Exhibit A
Motion for Default Order
Docket No. RCRA-03-2018-0131

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

In the Matter of:	)	
	)	Administrative Complaint, Compliance Order and Notice of Opportunity for Hearing
Silky Associates, LLC 200 E Williamsburg Road Sandston, VA 23150	)	
	)	Docket No: RCRA-03-2018-0131
Respondent,	)	
	)	Proceeding Under Section 9006 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6991e
Lucky Mart 200 E Williamsburg Road Sandston, VA 23150	)	
	)	
Facility.	)	

U.S. EPA-REGION 3-RHC
FILED-24JUL2018AM11:07

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 the "Agency") 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 "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, 40 C.F.R. Part 22 ("Consolidated Rules of Practice"), a copy of which is enclosed with this Complaint ("Enclosure A"). The Administrator has delegated this authority under RCRA to the Regional Administrators by EPA Delegation No. 8-25 dated February 26, 2010, and on April 26, 2018 this authority was further delegated in EPA Region III to the Director of the Land and Chemicals Division, the Associate Director of the Office of RCRA Programs in the Land and Chemicals Division, and the Director of

Enforcement, Compliance and Environmental Justice.

Section 9006 of RCRA, 42 U.S.C. § 6991e, authorizes the Administrator to take an enforcement action, including issuing a compliance order or assessing a civil penalty, whenever it is determined that a person is in violation of any requirement of RCRA Subtitle I. Section 9006(d) of RCRA, 42 U.S.C. § 6991e(d), authorizes civil penalties to be assessed against any owner or operator of an underground storage tank ("UST") who fails to comply with, *inter alia*, any requirement or standard of a State program that has been approved pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c.

Effective October 28, 1998, pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991*c*, and 40 C.F.R. Part 281, Subpart A, the Commonwealth of Virginia was granted final authorization to administer a state UST management program *in lieu* of the Federal UST management program established under RCRA Subtitle I of RCRA, 42 U.S.C. §§ 6991-6991m. The provisions of the Virginia UST management program, through this final authorization, have become requirements of RCRA Subtitle I and are, accordingly, enforceable by EPA pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e. Virginia's authorized UST management program regulations are set forth in the Virginia Administrative Code as "Underground Storage Tanks: Technical Standards and Corrective Action Requirements" ("VA UST Regulations"), 9 VAC § 25-580-10 *et seq.*, a copy of which is enclosed with this Complaint ("Enclosure B").

EPA has given the Commonwealth of Virginia Department of Environmental Quality ("VADEQ") notice of the issuance of this Complaint in accordance with Section 9006(a)(2) of RCRA, 42 U.S.C. § 6991e(a)(2).

II. GENERAL ALLEGATIONS

1. At all times relevant to this Complaint, Respondent has been a Virginia limited liability company doing business in the Commonwealth of Virginia.

2. At all times relevant to this Complaint, Respondent has been a "person" as defined by Section 9001(5) of RCRA, 42 U.S.C. § 6991(5), and 9 VAC § 25-580-10.

3. At all times relevant to this Complaint, Respondent has been the "owner" and/or "operator" as those terms are defined by Section 9001(3) and (4) of RCRA, 42 U.S.C. § 6991(3) and (4), and 9 VAC 25-580-10, of 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 9 VAC § 25-580-10, at the Lucky Mart facility located at 200 E Williamsburg Road in Sandston, Virginia ("Facility").

4. On July 18, 2016, an EPA representative conducted a Compliance Evaluation Inspection ("CEI") of the Facility pursuant to Section 9005 of RCRA, 42 U.S.C. § 6991d.

5. At the time of the July 18, 2016 CEI, and at all times relevant to the applicable violations alleged herein:

a. five (5) USTs, as described below, were located at the Facility:

i. a ten thousand (10,000) gallon steel tank that was installed in or about May 1973 and that routinely contained gasoline (premium), a "regulated substance" as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and 9 VAC § 25-580-10 (hereinafter "UST-001"),

ii. a ten thousand (10,000) gallon steel tank that was installed in or about May 1973 and that routinely contained gasoline (regular), a "regulated substance" as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and 9 VAC § 25-580-10 (hereinafter "UST-002"),

iii. a ten thousand (10,000) gallon steel tank that was installed in or about May 1978 and that routinely contained gasoline (regular), a "regulated

substance" as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and 9 VAC § 25-580-10 (hereinafter "UST-003"),

iv. a four thousand (4,000) gallon steel tank that was installed in or about May 1983 and that routinely contained kerosene, a "regulated substance" as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and 9 VAC § 25-580-10 (hereinafter "UST-004[1]"), and

v. a four thousand (4,000) gallon steel tank that was installed in or about May 1985 and that routinely contained diesel, a "regulated substance" as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and 9 VAC § 25-580-10 (hereinafter "UST-005[2]");

b. UST-002 and UST-003 were siphoned manifolded;

c. UST-001, UST-002, UST-003, UST-004 and UST-005 each were connected to galvanized steel underground piping that routinely contained regulated substances conveyed under pressure; and

d. UST-001, UST-002, UST-003, UST-004 and UST-005 and all associated underground piping were equipped with a cathodic protection system to protect against corrosion.

6. At all times relevant to the applicable violations alleged herein, UST-001, UST-002, UST-003, UST-004 and UST-005 and the respective connected underground piping associated with each, was a "petroleum UST system" and "existing UST system" as these terms are defined in 9 VAC § 25-580-10.

[1] Tank UST-004 is identified as Tank UST-005 in the VADEQ tank registration database.
[2] Tank UST-005 is identified as Tank UST-004 in the VADEQ tank registration database.

