

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

*Lynia Gary*

In Re:	)	
	)	
Samad Corporation	)	Administrative Complaint,
12680 Darby Brooke Court	)	and Notice of Opportunity
Woodbridge, Virginia 22192	)	for Hearing
	)	
<b>RESPONDENT</b>	)	Docket No. RCRA-03-2010-0255
	)	
Minnesota Avenue Citgo	)	Proceeding Under Section 9006 of
3820 Minnesota Avenue, N.E.	)	the Resource Conservation and
Washington, D.C. 20019	)	Recovery Act, as amended, 42
	)	U.S.C. Section 6991e
<b>FACILITY</b>	)	

**ADMINISTRATIVE COMPLAINT AND  
NOTICE OF OPPORTUNITY FOR HEARING**

**I. INTRODUCTION**

This Administrative Complaint, Compliance Order and Notice of Opportunity for Hearing ("Complaint") is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA" or "Complainant") by Section 9006 of the Solid Waste Disposal Act, commonly referred to as the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984 (collectively referred to hereinafter as "RCRA"), 42 U.S.C. § 6991e, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits

("Consolidated Rules of Practice"), 40 C.F.R. Part 22, a copy of which is enclosed with this Complaint.

Complainant, the Director of the Land and Chemicals Division of the U.S. Environmental Protection Agency, Region III, hereby notifies Samad Corporation ("Respondent") that EPA has reason to believe that Respondent has violated certain provisions of Subtitle I of RCRA, 42 U.S.C. §§ 6991-6991m, and the District of Columbia's federally-authorized underground storage tank ("UST") program, with respect to certain underground storage tanks ("USTs") at a facility located at 3820 Minnesota Avenue, N.E. in Washington, D.C. Section 9006(a)-(d) of RCRA, 42 U.S.C. § 6991e(a)-(d) authorizes EPA to take an enforcement action, including the issuance of a compliance order and/or the assessment of a civil penalty, whenever it is determined that a person is in violation of any requirement of RCRA Subtitle I, EPA's regulations thereunder (40 C.F.R. Part 280), or any regulation of a state underground storage tank program which has been authorized by EPA.

Effective May, 4, 1998, pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c, and 40 C.F.R. Part 281, Subpart A, the District of Columbia was granted final authorization to administer a state UST management program *in lieu* of the Federal UST management program established under Subtitle I of RCRA, 42 U.S.C. §§ 6991-6991m. The provisions of the District of Columbia UST management program, through this final authorization, are enforceable by EPA pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e.

The District of Columbia's authorized UST program regulations are set forth in the District of Columbia Municipal Regulations, Title 20, Chapters 55 *et seq.*, and will be cited hereinafter as 20 DCMR §§ 5500 *et seq.*

EPA has given the District of Columbia, through the District of Columbia Department of the Environment ("DCDOE"), prior notice of the issuance of this Complaint in accordance with Section 9006(a)(2) of RCRA, 42 U.S.C. § 6991e(a)(2).

In support of this Complaint, the Complainant makes the following allegations, findings of fact and conclusions of law:

## **II. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. Respondent is, and was at the time of the violations alleged herein, a corporation and a "person" as defined in Section 9001(5) of RCRA, 42 U.S.C. § 6991(5), and as defined in 20 DCMR § 6899.1.
2. Respondent is, and was at the time of the violations alleged herein, an "operator" and/or the "owner," as those terms are defined in Sections 9001(3) and (4) of RCRA, 42 U.S.C. § 6991(3) and (4), and 20 DCMR § 6899.1, of at least three (3) "underground storage tanks" ("USTs") and "UST systems" as those terms are defined in Section 9001(10) of RCRA, 42 U.S.C. § 6991(10) and 20 DCMR § 6899.1, at the Minnesota Avenue Citgo Station located at 3820 Minnesota Avenue, N.E., Washington, D.C. (the "Facility"). These USTs consist of three 10,000-gallon USTs, as follows:
  - a. Tank 1, containing regular gasoline, and manifolded to Tank 2 as a "slave" tank, meaning that it does not have its own pump and external piping;
  - b. Tank 2, containing regular gasoline, and manifolded to Tank 1 as a master tank containing a pump and external piping for both manifolded tanks; and

- c. Tank 3, containing premium gasoline.
3. Tanks 1, 2 and 3 at the Facility were installed in 1986, and are “existing tank systems” as that term is defined at 20 DCMR § 6899.1.
4. At all times relevant to the violations alleged herein, Tanks 1, 2 and 3 at the Facility have been used to store gasoline, which is a petroleum product and is a “regulated substance” as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and 20 DCMR § 6899.1. Tanks 1, 2 and 3 at the Facility are therefore “petroleum UST systems” as that term is defined at 20 DCMR § 6899.1.

