

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region 2

U.S. ENVIRONMENTAL PROTECTION AGENCY-REG.11

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REGIONAL HEARING CLERK

United Refining Company,  
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-02-2012-7504

**COMPLAINT**

Complainant hereby alleges as and for her complaint against Respondent:

**Predicate Allegations**

1. This administrative proceeding is being prosecuted pursuant to Section 9006 of the Solid Waste Disposal Act, as amended (the Solid Waste Disposal Act, as amended, henceforth referred to as the "Act").

2. This proceeding seeks to assess a civil penalty against Respondent for violations of the requirements or standards promulgated by the Administrator of the United States Environmental Protection Agency ("EPA") pursuant to Section 9003 of the Act, 42 U.S. C. § 6991b, and to require compliance with said requirements or standards.

3. This Tribunal has jurisdiction over the subject matter of this administrative proceeding pursuant to Section 9006(a) of the Act, 42 U.S.C. § 6991e(a), and 40 C.F.R. § 22.1(a)(4).

4. Section 9006(a)(1) of the Act, 42 U.S.C. § 6991e(a)(1) provides, in part, that "whenever on the basis of any information, the Administrator [of EPA] determines that any person is in violation of any requirement of this subchapter [Subchapter IX, 42 U.S.C. §§ 6991 - 6991i], the Administrator may issue an order requiring compliance within a reasonable specified time period...."

5. Section 9006(c) of the Act, 42 U.S.C. § 6991e(c), provides that "[a]ny order issued under this section shall state with reasonable specificity the nature of the violation, specify a reasonable time for compliance, and assess a penalty, if any, which the Administrator determines is reasonable taking into account the seriousness of the violation and any good faith efforts to comply with the applicable requirements."

6. Pursuant to Section 9006(d)(2)(A) of the Act, 42 U.S.C. § 6991e(d)(2)(A), “[a]ny owner or operator of an underground storage tank who fails to comply with[] any requirement or standard promulgated by the Administrator [of EPA] under section 6991b of this title [Section 9003 of the Act]...shall be subject to a civil penalty not to exceed \$10,000 for each tank for each day of violation.”

7. Under authority of the Federal Civil Penalties Inflation Adjustment Act of 1990, 104 Stat. 890, Public Law 101-410 (codified at 28 U.S.C. § 2461 note), as amended by the Debt Collection Improvement Act of 1996, 110 Stat. 1321, Public Law 104-134 (codified at 31 U.S.C. § 3701 note), EPA has promulgated regulations, codified at 40 C.F.R. Part 19, that, *inter alia*, increase the maximum penalty EPA might obtain pursuant to Section 9006(d) of the Act, 42 U.S.C. § 6991e(d), to \$11,000 for any violation occurring between January 30, 1997 and January 12, 2009, and to \$16,000 for any violation occurring after January 12, 2009.

8. Section 9006(e) of the Act, 42 U.S.C. § 6991e(e), provides that “[b]oth of the following may be taken into account in determining the terms of a civil penalty under [Section 9006(d), 42 U.S.C. § 6991e(d)]: (1) [t]he compliance history of an owner or operator in accordance with this subchapter [Subchapter IX, 42 U.S.C. §§ 6991 - 6991i] [and] (2) “[a]ny other factors the Administrator [of EPA] considers appropriate.”

9. EPA has promulgated regulations governing the installation, operation, maintenance and closure of “underground storage tanks” (as such term is defined in Section 9001(1) of the Act, 42 U.S.C. § 6991(1), and in 40 C.F.R. § 280.12; hereinafter such tanks also referred to as “UST” or “USTs”) by the “owners” (as such term has been defined by Section 9001(3) of the Act, 42 U.S.C. § 6991(3), and 40 C.F.R. § 280.12) and/or “operators” (as such term has been defined in Section 9001(3) of the Act, 42 U.S.C. § 6991(3), and 40 C.F.R. § 280.12) of the USTs.<sup>1</sup>

10. The requirements or standards set forth in the aforementioned (¶ 9, above) regulations, codified in 40 C.F.R. Part 280, constitute the “requirement[s] or standard[s] promulgated by the Administrator [of EPA] under section 6991b of this title [Section 9003 of the Act]” for purposes of Section 9006(d)(2)(A) of the Act, 42 U.S.C. § 6991e(d)(2)(A).

11. The failure to comply with a regulation set forth in 40 C.F.R. Part 280 constitutes a failure to comply with “any requirement or standard promulgated by the Administrator [of EPA] under section 6991b of this title [Section 9003 of the Act]” for purposes of Section 9006(d)(2)(A) of the Act, 42 U.S.C. § 6991e(d)(2)(A), and thus constitutes a “violation of any requirement of this subchapter [Subchapter IX, 42 U.S.C. §§ 6991 - 6991i]” for purposes of Section 9006 of the Act, 42 U.S.C. § 6991e.

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<sup>1</sup>Words or phrases defined in accordance with applicable statutory and/or regulations definitions are subsequently used in this complaint, and are intended to be understood, as so defined.

12. For any violation of a regulation set forth at 40 C.F.R. Part 280, the violator(s) thereof is, *inter alia*, subject to a civil penalty pursuant to Section 9006(d)(2)(A) of the Act, 42 U.S.C. § 6991e(d)(2)(A), as amended.

13. Complainant in this proceeding is the Director of the Division of Enforcement and Compliance Assistance of EPA, Region 2.

14. Complainant has been duly delegated the authority to institute this action on behalf of the Administrator of EPA.

#### **Applicable Statutory and Regulatory Definitions**

15. The term “tank” has been defined in 40 C.F.R. § 280.12 to mean “ a stationary device designed to contain an accumulation of regulated substances and constructed of non-earthen materials (e.g., concrete, steel, plastic) that provide structural support.”

16. The term “underground storage tank” has been defined, in relevant part, to mean:

a. Pursuant to Section 9001(1) of the Act, 42 U.S.C. § 6991(1), “any one or combination of tanks (including underground pipes connected thereto) which is used to contain an accumulation of regulated substances, and the volume of which (including the volume of the underground pipes connected thereto) is 10 per centum or more beneath the surface of the ground.”

b. Pursuant to 40 C.F.R. § 280.12, “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 the underground pipes connected thereto) is 10 percent or more beneath the surface of the ground.”

17. Pursuant to 40 C.F.R. § 280.12, the term “UST system or Tank System means an underground storage tank, connected underground piping, underground ancillary equipment, and containment system, if any.”

18. The term “existing tank system” has been defined in 40 C.F.R. § 280.12 to “mean[] a tank system used to contain an accumulation of regulated substances or for which installation has commenced on or before December 22, 1988.”

19. Pursuant to 40 C.F.R. § 280.12, the term “new tank system” has been defined to “mean[] a tank system that will be used to contain an accumulation of regulated substances and for which installation has commenced after December 22, 1988.”

20. Pursuant to 40 C.F.R. § 280.12, the term “petroleum UST system” has been defined to “mean[] an underground storage tank system that contains petroleum or a mixture of petroleum with *de minimis* quantities of other regulated substances.”

21. The term “regulated substance” has been defined to mean:

a. Pursuant to Section 9001(7) of the Act, 42 U.S.C. § 6991(7), the following: “(A) any substance defined in Section 9601(14) of this title [42 U.S.C. § 9601(14)] (but not including any substance regulated as a hazardous waste under subchapter III of this chapter [42 U.S.C. §§ 6921-6939e]), and (B) petroleum.”

b. Pursuant to 40 C.F.R. § 280.12, the following: “(a) Any substance defined in section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA of 1980 [42 U.S.C. § 9601(14)] (but not including any substance regulated as a hazardous waste under subtitle C [42 U.S.C. §§ 6921-6939e]), 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).