7. At all times relevant to the applicable violations alleged herein, none of the UST systems at the Facility were "empty" within the meaning of 9 VAC § 25-580-310(1).

8. Pursuant to Section 9005 of RCRA, 42 U.S.C. § 6991d, on March 7, 2017, EPA issued an Information Request letter to Respondent concerning the petroleum UST systems at the Facility.

9. Pursuant to Section 9012 of RCRA, 42 U.S.C. § 6991k, on November 30, 2017, EPA issued a Notice of Intent to Prohibit Delivery letter to Respondent concerning the petroleum UST systems at the Facility.

10. Pursuant to Section 9012 of RCRA, 42 U.S.C. § 6991k, on February 21, 2018, EPA issued an amended Notice of Intent to Prohibit Delivery letter to Respondent concerning the petroleum UST systems at the Facility.

11. Pursuant to Section 9012 of RCRA, 42 U.S.C. § 6991k, from April 3, 2018 until April 10, 2018, EPA prohibited the delivery of regulated substances to UST-002, UST-003 and UST-004.

12. Pursuant to Section 9012 of RCRA, 42 U.S.C. § 6991k, from April 3, 2018 until April 11, 2018, EPA prohibited the delivery of regulated substances to UST-005.

13. Pursuant to Section 9012 of RCRA, 42 U.S.C. § 6991k, beginning April 3, 2018 until the present, EPA has prohibited and is prohibiting the delivery of regulated substances to UST-001.

III. VIOLATIONS

COUNT 1 - FAILURE TO PERFORM TANK RELEASE DETECTION

14. The preceding Paragraphs are incorporated by reference as though fully set forth herein.

15. Pursuant to 9 VAC § 25-580-140(1), with exceptions provided at 9 VAC § 25-580-140(1)(a)-(c) not applicable to any of the USTs at the Facility, owners and operators of

petroleum UST systems are required to monitor tanks at least every 30 days for releases using one of the methods listed in 9 VAC § 25-580-160(4)-(8).

16. At all times relevant to the violations alleged herein, Respondent selected automatic tank gauging ("ATG") under 9 VAC § 25-580-160(4) as its method of release detection for all USTs at the Facility.

17. During the July 18, 2016 CEI, Respondent provided records of ATG testing conducted on July 4, 2016 for UST-001; July 18, 2016 for UST-002 and UST-003; July 17, 2016 for UST-004 and June 4, 2016 for UST-005.

18. In response to EPA's March 7, 2017 information request letter requesting release detection records from August 2016 through February 2017, Respondent provided records of ATG testing conducted on April 1, 2017 for UST-001, UST-002, UST-003 and UST-004.

19. Following receipt of EPA's November 30, 2017 Notice of Intent to Prohibit Delivery letter, Respondent provided records of ATG testing conducted on January 1, 2018 for UST-005.

20. From August 2016 through March 2017, Respondent failed to monitor UST-001, UST-002, UST-003 and UST-004 at least every 30 days for releases by automatic tank gauging.

21. From July 2016 through December 2017, Respondent failed to monitor UST-005 at least every 30 days for releases by automatic tank gauging.

22. During the periods of time indicated in Paragraphs 20 and 21, above, Respondent did not monitor UST-001, UST-002, UST-003, UST-004 or UST-005 at least every 30 days for releases by any of the other release detection monitoring methods specified in 9 VAC § 25-580-160(4)-(8).

23. Respondent's acts and/or omissions as alleged in Paragraphs 20 through 22, above, constitute violations by Respondent of 9 VAC § 25-580-140(1).

COUNT 2 - FAILURE TO PERFORM AUTOMATIC LINE LEAK DETECTOR TESTING

24. The preceding Paragraphs are incorporated by reference as though fully set forth herein.

25. Pursuant to VAC § 25-580-140(2)(a)(1), owners and operators of petroleum UST systems are required to equip underground piping that routinely contains regulated substances conveyed under pressure with an automatic line leak detector conducted in accordance with 9 VAC § 25-580-170(1).

26. Pursuant to 9 VAC § 25-580-170(1), in pertinent part, a test of the operation of the automatic line leak detector must be conducted in accordance with the manufacturer's requirements annually.

27. During the July 18, 2016 CEI, Respondent provided records of automatic line leak detector testing conducted on November 6, 2013 for piping associated with UST-002/UST-003 (manifolded), UST-004 and UST-005.

28. In response to EPA's March 7, 2017 information request letter requesting documentation of all automatic line leak detector testing from 2012 to the then present, Respondent did not provide any records of testing for any of the automatic line leak detectors at the Facility.

29. Following receipt of EPA's November 30, 2017 Notice of Intent to Prohibit Delivery letter, Respondent provided records of automatic line leak detector testing conducted on September 20, 2017 for UST-001, UST-002/UST-003 (manifolded), UST-004 and UST-005.

30. From at least August 1, 2013 through September 19, 2017, Respondent failed to perform an annual test of the automatic line leak detector on the underground piping associated with UST-001.

31. From at least August 1, 2013 through November 5, 2013 and from November 6, 2014 through September 19, 2017, Respondent failed to perform annual tests of the automatic line leak

detectors on the underground piping associated with UST-002/UST-003 (manifolded), UST-004, and UST-005.

32. Respondent's acts and/or omissions as alleged in Paragraphs 30 and 31, above, constitute violations by Respondent of 9 VAC § 25-580-140(2)(a)(1) and 9 VAC § 25-580-170(1).

