

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
**Region 2**

IN THE MATTER OF:

Endicott 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-02-2018-7502

**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. § 6901e 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 ("EPA"), has been duly delegated the authority to institute this action.
4. Respondent is Endicott Gas, Inc. (hereinafter "Endicott" or "Respondent"), a corporation organized pursuant to the laws of the State of New York, located at 415 West Main Street, Endicott, NY 13760, New York State Department of Environmental Conservation Petroleum Bulk Storage Number: 7-129003
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 and is the “owner” and/or “operator” of underground storage tank systems or “UST systems” as those terms are defined in Section 9001 of the Act, 42 U.S.C. §6991, and 40 C.F.R. §280.12, which are located at the address in paragraph 4 above.
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.
8. Pursuant to Sections 2002, 9002, and 9003 of the Act, 42 U.S.C. §§ 6912, 6991a, and 6991b, EPA promulgated regulations setting forth requirements for owners and operators of UST systems, codified at 40 C.F.R. Part 280. These regulations include requirements related to release detection, record-keeping, upgrade requirements, temporary and permanent closure, and financial assurance.
9. 40 C.F.R. § 280.12 defines an “Underground storage tank” or “UST” as any one or combination of tanks (including underground pipes connected thereto) that is used to contain an accumulation of regulated substances, and the volume of which (including the volume of underground pipes connected thereto) is 10 percent or more beneath the surface of the ground.
10. 40 C.F.R. § 280.12 defines an “Existing tank system” as a tank system used to contain an accumulation of regulated substances or for which installation has commenced on or before December 22, 1988.
11. 40 C.F.R. § 280.12 defines a “New tank system” means a tank system that will be used to contain an accumulation of regulated substances and for which installation has commenced after December 22, 1988.
12. 40 C.F.R. § 280.12 defines “Regulated substance” as: (a) Any substance defined in Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980 (but not including any substance regulated as a hazardous waste under subtitle C), and (b) Petroleum, including crude oil or any fraction thereof that is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute).
13. The term “regulated substance” includes but is not limited to petroleum and petroleum-based substances comprised of a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading, and finishing, such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.
14. 40 C.F.R. § 280.12 defines “Petroleum UST system” as an underground storage tank system that contains petroleum or a mixture of petroleum with de minimis quantities of

other regulated substances. Such systems include those containing motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

15. RCRA 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....”
16. Pursuant to 40 C.F.R. §280.34, owners and operators of UST systems must cooperate fully with inspections by the implementing agency, as well as requests for document submission, testing, and monitoring by the owner or operator pursuant to Section 9005 of Subtitle I of the Resource Conservation and Recovery Act, as amended (“RCRA”). Pursuant to 40 C.F.R. §280.34 (c) owners and operators must keep required records at the UST site and immediately available for inspection by the implementing agency, or at a readily available alternative site and they must be provided for inspection to the implementing agency upon request.
17. Pursuant to 40 C.F.R. § 280.34(b)(4) owners and operators of UST systems must maintain records of recent compliance with release detection requirements (40 C.F.R. §280.45). 40 C.F.R. §280.45 specifies records that must be maintained in accordance with 40 C.F.R. 280.34.
18. On or about September 14, 2016, a duly designated representative of EPA Edward Guster conducted an inspection of the USTs at Respondent’s facility (the “Inspection”) as described in paragraphs 4 and 6 above. Potential violations of 40 C.F.R. Part 280 were observed and were later discussed with the facility operators and owners (over the phone).
19. On or about December 8, 2016, EPA issued a Notice of Violations/Information Request Letter (“NOV/IRL”) to Endicott. The NOV/IRL was received by Endicott on December 15, 2016. The full and complete response (including answering specific questions and providing documentation on a variety of UST-related subjects including other gas stations and USTs owned and/or operated by Endicott Gas, Inc., overfill, spill and corrosion protection, UST maintenance, line and tank testing, closure and financial assurance) to the NOV/IRL was due thirty (30) calendar days of receipt, which deadline was on or about January 14, 2017. (See attached December 8, 2016 NOV/IRL).
20. On or about December 21, 2016, Tom LaMont of Ultracon, Inc., a contractor, for Endicott, contacted Mr. Guster to discuss the violations that needed to be corrected.
21. On or about January 4, 2017, Mr. LaMont contacted Mr. Guster to indicate that repairs were made to correct the violations identified in the Inspection at Endicott’s facility, but Mr. LaMont indicated that he had not seen or responded to the NOV/IRL.