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.”

22. The term “owner” has been defined, in relevant part, to mean:

a. Pursuant to Section 9001(3) of the Act, 42 U.S.C. § 6991(3), “in the case of an underground storage tank in use on November 8, 1984, or brought into use after that date, any person who owns an underground storage tank used for the storage, use, or dispensing of regulated su[b]stances....”

b. Pursuant to 40 C.F.R. § 280.12, “In the case of an UST system in use on November 8, 1984, or brought into use after that date, any person who owns an UST system used for the storage, use, or dispensing of regulated substances....”

23. The term “operator” has been defined to mean:

a. Pursuant to Section 9001(4) of the Act, 42 U.S.C. § 6991(4), “any person in control of, or having responsibility for, the daily operation of the underground storage tank.”

b. Pursuant to 40 C.F.R. § 280.12, “any person in control of, or having responsibility for, the daily operation of the UST system.”

24. The term “person” has been defined to mean:

a. Pursuant to Section 9001(6) of the Act, 42 U.S.C. § 6991(6), such term “has the same meaning as provided in section 6903(15) of this title, except that such term includes a consortium, a joint venture, and a commercial entity, and the United States Government.

b. Section 1004(15) of the Act, 42 U.S.C. § 6903(15), defines “person” to “mean[] an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, or any interstate body and shall include each department, agency, and instrumentality of the United States.”

25. Pursuant to 40 C.F.R. § 280.12, a person means “an individual, trust, firm, joint stock company, Federal agency, corporation, state, municipality, commission, political subdivision of a state, or any interstate body. ‘Person’ also includes a consortium, a joint venture, a commercial entity, and the United States Government.”

### **Respondent’s Identity**

26. Respondent is United Refining Company (hereinafter “United Refining”).

27. Respondent is, and has been, a for-profit corporation organized pursuant to, and existing since July 7, 1981, under, the laws of the State of Pennsylvania.

28. Respondent is a “person” within the meaning of Section 9001(6) of the Act, 42 U.S.C. § 6991(6), and of 40 C.F.R. § 280.12.

29. Respondent is, or has been for the times relevant to the matters alleged below, in the business of owning and/or operating retail gasoline stations in New York State.

### **The Service Stations and their USTs**

30. Since at least December 13, 1989 to the present, Respondent has been the owner and operator of a retail gasoline station, known as Kwik Fill M0332-332, the address of which is 2371 Culver Road, Rochester, New York 14609 (hereinafter this gasoline station referred to as “Service Station I”).

31. From December 13, 1989 to the present, Service Station I has had three USTs, as follows:

a) Tank number 001, installed December 1, 1983, with a capacity of 6,000 gallons;

b) Tank number 002, installed December 1, 1983, with a capacity of 8,000 gallons; and

c) Tank number 003, installed December 1, 1983, with a capacity of 6,000 gallons.<sup>2</sup>

32. With regard to the aforementioned (§ 31, above) USTs at Service Station I, from at least December 13, 1989 to the present, Respondent has been the owner and operator and continues to be the owner and operator of said USTs.

33. Since at least September 21, 1994, to the present, Respondent has been the owner and operator of a retail gasoline station, Kwik Fill-M0150-096, the address of which is 769 Central Avenue, Dunkirk, New York 14048 (hereinafter this gasoline station referred to as "Service Station II").

34. From at least September 21, 1994, to the present, Service Station II has had three USTs, as follows:

a) Tank number 4, installed on September 1, 1994, with a capacity of 10,000 gallons;

b) Tank number 5, installed on September 1, 1994, with a capacity of 10,000 gallons; and

c) Tank number 6, installed on September 1, 1994, with a capacity of 10,000 gallons.

35. With regard to the aforementioned (§ 34, above) USTs at Service Station II, from at least September 21, 1994 to the present, Respondent has been the owner and operator and continues to be the owner and operator of said USTs.

36. Since at least May 31, 1967 through to the present, Respondent has been the owner and operator of a retail gasoline station, Kwik Fill-M0034-082, the address of which is 7630 East Main Road, Westfield, New York 14787 (hereinafter this gasoline station referred to as "Service Station III").

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<sup>2</sup> Both the Petroleum Bulk Storage ("PBS") Application submitted by Respondent to the New York State Department of Conservation ("DEC") on January 11, 2008, the PBS certificate issued by the DEC on November 12, 2004 and Respondent's May 18, 2012 Response to EPA's Section 9005 Information Request Letter ("IRL")(hereinafter "May Responses") indicate that these three tanks were installed in December 1983. The PBS certificate issued by the DEC on March 8, 2011 indicates that these tanks were installed on January 1, 1983. For purposes of this Complaint, the December 1, 1983 date will be used because Respondent stated in its PBS application and in its May 2012 Response that was the date when these three tanks were installed.

37. From at least May 31, 1967 to the present, Service Station III has had three USTs, as follows:

- a) Tank number 1, installed on January 1, 1967, with a capacity of 10,000 gallons;
  - b) Tank number 2, installed on January 1, 1967, with a capacity of 8,000 gallons;
- and
- c) Tank number 3, installed on January 1, 1973, with a capacity of 10,000 gallons.

38. With regard to the aforementioned (§ 37, above) USTs at Service Station III, from at least May 31, 1967 to the present, Respondent has been the owner and operator and continues to be the owner and operator of said USTs.

39. Since at least 2008 to the present, Respondent has been the owner and operator of a retail gasoline station, Kwik Fill M0312-312, the address of which is 342 Forest Avenue, Jamestown, New York 14701 (hereinafter this gasoline station referred to as "Service Station IV").

40. From at least 2008 to the present, Service Station IV has had two USTs, as follows:

- a) Tank number 1, installation date unknown, with a capacity of 8,000 gallons;
- and
- b) Tank number 2, installation date unknown, with a capacity of 8,000 gallons.<sup>3</sup>

41. With regard to the aforementioned (§ 40, above) USTs at Service Station IV, from at least 2008 to the present Respondent has been the owner and operator and continues to be the owner and operator of said USTs.

42. Since at least August 1, 1998 to the present, Respondent has been the owner and operator of a retail gasoline station, Kwik Fill M0380-380, the address of which is 10419 Bennett Road, Fredonia, New York 14063 (hereinafter this gasoline station referred to as "Service Station V").

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<sup>3</sup> In the PBS application submitted on October 21, 2011, Respondent stated that the two USTs were installed prior to December 1985. In the PBS certificate issued to Respondent by the DEC on November 1, 2011, the date of installation was given as December 1, 1985. In its May 2012 Response, the Respondent stated the installation date of the two USTs was unknown. For purposes of this Complaint the "unknown date" will be used because that is the date that Respondent admitted to in its May 2012 Response. In any event, the two USTs appear to have been installed prior to December 22, 1988 and each UST would, *inter alia*, constitute an existing tank system.

43. From August 1, 1998 to the present, Service Station V has had four USTs, as follows:

- a) Tank number 001, installed August 1, 1998, with a capacity of 10,000 gallons;
  - b) Tank number 002, installed August 1, 1998, with a capacity of 10,000 gallons;
  - c) Tank number 003, installed August 1, 1998, with a capacity of 10,000 gallons;
- and
- d) Tank number 004, installed August 1, 1998, with a capacity of 10,000 gallons.

44. With regard to the aforementioned (¶ 43, above) USTs at Service Station V, Respondent has been the owner and operator since at least August 1, 1998 to the present and continues to be the owner and operator of said USTs.

