 6991e, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22 (“Consolidated Rules of Practice”), a copy of which is enclosed with this Complaint (“Enclosure A”). The Administrator has delegated this authority under RCRA to the Regional Administrators by EPA Delegation No. 8-25 dated February 26, 2010, and on April 26, 2018 this authority was further delegated in EPA Region III to the Director of the Land and Chemicals Division, the Associate Director of the Office of RCRA Programs in the Land and Chemicals Division, and the Director of

## Enforcement, Compliance and Environmental Justice.

Section 9006 of RCRA, 42 U.S.C. § 6991e, authorizes the Administrator to take an enforcement action, including issuing a compliance order or assessing a civil penalty, whenever it is determined that a person is in violation of any requirement of RCRA Subtitle I. Section 9006(d) of RCRA, 42 U.S.C. § 6991e(d), authorizes civil penalties to be assessed against any owner or operator of an underground storage tank (“UST”) who fails to comply with, *inter alia*, any requirement or standard of a State program that has been approved pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c.

Effective October 28, 1998, pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c, and 40 C.F.R. Part 281, Subpart A, the Commonwealth of Virginia was granted final authorization to administer a state UST management program *in lieu* of the Federal UST management program established under RCRA Subtitle I of RCRA, 42 U.S.C. §§ 6991-6991m. The provisions of the Virginia UST management program, through this final authorization, have become requirements of RCRA Subtitle I and are, accordingly, enforceable by EPA pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e. Virginia’s authorized UST management program regulations are set forth in the Virginia Administrative Code as “Underground Storage Tanks: Technical Standards and Corrective Action Requirements” (“VA UST Regulations”), 9 VAC § 25-580-10 *et seq.*, a copy of which is enclosed with this Complaint (“Enclosure B”).

EPA has given the Commonwealth of Virginia Department of Environmental Quality (“VADEQ”) notice of the issuance of this Complaint in accordance with Section 9006(a)(2) of RCRA, 42 U.S.C. § 6991e(a)(2).

## II. GENERAL ALLEGATIONS

1. At all times relevant to this Complaint, Respondent has been a Virginia limited liability company doing business in the Commonwealth of Virginia.

2. At all times relevant to this Complaint, Respondent has been a “person” as defined by Section 9001(5) of RCRA, 42 U.S.C. § 6991(5), and 9 VAC § 25-580-10.
3. At all times relevant to this Complaint, Respondent has been the “owner” and/or “operator” as those terms are defined by Section 9001(3) and (4) of RCRA, 42 U.S.C. § 6991(3) and (4), and 9 VAC 25-580-10, of underground storage tanks (“USTs”) and “UST systems” as those terms are defined in Section 9001(10) of RCRA, 42 U.S.C. § 6991(10), and 9 VAC § 25-580-10, at the Lucky Mart facility located at 200 E Williamsburg Road in Sandston, Virginia (“Facility”).
4. On July 18, 2016, an EPA representative conducted a Compliance Evaluation Inspection (“CEI”) of the Facility pursuant to Section 9005 of RCRA, 42 U.S.C. § 6991d.
5. At the time of the July 18, 2016 CEI, and at all times relevant to the applicable violations alleged herein:
  - a. five (5) USTs, as described below, were located at the Facility:
    - i. a ten thousand (10,000) gallon steel tank that was installed in or about May 1973 and that routinely contained gasoline (premium), a “regulated substance” as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and 9 VAC § 25-580-10 (hereinafter “UST-001”),
    - ii. a ten thousand (10,000) gallon steel tank that was installed in or about May 1973 and that routinely contained gasoline (regular), a “regulated substance” as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and 9 VAC § 25-580-10 (hereinafter “UST-002”),
    - iii. a ten thousand (10,000) gallon steel tank that was installed in or about May 1978 and that routinely contained gasoline (regular), a “regulated

substance” as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and 9 VAC § 25-580-10 (hereinafter “UST-003”),