#### COUNT 1

5. The allegations of Paragraphs 1 through 4 of this Complaint are incorporated herein by reference.
6. 20 DCMR § 6000 provides that each owner and operator of a new or existing UST system must provide a method or combination of methods of release detection monitoring that meets the requirements described therein.
7. Pursuant to 20 DCMR §§ 6003.1 through 6003.5, tanks which are part of a petroleum UST system must be monitored at least every 30 days for releases using one of the methods listed in 20 DCMR §§ 6008 through 6012, with exceptions not here relevant.
8. From at least August 1, 2007 until at least July 30, 2009, Tanks 1, 2 and 3 at the Facility routinely contained greater than 1 inch of regulated substances and 0.3 percent by weight of the total capacity, and thus were not “empty” during such time as defined in 20 DCMR § 6100.7(a).

9. During the time period from at least August 1, 2007 until at least July 30, 2009, Tanks 1, 2 and 3, were not monitored in compliance with the methods set forth in 20 DCMR §§ 6009 through 6011.
10. During part of the time period from at least August 1, 2007 until at least July 30, 2009, an automatic tank gauging system (“ATG system”) was present at the Facility. This ATG system, if properly programmed and operated, may have been capable of performing release detection testing on Tanks 1, 2 and 3 which could have complied with the requirements of 20 DCMR § 6008. However, at various times between at least August 1, 2007 and at least July 30, 2009, valid tank release detection monitoring results were not generated at least every 30 days using this ATG system.
11. During part of the time period from August 1, 2007 until July 30, 2009, Respondent utilized a method of statistical inventory reconciliation (“SIR”) at the Facility which, if successfully performed, may have been capable of performing release detection testing on Tanks 1, 2 and 3 which could have complied with the requirements of 20 DCMR § 6012. However, at various times between August 1, 2007 and July 30, 2009, valid tank release detection monitoring results were not generated at least every 30 days using SIR.
12. During certain time periods from at least August 1, 2007 to at least July 30, 2009, valid tank release detection monitoring results were not generated at least every 30 days using either the ATG system or SIR, including, but not necessarily limited to, the time periods set forth below:

- a. For Tank 1:
    - (1) From August 1, 2007, to November 19, 2007;
    - (2) From December 20, 2007 to May 12, 2008;
    - (3) From July 11, 2008 to August 2, 2008;
    - (4) From October 11, 2008 to March 12, 2009; and
    - (5) From May 4, 2009 to July 30, 2009.
  - b. For Tank 2:
    - (1) From August 1, 2007, to November 19, 2007;
    - (2) From December 20, 2007 to May 12, 2008;
    - (3) From July 11, 2008 to August 2, 2008; and
    - (4) From October 11, 2008 to March 25, 2009.
  - c. For Tank 3:
    - (1) From August 1, 2007, to November 19, 2007;
    - (2) From March 9, 2008 to May 12, 2008;
    - (3) From October 11, 2008 to December 10, 2008; and
    - (4) From January 10, 2009 to February 13, 2009.
13. From at least August 1, 2007, to November 19, 2007; from December 20, 2007 to May 12, 2008; from July 11, 2008 to August 2, 2008; from October 11, 2008 to March 12, 2009; and from May 4, 2009 to at least July 30, 2009, Respondent violated 20 DCMR §§ 6000 and 6003 by failing to provide a method or methods of tank release detection for the UST system designated as Tank 1 at the Facility which meets the requirements referenced in such regulations.

14. From at least August 1, 2007, to November 19, 2007; from December 20, 2007 to May 12, 2008; from July 11, 2008 to August 2, 2008; and from October 11, 2008 to at least March 25, 2009; Respondent violated 20 DCMR §§ 6000 and 6003 by failing to provide a method or methods of tank release detection for the UST system designated as Tank 2 at the Facility which meets the requirements referenced in such regulations.