45. Since at least October 9, 2007 to the present, Respondent has been the owner and operator of a retail gasoline station, Kwik Fill M0395-395, the address of which is 2930 North Main Street Extension, Jamestown, New York 14701 (hereinafter this gasoline station referred to as "Service Station VI").

46. From October 9, 2007 to the present, Service Station VI has had three USTs, as follows:

- a) Tank number 001, installed August 13, 2003, with a capacity of 12,000 gallons;
- b) Tank number 002A, installed August 13, 2003, with a capacity of 12,000 gallons; and Tank number 002B, installed August 13, 2003, with a capacity of 4,000 gallons.

47. With regard to the aforementioned (¶ 46, above) USTs at Service Station VI, Respondent has been the owner and operator since at least October 9, 2007 to the present and continues to be the owner and operator of said USTs.

#### **EPA Investigations of Respondent's Service Stations**

48. Pursuant to Section 9005 of the Act, 42 U.S.C. § 6991d, on March 3, 2009, a duly designated representative of EPA conducted an inspection of Service Station I.

49. Pursuant to Section 9005 of the Act, 42 U.S.C. § 6991d, on February 15, 2012, a duly designated representative of EPA conducted an inspection of each of a) Service Station II, b) Service Station III, and c) Service Station V.



50. Pursuant to Section 9005 of the Act, 42 U.S.C. § 6991d, on February 16, 2012, a duly designated representative of EPA conducted an inspection of each of a) Service Station IV and b) Service Station VI.

51. The purpose of each of the aforementioned (§§ 48 through 50, above) inspections was to determine compliance at the respective service station with the applicable provisions and requirements of 40 C.F.R. Part 280 in the operation and maintenance of the USTs.

52. On or about April 19, 2012, EPA issued a “Notice of Violation and Request for Information” pursuant to Section 9005(a) of the Act, 42 U.S.C. § 6991d(a) [hereinafter, such letter referred to as a “Section 9005 IRL”], to Respondent: notifying the Respondent of the deficiencies EPA observed at its facilities, seeking information relating to those deficiencies, obtaining Respondent financial responsibility for each of those facilities, and acquiring a complete listing of all UST facilities that Respondent owns and or operates irrespective of whether those facilities are situated within New York State.

53. On or about May 18, 2012 and May 24, 2012, Respondent provided its Responses to the aforementioned (§ 52, above) Section 9005 IRL (hereinafter “May 2012 Responses”).

54. Each of the aforementioned (§ 53, above) responses was prepared and certified by an individual in the course of carrying out his duties and responsibilities with regard to the ownership and operation of Service Stations I through VI.

#### **Status of the USTs**

55. The DEC has issued or renewed Petroleum Bulk Storage Certificates for the aforementioned (§§ 30 through 47, above) Service Stations I through VI (hereinafter collectively referred to as “the Service Stations”), as follows:

a) On or about December 18, 2009, to Respondent Unified Refining (as owner and operator), for Service Station I;

b) On or about August 1, 2011 to Respondent Unified Refining (as owner and operator) for Service Station II and III;

c) On or about October 25, 2011, to Respondent Unified Refining (as owner and operator) for Service Stations IV;

d) On or about July 16, 2008, to Respondent Unified Refining (as owner and operator) for Service Stations V; and

e) On or about December 21, 2007, to Respondent Unified Refining (as owner and operator) for Service Station VI.

56. At the time of each of the inspections referenced in ¶¶ 48 through 50, above, (and for an additional period of time prior and subsequent thereto):

- a) each of the aforementioned (¶ 31, above) three USTs at Service Station I was in use;
- b) each of the aforementioned (¶ 34, above) three USTs at Service Station II was in use);
- c) each of the aforementioned (¶ 37, above) three USTs at Service Station III was in use;
- d) each of the aforementioned (¶ 40, above) two USTs at Service Station IV was in use;
- e) each of the aforementioned (¶ 43, above) four USTs at Service Station V was in use; and
- f) each of the aforementioned (¶ 46, above) three USTs at Service Station VI was in use.

57. Each of the following USTs constituted a “new tank system”:

- a) at Service Station II, each of tank numbers 4, 5, and 6 (¶ 34, above);
- b) at Service Station V, each of tank numbers 001, 002, 003 and 004 (¶ 43, above); and
- c) at Service Station VI, each of Tanks 001 and 002A/002B (¶ 46, above).

58. Each of the following USTs constituted an “existing tank system”:

- a) at Service Station I, each of tank numbers 01, 02, and 03 (¶ 31, above);
- b) at Service Station III, tank numbers 1, 2, and 3 (¶ 37, above); and
- c) at Service Station IV, each of tank numbers 1, and 2 (¶ 40, above).

59. Each of the UST systems situated at Service Stations I through VI, contained a “regulated substance” within the meaning of Section 9001(2) of the Act, 42 U.S.C. § 6991(2), and 40 C.F.R. § 280.12.

**Count 1, Service Station I – Failure to upgrade metallic piping**

60. Complainant re-alleges each allegation contained in Paragraphs “1” through “59” with the same force and effect as if fully set forth herein.

61. Pursuant to 40 C.F.R. § 280.21(c), owners and operators of existing UST systems must upgrade metallic piping with corrosion protection by no later than December 22, 1998.

62. Each of tank numbers 001, 002 and 003 at Respondent’s Service Station I was and is an existing petroleum UST system for purposes of 40 C.F.R. § 280.21.

63. Respondent, in both its PBS application for Service Station I submitted on January 11, 2008 and in its May 2012 Responses, stated that its three UST systems had been installed in 1983.

64. At the time of the March 3, 2009 EPA Inspection, the inspector observed that the underground piping associated with each of the three USTs systems was steel piping that was in contact with the ground and routinely contained a regulated substance.

65. In EPA’s Section 9005 IRL, EPA requested documentation that the underground steel piping associated with the three UST systems at Service Station I had been upgraded with corrosion protection as required by 40 C.F.R. § 280.21.

66. In its May 2012 Responses, Respondent stated “[t]he discovery of steel piping during the March 3, 2009 inspection resulted in the tanks system being placed temporarily out of service until the permitting process to replace the product lines was approved. The product piping was upgraded to double-walled flex piping prior to being placed back in service.”

67. Respondent in its March 19, 2009 letter to the DEC, which was attached to and incorporated into its May 2012 Responses, stated “. . .the piping was uncovered at the submersibles and found that it was steel heading towards the dispensers from both the Nolead and Midgrade tanks. The pea stone was also removed from under a dispenser and found that the piping was also steel heading back towards the tanks. There was also continuity from the tanks to the dispensers indicating that the piping is steel. The distance between the tanks and the dispensers is not great and it is believed that the entire piping runs are, in fact, steel.”

68. In an email to Complainant dated June 8, 2012, Respondent stated “[t]his facility had the tanks in temporary out of service status from March 5, 2009, when confirmation was made that the piping was steel, until the completion of the double wall flex piping replacement, June 29, 2010.”

69. Respondent’s failure to comply with the upgrade requirements for the metallic piping associated with the three UST systems at Service Station I from at least October 1, 2007 through March 5, 2009 is a violation of 40 C.F.R. § 280.21(c).

**Count 2, Service Station II – Failure to maintain records of release detection**

70. Complainant re-alleges each allegation contained in Paragraphs “1” through “59” with the same force and effect as if fully set forth herein.

71. Pursuant to 40 C.F.R. § 280.40(a), “[o]wners and operators of UST systems of new and existing UST systems must provide a method or combination of methods of release detection that” meets the requirements set forth therein.

72. Pursuant to 40 C.F.R. § 280.41(a), owners and operators of petroleum UST systems must provide, *inter alia*, release detection for tanks in accordance with 40 C.F.R. § 280.43(d) – (h).