- iv. a four thousand (4,000) gallon steel tank that was installed in or about May 1983 and that routinely contained kerosene, a “regulated substance” as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and 9 VAC § 25-580-10 (hereinafter “UST-004<sup>1</sup>”), and
  - v. a four thousand (4,000) gallon steel tank that was installed in or about May 1985 and that routinely contained diesel, a “regulated substance” as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and 9 VAC § 25-580-10 (hereinafter “UST-005<sup>2</sup>”);
- b. UST-002 and UST-003 were siphoned manifolded;
  - c. UST-001, UST-002, UST-003, UST-004 and UST-005 each were connected to galvanized steel underground piping that routinely contained regulated substances conveyed under pressure; and
  - d. UST-001, UST-002, UST-003, UST-004 and UST-005 and all associated underground piping were equipped with a cathodic protection system to protect against corrosion.

6. At all times relevant to the applicable violations alleged herein, UST-001, UST-002, UST-003, UST-004 and UST-005 and the respective connected underground piping associated with each, was a “petroleum UST system” and “existing UST system” as these terms are defined in 9 VAC § 25-580-10.

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<sup>1</sup> Tank UST-004 is identified as Tank UST-005 in the VADEQ tank registration database.

<sup>2</sup> Tank UST-005 is identified as Tank UST-004 in the VADEQ tank registration database.

7. At all times relevant to the applicable violations alleged herein, none of the UST systems at the Facility were “empty” within the meaning of 9 VAC § 25-580-310(1).
8. Pursuant to Section 9005 of RCRA, 42 U.S.C. § 6991d, on March 7, 2017, EPA issued an Information Request letter to Respondent concerning the petroleum UST systems at the Facility.
9. Pursuant to Section 9012 of RCRA, 42 U.S.C. § 6991k, on November 30, 2017, EPA issued a Notice of Intent to Prohibit Delivery letter to Respondent concerning the petroleum UST systems at the Facility.
10. Pursuant to Section 9012 of RCRA, 42 U.S.C. § 6991k, on February 21, 2018, EPA issued an amended Notice of Intent to Prohibit Delivery letter to Respondent concerning the petroleum UST systems at the Facility.
11. Pursuant to Section 9012 of RCRA, 42 U.S.C. § 6991k, from April 3, 2018 until April 10, 2018, EPA prohibited the delivery of regulated substances to UST-002, UST-003 and UST-004.
12. Pursuant to Section 9012 of RCRA, 42 U.S.C. § 6991k, from April 3, 2018 until April 11, 2018, EPA prohibited the delivery of regulated substances to UST-005.
13. Pursuant to Section 9012 of RCRA, 42 U.S.C. § 6991k, beginning April 3, 2018 until the present, EPA has prohibited and is prohibiting the delivery of regulated substances to UST-001.

### III. VIOLATIONS

#### *COUNT 1 - FAILURE TO PERFORM TANK RELEASE DETECTION*

14. The preceding Paragraphs are incorporated by reference as though fully set forth herein.
15. Pursuant to 9 VAC § 25-580-140(1), with exceptions provided at 9 VAC § 25-580-140(1)(a)-(c) not applicable to any of the USTs at the Facility, owners and operators of



petroleum UST systems are required to monitor tanks at least every 30 days for releases using one of the methods listed in 9 VAC § 25-580-160(4)-(8).

16. At all times relevant to the violations alleged herein, Respondent selected automatic tank gauging (“ATG”) under 9 VAC § 25-580-160(4) as its method of release detection for all USTs at the Facility.

17. During the July 18, 2016 CEI, Respondent provided records of ATG testing conducted on July 4, 2016 for UST-001; July 18, 2016 for UST-002 and UST-003; July 17, 2016 for UST-004 and June 4, 2016 for UST-005.

18. In response to EPA’s March 7, 2017 information request letter requesting release detection records from August 2016 through February 2017, Respondent provided records of ATG testing conducted on April 1, 2017 for UST-001, UST-002, UST-003 and UST-004.

19. Following receipt of EPA’s November 30, 2017 Notice of Intent to Prohibit Delivery letter, Respondent provided records of ATG testing conducted on January 1, 2018 for UST-005.

20. From August 2016 through March 2017, Respondent failed to monitor UST-001, UST-002, UST-003 and UST-004 at least every 30 days for releases by automatic tank gauging.