COUNT 3 - FAILURE TO PERFORM PIPING RELEASE DETECTION

33. The preceding Paragraphs are incorporated by reference as though fully set forth herein.

34. Pursuant to 9 VAC § 25-580-140(2)(a)(2), owners and operators of petroleum UST systems with underground piping that routinely contains regulated substances conveyed under pressure must have an annual line tightness test conducted in accordance with 9 VAC § 25-580-170(2) or have monthly monitoring conducted in accordance with 9 VAC § 25-580-170(3).

35. Respondent selected line tightness testing as its method of complying with the piping release detection requirements of 9 VAC § 25-580-140(2)(a)(2).

36. During the July 18, 2016 CEI, Respondent provided records of line tightness tests conducted on January 30, 2012 for piping associated with UST-001 and UST-002/UST-003 (manifolded), and on November 6, 2013 for piping associated with UST-002/UST-003 (manifolded), UST-004 and UST-005.

37. In response to EPA's March 7, 2017 information request letter requesting documentation of all line tightness testing from 2012 to March 7, 2017, Respondent did not provide any records of testing for piping associated with any of the USTs at the Facility.

38. Following receipt of EPA's November 30, 2017 Notice of Intent to Prohibit Delivery letter, Respondent provided records of line tightness testing conducted on September 20, 2017 for UST-001, UST-002/UST-003 (manifolded), UST-004 and UST-005.

39. From at least August 1, 2013 through September 19, 2017, Respondent failed to perform annual line tightness testing in accordance with 9 VAC § 25-580-170(2) or have monthly monitoring conducted in accordance with 9 VAC § 25-580-170(3) on the underground piping associated with UST-001.

40. From at least August 1, 2013 through November 5, 2013 and from November 6, 2014 through September 19, 2017, Respondent failed to perform annual line tightness testing in accordance with 9 VAC § 25-580-170(2) or have monthly monitoring conducted in accordance with 9 VAC § 25-580-170(3) on the underground piping associated with UST-002/UST-003 (manifolded), UST-004 and UST-005.

41. Respondent's acts and/or omissions as alleged in Paragraphs 39 and 40, above, constitute violations by Respondent of 9 VAC § 25-580-140(2)(a)(2).

COUNT 4 - FAILURE TO HAVE OVERFILL PREVENTION EQUIPMENT

42. The preceding Paragraphs are incorporated by reference as though fully set forth herein.

43. Pursuant to 9 VAC § 25-580-60(4) and 9 VAC § 25-580-50(3)(a)(2), with exceptions provided at 9 VAC § 25-580-60(1)(c) and 9 VAC § 25-580-50(3)(b) not applicable to any of the USTs at the Facility, owners and operators of existing UST systems are required to use overfill prevention equipment that will automatically shut off flow into the tank when the tank is more than 95 percent full, or alert the transfer operator when the tank is no more than 90 percent full by restricting the flow into the tank or triggering a high level alarm.

44. During the July 18, 2016 CEI, EPA's inspector did not observe overfill prevention equipment (e.g., drop tube shut off devices, visible/audible alarms) and was unable to verify the presence of ball floats for the UST-001, UST-002, UST-003, UST-004 and UST-005 UST systems.

45. In response to EPA's March 7, 2017 information request letter requesting documentation confirming the presence of overfill prevention equipment and following receipt of EPA's November 30, 2017 Notice of Intent to Prohibit Delivery letter and February 21, 2018 amended Notice of Intent to Prohibit Delivery letter, Respondent did not provide any overfill verification documentation for any of the UST systems at the Facility.

46. On April 3, 2018, EPA prohibited the delivery of regulated substances to all of the UST systems at the Facility.

47. Respondent provided documentation of installation of overfill prevention equipment on April 10, 2018 for the UST-002, UST-003, and UST-004 UST systems, and on April 11, 2018 for the UST-005 UST system.

48. As of the date of this Complaint, EPA's prohibition on the delivery of regulated substances to the UST-001 UST system is still in effect.

49. From at least August 1, 2013 through at least April 9, 2018, Respondent failed use overfill prevention equipment that automatically shuts off flow into the tank when the tank is more than 95 percent full or alerted the transfer operator when the tank is no more than 90 percent full by restricting the flow into the tank or triggering a high level alarm for the UST-001, UST-002, UST-003, UST-004 and UST-005 UST systems.

50. Respondent's acts and/or omissions as alleged in Paragraph 49, above, constitute violations by Respondent of 9 VAC § 25-580-60(4) and 9 VAC § 25-580-50(3)(a)(2).

COUNT 5 - FAILURE TO TEST CATHODIC PROTECTION SYSTEM

51. The preceding Paragraphs are incorporated by reference as though fully set forth herein.

52. Pursuant to 9 VAC § 25-580-90(2)(a), owners and operators of steel UST systems equipped with cathodic protection systems are required to test for proper operation within 6

months of installation and at least 3 years thereafter by a qualified cathodic protection tester.

53. During the July 18, 2016 CEI, Respondent provided documentation of cathodic protection testing conducted on April 17, 2012.

54. In response to EPA's March 7, 2017 information request letter requesting documentation of its most recent two (2) cathodic protection tests, Respondent did not provide any records of cathodic protection testing.

55. Following receipt of EPA's November 30, 2017 Notice of Intent to Prohibit Delivery letter, Respondent provided a report of cathodic protection test conducted on December 6, 2017.

56. From April 17, 2015 through December 5, 2017, Respondent failed to conduct 3 year tests of the cathodic protection system for the UST systems at the Facility.

57. Respondent's act and/or omission as alleged in Paragraph 56, above, constitute violations by Respondent of 9 VAC § 25-580-90(2)(a).

