

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF:

Rome Gas Inc.,

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-02-2017-7504

REGIONAL OFFICE
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U.S. Environmental Protection Agency

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

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. § 6991e *et seq.* (the “Act”).
2. This proceeding seeks to assess a civil penalty against Respondent for having failed to comply with various requirements or standards promulgated by the Administrator of EPA under the authority of Section 9003 of the Act, 42 U.S.C. § 6991b, and to require compliance with said requirements or standards.
3. Complainant in this proceeding, Dore LaPosta, Director, Division of Enforcement and Compliance Assistance of the United States Environmental Protection Agency, Region 2, has been duly delegated the authority to institute this action.
4. Respondent is Rome Gas Inc. (hereinafter “Respondent”), a corporation organized pursuant to the laws of the State of New York.
5. 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.

6. Respondent has been for the times relevant to the matters alleged below, and remains (except as noted in paragraphs 26, 28 and 29) the “owner” and/or “operator” of “underground storage tanks” (“USTs”) or “UST system,” as those terms are defined in Section 9001 of the Act, 42 U.S.C. § 6991, and 40 C.F.R. § 280.12, that are located at the following facilities with the corresponding New York State Petroleum Bulk Storage (“PBS”) numbers:
 - a) A1 Easy Mart, 49 Union St., Sidney, NY (the “Sidney Facility”); NYS PBS # 4-442542
 - b) P & H Petroleum (Runway) 8516 Seneca Turnpike, New Hartford, NY (the “New Hartford Facility”); NYS PBS # 6-065641
 - c) Runway # 4, 4 North Ann. St., Little Falls, NY (the “Little Falls Facility”); NYS PBS # 6-299782
 - d) Runway #6371, 6371 State Route 167, Dolgeville, NY (the “Dolgeville Facility”); NYS PBS # 6-394564
 - e) Runway Mobil #105, 2794 State Route 28, Thendara, NY (the “Thendara Facility”); NYS PBS # 6-600955
 - f) Saini Associates, Inc., 976 Conklin Road, Conklin, NY (the “Conklin Facility”) NYS PBS # 7-103152
 - g) Johnson Sunoco, 143 Riverside Drive; Johnson City, NY (the “Johnson City Facility”), NYS PBS # 7-491187
 - h) Runway # 684, 684 Conklin St., Binghamton, NY (the “Binghamton Facility”); NYS PBS # 7-600466
 - i) Runway #429, 429-431 East Main St., Endicott, NY (the “Endicott Facility”); NYS PBS # 7-600515
 - j) JK Gas Mart, 3 Sova Road, Harpursville, NY (the “Harpursville Facility”); NYS PBS # 7-600653
7. 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. For purposes of receiving reports of suspected releases, New York State is the “implementing agency.”
8. Pursuant to Section 9003 of the Act, 42 U.S.C. § 6991b, EPA promulgated rules setting forth requirements for owners and operators of UST systems, codified at 40 C.F.R. Part 280. These rules include but are not limited to requirements related to release detection record-keeping, investigation and reporting of suspected releases, performance testing of automatic line leak detectors, overfill equipment and corrosion protection.
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. 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”).

11. Section 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.”
12. Pursuant to 40 C.F.R. § 280.34(c), owners and operators of UST systems must keep the records required either: (1) at the UST site and immediately available for inspection by the implementing agency; or (2) at a readily available alternative site and be provided for inspection to the implementing agency upon request.
13. Pursuant to 40 C.F.R. § 280.45(b), owners and operators of UST systems must maintain, for at least one year, the results of any sampling, testing or monitoring.
14. 40 C.F.R. § 280.20(c) states that owner/operators of petroleum UST systems must have installed overfill prevention equipment on all new tanks. 40 C.F.R. § 280.21(d) states that all existing UST systems must comply with UST system spill and overfill prevention equipment requirements specified in § 280.20(c).
15. 40 C.F.R. § 280.31(b) states that owners and operators of petroleum UST systems must conduct testing of cathodic corrosion protection systems every three years and maintain the last two test results.
16. 40 C.F.R. § 280.44(a) states that owners and operators of petroleum UST systems must annually test the performance of automatic line leak detectors for all underground pressurized lines.
17. Pursuant to 40 C.F.R. § 280.50, owners and operators of petroleum 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 (release investigation and confirmation steps), for any 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; . . . 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).
18. Pursuant to Section 9005 of the Act, 42 U.S.C. § 6991d, between January 7 through 13, 2016, an authorized representative of EPA inspected the following ten (10) facilities which have USTs to determine their compliance with the Act and 40 C.F.R. Part 280 on

the dates indicated:

- a) January 7, 2016: the Sidney Facility
 - b) January 7, 2016: the Conklin Facility
 - c) January 7, 2016: the Harpursville Facility
 - d) January 8, 2016: the Johnson City Facility
 - e) January 8, 2016: the Binghamton Facility
 - f) January 8, 2016: the Endicott Facility
 - g) January 12, 2016: the New Hartford Facility
 - h) January 13, 2016: the Little Falls Facility
 - i) January 13, 2016: the Dolgeville Facility
 - j) January 13, 2016: the Thendara Facility
19. Pursuant to Section 9005 of the Act, 42 U.S.C. § 6991d, and 40 C.F.R. § 280.34, EPA sent a RCRA § 9005 Information Request Letters (“IRL”), dated March 10, 2016, to Peter Tal, Vice President - Real Estate, Rome Gas, Inc., in order to determine Respondent’s compliance with the Act and 40 C.F.R. Part 280 for the Sidney, Endicott and Harpursville Facilities (the “First IRL”).
 20. Respondent received the First IRL on March 12, 2016.
 21. Respondent submitted an incomplete response to the First IRL to EPA on June 8, 2016 (the “First Response”).
 22. Pursuant to Section 9005 of the Act, 42 U.S.C. § 6991d, and 40 C.F.R. § 280.34, EPA sent a second IRL to Mr. Peter Tal, dated December 23, 2016 to determine Respondent’s compliance with the Act and 40 C.F.R. Part 280 for all Facilities named in paragraph 6 above (the “Second IRL”).
 23. Respondent received the Second IRL on December 27, 2016.
 24. On May 1, 2017, Respondent submitted a response to the Second IRL to EPA. that only included photographs of overfill devices at the Facilities (the “Second Response”).
 25. To date, Mr. Peter Tal or the Respondent have not submitted further responses to EPA.