21. From July 2016 through December 2017, Respondent failed to monitor UST-005 at least every 30 days for releases by automatic tank gauging.

22. During the periods of time indicated in Paragraphs 20 and 21, above, Respondent did not monitor UST-001, UST-002, UST-003, UST-004 or UST-005 at least every 30 days for releases by any of the other release detection monitoring methods specified in 9 VAC § 25-580-160(4)-(8).

23. Respondent’s acts and/or omissions as alleged in Paragraphs 20 through 22, above, constitute violations by Respondent of 9 VAC § 25-580-140(1).

*COUNT 2 - FAILURE TO PERFORM AUTOMATIC LINE LEAK DETECTOR TESTING*

24. The preceding Paragraphs are incorporated by reference as though fully set forth herein.

25. Pursuant to VAC § 25-580-140(2)(a)(1), owners and operators of petroleum UST systems are required to equip underground piping that routinely contains regulated substances conveyed under pressure with an automatic line leak detector conducted in accordance with 9 VAC § 25-580-170(1).

26. Pursuant to 9 VAC § 25-580-170(1), in pertinent part, a test of the operation of the automatic line leak detector must be conducted in accordance with the manufacturer's requirements annually.

27. During the July 18, 2016 CEI, Respondent provided records of automatic line leak detector testing conducted on November 6, 2013 for piping associated with UST-002/UST-003 (manifolded), UST-004 and UST-005.

28. In response to EPA's March 7, 2017 information request letter requesting documentation of all automatic line leak detector testing from 2012 to the then present, Respondent did not provide any records of testing for any of the automatic line leak detectors at the Facility.

29. Following receipt of EPA's November 30, 2017 Notice of Intent to Prohibit Delivery letter, Respondent provided records of automatic line leak detector testing conducted on September 20, 2017 for UST-001, UST-002/UST-003 (manifolded), UST-004 and UST-005.

30. From at least August 1, 2013 through September 19, 2017, Respondent failed to perform an annual test of the automatic line leak detector on the underground piping associated with UST-001.

31. From at least August 1, 2013 through November 5, 2013 and from November 6, 2014 through September 19, 2017, Respondent failed to perform annual tests of the automatic line leak

detectors on the underground piping associated with UST-002/UST-003 (manifolded), UST-004, and UST-005.

32. Respondent's acts and/or omissions as alleged in Paragraphs 30 and 31, above, constitute violations by Respondent of 9 VAC § 25-580-140(2)(a)(1) and 9 VAC § 25-580-170(1).

*COUNT 3 - FAILURE TO PERFORM PIPING RELEASE DETECTION*

33. The preceding Paragraphs are incorporated by reference as though fully set forth herein.

34. Pursuant to 9 VAC § 25-580-140(2)(a)(2), owners and operators of petroleum UST systems with underground piping that routinely contains regulated substances conveyed under pressure must have an annual line tightness test conducted in accordance with 9 VAC § 25-580-170(2) or have monthly monitoring conducted in accordance with 9 VAC § 25-580-170(3).

35. Respondent selected line tightness testing as its method of complying with the piping release detection requirements of 9 VAC § 25-580-140(2)(a)(2).

36. During the July 18, 2016 CEI, Respondent provided records of line tightness tests conducted on January 30, 2012 for piping associated with UST-001 and UST-002/UST-003 (manifolded), and on November 6, 2013 for piping associated with UST-002/UST-003 (manifolded), UST-004 and UST-005.

37. In response to EPA's March 7, 2017 information request letter requesting documentation of all line tightness testing from 2012 to March 7, 2017, Respondent did not provide any records of testing for piping associated with any of the USTs at the Facility.

38. Following receipt of EPA's November 30, 2017 Notice of Intent to Prohibit Delivery letter, Respondent provided records of line tightness testing conducted on September 20, 2017 for UST-001, UST-002/UST-003 (manifolded), UST-004 and UST-005.



39. From at least August 1, 2013 through September 19, 2017, Respondent failed to perform annual line tightness testing in accordance with 9 VAC § 25-580-170(2) or have monthly monitoring conducted in accordance with 9 VAC § 25-580-170(3) on the underground piping associated with UST-001.