22. On or about March 9, 2017, EPA sent a “2<sup>nd</sup> Notice – Response Overdue Letter RCRA UST IR-07-002” to Endicott. A certified mail green card indicated the letter was received by Endicott on March 13, 2017. The letter specified that “you or your representative are to contact our offices within 30-days of receipt of this letter.”
23. On or about April 13, 2017, Mr. Guster contacted Mr. Jagbir Singh Oberoi, an onsite operator and contact person at the Endicott facility, and indicated that the full and complete responses to EPA’s IRL and 2<sup>nd</sup> Notice – Response Overdue were overdue.
24. On or about May 24, 2017, Mr. Oberoi contacted Mr. Guster and requested that Mr. Guster e-mail a copy of the December 2016, NOV/IRL to his AOL email account. On June 2, 2017, Mr. Guster emailed a copy of the NOV/IRL to Mr. Oberoi.
25. On or about July 24, 2017, Mr. Guster re-sent a copy of the NOV/IRL to Mr. Oberoi via e-mail.
26. On or about July 28, 2017, Mr. Maynard Upright, of Ultracon, Inc., requested a copy of the NOV/IRL, via e-mail. Mr. Guster sent a copy of the NOV/IRL to him later that day.
27. On or about August 3, 2017, Mr. Upright indicated to Mr. Guster that he had forwarded the December 2016 NOV/IRL to Mr. Oberoi. Mr. Upright had indicated to Mr. Oberoi that Mr. Upright could not answer the NOV/IRL, and that Endicott Gas, Inc. needed to respond to EPA and should do so quickly.
28. On or about September 11, 2017, Mr. Guster and another EPA inspector Mr. Ronald Lockwood visited the Endicott Gas facility to discuss submitting the NOV/IRL response and talk about what was required to answer the questions. The store clerks contacted Mr. Oberoi to have him discuss with Mr. Guster what information was required to respond to the IRL questions. Mr. Oberoi indicated that he would submit the paperwork within two weeks. None was received by EPA.
29. Between the end of September 2017 and December 13, 2017, Mr. Guster spoke to Mr. Oberoi and Ultracon, Inc. several times regarding Endicott’s overdue response to the NOV/IRL.
30. On or about December 13, 2017, Mr. Guster and EPA’s UST Team Leader Claudia Gutierrez contacted Mr. Oberoi and explained to him what was needed for Endicott to submit its response to the NOV/IRL. Mr. Oberoi indicated again that he needed a copy of the NOV/IRL. Mr. Guster forwarded a copy of the NOV/IRL again to Mr. Oberoi via e-mail.
31. On or about December 20, 2017, Mr. Guster and Ms. Gutierrez once again contacted Mr. Oberoi and discussed what was required for the NOV/IRL response to EPA.

32. On or about December 21, 2017, Mr. Oberoi submitted a pollution liability policy to EPA. The policy did not indicate whether it covered 3<sup>rd</sup> Party Liability for accidental or sudden releases. Other than this pollution liability policy, Endicott did not submit to EPA any additional documentation in response to EPA's questions in the NOV/IRL.
33. On or about January 25, 2018, Mr. Guster contacted Mr. LaMont at Ultracon, Inc. to discuss what, if any, paperwork may have been given to Endicott. Tom indicated that he had no additional paperwork, and further indicated that Endicott needed to respond to the NOV/IRL itself.
34. As of the date of this complaint, EPA has not received any further response from Endicott to the December 8, 2016 NOV/IRL.
35. Respondent's failure to submit a complete and timely response to the IRL constitutes a violation of 40 C.F.R. §280.34 and Section 9005 of the Act, 42 U.S.C. § 6991d.
36. Respondent is liable for civil penalties pursuant to Section 9006 of RCRA for its failure to respond to the IRL between at least January 15, 2017 through September 14, 2018.
37. Section 9005 and 40 C.F.R. §280.34 constitute requirements of Subtitle I of RCRA for purposes of Section 9006(a) of RCRA, 42 U.S.C. § 6991e(a).

### **PROPOSED CIVIL PENALTY**

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

To develop the proposed penalty in this Complaint, Complainant has taken into account the particular facts and circumstances of this case, to the extent known at the time of its filing, and has used "US EPA Penalty Guidance for Violations of UST Requirements" (EPA's "UST Penalty Policy"), dated November 14, 1990. EPA's UST Penalty Policy is available upon request and also publicly available on the Internet at <http://www.epa.gov/swerust1/directiv/od961012.htm>. EPA's UST Penalty Policy provides guidance to effect a rational, consistent and equitable calculation methodologies for applying the statutory penalty criteria (enumerated above) to particular cases.

Section 9006(d)(2)(A) of the Act, 42 U.S.C. § 6991e(d)(2)(A), authorizes the assessment of a civil penalty up to \$10,000 for each tank for each day of violation of any requirement or standard

promulgated by the Administrator of EPA. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended through 2015 (the “Inflation Adjustment Act”), 28 U.S.C. § 245, required EPA to adjust its penalties for inflation on a periodic basis. Consistent with this statutory mandate, EPA has amended the penalty amounts in the November 1990 UST Penalty Policy to reflect inflationary adjustments. The adjustments were made pursuant to the January 11, 2018 document entitled “Amendments to the U.S. Environmental Protection Agency’s Civil Penalty Policies to Account for Inflation (effective January 15, 2018)” (This policy is applicable where violations have occurred after November 2, 2015 and penalties are assessed on or after January 15, 2018).