73. Pursuant to 40 C.F.R. § 280.43(g), owners and operators of petroleum UST systems may use interstitial monitoring as a method of release detection for tanks if the tanks are double walled or the tanks have a secondary barrier immediately around or beneath it.

74. Pursuant to 40 C.F.R. § 280.45, “[a]ll UST system owners and operators must maintain records in accordance with 40 C.F.R. § 280.34 demonstrating compliance with all applicable requirements of this subpart [40 C.F.R. Part 280, Subpart D].”

75. 40 C.F.R. § 280.34 (b)(4) requires that “[o]wners and operators must maintain” information pertaining to “[r]ecent compliance with release detection requirements (40 C.F.R. § 280.45)....”

76. The aforementioned (¶¶ 74 and 75 above) required recordkeeping provides, pursuant to 40 C.F.R. § 280.45(b), “[t]he results of any sampling, testing or monitoring must be maintained for at least 1 year....”

77. Each of tank numbers 4, 5, and 6 at Respondent’s Service Station II was and is a petroleum UST system for purposes of 40 C.F.R. § 280.41.

78. Each of tank numbers 4, 5, and 6 is a double wall tank installed in September 1994.

79. At the time of the February 15, 2012 EPA Inspection, release detection monitoring of the three UST systems at Respondent’s Service Station II was being conducted via electronic monitoring.

80. At the time of the February 15, 2012 EPA Inspection, the inspector was only able to observe documentation of electronic interstitial monitoring records for the period of August 2011 through January 2012.

81. EPA's Section 9005 IRL requested all monthly release detection monitoring records for the period of February 15, 2011 through the date of the company's receipt of the Section 9005 IRL for Service Station II.

82. In its May 2012 Responses, Respondent stated "[t]he records for February 2011 through July 2011 cannot be provided. During this time period, the facility manager failed to document the monthly interstitial monitoring. This manager is no longer employed."

83. Respondent's failure to maintain records of release detection monitoring for the three UST systems at Service Station II from at least February 15, 2011 through July 31, 2011 is a violation of 40 C.F.R. § 280.45.

**Count 3, Service Station III – Failure to maintain the last three readings of impressed current**

84. Complainant re-alleges each allegation contained in Paragraphs "1" through "59" with the same force and effect as if fully set forth herein

85. Pursuant to 40 C.F.R. § 280.31(c), "UST systems with impressed current must also be inspected every sixty days to insure the equipment is running properly."

86. Pursuant to 40 C.F.R. § 280.31(d)(1), for "UST systems using cathodic protection. . . the results of the last three inspections required in paragraph (c) of this section. . ." must be maintained.

87. Each of tank numbers 1, 2, and 3 at Respondent's Service Station III was and is a UST system for purposes of 40 C.F.R. § 280.31.

88. Each of tank numbers 1, 2, and 3 is a steel carbon/steel iron tank protected from corrosion via impressed current.

89. At the time of the February 15, 2012 EPA Inspection, the last three entries in the Cathodic Protection Rectifier log for the inspection of the impressed current at Respondent's Service Station III were dated February 9, 2012, December 27, 2011 and July 27, 2011.

90. There was a period of greater than 60 days between the December 27, 2011 reading and the July 27, 2011 reading.

91. EPA's Section 9005 IRL requested all rectifier inspection logs for Respondent's Service Station III for the time period between July 27, 2011 and December 27, 2011.

92. In its May 2012 Responses, Respondent stated "[r]ectifier logs for the period between July 27, 2011 through December 27, 2011 cannot be provided. A new manager started

at this facility in August 2011 and did not understand the requirement for documenting the rectifier readings.”

93. Respondent’s failure to maintain the results of the inspection it had performed at Service Station III between December 27, 2011 and October 27, 2011 (a period of sixty days) is a violation of 40 C.F.R. § 280.31(d)(1).

**Count 4, Service Station IV – Failure to ensure equipment is running properly**

94. Complainant re-alleges each allegation contained in Paragraphs “1” through “59” and Paragraph “85” with the same force and effect as if fully set forth herein.

95. Each of tank numbers 1 and 2 at Respondent’s Service Station IV was and is an UST system for purposes of 40 C.F.R. § 280.31.

96. Each of tanks numbered 1 and 2 is an 8,000 gallon steel carbon/steel iron tank protected from corrosion via impressed current.

97. At the time of the February 16, 2012 EPA Inspection, the inspector noted that the impressed current system was not running properly from October 3, 2011 through February 14, 2012 because the current (ampere) reading for the impressed current recorded in the Cathodic Protection Rectifier Log for Service Station IV was between 0 and 0.5 amps when the voltage reading was 12.

98. Prior to the October 3, 2011 current (ampere) readings, the current reading for the impressed current recorded in the Cathodic Protection Rectifier Log for Respondent’s Service Station IV was above 7 amps whenever the voltage reading was at least 12 volts.

99. EPA’s Section 9005 IRL requested documentation that the USTs systems at Service Station IV were protected from corrosion in some other manner for the period from October 3, 2011 through the date of the company’s receipt of the Section 9005 IRL and/or that the equipment for the impressed current system was running properly.

100. In its May 2012 Responses, Respondent stated “[d]uring the 2/16/2012 EPA inspection it was discovered that the Amp meter had been reporting low readings. A CP technician was deployed to the site on 2/17/2012 to troubleshoot the issue. The impressed current system was tested and diagnosed that adequate protection was being provided and that the amp meter itself was not functioning properly. The amp meter was replaced that day.”

101. Respondent’s failure to ensure that the impressed current equipment at Service Station IV was running properly for the period between at least December 1, 2011 (earliest of the last three rectifier readings at time of the inspection) and February 17, 2012 is a violation of 40 C.F.R. § 280.31(c).

**Count 5, Service Station V—Failure to maintain records of release detection**

102. Complainant re-alleges each allegation contained in Paragraphs “1” through “59” and Paragraphs “71” through “76” with the same force and effect as if fully set forth herein.

103. Each of tank numbers 001, 002, 003, and 004, at Respondent’s Service Station V was and is a petroleum UST system for purposes of 40 C.F.R. § 280.41.

104. Each of tank numbers 001, 002, 003, and 004 at Service Station V is a double wall tank installed in August 1998.

105. At the time of the February 15, 2012 EPA Inspection, release detection monitoring of the three UST systems was being conducted via electronic monitoring.

106. At the time of the February 15, 2012 EPA Inspection, the inspector was only able to observe documentation of electronic interstitial monitoring records for nine of the previous twelve months (May 2011 – January 2012).

107. EPA’s Section 9005 IRL requested all monthly release detection monitoring records for the period of February 15, 2011 through the date of the company’s receipt of the Section 9005 IRL for Service Station V.

108. In its May 2012 Responses, Respondent stated “[r]ecords for February 2011 through April 2011 cannot be provided. During this time period, the facility manager failed to document the monthly interstitial monitoring. This manager is no longer employed.”

109. Respondent’s failure to maintain records of release detection monitoring for the four UST systems at Service Station V from at least February 15, 2011 through April 30, 2011 is a violation of 40 C.F.R. § 280.45.

**Count 6, Service VI—Failure to maintain records of release detection**

110. Complainant re-alleges each allegation contained in Paragraphs “1” through “59” and Paragraphs “71” through “76” with the same force and effect as if fully set forth herein.

111. Each of tank numbers 001 and 002A/002B at Service Station VI was and is a petroleum UST system for purposes of 40 C.F.R. § 280.41.