40. From at least August 1, 2013 through November 5, 2013 and from November 6, 2014 through September 19, 2017, Respondent failed to perform annual line tightness testing in accordance with 9 VAC § 25-580-170(2) or have monthly monitoring conducted in accordance with 9 VAC § 25-580-170(3) on the underground piping associated with UST-002/UST-003 (manifolded), UST-004 and UST-005.

41. Respondent's acts and/or omissions as alleged in Paragraphs 39 and 40, above, constitute violations by Respondent of 9 VAC § 25-580-140(2)(a)(2).

*COUNT 4 - FAILURE TO HAVE OVERFILL PREVENTION EQUIPMENT*

42. The preceding Paragraphs are incorporated by reference as though fully set forth herein.

43. Pursuant to 9 VAC § 25-580-60(4) and 9 VAC § 25-580-50(3)(a)(2), with exceptions provided at 9 VAC § 25-580-60(1)(c) and 9 VAC § 25-580-50(3)(b) not applicable to any of the USTs at the Facility, owners and operators of existing UST systems are required to use overfill prevention equipment that will automatically shut off flow into the tank when the tank is more than 95 percent full, or 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.

44. During the July 18, 2016 CEI, EPA's inspector did not observe overfill prevention equipment (e.g., drop tube shut off devices, visible/audible alarms) and was unable to verify the presence of ball floats for the UST-001, UST-002, UST-003, UST-004 and UST-005 UST systems.

45. In response to EPA's March 7, 2017 information request letter requesting documentation confirming the presence of overfill prevention equipment and following receipt of EPA's November 30, 2017 Notice of Intent to Prohibit Delivery letter and February 21, 2018 amended Notice of Intent to Prohibit Delivery letter, Respondent did not provide any overfill verification documentation for any of the UST systems at the Facility.

46. On April 3, 2018, EPA prohibited the delivery of regulated substances to all of the UST systems at the Facility.

47. Respondent provided documentation of installation of overfill prevention equipment on April 10, 2018 for the UST-002, UST-003, and UST-004 UST systems, and on April 11, 2018 for the UST-005 UST system.

48. As of the date of this Complaint, EPA's prohibition on the delivery of regulated substances to the UST-001 UST system is still in effect.

49. From at least August 1, 2013 through at least April 9, 2018, Respondent failed use overfill prevention equipment that automatically shuts off flow into the tank when the tank is more than 95 percent full or alerted 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 for the UST-001, UST-002, UST-003, UST-004 and UST-005 UST systems.

50. Respondent's acts and/or omissions as alleged in Paragraph 49, above, constitute violations by Respondent of 9 VAC § 25-580-60(4) and 9 VAC § 25-580-50(3)(a)(2).

*COUNT 5 - FAILURE TO TEST CATHODIC PROTECTION SYSTEM*

51. The preceding Paragraphs are incorporated by reference as though fully set forth herein.

52. Pursuant to 9 VAC § 25-580-90(2)(a), owners and operators of steel UST systems equipped with cathodic protection systems are required to test for proper operation within 6

months of installation and at least 3 years thereafter by a qualified cathodic protection tester.

53. During the July 18, 2016 CEI, Respondent provided documentation of cathodic protection testing conducted on April 17, 2012.

54. In response to EPA's March 7, 2017 information request letter requesting documentation of its most recent two (2) cathodic protection tests, Respondent did not provide any records of cathodic protection testing.

55. Following receipt of EPA's November 30, 2017 Notice of Intent to Prohibit Delivery letter, Respondent provided a report of cathodic protection test conducted on December 6, 2017.

56. From April 17, 2015 through December 5, 2017, Respondent failed to conduct 3 year tests of the cathodic protection system for the UST systems at the Facility.

57. Respondent's act and/or omission as alleged in Paragraph 56, above, constitute violations by Respondent of 9 VAC § 25-580-90(2)(a).

#### IV. COMPLIANCE ORDER

58. Beginning not later than thirty (30) days after the Compliance Order becomes a Final Order (pursuant to 40 C.F.R. § 22.37(b)) and ending upon submission of its sixth (6) report, Respondent shall submit to EPA every thirty (30) days a report demonstrating compliance with the tank release detection monitoring requirements of 9 VAC § 25-580-140(1) for UST-002, UST-003, UST-004 and UST-005.