OWNERSHIP AND OPERATION OF UST SYSTEMS AT THE FACILITIES

26. Based on EPA’s inspections and information on New York State PBS certificates that EPA has for each facility, the following are the owner and or operators of the USTs of the Facilities as follows:
 - a) A September 17, 2014 PBS certificate for the Sidney facility indicates that the facility owner and operator of the five federally regulated USTs was Rome Gas Inc., located at 114 Danberry Circle, New Hartford, NY. The certificate was signed by John Tal, VP, on September 22, 2014. Based upon a PBS Change of Ownership application received by EPA from the NYS DEC the USTs at this facility are now owned by another company and the transfer occurred on or about March 2017.

- b) An October 31, 2014 PBS certificate for the New Hartford Facility indicates that the owner and operator of the three federally regulated USTs was Rome Gas Inc. #8516, 114 Danberry Circle, New Hartford, NY. NYS DEC's online PBS database indicates that this information is unchanged as of 9/13/17.
- c) A February 28, 2014 PBS certificate issued to the Little Falls Facility indicates that the owner and operator of the three federally regulated USTs was Rome Gas Inc., 114 Danbury Circle, New Hartford, NY. NYS DEC's online PBS database indicates that the USTs at this facility are now owned by another company and a change of ownership PBS application provided by DEC to EPA indicates that the transfer occurred on or about July 2017.
- d) A March 8, 2013 PBS certificate issued to the Dolgeville Facility indicates that the owner and operator of the four federally regulated USTs was Rome Gas Inc., 114 Danberry Circle, New Hartford, NY. The certificate was not signed. NYS DEC's online PBS database indicates that this information is unchanged as of 9/13/17.
- e) An August 3, 2012 PBS certificate issued to the Thendara Facility indicates that the owner and operator of the four federally regulated USTs was Rome Gas Inc, 114 Danberry Circle, New Hartford, NY. The certificate was not signed. NYS DEC's online PBS database indicates that the owner is Rome Gas Inc, 8086 Seneca Tpk, Clinton, NY.
- f) A September 25, 2012 PBS certificate issued to the Conklin Facility indicates that the owner of the four federally regulated USTs was Rome Gas Inc, 114 Danberry Circle, New Hartford, NY and the operator as Parminder Singh, President, Saini Associates Inc, 976 Conklin Rd., Conklin, NY. The certificate was signed by Mr. Singh on July 16, 2013. NYS DEC's online PBS database indicates that the owner is Rome Gas Inc, 8086 Seneca Tpk, Clinton, NY.
- g) A February 21, 2013 PBS certificate issued to the Johnson City Facility indicates that the owner and operator of the three federally regulated USTs was Rome Gas Inc, 114 Danberry Circle, New Hartford, NY. The certificate was signed by John Tal, V President, on October 10, 2013. NYS DEC's online PBS database indicates that this information is unchanged as of 9/13/17.
- h) A February 21, 2013 PBS certificate issued to the Binghamton Facility indicates that the owner and operator of the four federally regulated USTs was Rome Gas Inc, 114 Danberry Circle, New Hartford, NY. The certificate was signed by Peter Tal, President, on February 24, 2013. NYS DEC's online PBS database indicates that the owner is Rome Gas Inc, 8086 Seneca Tpk, Clinton, NY.
- i) A February 21, 2013 PBS certificate issued to the Endicott Facility indicates that the owner of the four federally regulated USTs was Rome Gas Inc, 114 Danberry Circle, New Hartford, NY. The certificate was signed by Peter Tal, President, on February 24, 2013. NYS DEC's online PBS database indicates that the owner is Rome Gas Inc, 8086 Seneca Tpk, Clinton, NY.
- j) A February 21, 2013 PBS certificate issued to the Harpursville Facility indicates that the owner of the four federally regulated USTs was Rome Gas Inc, 114 Danberry Circle, New Hartford, NY. The certificate was signed but not dated by Peter Tal, President. NYS DEC's online PBS database indicates that this information is unchanged as of 9/13/17.

27. Respondent was for the times relevant to the matters alleged below and continues to be the owner and operator of the USTs at the New Hartford, Dolgeville, Thendara, Johnson

City, Binghamton, Endicott, and Harpursville Facilities.

28. Respondent was for the times relevant to the matters alleged below the owner and operator of the USTs at the Sidney Facility until their transfer on or about March 2017.
29. Respondent was for the times relevant to the matters alleged below the owner and operator of the USTs at the Little Falls Facility until their transfer on or about July 2017.
30. Respondent was for the times relevant to the matters alleged below and continues to be the owner of the USTs at the Conklin Facility. Saini Associates was for the times relevant to the matters alleged below and continues to be the operator of the USTs at the Conklin Facility.

SIDNEY FACILITY;

Count 1 – Failure to Maintain and Provide Release Detection Records

31. Complainant repeats, realleges and incorporates by reference paragraphs 1 through 30 with the same force and effect as if fully set forth below.
32. The Sidney Facility is an automobile service station that has five USTs:

Tank 9A: 6,000-gallon UST for diesel fuel storage,
Tank 9B: 4,000-gallon UST for kerosene storage,
Tank 10: 10,000-gallon UST for regular gasoline storage,
Tank 11: 8,000-gallon UST for regular gasoline storage, and
Tank 12: 8,000-gallon UST for premium gasoline storage.
33. The USTs at the Sidney Facility were installed in May 1990, making them new tanks as defined by 40 C.F.R. § 280.12.
34. On January 7, 2016, a duly authorized representative of the EPA inspected the USTs located at the Sidney Facility.
35. During the January 7, 2016 inspection of the Sidney Facility, the inspector noted that the USTs were monitored monthly for releases via a Gilbarco EMC conducting electronic interstitial monitoring. The inspector was only provided monthly release detection records for Tanks 9A, 9B, 10 and 11 for the period of May 11, 2015 through December 5, 2015. For Tank 12, the inspector was only provided release detection records for June 15, 2015 through December, 5 2015.
36. EPA's March 10, 2016 IRL required Respondent to provide release detection records for all USTs at this facility for the period of January 7, 2015 through May 11, 2015.
37. Respondent's June 8, 2016 IRL response provided release detection records for the five USTs for February 16, 2015; April 27, 2015 through December 21, 2015; and records for January 4, 2016 and March 28, 2016 in place of records for those corresponding months in 2015. Respondent did not provide the requested records for January and March 2015.