112. Each of tank numbers 001 and 002A/002B at Service Station VI is a double walled fiberglass reinforced plastic tank installed in August 2003.

113. At the time of the February 16, 2012 EPA Inspection, release detection monitoring of the UST systems was being conducted via electronic monitoring.

114. At the time of the February 16, 2012 EPA Inspection, the inspector was not able to observe documentation of electronic interstitial monitoring records for the month of August 2011.

115. EPA's Section 9005 IRL requested all monthly release detection monitoring records for the period of February 16, 2011 through the through the date of the company's receipt of the Section 9005 IRL for Service Station VI.

116. In its May 2012 Responses, Respondent stated "[r]ecords for August 2011 cannot be provided. During this period, the manager failed to document the monthly interstitial monitoring."

117. Respondent's failure to maintain records of release detection monitoring for the three UST systems at Service Station VI for the month of August 2011 is a violation of 40 C.F.R. § 280.45.

### **PROPOSED CIVIL PENALTY**

Section 9006(d)(2)(A) of the Act, 42 U.S.C. § 6991e (d)(2)(A), authorizes the assessment of a civil penalty against any person of up to \$10,000 for each UST 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 by the Debt Collection and Improvement Act of 1996, Pub. L. No. 104-34, 110 Stat. 1321 (1996), required EPA to adjust its penalties for inflation on a periodic basis. EPA issued a Civil Monetary Penalty Inflation Adjustment Rule on December 31, 1996, set forth in 61 *Fed. Reg.* 69360 (1996); on February 13, 2004, 69 *Fed. Reg.* 7121 (2004); and on December 11, 2008, 73 *Fed. Reg.* 239 (2008), codified at 40 C.F.R. Part 19.

Under Table I of the Civil Monetary Penalty Inflation Adjustment Rule, the maximum civil penalty under Section 9006(d)(2) of the Act, 42 U.S.C. § 6991e(d)(2), for each UST for each day of violation occurring between January 30, 1997 and January 12, 2009 is \$11,000. The maximum civil penalty for a violation(s) occurring after January 12, 2009 was increased to \$16,000.

The penalties are proposed pursuant to the "U.S. EPA Penalty Guidance for Violations of UST Requirements," dated November 1990 ("UST penalty guidance"; a copy of which is available upon request or at this Internet address: <http://www.epa.gov/swerust1/directiv/od961012.htm>). The penalty amounts in this UST penalty guidance were amended by a September 21, 2004 document entitled, "Modifications to EPA Penalty Policies to implement the Civil Monetary Penalty Inflation Rule (pursuant to the Debt Collection Improvement Act of 1996, Effective October 1, 2004)," and a December 29, 2008 document entitled, "Amendments to EPA's Civil Penalty Policies to Implement the 2008 Civil Monetary Penalty Inflation Adjustment Rule (Effective January 12, 2009)." A more specific guidance entitled "Revision to Adjusted Penalty



Policy Matrices Issued on November 16, 2009” was issued on April 6, 2010. (These documents are available upon request.) The penalty guidance for UST violations provides a rational, consistent, and equitable calculation methodology for applying the statutory penalty factors to particular cases.

Based upon the facts alleged in this Complaint and taking into account factors such as the seriousness of the violations and any good faith efforts by the Respondent to comply with the applicable requirements, Complainant proposes, subject to receipt and evaluation of further relevant information, to assess the following civil penalties:

<u>Count 1</u> : Failure to upgrade metallic piping at Service Station I	\$26,539
<u>Count 2</u> : Failure to maintain release detection records at Service Station II	\$3,217
<u>Count 3</u> : Failure to maintain the last three records of the impressed current at Service Station III	\$847
<u>Count 4</u> : Failure to ensure equipment is running properly at Service Station IV	\$4,248
<u>Count 5</u> : Failure to maintain release detection records at Service Station V	\$4,257
<u>Count 6</u> : Failure to maintain release detection records at Service Station VI	\$3,187
<b><u>Total Proposed Penalty Amount for Counts 1-6</u></b>	<b><u>\$42,295</u></b>

Penalty Computation Worksheets explaining the rationale for the proposed civil penalties in this specific case are attached to this Complaint.

**COMPLIANCE ORDER**

Pursuant to the authority granted EPA in Section 9006 of the Act, 42 U.S.C. § 6991e, Complainant issues the following Compliance Order against Respondent United Refining. This Compliance Order shall become final (*i.e.* take effect) thirty (30) days after service of this Compliance Order (henceforth, the “effective date”) unless, by said date, Respondent United Refining has requested a hearing as provided for in 40 C.F.R. § 22.15. Pursuant to this Compliance Order, United Refining shall:

1. Respondent shall, starting no later than thirty (30) days of the effective date of this Order, comply with all applicable UST system standards in 40 C.F.R. Part 280 for all the UST systems at the Facilities cited in this Order, including but not limited to corrosion protection and release detection monitoring recordkeeping.
2. In accordance with 40 C.F.R. §§ 280.45, Respondent shall ensure that records for release detection monitoring of all UST systems it owns and operates are recorded at least monthly and that all records are maintained for at least twelve months.
3. In accordance with 40 C.F.R. §§ 280.31, Respondent shall ensure that the equipment for the impressed current cathodic protection systems for all applicable UST systems it owns and operates is running properly and that the last three inspection records of its cathodic protection system are maintained.

Respondent shall, within sixty (60) calendar days after the effective date of this Order, submit to EPA written notice of its compliance (accompanied by a copy of all appropriate supporting documentation) or noncompliance for each of the requirements set forth herein. If the Respondent is in noncompliance with a particular requirement, the notice shall state the reasons for noncompliance and shall provide a schedule for achieving expeditious compliance with the requirement. Furthermore, in all documents or reports submitted to EPA pursuant to this Compliance Order, the Respondent’s written notice shall contain the following certification:

I certify that the information contained in this written notice and the accompanying documents is true, accurate and complete. As to the identified portions of this response for which I cannot personally verify their accuracy, I certify under penalty of law that this response and all attachments were prepared so as to ensure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Respondent shall submit the documents specified above to:

**Dennis J. McChesney Ph.D., MBA, Team Leader  
UST Team  
U.S. EPA Region 2  
290 Broadway, 20th Floor  
New York, New York 10007-1866**

**NOTICE OF LIABILITY FOR ADDITIONAL CIVIL PENALTIES**

Pursuant to the terms of Section 9006(a)(3) of the Act, 42 U.S.C. § 6991e(a)(3), as amended by the Debt Collection Improvement Act of 1996, 110 Stat. 1321, Public Law 104-134 (codified at 31 U.S.C. § 3701 note), and the regulations EPA has codified pursuant thereto set forth at 40 C.F.R. Part 19 [as alleged in paragraph 7 of the complaint], a violator failing to timely comply with a provision of the Compliance Order set forth above, where said order has taken effect, shall be liable for a civil penalty of up to \$37,500 for each day of continued noncompliance.

**PROCEDURES GOVERNING THIS ADMINISTRATIVE LITIGATION**

The rules of procedure governing this civil administrative litigation were promulgated 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," and which are codified at 40 C.F.R. Part 22. A copy of these rules accompanies this "Complaint, Compliance Order and Notice of Opportunity for Hearing."

**A. Answering The Complaint**

Where Respondent intends to contest any material fact upon which the Complaint is based, to contest that the proposed penalty and/or the Compliance Order, to contend that the proposed penalty and/or Compliance Order 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(s) to the Complaint, and such Answer must be filed within 30 days after service of the 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, New York 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 state in the 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, 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 thirty (30) days after the Compliance Order is served, the Compliance 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 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. 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. 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. § 22.17(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 a representative of Complainant, Respondent may comment on the charges made in the Complaint, and Respondent may also provide whatever additional information that it believes 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 wish to raise. At such a conference, Respondent may, if it so chooses be represented by counsel.