59. Any report, certification, data presentation, or other document submitted by Respondent pursuant to this Compliance Order which discusses, describes, demonstrates, supports any finding or makes any representation concerning Respondent's compliance or noncompliance with any requirement of this Compliance Order shall be certified by a responsible corporate officer or general partner, as appropriate, of Respondent.

The certification required above shall be in the following form:

I certify that the information contained in or accompanying this [type of submission] is true, accurate, and complete. As to [the/those] identified portions of this [type of submission] for which I cannot personally verify [its/their] accuracy, I certify under penalty of law that this [type of submission] and all attachments were prepared in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

60. All documents and reports to be submitted pursuant to this Compliance Order shall be sent to the following persons:

1. Documents to be submitted to EPA shall be sent to the attention of:

Melissa Toffel (3LC31)  
U.S. Environmental Protection Agency - Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029  
[Toffel.Melissa@epa.gov](mailto:Toffel.Melissa@epa.gov)  
Fax: (215) 814-5211

2. One copy of all documents submitted to EPA shall also be sent by regular mail to the attention of:

Russell P. Ellison, III  
UST Program Coordinator  
Office of Spill Response & Remediation  
Division of Land Protection & Revitalization  
VA DEQ  
P.O. Box 1105  
Richmond, VA 23218

61. Failure to comply with any of the terms of this Compliance Order may subject Respondent to the imposition of a civil penalty of up to \$58,562 for each day of continued

noncompliance, pursuant to Section 9006(a)(3) of RCRA, 42 U.S.C. § 6991e(a)(3); the Federal Civil Penalties Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, and most recently, by the Federal Civil Inflation Adjustment Act Improvement Act of 2015; and the Civil Monetary Penalty Inflation Adjustment Rule, 83 Fed. Reg. 1190, 1193 (January 10, 2018).

#### V. PROPOSED CIVIL PENALTY

Section 9006(d)(2) of RCRA, 42 U.S.C. § 6991e(d)(2), provides, in relevant part, that any owner or operator of an underground storage tank who fails to comply with any requirement or standard of a State program approved pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c, shall be liable for a civil penalty not to exceed \$10,000 for each tank for each day of violation. This amount has been adjusted pursuant to the Federal Civil Penalties Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, and most recently, by the Federal Civil Inflation Adjustment Act Improvement Act of 2015 by implementing Civil Monetary Penalty Inflation Adjustment Rules codified at 40 C.F.R. Part 19 such that violations of RCRA Section 9006(d)(2), 42 U.S.C. § 6991e(d)(2), that occur on or before November 2, 2015 are subject to a civil penalty not to exceed \$16,000 per day per violation, and violations that occur after November 2, 2015 are subject to a civil penalty not to exceed \$23,426 per day per violation. *See* 78 Fed. Reg. 66643, 66648 (November 6, 2013) and 83 Fed. Reg. 1190, 1193 (January 10, 2018).

Pursuant to 40 C.F.R. § 22.14(a)(4)(ii), Complainant is not proposing a specific penalty at this time, but will do so at a later date after an exchange of information has occurred in accordance with 40 C.F.R. § 22.19(a)(4).

For purposes of determining the amount of any penalty to be assessed, Sections 9006(c) and (e) of RCRA, 42 U.S.C. §§ 6991e(c) and (e), require EPA to take into account the seriousness of the violation, any good faith efforts to comply with the applicable requirements, the compliance history of the owner or operator and any other factors considered appropriate. In developing a proposed penalty for the violations alleged in this Complaint, EPA will take into account the particular facts and circumstances of this case with specific reference to EPA's November 1990 *U.S. EPA Penalty Guidance for Violations of UST Regulations* ("UST Penalty Policy") ("Enclosure C"), January 11, 2018 *Amendments to the EPA's Civil Penalty Policies to Account for Inflation (effective January 15, 2018) and Transmittal of the 2018 Civil Monetary Penalty Inflation Adjustment Rule* ("Enclosure D"), and December 6, 2013 *Amendments to the U.S. Environmental Protection Agency's Civil Penalty Policies to Account for Inflation (Effective December 6, 2013)* ("Enclosure E"). These policies provide a rational, consistent and equitable methodology for applying the statutory penalty factors enumerated above to particular cases. As a basis for calculating a specific penalty pursuant to 40 C.F.R. § 22.19(a)(4), Complainant will also consider, among other factors, Respondent's ability to pay a civil penalty. The burden of raising and demonstrating an inability to pay rests with the Respondent. In addition, to the extent that facts and circumstances unknown to Complainant at the time of issuance of this Complaint become known after the Complaint is issued, such facts and circumstances may also be considered as a basis for adjusting a civil penalty.