38. EPA's December 23, 2016 IRL required Respondent to provide the missing records for January and March 2015.
39. Respondent's May 1, 2017 IRL response did not provide the missing records for January and March 2015.
40. Respondent failed to maintain and provide record of monthly release detection monitoring for the five USTs at the Sidney Facility for January 2015 and March 2015.
41. Respondent's failure to maintain and provide records of monthly release detection monitoring for the five USTs at the Sidney Facility for January 2015 and March 2015 constitutes violations of 40 C.F.R. §§ 280.34 and 280.45.

Count 2 – Failure to Investigate and Report a Suspected Release

42. Complainant repeats, realleges and incorporates by reference paragraphs 1 through 41 with the same force and effect as if fully set forth below.
43. During the January 7, 2016 UST inspection of the Sidney Facility, the inspector noted that the electronic interstitial release monitoring system for the day of the inspection was showing a "Fuel Alarm" for the annular space sensor "L3-Regular East" and the annular space sensor "L4-Diesel-Kero" (Tank 10 and 9A/9B respectively), indicating a suspected release from these tanks. The annular space of an UST is considered secondary containment as defined in 40 C.F.R. §§ 280.12 and 280.50.
44. A check of the New York State Department of Environmental Conservation ("NYSDEC") Spill Database by EPA indicates that no spill was reported at the facility until January 22, 2016 (Spill Number 1510428) where a suspected release from the kerosene UST as a result of "equipment failure" was reported.
45. EPA's March 10, 2016 IRL required Respondent to provide documentation that the suspected release noted on January 7, 2016 was: a) investigated within 24 hours of detection, b) the results of that investigation, and c) any report of a confirmed release that was submitted to the NYSDEC.
46. Respondent's June 8, 2016 IRL response provided a statement that the alarms were from high levels of ground water entering the pressurized piping sumps that subsequently was removed and this is why the company did not report any suspected release to the NYSDEC. The response did not address the fuel alarms for the interstitial (annular) space of the tanks.
47. EPA's December 23, 2016 IRL again asked Respondent to provide documentation of how the suspected release to the interstitial space of the two tanks described above was investigated within 24 hours of detection, the results of that investigation, documentation of any repairs and documentation or any reporting to the NYSDEC. Additionally, EPA requested the details of the spill incident reported to NYSDEC for January 22, 2016.

48. Respondent's May 1, 2017 IRL response did not provide any additional information on the alarm investigation or steps taken to correct the issue.
49. Respondent failed to conduct an investigation and/or report a suspected release into the secondary containment of two USTs within 24 hours of detection from at least January 8, 2016 through January 22, 2016.
50. Respondent's failure to investigate and/or report to the NYSDEC a suspected release into the secondary containment of two USTs at the Sidney Facility from at least January 8, 2016 through January 22, 2016 constitutes violations of 40 C.F.R. § 280.50(c).

NEW HARTFORD FACILITY

Count 3 – Failure to Maintain and Provide Release Detection Records

51. Complainant repeats, realleges and incorporates by reference paragraphs 1 through 30 with the same force and effect as if fully set forth below.
52. The New Hartford Facility is an automobile service station that has three USTs:

Tank 001: 12,000-gallon UST for regular gasoline storage,
Tank 002: 12,000-gallon UST for regular gasoline storage,
Tank 003: 12,000-gallon UST for premium gasoline storage,
53. The USTs at the New Hartford Facility were installed in July 1982, making them existing tanks as defined by 40 C.F.R. § 280.12.
54. On January 12, 2016, a duly authorized representative of the EPA inspected the USTs located at the New Hartford Facility.
55. During the January 12, 2016 inspection of the New Hartford Facility, the inspector found that three USTs were monitored for releases via an automatic tank gauge ("ATG") conducting continuous statistical leak detection ("CSLD"). The inspector reviewed sump and dispenser sensor records for January 2015 through December 2015. However, no historic CSLD records were provided except for the day of the inspection
56. EPA's December 23, 2016 IRL required Respondent to provide release detection records for January 12, 2015 through December 27, 2016 (the date of receipt of the Second IRL).
57. Respondent's May 1, 2017 IRL response did not address the missing release detection records.
58. Respondent failed to provide records of monthly release detection monitoring for the three USTs at the New Hartford Facility for January 2015 through December 2015.
59. Respondent's failure to maintain and provide records of monthly release detection monitoring for three USTs at the New Hartford Facility for January 2015 through

December 2015 constitutes violations of 40 C.F.R. §§ 280.34 and 280.45.