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:

Gary H. Nurkin  
Assistant Regional Counsel  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, Room 1623  
New York, New York 10007-1866  
212-637-3195

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 obligations 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.

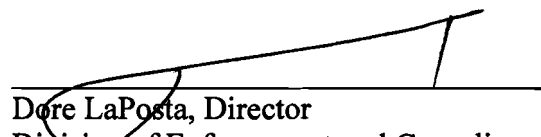
Any settlement that may be reached as a result of an informal settlement conference will be embodied in a written consent agreement. 40 C.F.R. § 22.18(b)(2). In accepting the consent agreement, Respondent waives its rights to contest the allegations in the Complaint and waive any right to obtain judicial review of the final order that is to accompany the consent agreement. 40 C.F.R. § 22.18(b)(2). 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 complying with the terms and conditions set forth in the 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 wishes 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 on the previous page.

Dated: SEPTEMBER 25, 2012

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

**To:** John A. Catsimatidis, Chairman-CEO  
United Refining Company.  
15 Bradley Street  
Warren, PA 16365

**cc:** Russ Brauksieck, Chief  
Facility Compliance Section  
New York State Department of Environmental Conservation  
625 Broadway, 11<sup>th</sup> Floor  
Albany, New York 12233-7012

**bcc:** Dennis McChesney (DECA-WCB)  
John Martin (CD-PAD)  
George Meyer (DECA-RCB)  
William K. Sawyer (ORC-WTS)  
Paul Sacker (DECA-WCB)  
Gary Nurkin(ORC-WTS)



**CERTIFICATE OF SERVICE**

This is to certify that on the \_\_\_\_\_ day of \_\_\_\_\_, 2012, I caused to be mailed a true and correct copy of the foregoing "COMPLAINT, COMPLIANCE ORDER AND NOTICE OF OPPORTUNITY FOR HEARING," bearing Docket Number RCRA-02-2012-7504 (henceforth referred to as the "Complaint"), and with a copy of the "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," 40 C.F.R. Part 22, by certified mail, return receipt requested, to the following addressees listed below. I hand carried the original and a copy of the Complaint to the office of the Regional Hearing Clerk of the United States Environmental Protection Agency, Region 2, 290 Broadway, 16<sup>th</sup> floor, New York, New York 10007-1866.

John A. Catsimatidis, Chairman-CEO  
United Refining Company.  
15 Bradley Street  
Warren, PA 16365

Dated: October 3, 2012  
New York, New York

Mary C. Cochrane

**United Refining Company of PA.**  
**Summary of Violations**  
**Violations Cited**  
As of August 24, 2012

Penalties (see worksheets for specific information)

# of Components    Start            End

Service Station ID	County	Address	Proposed Penalty	Gravity	Eco Benefit	# of Components	Start	End
Service Station I	KWIK-FILL 0327/032	2271 CULVER ROAD & NORTON, ROCHESTER, NY						
	Count #1	§290.21(c) - CP Record Keeping						
	Proposed Penalty	\$ 2,039.00	Gravity	\$ 20,056.00	Eco Benefit	\$ 484.00	3 Lines	07/1/2011 - 07/20/2011
Service Station II	KWIK-FILL 0016/096	789 CENTRAL & LUCAS, DUNKIRK, NY						
	Count #2	§290.45 - Records of monitoring						
	Proposed Penalty	\$ 3,217.00	Gravity	\$ 3,190.00	Eco Benefit	\$ 27.00	1 Facility	06/01/2011 - 07/31/2011
Service Station III	KWIK-FILL 0003/052	7430 E. MAIN ROAD, WESTFIELD, NY						
	Count #3	§290.31(d) - Maintain empty CP inspection record						
	Proposed Penalty	\$ 617.00	Gravity	\$ 640.00	Eco Benefit	\$ 73.00	1 Tank	10/27/2011 - 12/22/2011
Service Station IV	KWIK-FILL 00312/312	142 FOREST AVE, JAMESTOWN, NY						
	Count #4	§290.31(c) & §290.33(a) - Property Inspection Requirements - Current records and ensure adjustment of tanks to property						
	Proposed Penalty	\$ 4,549.00	Gravity	\$ 4,340.00	Eco Benefit	\$ 209.00	2 Tanks	09/01/2011 - 09/12/2011
Service Station V	KWIK-FILL 03900/001	1901 & BENNETT ROAD, FREDONIA, NY						
	Count #5	§290.45 - Records of monitoring						
	Proposed Penalty	\$ 4,257.00	Gravity	\$ 4,240.00	Eco Benefit	\$ 17.00	1 Facility	02/15/2011 - 03/22/2011
Service Station VI	KWIK-FILL 00053/005	2230 NORTH MAIN STREET EXTENSION, JAMESTOWN, NY						
	Count #6	§290.45 - Records of monitoring						
	Proposed Penalty	\$ 3,167.00	Gravity	\$ 3,180.00	Eco Benefit	\$ 7.00	1 Facility	04/22/2011 - 05/31/2011

**TOTAL PENALTY                                    \$ 42,295.00                                    Gravity                    \$41,735.00                    Eco Ben.                    \$560.00**

Site: **Kwik-Fill 332/332, 2271 CULVER ROAD & NORTON, ROCHESTER, NY**  
 Violation: **§280.21(c) - CP for metal piping**

- 1. Days of noncompliance: **1-Oct-07 5-Mar-09**
- 2. Number of facilities, tanks or pipes: **3**
- 3. Total number of days: **522**

**Part 2 - Economic Benefit Component (See BEN computer model v. 4.3):**

- 4. One Time Capital & Time Costs: **\$ 804.00**
- 5. Delay Capital & Avoided Costs: **\$ 723.00**
- 6. Avoided Annually Recurring Costs: **\$ 243.00**
- 7. Initial Economic Benefit (4-5+6): **\$ 324.00**
- 8. Final Economic Benefit at Penalty Payment Date: **\$ 484.00**

**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+Inflation	Round To	Matrix	Total
10a.	1,500	10/1/2007	1/12/2009	1.2895	\$ 1,934.25	10	\$1,930.00	\$ 5,790.00
10b.	1,500	1/13/2009	3/5/2009	1.4163	\$ 2,124.45	10	\$2,120.00	\$ 6,360.00

Note: Inflation adjustments are defined as:

- a. **17.23% increase effective Oct 1, 2004 - see Debt Collection Act of 1996**
- b. **9.83% increase effective Jan 13,2009**

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%	\$5,790.00	-
11b. Degree of cooperation or noncooperation:	0%	\$6,360.00	-
12a. Degree of willfulness or negligence:	0%	\$5,790.00	-
12b. Degree of willfulness or negligence:	0%	\$6,360.00	-
13a. History of noncompliance:	0%	\$5,790.00	-
13b. History of noncompliance:	0%	\$6,360.00	-
14a. Unique factors:	0%	\$5,790.00	-
14b. Unique factors:	0%	\$6,360.00	-
15a. Adjusted Matrix Value, (line 10a + Dollar Adjustments in lines 11.a to 14a)			<b>\$5,790.00</b>
15b. Adjusted Matrix Value, (line 10b + Dollar Adjustments in lines 11.b to 14b)			<b>\$6,360.00</b>

Justification for Degree of Cooperation/ Noncooper: **no adjustmer** No adjustment was made.  
 Justification for Degree of Willfulness or Negligence: **no adjustmer** No adjustment was made.  
 Justification for History of Noncompliance: **no adjustmer** No adjustment was made.  
 Justification for Unique Factors: **no adjustmer** No adjustment was made.