Pursuant to Section 9006(d)(2) of RCRA, 42 U.S.C. § 6991e(d)(2), Complainant proposes the assessment of a civil penalty of up to \$16,000 per day per violation for violations that occurred on or before November 2, 2015, and up to \$23,426 per day per violation for violations that occurred after November 2, 2015. This does not constitute a "demand" as that



term is defined in the Equal Access to Justice Act, 28 U.S.C. § 2412. Pursuant to 40 C.F.R. § 22.14(a)(4)(ii), an explanation of the severity of each violation is given below.

*COUNT 1 - FAILURE TO PERFORM TANK RELEASE DETECTION:*

According to the UST Penalty Policy Appendix A, the tank release detection violations alleged in the Complaint (corresponding to violations of 40 C.F.R. § 280.41(a)) constitute a “major” potential for harm and “major” extent of deviation from the requirements. Respondent’s failure to ensure that each UST at the Facility was monitored at least every 30 days for releases using one of the methods required by the federally authorized VA UST Regulations constitutes a major potential for harm because without release detection monitoring a release may go unnoticed with serious detrimental consequences. It is a fundamental goal of the UST regulations to ensure that an UST does not release substances that may harm human health or the environment. While Respondent installed release detection equipment, it failed to consistently operate such equipment for UST-001, UST-002, UST-003, UST-004 and UST-005 for extended periods of time. As the mechanism established by EPA to ensure releases are prevented and minimized is the release detection program, Respondent’s failure to comply with the tank release detection monitoring requirements presents a significant harm to, and a major deviation from the requirements of, the RCRA regulatory program. Penalties for this violation will be assessed on a per tank basis since there was an independent obligation to monitor each tank for releases at the Facility.

*COUNT 2 - FAILURE TO PERFORM AUTOMATIC LINE LEAK DETECTOR TESTING*

According to the UST Penalty Policy Appendix A, the automatic line leak detector testing violations alleged in the Complaint (corresponding to violations of 40 C.F.R. § 280.44(a)) constitute a “major” potential for harm and “major” extent of deviation from the requirements. It

is critically important that facility owners and operators utilize effective methods of detecting releases from underground piping associated USTs, especially for piping that conveys regulated substances under pressure. The prevention and detection of leaks are the cornerstones of the UST regulatory program. Respondent's failure to perform an annual test of the functionality of the line leak detectors for the underground piping associated with UST-001, UST-002/UST-003 (manifolded), UST-004 and UST-005 presented a substantial risk that a leak would go undetected. Respondent's failure to comply with the automatic line leak detector testing requirements presents a significant harm to, and a major deviation from the requirements of, the RCRA regulatory program. Penalties for this violation will be assessed on a per tank basis since there was an independent obligation to test each of the detectors at the Facility.

*COUNT 3 - FAILURE TO PERFORM PIPING RELEASE DETECTION*

According to the UST Penalty Policy Appendix A, the piping release detection monitoring violations alleged in the Complaint (corresponding to violations of 40 C.F.R. § 280.41(b)(1)(ii)) constitute a "major" potential for harm and "major" extent of deviation from the requirements. As discussed above, it is critically important that facility owners and operators utilize effective methods of detecting releases from underground piping associated USTs, especially for piping that conveys regulated substances under pressure. The prevention and detection of leaks are the cornerstones of the UST regulatory program. Respondent's failure to perform an annual line tightness test or monthly monitoring of underground piping associated with UST-001, UST-002/UST-003 (manifolded), UST-004 and UST-005 presented a substantial risk that a leak would go undetected. Respondent's failure to comply with the piping release detection requirements presents a significant harm to, and a major deviation from the requirements of, the RCRA regulatory program. Penalties for this violation will be assessed on a

per tank basis since there was an independent obligation to monitor the piping associated with each tank for releases at the Facility.