LITTLE FALLS FACILITY

Count 4 – Failure to Maintain and Provide Release Detection Records

60. Complainant repeats, realleges and incorporates by reference paragraphs 1 through 30 with the same force and effect as if fully set forth below.
61. The Little Falls Facility is an automobile service station that has three USTs:

Tank 1: 8,000-gallon UST for regular gasoline storage,
Tank 2: 8,000-gallon UST for premium gasoline storage,
Tank 3: 4,000-gallon UST for diesel fuel storage,
62. The USTs at the Little Falls Facility were installed in July 1982 and July 1984, making them existing tanks as defined by 40 C.F.R. § 280.12.
63. On January 13, 2016, a duly authorized representative of the EPA inspected the USTs located at the Little Falls Facility.
64. During the January 13, 2016 UST inspection of the Little Falls Facility, the inspector found that the USTs were monitored monthly for releases via an ATG conducting CSLD. However, there were no CSLD results for Tank 1 for the months of January, February, March, June and July 2015.
65. EPA's December 23, 2016 IRL required Respondent to provide release detection records for the regular gasoline UST for the months of January, February, March, June and July 2015.
66. Respondent's May 1, 2017 IRL response did not address the missing release detection records.
67. Respondent failed to provide records of release detection monitoring for the regular gasoline UST at the Little Falls Facility for January, February, March, June and July 2015.
68. Respondent's failure to maintain and provide records of monthly release detection monitoring for the regular gasoline UST at the Little Falls Facility for January, February, March, June and July 2015 constitutes violations of 40 C.F.R. §§ 280.34 and 280.45.

DOLGEVILLE FACILITY

Count 5 – Failure to Conduct Cathodic Corrosion Protection Testing

69. Complainant repeats, realleges and incorporates by reference paragraphs 1 through 30 with the same force and effect as if fully set forth below.

70. The Dolgeville Facility is an automobile service station that has four USTs:
Tank 003: 8,000-gallon UST for premium gasoline storage,
Tank 004: 4,000-gallon UST for kerosene storage,
Tank 005: 12,000-gallon UST for diesel fuel storage, and
Tank 006: 15,000-gallon UST for regular gasoline storage
71. The USTs at the Dolgeville Facility were installed in April 1989 and May 1999, making them new tanks as defined by 40 C.F.R. § 280.12.
72. On January 13, 2016, a duly authorized representative of the EPA inspected the USTs located at the Dolgeville Facility.
73. During the January 13, 2016 UST inspection of the Dolgeville Facility, the inspector determined that the four USTs were of the sti-P3 variety and required cathodic corrosion protection testing every three years. The inspector was only provided cathodic corrosion test results for the four USTs dated June 9, 2015. A second set of test results was not provided.
74. EPA's December 23, 2016 IRL required Respondent to provide all corrosion protection test results conducted between June 9, 2012 (three years prior to the provided test) through December 27, 2016.
75. Respondent's May 1, 2017 IRL response did not provide additional cathodic corrosion protection results.
76. Respondent failed to conduct cathodic corrosion protection testing for the four USTs at the Dolgeville Facility every three years for the period of at least October 1, 2012 through June 9, 2015.
77. Respondent's failure to conduct cathodic corrosion protection testing for the four USTs at the Dolgeville Facility for the period of at least October 1, 2012 through June 9, 2015 constitutes violations of 40 C.F.R. § 280.31(b).

THENDARA FACILITY

Count 6 – Failure to Test Automatic Line Leak Detectors

78. Complainant repeats, realleges and incorporates by reference paragraphs 1 through 30 with the same force and effect as if fully set forth below.
79. The Thendara Facility is an automobile service station that has four USTs:
Tank 1A: 13,000-gallon UST for regular gasoline storage,
Tank 1B: 8,000-gallon UST for premium gasoline storage,
Tank 2A: 5,000-gallon UST for diesel fuel storage, and
Tank 2B: 3,000-gallon UST for kerosene storage

80. The USTs at the Thendara Facility were installed in May 2002, making them new tanks as defined by 40 C.F.R. § 280.12.
81. On January 13, 2016, a duly authorized representative of the EPA inspected the USTs located at the Thendara Facility.
82. During the January 13, 2016 UST inspection of the Thendara Facility, the inspector determined that the four USTs used pressurized piping and had automatic line leak detectors (“ALLDs”). The inspector was only provided with annual ALLD test results for the piping for Tanks 1A, 1B and 2A dated October 14, 2015, but there were no test results for the piping for Tank 2B.
83. EPA’s December 23, 2016 IRL required Respondent to provide all ALLD test results for the kerosene tank (Tank 2B) from January 13, 2015 through December 27, 2016.
84. Respondent’s May 1, 2017 IRL response did not provide ALLD test results for the piping associated with Tank 2B.
85. Respondent failed to conduct an ALLD test for the piping for Tank 2B at the Thendara Facility for the period of at least January 13, 2015 through December 27, 2016.
86. Respondent’s failure to conduct an ALLD test of the piping for Tank 2B at the Thendara Facility for the period of at least January 13, 2015 through December 27, 2016 constitutes violations of 40 C.F.R. § 280.44(a).

CONKLIN FACILITY

Count 7 – Failure to Install Overfill Equipment

87. Complainant repeats, realleges and incorporates by reference paragraphs 1 through 30 with the same force and effect as if fully set forth below.
88. The Conklin Facility is an automobile service station that has four USTs:

Tank 001A: 14,000-gallon UST for regular gasoline storage,
Tank 001B: 6,000-gallon UST for premium gasoline storage,
Tank 002A: 6,000-gallon UST for diesel fuel storage, and
Tank 002B: 2,000-gallon UST for kerosene storage
89. The USTs at the Conklin Facility were installed in August 1999, making them new tanks as defined by 40 C.F.R. § 280.12.
90. On January 07, 2016, a duly authorized representative of the EPA inspected the USTs located at the Conklin Facility.
91. During the January 7, 2016 UST inspection of the Conklin Facility, the inspector could not verify that the four UST compartments had an overfill prevention device installed.

92. EPA's December 23, 2016 IRL required Respondent to provide documentation (photos or a current overfill inspection report) of installation of an overfill device on the four USTs, including the date of installation if after the inspection.
93. Respondent's May 1, 2017 IRL response provided photographic evidence that two USTs had a ball float overfill prevention device. The response, however, did not indicate which two USTs had ball floats.
94. Respondent failed to demonstrate that two of the USTs at the Conklin Facility had overfill prevention devices from at least January 7, 2016 through December 27, 2016.
95. Respondent's failure to provide an overfill prevention device for two of the USTs at the Conklin Facility for the period of at least January 7, 2016 through December 27, 2016 constitutes violations of 40 C.F.R. § 280.20(c).