15. From at least August 1, 2007, to November 19, 2007; from March 9, 2008 to May 12, 2008; from October 11, 2008 to December 10, 2008; and from January 10, 2009 to at least February 13, 2009, Respondent violated 20 DCMR §§ 6000 and 6003 by failing to provide a method or methods of tank release detection for the UST system designated as Tank 3 at the Facility which meets the requirements referenced in such regulations.

### III. CIVIL PENALTY

Section 9006(d)(2) of RCRA, 42 U.S.C. § 6991e(d)(2), provides in relevant part that any owner or operator of an underground storage tank who fails to comply with any requirement promulgated by EPA under Section 9003 of RCRA, 42 U.S.C. § 6991b, or any requirement or standard of a State program authorized pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c, shall be liable for a civil penalty not to exceed \$10,000 for each tank for each day of violation. Pursuant to the Debt Collection Improvement Act of 1996 ("DCIA") and the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 61 *Fed. Reg.* 69360 (December 31, 1996), codified at 40 C.F.R. Part 19, violations which occur subsequent to January 30, 1997 are subject to a statutory maximum penalty of \$11,000 for each tank for each day of violation, and all violations which occur subsequent to January 12, 2009 are subject to a statutory maximum penalty of \$16,000 for each tank for each day of violation. 73 *Fed. Reg.* 75340 (December 11, 2008)

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

For purposes of determining the amount of any penalty to be assessed, Section 9006(c) and (e) of RCRA, 42 U.S.C. § 6991e(c) and (e), require EPA to take into account the seriousness of the violation, any good faith efforts to comply with the applicable requirements, the compliance history of the owner and operator, and any other appropriate factors. In developing the proposed penalty, Complainant will take into account the particular facts and circumstances of this case with specific reference to EPA's November 1990 "*U.S. EPA Penalty Guidance for Violations of UST Regulations*" ("UST Penalty Guidance"), the "*Modifications to EPA's Penalty Policies to Implement the Civil Monetary Penalty Inflation Adjustment Rule (pursuant to the Debt Collection Improvement Act of 1996 (effective October 1, 2004))*," dated September 21, 2004 (the "2004 Penalty Policy Inflation Modification"), and the "*Amendments to EPA's Civil Penalty Policies to Implement the 2008 Civil Monetary Penalty Inflation Adjustment Rule (Effective January 12, 2009)*," dated December 29, 2008 ("2008 Penalty Policy Inflation Modification"), copies of which are enclosed with this Complaint. These policies provide a rational, consistent and equitable methodology for applying the statutory penalty factors enumerated above to particular cases.

As a basis for calculating a specific penalty pursuant to 40 C.F.R. § 22.19(a)(4), Complainant will consider, among other factors, facts or circumstances unknown to Complainant at the time of issuance of the Complaint that become known after the Complaint is issued. In particular, EPA will consider, if raised, Respondent's ability to



pay as a factor in adjusting the civil penalty. The burden of raising the issue of inability to pay rests with Respondent.

**This Complaint does not constitute a "demand" as that term is defined in the Equal Access to Justice Act, 28 U.S.C. § 2412.** Pursuant to 40 C.F.R. § 22.14(a)(4)(ii), an explanation of the number of and severity of violations alleged in this Complaint is set forth below.

### **COUNT 1**

#### **Failure to Perform Tank Release Detection**

Respondent failed to provide tank release detection for Tanks 1, 2 and 3 during at least the time periods set forth in the Findings of Fact and Conclusions of Law.

Tank release detection is one of the most important elements of the UST regulations because it ensures that regulated substances are not released into the environment in large quantities. Under the UST Penalty Guidance the failure to conduct tank release detection in a proper manner is generally considered a “major” deviation from the statutory and regulatory program with a “major” potential for harm to the environment and/or the regulatory program. In this instance there is no reason to deviate from that assessment.

Depending on the information to be produced by Respondent in the litigation of this matter, Complainant will consider whether it is appropriate to make either upward or downward adjustments to the penalty based on Respondent’s degree of cooperation with EPA and Respondent’s level of culpability. EPA will propose an upward adjustment to the penalty in consideration of Respondent’s prior history of similar violations. In

addition, Complainant may increase the base penalty by a multiplier to account for relative sensitivity of the environment affected by the violation.

Further, a penalty component will be added to reflect the economic benefit gained by Respondent by failing to comply with the tank release detection requirements.