*COUNT 4 - FAILURE TO HAVE OVERFILL PREVENTION EQUIPMENT*

According to the UST Penalty Policy Appendix A, the overfill prevention violations alleged in the Complaint (corresponding to violations of 40 C.F.R. § 280.21(d)) constitute a “moderate” potential for harm and “major” extent of deviation from the requirements. It is critically important that facility owners and operators utilize effective methods for preventing releases at the time product is being transferred to UST systems. The prevention of releases is an important component of the UST regulatory program. Respondent’s failure to have equipment to prevent overfilling during the transfer of product on the UST-001, UST-002, UST-003, UST-004 and UST-005 UST systems presented a substantial risk of harm to human health or the environment associated with a release. Respondent’s failure to comply with the overfill prevention requirements presents a significant harm to, and a major deviation from the requirements of, the RCRA regulatory program. Penalties for this violation are assessed on a per tank system basis since there was an independent obligation to have overfill prevention equipment for each tank system at the Facility.

*COUNT 5 - FAILURE TO TEST CATHODIC PROTECTION SYSTEM*

According to the UST Penalty Policy Appendix A, the cathodic protection testing violations alleged in the Complaint (corresponding to violations of 40 C.F.R. § 280.31(b)(1)) constitute a “moderate” potential for harm and “major” extent of deviation from the requirements. Cathodic protection systems must be tested for proper operation in order to prevent releases from steel UST that have corroded. Especially due to the age of the UST systems at the Facility, Respondent’s failure to conduct 3 year testing of its cathodic protection system posed a

major risk of harm to human health and the environment as demonstrated by Respondent's December 6, 2017 cathodic protection test which showed a failing result. (Following receipt of EPA's February 21, 2018 amended Notice of Intent to Prohibit Delivery letter, Respondent repaired its cathodic protection system in accordance with the recommendations of a cathodic protection expert and a February 27, 2018 cathodic protection test showed a passing result.) Respondent's failure to conduct 3 year testing of its cathodic protection system presents a significant harm to, and a major deviation from the requirements of, the RCRA regulatory program. Penalties for this violation are assessed on a Facility basis.

In addition to the above, Complainant may adjust each violation-specific gravity-based penalty discussed above upward or downward based upon the violator-specific and environmental sensitivity adjustment factors described in the UST Penalty Policy. In addition, Complainant may add components to reflect any economic benefit gained by Respondent for failing to comply with each the regulatory requirements as appropriate.

#### VI. NOTICE OF RIGHT TO REQUEST A HEARING

Respondent may request a hearing before an EPA Administrative Law Judge and at such hearing may contest any material fact upon which the Complaint is based, contest the appropriateness of any compliance order or proposed penalty, and/or assert that the Respondent is entitled to judgment as a matter of law. To request a hearing, Respondent must file a written answer ("Answer") within thirty (30) days after service of this Complaint as set forth in 40 C.F.R. § 22.15(a). The Answer should clearly and directly admit, deny or explain each of the factual allegations contained in this Complaint of which the Respondent has any knowledge. Where a Respondent has no knowledge of a particular factual allegation and so states, such a statement is deemed to be a denial of the allegation. The Answer should contain: (1) the

circumstances or arguments which are alleged to constitute the grounds of any defense; (2) the facts which the Respondent disputes; (3) the basis for opposing any proposed relief; and (4) a statement of whether a hearing is requested. All material facts not denied in the Answer will be considered to be admitted.

Failure of Respondent to admit, deny or explain any material allegation in the Complaint shall constitute an admission by Respondent of such allegation. Failure to file a timely Answer 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. 40 C.F.R § 22.17.