Count 8 – Failure to Conduct Cathodic Corrosion Protection Testing

96. Complainant repeats, realleges and incorporates by reference paragraphs 1 through 30 and 87 through 95 with the same force and effect as if fully set forth below.
97. During the January 7, 2016 UST inspection of the Conklin Facility, the inspector determined that the four USTs were of the sti-P3 variety and required cathodic corrosion protection testing every three years. The inspector was not provided any cathodic corrosion protection test results.
98. EPA's December 23, 2016 IRL required Respondent to provide the last two previous cathodic protection test results for the USTs prior to the inspection (for the period of January 7, 2010 through January 7, 2016) as well as any cathodic protection test results since the inspection.
99. Respondent's May 1, 2017 IRL response did not provide any cathodic corrosion protection test results.
100. Respondent failed to conduct cathodic corrosion protection testing for the four USTs at the Conklin Facility from at least October 1, 2012 through the January 7, 2016 inspection date.
101. Respondent's failure to conduct cathodic corrosion protection testing for the four USTs at the Conklin Facility for the period of at least October 1, 2012 through the January 7, 2016 inspection date constitutes violations of 40 C.F.R. § 280.31(b).

Count 9 – Failure to Maintain and Provide Release Detection Records

102. Complainant repeats, realleges and incorporates by reference paragraphs 1 through 30 and 87 through 101 with the same force and effect as if fully set forth below.
103. During the January 7, 2016 UST inspection of the Conklin Facility, the inspector determined that the four USTs were monitored monthly for releases via electronic

interstitial monitoring and an ATG conducting CSLD. No monthly release detection records for any of the four USTs were provided for the twelve months prior to the inspection.

104. The inspector also determined that the four USTs used pressurized piping. The piping was setup to be monitored monthly for release detection via interstitial monitoring (liquid status sensors in sumps). No monthly release detection records were provided for any of the piping for the four USTs. For the two gasoline USTs line tightness tests were provided. For the diesel and kerosene USTs no line tightness tests were provided.
105. EPA's December 23, 2016 IRL required Respondent to provide documentation of monthly release detection for the four USTs and either monthly release detection monitoring records or, in the alternative, line tightness test results, for the diesel and kerosene pressurized lines for the period of January 7, 2015 through December 27, 2016.
106. Respondent's May 1, 2017 IRL response did not provide any monthly release detection records for the tanks. Respondent also did not submit monthly release detection monitoring records or, in the alternative, line tightness test results for the piping (lines) for the diesel and kerosene USTs.
107. Respondent failed to maintain and provide records of monthly release detection monitoring for the four USTs and for the diesel and kerosene pressurized lines at the Conklin Facility from at least January 7, 2015 through the December 27, 2016.
108. Respondent's failures to maintain and provide (a) records of monthly release detection monitoring for the four USTs and (b) records of release detection for the pressurized lines for the diesel and kerosene USTs at the Conklin Facility for the period of at least January 7, 2015 through December 27, 2016 constitutes violations of 40 C.F.R. §§ 280.34 and 280.45.

JOHNSON CITY FACILITY

Count 10 – Failure to Maintain and Provide Release Detection Records

109. Complainant repeats, realleges and incorporates by reference paragraphs 1 through 30 with the same force and effect as if fully set forth below.
110. The Johnson City Facility is an automobile service station that has three USTs:

Tank 001: 8,000-gallon UST for regular gasoline storage,
Tank 002: 8,000-gallon UST for premium gasoline storage, and
Tank 003: 8,000-gallon UST for diesel fuel storage.
111. The USTs at the Johnson City Facility were installed in May 1989, making them new tanks as defined by 40 C.F.R. § 280.12.
112. On January 8, 2016, a duly authorized representative of the EPA inspected the USTs located at the Johnson City Facility.

113. During the January 8, 2016 UST inspection of Johnson City Facility, the inspector determined that the three USTs and associated pressurized lines were monitored monthly for releases via electronic interstitial monitoring. No monitoring records were provided for the twelve months prior to the inspection.
114. EPA's December 23, 2016 IRL required Respondent to provide monthly release detection records for the three USTs and the associated pressurized lines for the period of January 8, 2015 through December 27, 2016. For the lines, the option to provide in the alternative, all line tightness test results from January 8, 2015 through receipt of the IRL was also presented.
115. Respondent's May 1, 2017 IRL response did not provide any monthly release detection records for the three USTs or pressurized lines for the Johnson City Facility, nor did it provide line tightness test for the three pressurized lines.
116. Respondent failed to maintain and provide records of monthly release detection monitoring for the three USTs and associated pressurized lines at the Johnson City Facility for the period of at least January 8, 2015 through December 27, 2016.
117. Respondent's failure to maintain monthly release detection records for the three USTs and associated pressurized lines located at the Johnson City Facility for the period of at least January 8, 2015 through at least the December 27, 2016 constitutes violations of 40 C.F.R. §§ 280.34 and 280.45.

BINGHAMTON FACILITY

Count 11 – Failure to Conduct Cathodic Corrosion Protection Testing

118. Complainant repeats, realleges and incorporates by reference paragraphs 1 through 30 with the same force and effect as if fully set forth below.
119. The Binghamton Facility is an automobile service station that has four USTs:

Tank 1A: 10,000-gallon UST for regular gasoline storage,
Tank 1B: 7,000-gallon UST for premium gasoline storage, and
Tank 1C: 3,000-gallon UST for diesel fuel storage.
Tank 2: 2,000-gallon UST for kerosene storage
120. The USTs at the Binghamton Facility were installed in August 1986, making them existing tanks as defined by 40 C.F.R. § 280.12.
121. On January 8, 2016, a duly authorized representative of the EPA inspected the USTs located at the Binghamton Facility.
122. During the January 8, 2016 UST inspection of the Binghamton Facility, the inspector determined that the four USTs were of the sti-P3 variety and required cathodic corrosion protection tests every three years. The inspector was provided a page with cathodic

protection test results dated October 22, 2014.