IV. COMPLIANCE ORDER

58. Beginning not later than thirty (30) days after the Compliance Order becomes a Final Order (pursuant to 40 C.F.R. § 22.37(b)) and ending upon submission of its sixth (6) report, Respondent shall submit to EPA every thirty (30) days a report demonstrating compliance with the tank release detection monitoring requirements of 9 VAC § 25-580-140(1) for UST-002, UST-003, UST-004 and UST-005.

59. Any report, certification, data presentation, or other document submitted by Respondent pursuant to this Compliance Order which discusses, describes, demonstrates, supports any finding or makes any representation concerning Respondent's compliance or noncompliance with any requirement of this Compliance Order shall be certified by a responsible corporate officer or general partner, as appropriate, of Respondent.

The certification required above shall be in the following form:

> I certify that the information contained in or accompanying this [type of submission] is true, accurate, and complete. As to [the/those] identified portions of this [type of submission] for which I cannot personally verify [its/their] accuracy, I certify under penalty of law that this [type of submission] and all attachments were prepared in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.
>
> Signature: _____
> Name: _____
> Title: _____

60. All documents and reports to be submitted pursuant to this Compliance Order shall be sent to the following persons:

1. Documents to be submitted to EPA shall be sent to the attention of:

   Melissa Toffel (3LC31)
   U.S. Environmental Protection Agency - Region III
   1650 Arch Street
   Philadelphia, PA 19103-2029
   Toffel.Melissa@epa.gov
   Fax: (215) 814-5211

2. One copy of all documents submitted to EPA shall also be sent by regular mail to the attention of:

   Russell P. Ellison, III
   UST Program Coordinator
   Office of Spill Response & Remediation
   Division of Land Protection & Revitalization
   VA DEQ
   P.O. Box 1105
   Richmond, VA 23218

61. Failure to comply with any of the terms of this Compliance Order may subject Respondent to the imposition of a civil penalty of up to $58,562 for each day of continued

noncompliance, pursuant to Section 9006(a)(3) of RCRA, 42 U.S.C. § 6991e(a)(3); the Federal Civil Penalties Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, and most recently, by the Federal Civil Inflation Adjustment Act Improvement Act of 2015; and the Civil Monetary Penalty Inflation Adjustment Rule, 83 Fed. Reg. 1190, 1193 (January 10, 2018).

V. PROPOSED 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 or standard of a State program approved 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. This amount has been adjusted pursuant to the Federal Civil Penalties Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, and most recently, by the Federal Civil Inflation Adjustment Act Improvement Act of 2015 by implementing Civil Monetary Penalty Inflation Adjustment Rules codified at 40 C.F.R. Part 19 such that violations of RCRA Section 9006(d)(2), 42 U.S.C. § 6991e(d)(2), that occur on or before November 2, 2015 are subject to a civil penalty not to exceed $16,000 per day per violation, and violations that occur after November 2, 2015 are subject to a civil penalty not to exceed $23,426 per day per violation. *See* 78 Fed. Reg. 66643, 66648 (November 6, 2013) and 83 Fed. Reg. 1190, 1193 (January 10, 2018).

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 in accordance with 40 C.F.R. § 22.19(a)(4).

For purposes of determining the amount of any penalty to be assessed, Sections 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 or operator and any other factors considered appropriate. In developing a proposed penalty for the violations alleged in this Complaint, EPA 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 Policy") ("Enclosure C"), January 11, 2018 *Amendments to the EPA's Civil Penalty Policies to Account for Inflation (effective January 15, 2018) and Transmittal of the 2018 Civil Monetary Penalty Inflation Adjustment Rule* ("Enclosure D"), and December 6, 2013 *Amendments to the U.S. Environmental Protection Agency's Civil Penalty Policies to Account for Inflation (Effective December 6, 2013)* ("Enclosure E"). 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 also consider, among other factors, Respondent's ability to pay a civil penalty. The burden of raising and demonstrating an inability to pay rests with the Respondent. In addition, to the extent that facts and circumstances unknown to Complainant at the time of issuance of this Complaint become known after the Complaint is issued, such facts and circumstances may also be considered as a basis for adjusting a civil penalty.

Pursuant to Section 9006(d)(2) of RCRA, 42 U.S.C. § 6991e(d)(2), Complainant proposes the assessment of a civil penalty of up to $16,000 per day per violation for violations that occurred on or before November 2, 2015, and up to $23,426 per day per violation for violations that occurred after November 2, 2015. This 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 severity of each violation is given below.

COUNT 1 - FAILURE TO PERFORM TANK RELEASE DETECTION:

According to the UST Penalty Policy Appendix A, the tank release detection violations alleged in the Complaint (corresponding to violations of 40 C.F.R. § 280.41(a)) constitute a "major" potential for harm and "major" extent of deviation from the requirements. Respondent's failure to ensure that each UST at the Facility was monitored at least every 30 days for releases using one of the methods required by the federally authorized VA UST Regulations constitutes a major potential for harm because without release detection monitoring a release may go unnoticed with serious detrimental consequences. It is a fundamental goal of the UST regulations to ensure that an UST does not release substances that may harm human health or the environment. While Respondent installed release detection equipment, it failed to consistently operate such equipment for UST-001, UST-002, UST-003, UST-004 and UST-005 for extended periods of time. As the mechanism established by EPA to ensure releases are prevented and minimized is the release detection program, Respondent's failure to comply with the tank release detection monitoring requirements presents a significant harm to, and a major deviation from the requirements of, the RCRA regulatory program. Penalties for this violation will be assessed on a per tank basis since there was an independent obligation to monitor each tank for releases at the Facility.