Any hearing requested and granted will be conducted in accordance with the Consolidated Rules of Practice (i.e., Enclosure A). Respondents must send any Answer to:

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

In addition, please send a copy of any Answer to:

Jennifer M. Abramson (3RC50)  
Senior Assistant Regional Counsel  
U.S. EPA, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

#### VII. SETTLEMENT CONFERENCE

Complainant encourages settlement of this proceeding at any time after issuance of the Complaint if such settlement is consistent with the provisions and objectives of RCRA. Whether or not a hearing is requested, Respondent may request a settlement conference with the Complainant to discuss the allegations of the Complaint, and the amount of the proposed civil penalty. **HOWEVER, A REQUEST FOR A SETTLEMENT CONFERENCE DOES NOT RELIEVE RESPONDENT OF ITS RESPONSIBILITY TO FILE A TIMELY ANSWER.**

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 designee. The execution of such a Consent Agreement shall constitute a waiver of Respondent's right to contest the allegations of the Complaint and its right to appeal the proposed Final Order accompanying the Consent Agreement.

If you wish to arrange a settlement conference, please have your counsel contact Jennifer M. Abramson, Senior Assistant Regional Counsel, at (215) 814-2066, prior to the expiration of the thirty (30) day period following service of this Complaint. However, such a request for a settlement conference does not relieve Respondent of its responsibility to file an Answer within thirty (30) days following service of this Complaint. Please note that the Quick Resolution settlement procedures set forth in 40 C.F.R. § 22.18 do not apply to this proceeding as the Complaint seeks a compliance order and does not contain a specific proposed penalty. 40 C.F.R. § 22.18(a)(1).

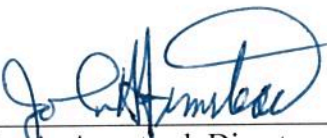
#### IX. SEPARATION OF FUNCTIONS AND *EX PARTE* COMMUNICATIONS

The following EPA offices, and the staffs thereof, are designated as the trial staff to represent Complainant as the party in this case: the Region III Office of Regional Counsel; the Region III Land & Chemicals Division; and the Office of the EPA Assistant Administrator for Enforcement and Compliance Assurance. Commencing from the date of 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 *ex parte* discussion of the merits of a case with, among others, the Administrator, members of the Environmental Appeals Board, Presiding Officer, Judicial Officer, Regional Administrator, Regional Judicial Officer, or any other person who is likely to advise these officials on any decision in this proceeding after issuance of this Complaint.

Dated: 7.23.18

  
\_\_\_\_\_  
John A. Armstead, Director  
Land and Chemicals Division  
U.S. EPA, Region III



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029**

In the Matter of:	)	
	)	Administrative Complaint, Compliance
Silky Associates, LLC	)	Order and Notice of Opportunity for
200 E. Williamsburg Road	)	Hearing
Sandston, VA 23150	)	
	)	Docket No: RCRA-03-2018-0131
Respondent,	)	
	)	Proceeding Under Section 9006 of the
Lucky Mart	)	Resource Conservation and Recovery
200 E Williamsburg Road	)	Act, as amended, 42 U.S.C. Section
Sandston, VA 23150	)	6991e
	)	
Facility.	)	

**U.S. EPA-REGION 3-RHC**  
FILED-24JUL2018AM11:04

**CERTIFICATE OF SERVICE**

I certify that the foregoing ADMINISTRATIVE COMPLAINT, COMPLIANCE ORDER AND NOTICE OF OPPORTUNITY FOR HEARING in the above referenced matter was sent this day in the following manner to the below addressees:

**Original and one copy by hand-delivery:**

Regional Hearing Clerk

**Copy by Certified Mail Return Receipt Requested:**

Mr. Lakhmir Bagga  
Silky Associates, LLC  
200 E. Williamsburg Road  
Sandston, VA 23150

JUL 24 2018

Date



Jennifer M. Abramson (3RC50)  
Senior Assistant Regional Counsel  
U.S. Environmental Protection Agency, Region III  
1650 Arch Street  
Philadelphia, PA 19103  
Phone: (215) 814-2066  
Email: [Abramson.Jennifer@epa.gov](mailto:Abramson.Jennifer@epa.gov)