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

Complainant proposes, subject to the receipt and evaluation of further relevant information that Respondent be assessed the following civil penalties for the violation alleged in this Complaint: A civil penalty of **\$9,702** is proposed for Respondent’s failure to respond to the Information Request Letter Issued under RCR A § 9005 and 40 C.F.R. §280.34 for the UST systems owned and/or operated by Respondent. A penalty calculation worksheet to support the penalty figure for the violation cited in this Complaint is included in Attachment 1, below.

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

### **COMPLIANCE ORDER**

Based on the foregoing, and pursuant to the authority of Section 9006 of the Act, 42 U.S.C. § 6991e, Complainant issues the following Compliance Order against Respondent, which shall take effect thirty (30) days after service of this Order (i.e., the effective date), unless by that date, the Respondent has requested a hearing pursuant to 40 C.F.R. § 22.15. See 42 U.S.C. § 6991(e)(b) and 40 C.F.R. §§ 22.37(b) and 22.7(c):

1. Respondent shall, within thirty (30) days after the effective date of this Order, respond fully to the questions in Enclosure II in the December 8, 2016 NOV/IRL. (a copy of this NOV/IRL is attached)
2. The Response shall contain the following certification:

*I certify that the information contained in this written response notice and any accompanying documents is true, accurate and complete. As to the identified portions of this response for which I cannot personally verify accuracy, I certify under penalty of law that this response 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.*

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Name

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Title

Respondent shall submit the response required to be submitted pursuant to this Order to:

**Claudia Gutierrez, Team Leader  
UST Team  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 20th Floor  
New York, NY 10007-1866  
Attn: Edward Guster**

**NOTICE OF LIABILITY FOR ADDITIONAL CIVIL PENALTIES**

Pursuant to Section 9006(a)(3) of the Act, 42 U.S.C. §6991e(a)(3), and in accordance with the 83 Fed. Reg.1190 (January 10, 2018) codified at 40 C.F.R. Part 19), a violator failing to comply with the requirements of a Compliance Order that has taken effect within the time specified in the Order is liable for a civil penalty up to \$ 58,562 for each day of continued noncompliance.

**PROCEDURES GOVERNING THIS ADMINISTRATIVE LITIGATION**

The rules of procedure governing this civil administrative litigation have been set forth in 64 Fed. Reg. 40138 (July 23, 1999), entitled CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENTS OF CIVIL PENALTIES, ISSUANCE OF COMPLIANCE OR CORRECTIVE ACTION 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 have been 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) A copy of the current Consolidated Rules of Practice, incorporating these revisions, 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). Respondent may seek judicial review of the compliance order pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701 – 706, once it is final and reviewable pursuant to Section 9006(b) of RCRA, 42 U.S.C. § 6991e(b), and 40 C.F.R. §§ 22.31 and 22.37(b).

#### **A. Answering the Complaint**

Where Respondent intends to contest any material fact upon which the Complaint is based, to contend that the proposed penalty is inappropriate or to contend that Respondent is entitled to judgment as a matter of law, Respondent must file with the Regional Hearing Clerk of EPA, Region 2, both an original and one copy of a written Answer to the Complaint (40 C.F.R. §22.15(a)). Such Answer must be filed within 30 days after service of a Complaint. The address of the Regional Hearing Clerk of EPA, Region 2, is:

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

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

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

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

#### **B. Opportunity to Request a Hearing**

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

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

### **C. Failure to Answer**

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

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

### **D. Filing of Documents Filed After the Answer**

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

If filing by the United States Postal Service:

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

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

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

### **E. Exhaustion of Administrative Remedies**

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

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

### **INFORMAL SETTLEMENT CONFERENCE**

Whether or not Respondent requests a formal hearing, EPA encourages settlement of this proceeding consistent with the provisions of the Act and its applicable regulations. 40 C.F.R. § 22.18(b). At an informal conference with a 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/or (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, to reflect 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:

**Melva J. Hayden, Esquire  
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) 637-3230**

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

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

Any settlement that may be reached as a result of an informal settlement conference shall be embodied in a written consent agreement. 40 C.F.R. § 22.18(b)(2). In accepting the consent agreement, Respondent waives its right to contest the allegations in the Complaint and waives its 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).