COUNT 2 - FAILURE TO PERFORM AUTOMATIC LINE LEAK DETECTOR TESTING

According to the UST Penalty Policy Appendix A, the automatic line leak detector testing violations alleged in the Complaint (corresponding to violations of 40 C.F.R. § 280.44(a)) constitute a "major" potential for harm and "major" extent of deviation from the requirements. It

is critically important that facility owners and operators utilize effective methods of detecting releases from underground piping associated USTs, especially for piping that conveys regulated substances under pressure. The prevention and detection of leaks are the cornerstones of the UST regulatory program. Respondent's failure to perform an annual test of the functionality of the line leak detectors for the underground piping associated with UST-001, UST-002/UST-003 (manifolded), UST-004 and UST-005 presented a substantial risk that a leak would go undetected. Respondent's failure to comply with the automatic line leak detector testing requirements presents a significant harm to, and a major deviation from the requirements of, the RCRA regulatory program. Penalties for this violation will be assessed on a per tank basis since there was an independent obligation to test each of the detectors at the Facility.

COUNT 3 - FAILURE TO PERFORM PIPING RELEASE DETECTION

According to the UST Penalty Policy Appendix A, the piping release detection monitoring violations alleged in the Complaint (corresponding to violations of 40 C.F.R. § 280.41(b)(1)(ii)) constitute a "major" potential for harm and "major" extent of deviation from the requirements. As discussed above, it is critically important that facility owners and operators utilize effective methods of detecting releases from underground piping associated USTs, especially for piping that conveys regulated substances under pressure. The prevention and detection of leaks are the cornerstones of the UST regulatory program. Respondent's failure to perform an annual line tightness test or monthly monitoring of underground piping associated with UST-001, UST-002/UST-003 (manifolded), UST-004 and UST-005 presented a substantial risk that a leak would go undetected. Respondent's failure to comply with the piping release detection requirements presents a significant harm to, and a major deviation from the requirements of, the RCRA regulatory program. Penalties for this violation will be assessed on a

per tank basis since there was an independent obligation to monitor the piping associated with each tank for releases at the Facility.

COUNT 4 - FAILURE TO HAVE OVERFILL PREVENTION EQUIPMENT

According to the UST Penalty Policy Appendix A, the overfill prevention violations alleged in the Complaint (corresponding to violations of 40 C.F.R. § 280.21(d)) constitute a "moderate" potential for harm and "major" extent of deviation from the requirements. It is critically important that facility owners and operators utilize effective methods for preventing releases at the time product is being transferred to UST systems. The prevention of releases is an important component of the UST regulatory program. Respondent's failure to have equipment to prevent overfilling during the transfer of product on the UST-001, UST-002, UST-003, UST-004 and UST-005 UST systems presented a substantial risk of harm to human health or the environment associated with a release. Respondent's failure to comply with the overfill prevention requirements presents a significant harm to, and a major deviation from the requirements of, the RCRA regulatory program. Penalties for this violation are assessed on a per tank system basis since there was an independent obligation to have overfill prevention equipment for each tank system at the Facility.

COUNT 5 - FAILURE TO TEST CATHODIC PROTECTION SYSTEM

According to the UST Penalty Policy Appendix A, the cathodic protection testing violations alleged in the Complaint (corresponding to violations of 40 C.F.R. § 280.31(b)(1)) constitute a "moderate" potential for harm and "major" extent of deviation from the requirements. Cathodic protection systems must be tested for proper operation in order to prevent releases from steel UST that have corroded. Especially due to the age of the UST systems at the Facility, Respondent's failure to conduct 3 year testing of its cathodic protection system posed a

major risk of harm to human health and the environment as demonstrated by Respondent's December 6, 2017 cathodic protection test which showed a failing result. (Following receipt of EPA's February 21, 2018 amended Notice of Intent to Prohibit Delivery letter, Respondent repaired its cathodic protection system in accordance with the recommendations of a cathodic protection expert and a February 27, 2018 cathodic protection test showed a passing result.) Respondent's failure to conduct 3 year testing of its cathodic protection system presents a significant harm to, and a major deviation from the requirements of, the RCRA regulatory program. Penalties for this violation are assessed on a Facility basis.

In addition to the above, Complainant may adjust each violation-specific gravity-based penalty discussed above upward or downward based upon the violator-specific and environmental sensitivity adjustment factors described in the UST Penalty Policy. In addition, Complainant may add components to reflect any economic benefit gained by Respondent for failing to comply with each the regulatory requirements as appropriate.

VI. NOTICE OF RIGHT TO REQUEST A HEARING

Respondent may request a hearing before an EPA Administrative Law Judge and at such hearing may contest any material fact upon which the Complaint is based, contest the appropriateness of any compliance order or proposed penalty, and/or assert that the Respondent is entitled to judgment as a matter of law. To request a hearing, Respondent must file a written answer ("Answer") within thirty (30) days after service of this Complaint as set forth in 40 C.F.R. § 22.15(a). The Answer should clearly and directly admit, deny or explain each of the factual allegations contained in this Complaint of which the Respondent has any knowledge. Where a Respondent has no knowledge of a particular factual allegation and so states, such a statement is deemed to be a denial of the allegation. The Answer should contain: (1) the

circumstances or arguments which are alleged to constitute the grounds of any defense; (2) the facts which the Respondent disputes; (3) the basis for opposing any proposed relief; and (4) a statement of whether a hearing is requested. All material facts not denied in the Answer will be considered to be admitted.