#### **IV. OPPORTUNITY TO REQUEST A HEARING**

Respondent has the right to request a hearing to contest any matter of law or material fact set forth in this Complaint and the appropriateness of any penalty. **To request a hearing, Respondent must file a written Answer to the Complaint with the Regional Hearing Clerk, *within thirty (30) days of receipt of this Complaint*, at the following address:**

**Regional Hearing Clerk  
Mail Code 3RC00  
U.S. EPA Region III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029**

Respondent's Answer must clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint of which Respondent has any knowledge. Where Respondent has no knowledge of a particular factual allegation, the Answer should so state. The Answer should contain: (1) the circumstances or arguments which are alleged to constitute the grounds of any defense; (2) the facts which Respondent disputes; (3) the basis for opposing any proposed relief; and (4) a statement as to whether a hearing is requested. The denial of any material fact or the raising of any affirmative defense shall be construed as a request for a hearing. All material facts not denied in the Answer will be considered as admitted.

***If Respondent fails to file a written Answer within (30) days of receipt of this Complaint, such failure shall constitute an admission of all facts alleged in the Complaint and a waiver of Respondent's right to a hearing on such factual allegations. Failure to file a written Answer may result in the filing of a Motion for Default Order imposing the penalties herein without further proceedings.***

Any hearing requested by Respondent will be conducted in accordance with the provisions of the Consolidated Rules of Practice. A copy of these rules is enclosed with this Complaint.

**A copy of Respondent's Answer and all other documents that Respondent files in this action should be sent to the attorney assigned to represent EPA in this matter, as follows:**

**Benjamin D. Fields  
Senior Assistant Regional Counsel  
Mail Code 3RC30  
U.S. EPA - Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029**

**V. SETTLEMENT CONFERENCE**

Complainant encourages settlement of the proceedings at any time after issuance of the Complaint if such settlement is consistent with the provisions and objectives of RCRA. Whether or not a hearing is requested, Respondent may request a settlement conference with the Complainant to discuss the allegations of the Complaint and the amount of the proposed civil penalty. **A request for a settlement conference does not relieve Respondent of its responsibility to file a timely Answer.**

The procedures in the Consolidated Rules of Practice for quick resolution of a proceeding do not apply in this case because a specific penalty is not proposed. See 40 C.F.R. § 22.18(a).

In the event settlement is reached, the terms shall be expressed in a written Consent Agreement prepared by Complainant, signed by the parties, and incorporated into a Final Order signed by the Regional Administrator or his designee. The execution of such a Consent Agreement shall constitute a waiver of Respondent's right to contest the allegations of the Complaint and its right to appeal the proposed Final Order accompanying the Consent Agreement.


If you wish to arrange a settlement conference, please contact Benjamin D. Fields, Senior Assistant Regional Counsel, at (215) 814-2629. Please note that a request for a settlement conference does not relieve Respondent of its responsibility to file an Answer within thirty (30) days following its receipt of this Complaint.

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

The following Agency offices and officers, and their staffs, are designated as the trial staff to represent the Agency as a party in this case: U.S. EPA, Region III, Office of Regional Counsel; U.S. EPA, Region III, Land and Chemicals Division; and the EPA Assistant Administrator for Enforcement and Compliance Assurance. Commencing from the date of the issuance of this Complaint until issuance of a final agency decision in this case, neither the Administrator, members of the Environmental Appeals Board, Presiding Officer, Regional Administrator, nor the Regional Judicial Officer, may have an *ex parte* communication with the trial staff or any representative of any Respondent on the merits of any issue involved in this proceeding. Please be advised that the Consolidated Rules

of Practice prohibit any unilateral discussion or *ex parte* communication of the merits of a case with the Administrator, members of the Environmental Appeals Board, Presiding Officer, Regional Administrator, or the Regional Judicial Officer after issuance of a Complaint.

Date: 4/28/10


  
Abraham Ferdas, Director  
Land and Chemicals Division

**CERTIFICATE OF SERVICE**

I hereby certify that on the date below I hand-delivered the original and one copy of the attached Complaint and Notice of Opportunity for Hearing to the Regional Hearing Clerk, and caused a true and correct copy to be sent via UPS Overnight to:

Abdolossein Ejtemai  
Managing Member, Samad Corporation  
12680 Darby Brooke Court  
Woodbridge, Virginia 22192

4/29/10  
Date

  
\_\_\_\_\_  
Benjamin D. Fields  
Senior Assistant Regional Counsel