Calculations for Gravity Based Components (GBC) with Inflation Adjustments:

16. Environmental Sensitivity: **Moderate**  
 17. Environmental Sensitivity Multiplier (ESM): **1.5**

Justification for Environmental Sensitivity Multiplier: **Overlies a NYS Primary aquifer**

18. Days of Noncompliance Multiplier (DNM): **3**

	Start	End	Days	DNM
18a.	10/1/2007	1/12/2009	470	3
18b.	1/13/2009	3/5/2009	52	0

Calculations for Gravity Based Components:

	Start	End	(AMV)	(ESM)	(DNM)	TOTAL
19a.	10/1/2007	1/12/2009	\$5,790.00	1.5	3	\$ 26,055.00
19b.	1/13/2009	3/5/2009	\$6,360.00	1.5	0	\$ -

20. Total Gravity-Based Component = **\$ 26,055.00**

21. Economic Benefit Component (from line 8): **\$ 484.00**

22. Gravity-Based Component (from line 20): **\$ 26,055.00**

23. Initial Penalty Target Figure: (line 21 plus line 22): **\$ 26,539.00**

Site: **KWIK FILL M0150-096, 769 CENTRAL & LUCAS, DUNKIRK, NY**  
 Violation: **§280.45 - Records of monitoring**

- 1. Days of noncompliance: **15-Feb-11 31-Jul-11**
- 2. Number of facilities, tanks or pipes: **1**
- 3. Total number of days: **167**

**Part 2 - Economic Benefit Component (See BEN computer model v. 4.3):**

- 4. One Time Capital & Time Costs:
- 5. Delay Capital & Avoided Costs:
- 6. Avoided Annually Recurring Costs: **\$ 32.00**
- 7. Initial Economic Benefit (4-5+6): **\$ 32.00**
- 8. Final Economic Benefit at Penalty Payment Date: **\$ 37.00**

**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+Inflation Round To	Matrix	Total
10a.	1,500	2/15/2011	7/31/2011	1.4163	\$ 2,124.45	10 \$2,120.00	\$ 2,120.00

Note: Inflation adjustments are defined as:  
**a. 9.83% increase effective Jan 13,2009**

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>\$2,120.00</b>	-
12a. Degree of willfulness or negligence:	0%	<b>\$2,120.00</b>	-
13a. History of noncompliance:	0%	<b>\$2,120.00</b>	-
14a. Unique factors:	0%	<b>\$2,120.00</b>	-
15a. Adjusted Matrix Value, (line 10a + Dollar Adjustments in lines 11.a to 14a)			<b>\$2,120.00</b>

Justification for Degree of Cooperation/ Noncooper: **no adjustmer** No adjustment was made.  
 Justification for Degree of Willfulness or Negligence: **no adjustmer** No adjustment was made.  
 Justification for History of Noncompliance: **no adjustmer** No adjustment was made.  
 Justification for Unique Factors: **no adjustmer** 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): **1.5**  
 18a. 

Start	End	Days	DNM
2/15/2011	7/31/2011	167	1.5

Calculations for Gravity Based Components:

	Start	End	(AMV)	(ESM)	(DNM)	TOTAL
19a.	2/15/2011	7/31/2011	\$2,120.00	1	1.5	\$ 3,180.00

20. Total Gravity-Based Component = **\$ 3,180.00**

21. Economic Benefit Component (from line 8): **\$ 37.00**

22. Gravity-Based Component (from line 20): **\$ 3,180.00**

23. Initial Penalty Target Figure: (line 21 plus line 22): **\$ 3,217.00**

Site: **KWIK FILL M0034/082, 7630 E. MAIN ROAD, WESTFIELD, NY**  
 Violation: **§280.31(d) - Maintain every CP inspection record**

- 1. Days of noncompliance: **27-Oct-11 27-Dec-11**
- 2. Number of facilities, tanks or pipes: **3**
- 3. Total number of days: **62**

**Part 2 - Economic Benefit Component (See BEN computer model v. 4.3):**

- 4. One Time Capital & Time Costs:
- 5. Delay Capital & Avoided Costs:
- 6. Avoided Annually Recurring Costs: **\$ 6.00**
- 7. Initial Economic Benefit (4-5+6): **\$ 6.00**
- 8. Final Economic Benefit at Penalty Payment Date: **\$ 7.00**

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

- 9. Matrix Value (MV): **100**

*Inflation Adjustment Rules:*

	Value	Start Date	End Date	Inflation	Value+Inflation	Round To	Matrix	Total
10a.	100	10/27/2011	12/27/2011	1.4163	\$ 141.63	10	\$ 140.00	\$ 420.00

Note: Inflation adjustments are defined as:  
**a. 9.83% increase effective Jan 13,2009**

Potential for Harm: **Minor**                      Extent of Deviation: **Moderate**

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>\$420.00</b>	-
12a. Degree of willfulness or negligence:	0%	<b>\$420.00</b>	-
13a. History of noncompliance:	0%	<b>\$420.00</b>	-
14a. Unique factors:	0%	<b>\$420.00</b>	-
15a. Adjusted Matrix Value, (line 10a + Dollar Adjustments in lines 11.a to 14a)			<b>\$420.00</b>

Justification for Degree of Cooperation/ Noncooper: **no adjustmer** No adjustment was made.  
 Justification for Degree of Willfulness or Negligence: **no adjustmer** No adjustment was made.  
 Justification for History of Noncompliance: **no adjustmer** No adjustment was made.  
 Justification for Unique Factors: **no adjustmer** No adjustment was made.

Calculations for Gravity Based Components (GBC) with Inflation Adjustments:

16. Environmental Sensitivity: **High**  
 17. Environmental Sensitivity Multiplier (ESM): **2**

Justification for Environmental Sensitivity Multiplier: **Overlies a NYS SWAP**

18. Days of Noncompliance Multiplier (DNM): **1**  
 Start End Days DNM  
 18a. **10/27/2011 12/27/2011 62 1**

Calculations for Gravity Based Components:

	Start	End	(AMV)	(ESM)	(DNM)	TOTAL
19a.	<b>10/27/2011</b>	<b>12/27/2011</b>	<b>\$420.00</b>	<b>2</b>	<b>1</b>	<b>\$ 840.00</b>
20. Total Gravity-Based Component =						<b>\$ 840.00</b>
21. Economic Benefit Component (from line 8):						<b>\$ 7.00</b>
22. Gravity-Based Component (from line 20):						<b>\$ 840.00</b>
23. Initial Penalty Target Figure: (line 21 plus line 22):						<b>\$ 847.00</b>



Site: **KWIK FILL MO312/312, 342 FOREST AVE, JAMESTOWN, NY**

Violation: **§280.31(c) and 33(a) - Properly inspect impressed current system and ensure equipment is working properly.**

- 1. Days of noncompliance: **1-Dec-11 17-Feb-12**
- 2. Number of facilities, tanks or pipes: **2**
- 3. Total number of days: **79**

**Part 2 - Economic Benefit Component (See BEN computer model v. 4.3):**

- 4. One Time Capital & Time Costs:
- 5. Delay Capital & Avoided Costs:
- 6. Avoided Annually Recurring Costs: **\$ 8.00**
- 7. Initial Economic Benefit (4-5+6): **\$ 8.00**
- 8. Final Economic Benefit at Penalty Payment Date: **\$ 8.00**

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

- 9. Matrix Value (MV): **750**

*Inflation Adjustment Rules:*

	Value	Start Date	End Date	Inflation	Value+Inflation Round To	Matrix	Total
10a.	<b>750</b>	<b>12/1/2011</b>	<b>2/17/2012</b>	<b>1.4163</b>	<b>\$ 1,062.23</b>	<b>10 \$1,060.00</b>	<b>\$ 2,120.00</b>

Note: Inflation adjustments are defined as:

- a. **9.83% increase effective Jan 13,2009**

Potential for Harm: **Moderate**      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>\$2,120.00</b>	-
12a. Degree of willfulness or negligence:	0%	<b>\$2,120.00</b>	-
13a. History of noncompliance:	0%	<b>\$2,120.00</b>	-
14a. Unique factors:	0%	<b>\$2,120.00</b>	-
15a. Adjusted Matrix Value, (line 10a + Dollar Adjustments in lines 11.a to 14a)			<b>\$2,120.00</b>

Justification for Degree of Cooperation/ Noncooper: **no adjustmer** No adjustment was made.