Failure of Respondent to admit, deny or explain any material allegation in the Complaint shall constitute an admission by Respondent of such allegation. Failure to file a timely Answer may result in the filing of a Motion for Default Order and the possible issuance of a Default Order imposing the penalties proposed herein without further proceedings. 40 C.F.R § 22.17.

Any hearing requested and granted will be conducted in accordance with the Consolidated Rules of Practice (i.e., Enclosure A). Respondents must send any Answer to:

Regional Hearing Clerk (3RC00)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

In addition, please send a copy of any Answer to:

Jennifer M. Abramson (3RC50)
Senior Assistant Regional Counsel
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

VII. SETTLEMENT CONFERENCE

Complainant encourages settlement of this proceeding 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. **HOWEVER, A REQUEST FOR A SETTLEMENT CONFERENCE DOES NOT RELIEVE RESPONDENT OF ITS RESPONSIBILITY TO FILE A TIMELY ANSWER.**

In the event settlement is reached, its 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 have your counsel contact Jennifer M. Abramson, Senior Assistant Regional Counsel, at (215) 814-2066, prior to the expiration of the thirty (30) day period following service of this Complaint. However, such a request for a settlement conference does not relieve Respondent of its responsibility to file an Answer within thirty (30) days following service of this Complaint. Please note that the Quick Resolution settlement procedures set forth in 40 C.F.R. § 22.18 do not apply to this proceeding as the Complaint seeks a compliance order and does not contain a specific proposed penalty. 40 C.F.R. § 22.18(a)(1).

IX. SEPARATION OF FUNCTIONS AND *EX PARTE* COMMUNICATIONS

The following EPA offices, and the staffs thereof, are designated as the trial staff to represent Complainant as the party in this case: the Region III Office of Regional Counsel; the Region III Land & Chemicals Division; and the Office of the EPA Assistant Administrator for Enforcement and Compliance Assurance. Commencing from the date of 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 on the merits of any issue involved in this proceeding. Please be advised that the Consolidated Rules of

Practice prohibit any *ex parte* discussion of the merits of a case with, among others, the Administrator, members of the Environmental Appeals Board, Presiding Officer, Judicial Officer, Regional Administrator, Regional Judicial Officer, or any other person who is likely to advise these officials on any decision in this proceeding after issuance of this Complaint.

Dated: 7.23.18

John A. Armstead, Director
Land and Chemicals Division
U.S. EPA, Region III

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

In the Matter of:	)	
	)	Administrative Complaint, Compliance
Silky Associates, LLC	)	Order and Notice of Opportunity for
200 E. Williamsburg Road	)	Hearing
Sandston, VA 23150	)	
	)	Docket No: RCRA-03-2018-0131
Respondent,	)	
	)	Proceeding Under Section 9006 of the
Lucky Mart	)	Resource Conservation and Recovery
200 E Williamsburg Road	)	Act, as amended, 42 U.S.C. Section
Sandston, VA 23150	)	6991e
	)	
Facility.	)	

U.S. EPA-REGION 3-RHC
FILED-24JUL2018AM11:08

CERTIFICATE OF SERVICE

I certify that the foregoing ADMINISTRATIVE COMPLAINT, COMPLIANCE ORDER AND NOTICE OF OPPORTUNITY FOR HEARING in the above referenced matter was sent this day in the following manner to the below addressees:

Original and one copy by hand-delivery: Regional Hearing Clerk

Copy by Certified Mail Return Receipt Requested: Mr. Lakhmir Bagga
Silky Associates, LLC
200 E. Williamsburg Road
Sandston, VA 23150

JUL 24 2018
Date

Jennifer M. Abramson (3RC50)
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103
Phone: (215) 814-2066
Email: Abramson.Jennifer@epa.gov