123. EPA's December 23, 2016 IRL required Respondent to provide complete records of all cathodic corrosion tests conducted between January 8, 2010 through December 27, 2016.
124. Respondent's May 1, 2017 IRL response did not provide any cathodic corrosion protection test results for the four USTs at the Binghamton Facility.
125. Respondent failed to conduct cathodic corrosion protection testing for the four USTs at the Binghamton Facility from at least October 1, 2012 through October 22, 2014.
126. Respondent's failure to conduct cathodic corrosion protection testing for the four USTs at the Binghamton Facility for the period of at least October 1, 2012 through October 22, 2014 constitutes violations of 40 C.F.R. § 280.31(b).

ENDICOTT FACILITY

Count 12 – Failure to Test Automatic Line Leak Detectors

127. Complainant repeats, realleges and incorporates by reference paragraphs 1 through 30 and 127 through 138 with the same force and effect as if fully set forth below.
128. The Endicott Facility is an automobile service station that has four USTs:

Tank 1A: 12,000-gallon UST for regular gasoline storage,
Tank 1B: 5,000-gallon UST for premium gasoline storage, and
Tank 1C: 3,000-gallon UST for diesel fuel storage.
Tank 2: 2,000-gallon UST for kerosene storage
129. The USTs at the Endicott Facility were installed in December 1995, making them new tanks as defined by 40 C.F.R. § 280.12.
130. On January 8, 2016, a duly authorized representative of the EPA inspected the USTs located at the Endicott Facility.
131. During the January 8, 2016 UST inspection of the Endicott Facility, the inspector noted that Tanks 1A, 1B and 1C used three pressurized lines and that each line had an ALLD. The inspector was not provided annual performance test results for the three ALLDs.
132. EPA's March 10, 2016 IRL required Respondent to provide performance test results for the three ALLDs at the Endicott Facility for the period of January 8, 2015 through March 12, 2016 (the date of receipt of the First IRL).
133. Respondent's June 8, 2016 IRL response only provides ALLD test results dated May 3, 2016, which is after the inspection.
134. EPA's December 23, 2016 IRL again asked for test results for the twelve-month period prior to the inspection (January 8, 2015 through January 8, 2016) for the three ALLDs at

the Endicott Facility.

135. Respondent's May 1, 2017 IRL response did not provide any additional ALLD test results for the piping for Tanks 1A, 1B and 1C at the Endicott Facility.
136. Respondent failed to test the three ALLDs at the Endicott Facility from at least January 8, 2015 through May 3, 2016.
137. Respondent's failure to test the ALLDs at the Endicott Facility constitutes violations of 40 C.F.R. § 280.44(a) for the period of at least January 8, 2015 through May 3, 2016.

Count 13 – Failure to Investigate and Report a Suspected Release

138. Complainant repeats, realleges and incorporates by reference paragraphs 1 through 30 and 127 through 146 with the same force and effect as if fully set forth below.
139. During the January 8, 2016 UST inspection of the Endicott Facility, the inspector noted that the electronic interstitial release monitoring system was in an alarm state for the Tank #2 liquid status sensor, indicating a suspected release from this UST into the secondary containment.
140. EPA checked the NYSDEC Spill Database and found that no spill was reported at the facility during the time period.
141. EPA's March 10, 2016 IRL required Respondent to provide: a) documentation that the suspected release noted on January 8, 2016 was investigated within 24 hours of detection, b) the results of that investigation, and c) any report of a confirmed release that was submitted to the NYSDEC.
142. Respondent's June 8, 2016 IRL response provided a statement that the alarm was from high levels of ground water entering the pressurized piping sumps that subsequently was removed and this was why they did not report any suspected release to the NYS DEC. This response did not address the fuel alarms for the interstitial (annular) space for Tank #2.
143. EPA's December 23, 2016 IRL again asked Respondent to provide documentation how the suspected release to the interstitial space of the kerosene UST was investigated within 24 hours of it being detected and the results of that investigation, documentation of any repairs and documentation or any reporting to the NYSDEC.
144. Respondent's May 1, 2017 IRL response did not provide any additional information on the alarm investigation or the steps taken to correct the issue.
145. Respondent failed to conduct an investigation and/or report a suspected release into the secondary containment of Tank #2 at the Endicott Facility within 24 hours of detection from at least January 8, 2016 through the December 27, 2016.
146. Respondent's failure to investigate and/or report to the NYSDEC a suspected release into

the secondary containment of Tank #2 at the Endicott Facility from at least January 8, 2016 through December 27, 2016 constitutes violations of 40 C.F.R. § 280.50(c).

HARPURSVILLE FACILITY

Count 14 – Failure to Investigate and Report a Suspected Release

147. Complainant repeats, realleges and incorporates by reference paragraphs 1 through 30 with the same force and effect as if fully set forth below.
148. The Harpursville Facility is an automobile service station that has four USTs:

Tank 1A: 10,000-gallon UST for regular gasoline storage,
Tank 1B: 5,000-gallon UST for premium gasoline storage, and
Tank 2: 12,000-gallon UST for diesel fuel storage.
Tank 3: 2,000-gallon UST for kerosene storage
149. The USTs at the Harpursville Facility were installed in June 1998, making them new tanks as defined by 40 C.F.R. § 280.12.
150. On January 7, 2016, a duly authorized representative of the EPA inspected the USTs located at the Harpursville Facility.
151. During the January 7, 2016 UST inspection of the Harpursville Facility, the inspector noted that the electronic interstitial release monitoring system was in an alarm state for Tank #3's liquid status sensor, indicating a suspected release from this UST into the secondary containment.
152. EPA checked the NYSDEC Spill Database and found that no spill was reported at the facility during the time period.
153. EPA's March 10, 2016 IRL required that the Respondent provide: a) documentation that the suspected release from Tank #3 noted on January 7, 2016 was investigated within 24 hours of detection, b) the results of that investigation, and c) any report of a confirmed release that was submitted to the NYSDEC.
154. Respondent's June 8, 2016 IRL response provided a statement that the alarm was from high levels of ground water entering the pressurized piping sumps that subsequently was removed and this was why they did not report any suspected release to the NYS DEC. This response did not address the fuel alarms for the interstitial (annular) space for Tank #3 located at the Harpursville Facility.
155. EPA's December 23, 2016 IRL again asked Respondent to provide documentation how the suspected release to the interstitial space of the kerosene UST at the Harpursville Facility was investigated within 24 hours of detection and the results of that investigation, documentation of any repairs and documentation of any reporting to the NYSDEC.
156. Respondent's May 1, 2017 IRL response did not provide any additional information on

the alarm investigation or the steps taken to correct the issue.

