

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

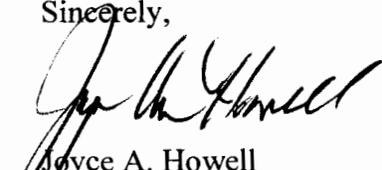
Ms. Lydia Guy  
Regional Hearing Clerk (3RC00)  
U.S. Environmental Protection Agency, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2019

Re: Resource Conservation and Recovery Act  
Administrative Complaint, Compliance Order  
and Notice of Opportunity for Hearing  
IMO Ross Transport Co., Inc. and Arnold Steinman  
EPA Docket No. RCRA-03-2010-0268

Dear Ms. Guy:

Enclosed please find a Motion to Dismiss Count II of the Complaint filed pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, and Revocation /Termination or Suspension of Permits ("Consolidated Rules of Practice") set forth at 40 C.F.R. Part 22. Under cover of this letter, I am copying Respondents with the same.

Sincerely,



Joyce A. Howell  
Sr. Assistant Regional Counsel

Enclosures

cc: Hon. Heather Gray, Acting Regional Judicial Officer  
Arnold Steinman  
Ross Transport c/ Arnold Steinman  
Marie Owens Powell (3LC70)

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

In the Matter of:

Ross Transport Co., Inc.  
and Arnold Steinman

Respondents,

4220 Almond Street  
Philadelphia, PA 19137

Facility.

U.S. EPA Docket No.  
RCRA-03-2010-0268

Proceeding under Section 9006  
of the Resource Conservation and  
Recovery Act, as amended,  
42 U.S.C. § 6991e

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**MOTION TO DISMISS COUNT II OF THE COMPLAINT  
WITH PREJUDICE**

Pursuant to 40 C.F.R. § 22.17(b) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules")*, 40 C.F.R. Part 22, the United States Environmental Protection Agency, Region III ("Complainant") respectfully moves to dismiss Count II of the Complaint against Respondents Ross Transport Co., Inc. and Arnold Steinman. In support of this Motion, the Complainant avers as follows:

1. The Complaint in this matter was filed on August 3, 2010. The Complaint alleged that the Respondents violated Subtitle I of RCRA, 42 U.S.C. §§ 6991-6991m, and the Commonwealth of Pennsylvania's federally authorized underground storage tank program with respect to a certain underground storage tank at Respondents' facility located at 4220 Almond Street, Philadelphia, Pennsylvania, 19137.
2. The Complaint was served upon Respondent Ross Transport, Co., Inc. on August 4, 2010 by UPS, next day delivery and on Respondent Arnold Steinman on September 2, 2010 via by United States Postal Service ("USPS) certified mail, return receipt requested.
3. A copy of the Commonwealth of Pennsylvania's federally authorized underground storage tank program, 25 PA Code §§ 245.1 *et seq.*, was enclosed with the Complaint and was served on Respondents with the Complaint and filed with the Regional Hearing Clerk with the original Complaint and made a part of the record.
4. Neither Respondent filed an Answer to the Complaint.
5. On November 9, 2010 Complainant filed a Motion for Default Order against Respondents for failure to Answer the Complaint as provided by 40 C.F.R. § 22.17(b).
6. Count II of the Complaint alleged that Respondents violated 25 PA Code § 245.442(2)(ii) because Respondents never performed a line tightness test every three years in accordance with 25 PA Code § 245.445(2) or had monthly monitoring conducted in accordance with 25 PA Code § 245.445(3) for the underground piping associated with the UST at the Facility as required by 25 PA Code § 245.442(2)(ii).
7. On or about April 23, 2012, correspondence from the Pennsylvania Department of Environmental Protection (PADEP) indicated Respondents had removed the underground

storage tank from the ground that was the subject of the Complaint. Contamination from the tank was observed. Site characterization and clean up actions were implemented to remediate the contamination. A closure report meeting the requirements of 25 Pa. Code § 245.310(b) was submitted by Respondent Arnold Steinman. PADEP accepted said closure report by letter dated December 5, 2012.

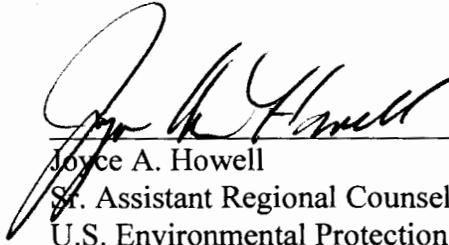
8. On July 2, 2013 the Region III Regional Judicial Officer issued an Order requiring Complainant to supplement the record regarding calculation of the proposed penalty. On July 18, 2013, Complainant submitted a response to the Order to Supplement the Record.
9. On August 8, 2013 the Region III Regional Judicial Officer issued a Second Order requiring Complainant to supplement the record regarding calculation of the proposed penalty. On August 8, 2013, Complainant submitted a response to the Second Order to Supplement the Record.
10. On December 31, 2013, the Region III Regional Judicial Officer issued an Initial Decision and Default Order as to Counts I and III of the Complaint.

11. During the pendency of the Motion for Default, Respondents removed the underground storage tank from the ground and have satisfied PADEP that the contamination caused by the underground storage tank has been remediated. Accordingly Complaint moves to dismiss Count II of the Complaint and the Compliance Order contained therein with prejudice. 40 C.F.R. § 22.14(d).

Respectfully submitted,

Dated: \_\_\_\_\_

6/12/2014



Joyce A. Howell  
Sr. Assistant Regional Counsel (3RC30)  
U.S. Environmental Protection Agency,  
Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029



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**CERTIFICATE OF SERVICE**

I hereby certify that on the date set forth below, I caused to be hand-delivered to Ms. Lydia Guy, Regional Hearing Clerk (3RC00), U.S. EPA Region III, 1650 Arch Street, 5<sup>th</sup> Floor, Philadelphia, PA 19103-2029, the original and one copy of the foregoing Motion to Dismiss Count II of the Complaint. I further certify that on the date set forth below, I caused true and correct copies of the same to be served upon each of the following persons at the following addresses and in the manner identified below:

Via Hand Delivery to:

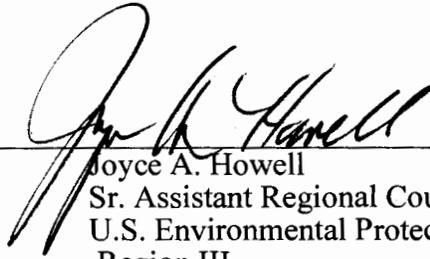
Heather Gray  
Acting Regional Judicial Officer (3RC00)  
U.S. Environmental Protection Agency, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2019.

Via, Certified Mail, Return Receipt Requested, Postage Prepaid, to:

Arnold Steinman  
1300 Adams Avenue  
Philadelphia, PA 19124

Ross Transport c/o  
Arnold Steinman  
1300 Adams Avenue  
Philadelphia, PA 19124

Date: 6/12/2014



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Joyce A. Howell  
Sr. Assistant Regional Counsel (3RC30)  
U.S. Environmental Protection Agency  
Region III  
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Philadelphia, PA 19103-2029