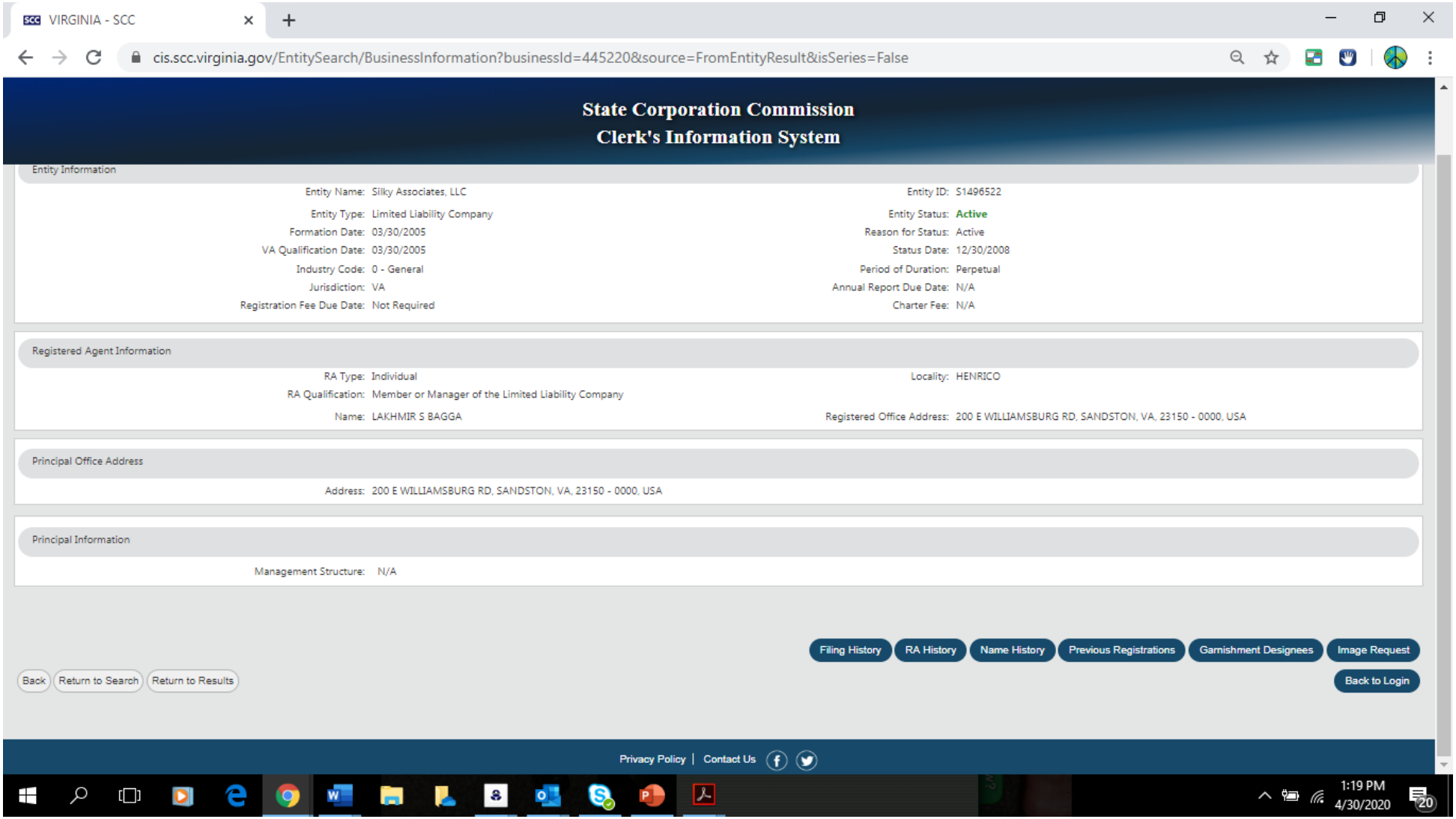

Exhibit B
Motion for Default Order
Docket No. RCRA-03-2018-0131

Exhibit C
Motion for Default Order
Docket No. RCRA-03-2018-0131

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece.

Lakhmir Bagga
Silky Associates, LLC
200 E. Williamsburg Road
Sandston, VA 23150

9590 9402 2553 6306 1402 58

2. Article Number *(Transfer from service label)*
7016 1370 0001 3642 8269

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X Bagga ☐ Agent ☐ Addressee

B. Received by *(Printed Name)* PRITAM BAGGA C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

REGION 3-RHC FILED 2018 JUN 26 PM 3:55

3. Service Type
- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☐ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery (over $500)
- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

USPS TRACKING #

9590 9402 2553 6306 1402 58

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

United States Postal Service

• Sender: Please print your name, address, and ZIP+4® in this box•

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III J. Abramson
1650 ARCH STREET
MAIL CODE 3RC50
PHILADELPHIA, PA 19103-2029
OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE $300