157. Respondent failed to conduct an investigation and/or report a suspected release into the secondary containment of Tank #3 at the Harpursville Facility within 24 hours of detection from at least January 7, 2016 through the December 27, 2016.
158. Respondent's failure to investigate and/or report to the implementing agency maintain a suspected release into the secondary containment of Tank #3 at the Harpursville Facility from at least January 7, 2016 through December 27, 2016 constitutes violations of 40 C.F.R. § 280.50(c).

ALL FACILITIES

Count 15 – Failure to Respond to Information Requests

159. Complainant repeats, realleges and incorporates by reference paragraphs 1 through 158 with the same force and effect as if fully set forth below.
160. Pursuant to Section 9005 of the Act, 42 U.S.C. § 6991d, and 40 C.F.R. Section 280.34, EPA sent a RCRA § 9005 IRL, dated March 10, 2016; to Peter Tal, Vice President - Real Estate, Rome Gas, Inc., in order to determine Respondent's compliance with the Act and 40 C.F.R. Part 280 for the Sidney, Endicott and Harpursville Facilities. The IRL was received by Mr. Tal on March 27, 2016 and a response was due 30 days later, or April 26, 2016.
161. When no response was received by EPA by the due date, EPA sent an overdue notice to Mr. Tal on May 18, 2016 asking that he reply to EPA within five days of its receipt. The overdue notice was received on May 21, 2016 and a response was due by May 26, 2016.
162. On May 31, 2016, Peter Tal sent a letter via e-mail dated May 22, 2016 to EPA stating that he had replied to the IRL in "March 2016."
163. On June 1, 2016 EPA Enforcement Officer, Paul Sacker, wrote an e-mail to Mr. Tal stating that EPA had checked its records and had no response from Respondent dated March 2016 or otherwise. Mr. Sacker asked for tracking data on the response. Mr. Tal replied that day stating that the March response was sent by regular mail and he has no receipt or tracking data of it being sent. He committed to resending the information.
164. On June 8, 2016, an incomplete response to the March 10, 2016 IRL was received by EPA by e-mail. The Response did not provide answers to any questions about the ownership of the USTs.
165. On June 14, 2016, Mr. Sacker sent an e-mail to Mr. Tal asking that he clarify information in the company's IRL response regarding the alarms at the three facilities discussed in the IRL. Mr. Tal replied on June 15, 2016 that he would look into the questions raised by Mr. Sacker and get back to him. No further correspondence occurred.
166. Pursuant to Section 9005 of the Act, 42 U.S.C. § 6991d, and 40 C.F.R. § 280.34, EPA

sent a RCRA § 9005, EPA sent an additional IRL to Mr. Tal, dated December 23, 2016 to determine Respondent's compliance with the Act and 40 C.F.R. Part 280 for the all facilities named in paragraph 6 above.

167. Respondent received the second IRL on December 27, 2016, and the due date for a response was thirty (30) days later, or January 26, 2017).
168. On January 2, 2017, Respondent sent an e-mail to EPA requesting a 60-day day extension. A hardcopy of the request was postmarked on January 3, 2017.
169. EPA granted a 30-day extension on January 9, 2017 setting the new due date to February 25, 2016.
170. On March 7, 2017, Respondent sent a letter to EPA requesting an additional sixty (60)-day extension to reply. The letter was sent to the wrong EPA office and was not received by the EPA's UST program until on or about March 25, 2017.
171. EPA responded to the newest extension request on April 26, 2017 granting an additional extension to reply to the December 23, 2016 IRL by May 6, 2017.
172. On May 1, 2017, Respondent submitted a response to the second IRL that only included photographs of overfill devices at the Facilities. None of other questions in the second IRL were addressed.
173. On May 15, 2017, Mr. Sacker attempted to contact Mr. Tal by e-mail to inquire about the missing information in the May 1, 2017 IRL response. Mr. Sacker faxed the e-mail to Mr. Tal on May 23, 2017.
174. On May 25, 2017, Mr. Tal contacted EPA Enforcement Officer by phone and they discussed the incomplete IRL response. Mr. Tal stated that he believed EPA was only interested in the overfill prevention devices at Respondent's facilities and was not sure what else he was supposed to do. Mr. Sacker pointed out to Mr. Tal that EPA needed a reply to all 18 questions in the December 23, 2016 IRL. Mr. Tal promised to send a response within a week of the conversation (by June 1, 2017).
175. To date, no further response from Mr. Tal or the Respondent has been received by EPA
176. Respondent's failure to fully respond to the March 10, 2016 and December 23, 2016 IRLs constitutes violations of 40 C.F.R. § 280.34 and Section 9005 of the Act, 42 U.S.C. § 6991d.
177. Respondent is liable for civil penalties pursuant to Section 9006 of RCRA for its failure to respond to the IRL from at least June 1, 2017 through September 30, 2017.

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

assessed, Section 9006(c) requires EPA “. . . taking into account the seriousness of the violation and any good faith efforts to comply with the applicable requirements.” Additionally, Section 9006(e)(1)&(2) state that EPA may take into effect “the compliance history of an owner or operator. . .” and “[a]ny other factor that the Administrator considers appropriate.” To develop the proposed penalty in this complaint, the Complainant has taken into account the particular facts and circumstances of this case and used US EPA Penalty Guidance for Violations of UST Requirements (EPA’s UST Penalty Policy, dated November 14, 1990), which is available upon request or at this Internet address:

<https://www.epa.gov/ust/compliance-and-enforcement-policy-and-guidance>

EPA’s UST Penalty Policy provides a rational, consistent, and equitable calculation methodology 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. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended through 2015 (“Inflation Adjustment Act”), 28 U.S.C. § 245, required EPA to adjust its penalties for inflation on a periodic basis.