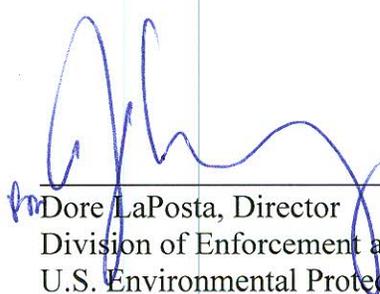
Respondent's entering into a settlement through the signing of such Consent Agreement and its complying with the terms and conditions set forth in the such Consent Agreement terminates this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint. Respondent's entering into a settlement does not extinguish, waive, satisfy or otherwise affect its obligation and responsibility to comply with all applicable statutory and regulatory requirements, 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 in the Complaint and wants 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: \_\_\_\_\_

9/26/18

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

To: Ragbinder Singh, Owner  
Endicott Gas, Inc.  
3109 Belmont Ave.  
Vestal, NY 13850

Ragbinder Singh, Owner  
Endicott Gas, Inc.  
415 West Main Street  
Endicott, NY 13760

cc: Kenneth P. Lynch  
Regional Director  
New York State DEC Region 7  
615 Erie Boulevard West  
Syracuse, NY 13204-2400

Russ Brauksieck  
Chief, Facility Compliance Section  
Division of Environmental Remediation  
NYSDEC  
625 Broadway- 11<sup>th</sup> floor  
Albany, NY 12233-7020

CERTIFICATE OF SERVICE

This is to certify that I have this day caused to be mailed a copy of the foregoing Complaint, Compliance Order, and Notice of Opportunity for Hearing, bearing docket number RCRA-02-2018-7502, and a copy of the Consolidated Rules of Practice, 40 C.F.R. Part 22, by certified mail, return receipt requested, to:

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: September 27, 2018   
New York, New York

Site: **Endicott Gas, Inc., 415 West Main Street, Endicott, NY**

Violation: **\$280.34 - No Response to IRL or NOV**

1. Days of noncompliance: **17-Jan-17** **14-Sep-18**  
2. Number of facilities, tanks or pipes: **1**  
3. Total number of days: **606**

**Part 2 - Economic Benefit Component (See BEN computer model v. 5.6):**

4. One Time Capital & Time Costs: **\$ 4.00**  
5. Delay Capital & Avoided Costs:  
6. Avoided Annually Recurring Costs:  
7. Initial Economic Benefit (4-5+6): **\$ 4.00**  
8. Final Economic Benefit at Penalty Payment Date:

**Part 3 - Matrix Value For The Gravity-Based Component:**

9. Matrix Value (MV): **1,500**

*Inflation Adjustment Rules:*

Value	Start Date	End Date	Inflation	Value+Inflatio	Round To	Matrix	Total
1,500	1/17/2017	9/14/2018	1.8477	\$ 2,771.55	1	\$ 2,772.00	\$ 2,772.00

Note: Inflation adjustments are defined as:

a. See **1/11/86 Amendments to EPA's Civil Penalty Policies for violations >11/2/15**

Potential for Harm: **Major**      Extent of Deviation: **Major**

Justifications for Potential for Harm and Extent of Deviation: **See OSWER Directive 9610.12, Appendix A.**

**Part 4 - Violator-Specific Adjustments To Matrix Value:**

	% Change	Matrix Value	Total Dollar Adjustment
11a. Degree of cooperation or noncooperation:	0%	<b>\$2,772.00</b>	-
12a. Degree of willfulness or negligence:	0%	<b>\$2,772.00</b>	-
13a. History of noncompliance:	0%	<b>\$2,772.00</b>	-
14a. Unique factors:	0%	<b>\$2,772.00</b>	-
15a. Adjusted Matrix Value, (line 10a + Dollar Adjustments in lines 11.a to 14a)			<b>\$2,772.00</b>

Justification for Degree of Cooperation/ Noncooperation:		no adjustment \ No adjustment was made.							
Justification for Degree of Willfulness or Negligence:		no adjustment \ No adjustment was made.							
Justification for History of Noncompliance:		no adjustment \ No adjustment was made.							
Justification for Unique Factors:		no adjustment \ No adjustment was made.							
Calculations for Gravity Based Components (GBC) with Inflation Adjustments:									
16. Environmental Sensitivity:		Low							
17. Environmental Sensitivity Multiplier (ESM):		1							
Justification for Environmental Sensitivity Multiplier:									
18. Days of Noncompliance Multiplier (DNM):		3.5							
Calculations for Gravity Based Components:									
	Start	End	Subset of Days	(AMV)	(ESM)	% of Overall Days	DNM% - (% of overall days x DNM)	TOTAL	
19a.	1/17/2017	9/14/2018	606	\$2,772.00	1	1	3.5	\$ 9,702.00	
20. Total Gravity-Based Component =								\$ 9,702.00	
21. Economic Benefit Component (from line 8):								\$ -	
22. Gravity-Based Component (from line 20):								\$ 9,702.00	
23. Initial Penalty Target Figure: (line 21 plus line 22):								\$ 9,702.00	