Justification for Degree of Willfulness or Negligenc: **no adjustmer** No adjustment was made.

Justification for History of Noncompliance: **no adjustmer** No adjustment was made.

Justification for Unique Factors: **no adjustmer** No adjustment was made.

Calculations for Gravity Based Components (GBC) with Inflation Adjustments:

16. Environmental Sensitivity: **High**  
17. Environmental Sensitivity Multiplier (ESM): **2**

Justification for Environmental Sensitivity Multiplier **Overlies NYS SWAP**

18. Days of Noncompliance Multiplier (DNM): **1**  
18a. 

	Start	End	Days	DNM
	12/1/2011	2/17/2012	79	1

Calculations for Gravity Based Components:

	Start	End	(AMV)	(ESM)	(DNM)	TOTAL
19a.	12/1/2011	2/17/2012	\$2,120.00	2	1	\$ 4,240.00
20. Total Gravity-Based Component =						\$ 4,240.00
21. Economic Benefit Component (from line 8):						\$ 8.00
22. Gravity-Based Component (from line 20):						\$ 4,240.00
23. Initial Penalty Target Figure: (line 21 plus line 22):						\$ 4,248.00

Site: **KWIKFILL M380/380, 10419 BENNETT ROAD, FREDONIA, NY**  
 Violation: **§280.45 - Records of monitoring**

- 1. Days of noncompliance: **15-Feb-11 30-Apr-11**
- 2. Number of facilities, tanks or pipes: **1**
- 3. Total number of days: **75**

**Part 2 - Economic Benefit Component (See BEN computer model v. 4.3):**

- 4. One Time Capital & Time Costs:
- 5. Delay Capital & Avoided Costs:
- 6. Avoided Annually Recurring Costs: **\$ 14.00**
- 7. Initial Economic Benefit (4-5+6): **\$ 14.00**
- 8. Final Economic Benefit at Penalty Payment Date: **\$ 17.00**

**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+Inflation Round To	Matrix	Total
10a.	<b>1,500</b>	<b>2/15/2011</b>	<b>4/30/2011</b>	<b>1.4163</b>	<b>\$ 2,124.45</b>	<b>10 \$2,120.00</b>	<b>\$ 2,120.00</b>

Note: Inflation adjustments are defined as:  
**a. 9.83% increase effective Jan 13,2009**

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>\$2,120.00</b>	-
12a. Degree of willfulness or negligence:	0%	<b>\$2,120.00</b>	-
13a. History of noncompliance:	0%	<b>\$2,120.00</b>	-
14a. Unique factors:	0%	<b>\$2,120.00</b>	-
15a. Adjusted Matrix Value, (line 10a + Dollar Adjustments in lines 11.a to 14a)			<b>\$2,120.00</b>

Justification for Degree of Cooperation/ Noncooperativ **no adjustmer** No adjustment was made.

Justification for Degree of Willfulness or Negligence: **no adjustmer** No adjustment was made.

Justification for History of Noncompliance: **no adjustmer** No adjustment was made.  
 Justification for Unique Factors: **no adjustmer** No adjustment was made.

Calculations for Gravity Based Components (GBC) with Inflation Adjustments:

16. Environmental Sensitivity: **High**  
 17. Environmental Sensitivity Multiplier (ESM): **2**

Justification for Environmental Sensitivity Multiplier: **Overlies a NYS SWAP**

18. Days of Noncompliance Multiplier (DNM): **1**

	Start	End	Days	DNM
18a.	2/15/2011	4/30/2011	75	1

Calculations for Gravity Based Components:

	Start	End	(AMV)	(ESM)	(DNM)	TOTAL
19a.	2/15/2011	4/30/2011	\$2,120.00	2	1	\$ 4,240.00

20. Total Gravity-Based Component = **\$ 4,240.00**

21. Economic Benefit Component (from line 8): **\$ 17.00**

22. Gravity-Based Component (from line 20): **\$ 4,240.00**

23. Initial Penalty Target Figure: (line 21 plus line 22): **\$ 4,257.00**

Site: **KWIK FILL M0395-395, 2930 NORTH MAIN STREET EXTENSION, JAMESTOWN, NY**  
 Violation: **§280.45 - Records of monitoring**

- 1. Days of noncompliance: **1-Aug-11 31-Aug-11**
- 2. Number of facilities, tanks or pipes: **1**
- 3. Total number of days: **31**

**Part 2 - Economic Benefit Component (See BEN computer model v. 4.3):**

- 4. One Time Capital & Time Costs:
- 5. Delay Capital & Avoided Costs:
- 6. Avoided Annually Recurring Costs: **\$ 6.00**
- 7. Initial Economic Benefit (4-5+6): **\$ 6.00**
- 8. Final Economic Benefit at Penalty Payment Date: **\$ 7.00**

**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+Inflation Round To	Matrix	Total
10a.	1,500	8/1/2011	8/31/2011	1.4163	\$ 2,124.45	10 \$2,120.00	\$ 2,120.00

Note: Inflation adjustments are defined as:

- a. **9.83% increase effective Jan 13,2009**

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>\$2,120.00</b>	-
12a. Degree of willfulness or negligence:	0%	<b>\$2,120.00</b>	-
13a. History of noncompliance:	0%	<b>\$2,120.00</b>	-
14a. Unique factors:	0%	<b>\$2,120.00</b>	-
15a. Adjusted Matrix Value, (line 10a + Dollar Adjustments in lines 11.a to 14a)			<b>\$2,120.00</b>

Justification for Degree of Cooperation/ Noncooper: **no adjustmer** No adjustment was made.

Justification for Degree of Willfulness or Negligence: **no adjustmer** No adjustment was made.

Justification for History of Noncompliance: **no adjustmer** No adjustment was made.

Justification for Unique Factors: **no adjustmer** No adjustment was made.

Calculations for Gravity Based Components (GBC) with Inflation Adjustments:

16. Environmental Sensitivity: **Moderate**  
 17. Environmental Sensitivity Multiplier (ESM): **1.5**

Justification for Environmental Sensitivity Multiplier: **Overlies a NYS Primary Aquifer**

18. Days of Noncompliance Multiplier (DNM): **1**

	Start	End	Days	DNM
18a.	8/1/2011	8/31/2011	31	1

Calculations for Gravity Based Components:

	Start	End	(AMV)	(ESM)	(DNM)	TOTAL
19a.	8/1/2011	8/31/2011	\$2,120.00	1.5	1	\$ 3,180.00

20. Total Gravity-Based Component = **\$ 3,180.00**

21. Economic Benefit Component (from line 8): **\$ 7.00**

22. Gravity-Based Component (from line 20): **\$ 3,180.00**

23. Initial Penalty Target Figure: (line 21 plus line 22): **\$ 3,187.00**