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 \$16,000 per day for each violation occurring after January 12, 2009 through November 2, 2015; and \$22,587 per day for each violation occurring after November 2, 2015. *See* 40 C.F.R. Part 19 and 81 *Fed Reg* 42,091 (July 1, 2016).

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

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

Total Proposed Penalty: **\$175,657.05**

Facility/Violation Number	UST(s) at issue	40 CFR Part 280 requirement violated	Violation summary failure to:	Proposed penalty for count
Sidney Facility - Count 1	Facility	280.34 & 45	Failure to maintain/provide release detection records	\$ 253.00
Sidney Facility - Count 2	Tank 10 & 9A/9B	280.50(c)	Failure to investigate/report suspected release	\$ 2,671.00
New Hartford Facility - Count 3	Facility	280.34 & .45	Failure to maintain/provide release detection records	\$ 5,925.91

Little Falls Facility; Count 4	Facility	280.34 & .45	Failure to maintain/provide release detection records	\$ 356.00
Dolgeville Facility; Count 5	Tanks 003, 004, 005, and 006	280.31(b)(1)	Failure to conduct corrosion protection testing	\$ 3,507.82
Thendara Facility; Count 6	2B	280.44(a)	Failure to conduct performance test on ALLD	\$ 8,915.76
Conklin Facility; Count 7	2 USTs	280.20(c)	Failure to install overfill equipment	\$ 13,479.00
Conklin Facility; Count 8	001 (A, B & C) and 002	280.31(b)	Failure to conduct corrosion protection testing	\$ 28,459.14
Conklin Facility; Count 9	Facility	280.34 & .45	Failure to maintain/provide release detection records	\$ 17,573.46
Johnson City Facility; Count 10	Facility	280.34 & .45	Failure to maintain/provide release detection records	\$ 17,574.92
Binghamton Facility; Count 11	1 (A, B, & C) and 2	280.31(b)	Failure to conduct corrosion protection testing	\$ 2,634.08
Endicott Facility; Count 12	1A, 1B, and 1C	280.44(a)	Failure to conduct performance test on ALLD	\$ 43,569.96
Endicott Facility; Count 13	2	280.50(c)	Failure to investigate/report suspected release	\$ 13,366.00
Harpursville Facility; Count 14	2	280.50(c)	Failure to investigate/report suspected release	\$ 13,366.00
All Facilities; Count 15	N/A	280.34 and Section 9005(a) of RCRA	Failure to respond to IRL	\$ 4,005.00
Total Penalty				\$ 175,657.05

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 with respect to the Respondent 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 will certify compliance with all requirements of 40 C.F.R. Part 280 for each federally regulated UST system at any of its facilities where it is an owner and/or operator of an UST system and undertake to the extent feasible the task specified below concerning the Sidney facility. Specifically, Respondent shall:

- a.) Ensure that all USTs at the Conklin Facility have operating overfill prevention devices installed in accordance with 40 C.F.R. § 280.20(c).
- b.) Ensure that all USTs at the Dolgeville, Conklin, and Binghamton Facilities are tested for cathodic corrosion protection in accordance with 40 C.F.R. § 280.31(b).
- c.) Ensure that all USTs at the Thendara and Endicott Facilities have ALLDs tested annually in accordance with 40 C.F.R. § 280.44(a).
- d.) Ensure that it maintains all monthly release detection records for the tanks and pressurized lines at the New Hartford, Conklin and Johnson City Facilities in accordance with 40 C.F.R. §§ 280.34 and 280.45.
- e.) Provide to EPA within thirty (30) days after service of this Order, a full investigation of the January 2016 fuel alarms noted for the USTs at the Sidney Facility to the extent Respondent can still access these records to document this and report any confirmed releases to the NYSDEC immediately in accordance with 40 C.F.R. § 280.50(c). If records of an investigation are inaccessible, Respondent shall provide EPA contact information for the entity that currently has access to such records.
- f.) Provide to EPA within thirty (30) days after service of this Order, a full investigation of the January 2016 fuel alarms noted for the USTs at the, Endicott, and Harpursville Facilities and report any confirmed releases to the NYSDEC immediately in accordance with 40 C.F.R. § 280.50(c).
- g.) Provide a complete response to EPA's March 10, 2016 and December 23, 2016 IRLs for all Facilities within thirty (30) days after service of this Order in accordance with 40 C.F.R. § 280.34 and Section 9005 of the Act, 42 U.S.C. § 6991d.

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 the Inflation Adjustment Act, a violator failing to take corrective action within the time specified in the Compliance Order that has taken effect is liable for a civil penalty of up to \$57,391. *See* 82 Fed. Reg. 3,133 (January 12, 2017) (codified at 40 C.F.R Part 19).

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 recently 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 apply to all new case filings after that date. A copy of the current Consolidated Rules of Practice, incorporating these amendments, accompanies this “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:

Sybil Anderson
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:

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

E. Exhaustion of Administrative Remedies

Where Respondent fails to appeal an adverse initial decision 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:

Karen L. Taylor
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) 637-3637 (phone)
taylor.karen@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 not to contest the Compliance Order and seeks to pay the total amount of the proposed penalty within thirty (30) days after receipt of the Complaint, Respondent should promptly contact the Assistant Regional Counsel identified above.

Dated: 9/29/17

Dore LaPosta

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

To: Peter Tal
President
Rome Gas Inc.
114 Danberry Circle
New Hartford, NY 13413

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, bearing docket number RCRA-02-2017-7504, and a copy of the Consolidated Rules of Practice, 40 C.F.R. Part 22, by certified mail, return receipt requested, to:

Peter Tal
President
Rome Gas Inc.
114 Danberry Circle
New Hartford, NY 13413

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: October 3, 2017
New York, New York

Yaelen Nijte