Exhibit C
Motion for Default Order
Docket No. RCRA-03-2018-0131

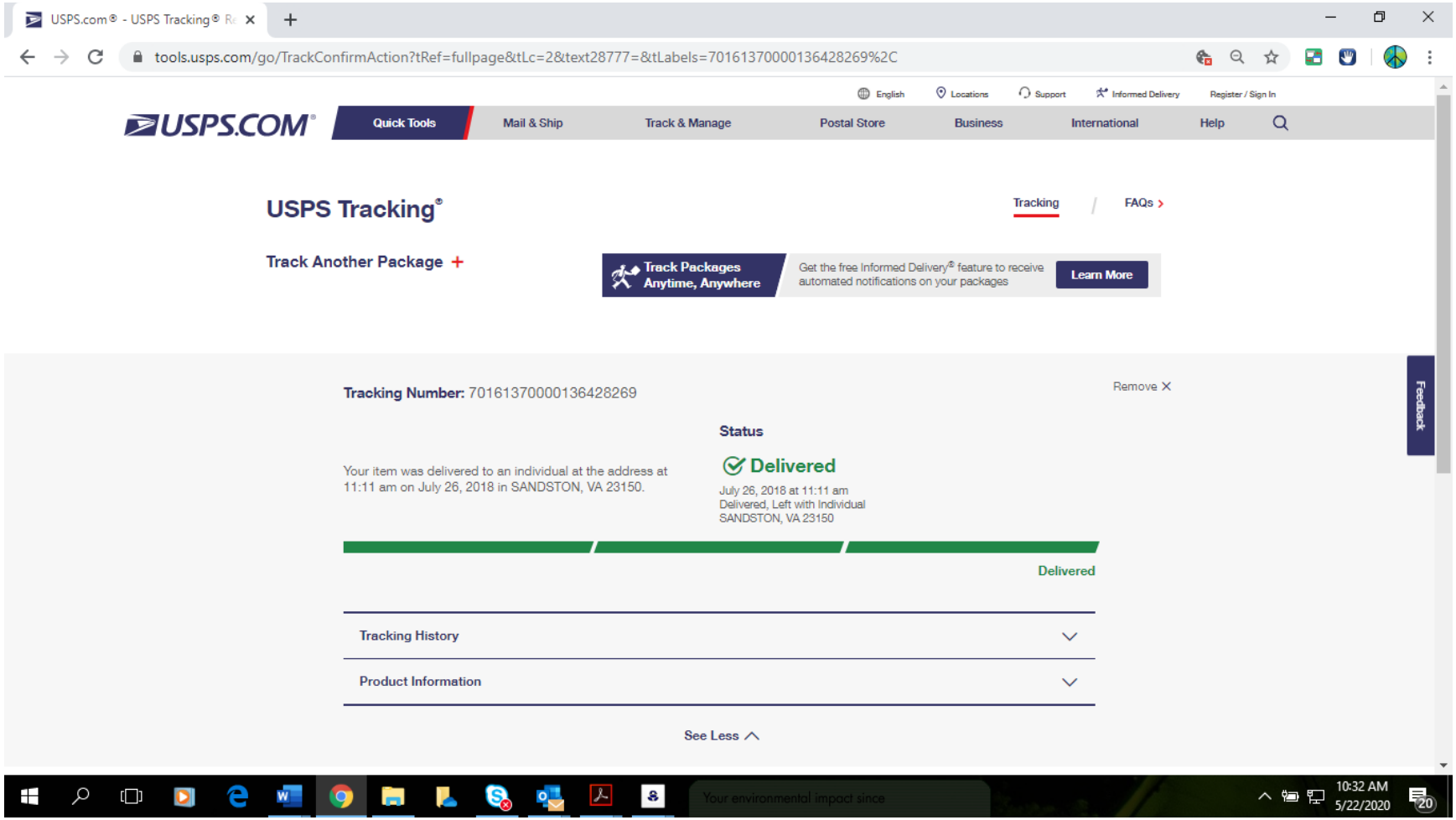

Exhibit D
Motion for Default Order
Docket No. RCRA-03-2018-0131

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 ARCH STREET
PHILADELPHIA, PENNSYLVANIA 19103

In the Matter of:	:	
Silky Associates, LLC,	:	**Docket No. RCRA-03-2018-0131**
Respondent.	:	

ORDER TO AMEND EPA'S ADMINISTRATIVE ENFORCEMENT DOCKET

On December 10, 2018 the United States Environmental Protection Agency ("EPA") Office of Administrative Law Judges ("OALJ") issued an Order of Remand in the above-captioned matter. ("Order of Remand"). The Order of Remand addressed whether a letter submitted by the Respondent, Silky Associates, LLC, to EPA Region III satisfied the procedural and substantive requirements for an Answer to a Complaint as provided by the *Consolidated Rules of Practice*, 40 C.F.R. § 22.15.

On July 24, 2018, EPA Region III filed an Administrative Complaint, Compliance Order and Notice of an Opportunity for a Hearing against Respondent alleging violations of the RCRA Underground Storage Tank regulations. On August 21, 2018, a representative of the Respondent sent a letter to the EPA UST Program Officer for the case in which Respondent addressed the Compliance Order and the issue of Respondent's compliance with the UST regulations. During an August 27, 2018 call with EPA, Respondent's representative indicated that Respondent wanted the August 21, 2018 letter to be considered as Respondent's Answer to the Complaint. (Order of Remand at 1). As a result, treating Respondent's letter as an Answer, EPA's counsel filed the letter with EPA Region III's Regional Hearing Clerk who promptly entered it into EPA's Administrative Enforcement Docket. ("Docket"). The letter was identified in the Docket as Respondent's Answer to the Complaint.

In the Order of Remand, OALJ held that Respondent's August 21, 2018 letter does not satisfy the requirements for an Answer under the Consolidated Rules of Practice because it "was not filed with the Regional Hearing Clerk, did not request a hearing upon the issues, and did not clearly and directly admit, deny or explain *each* of the factual allegations contained in the Complaint." (Order of Remand at 2). Additionally, OALJ noted that "Respondent was provided the opportunity to file an Answer with this Tribunal yet failed to do so." (*Id.*) As a result, OALJ held that "[b]ecause an Answer has not been filed, it is inappropriate for this Tribunal to retain jurisdiction of this matter or to continue to serve as Presiding Officer." (*Id.*) Therefore, OALJ remanded this case to the Regional Judicial Officer for EPA Region III "for disposition consistent with the Rules of Practice." (*Id.*)

Thereby, the Regional Hearing Clerk of EPA Region III, is **HEREBY ORDERED** to amend EPA's Administrative Enforcement Docket to reflect OALJ's holding that the August 21, 2018 letter submitted by Respondent does not qualify as an Answer in the above-caption matter.

SO ORDERED.

Joseph J. Lisa
Regional Judicial and Presiding Officer
US EPA Region III

Dated: Feb. 7, 2019

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on FEB 07 2019, I filed the foregoing Order to Amend EPA's Administrative Enforcement Docket and caused the Order to be served on the following persons in the matter indicated below.

Copy by Inter-Office Mail:

Jennifer M. Abramson
Senior Assistant Regional Counsel
United States Environmental Protection Agency – Region III
Mail Code 3RC50
1650 Arch Street
Philadelphia, PA 19103-2029
For Complainant

Copy by Certified Mail/Return Receipt Requested:

Lakhmir Bagga
Silky Associates, LLC
200 E. Williamsburg Road
Sandston, VA 23150
For Respondent

Copy by Certified Mail/Return Receipt Requested:

Mary Angeles
U.S. Headquarters Hearing Clerk
Environmental Protection Agency
Office of Administrative Law Judges
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460-2001

Bevin Esposito

Bevin Esposito
Regional Hearing Clerk
U.S. EPA, Region III

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

In the Matter of:	)	
	)	
Silky Associates, LLC,	)	**Docket No. RCRA-03-2018-0131**
	)	
Respondent.	)	

ORDER OF REMAND

This proceeding was initiated by the filing of an Administrative Complaint, Compliance Order and Notice of Opportunity for Hearing ("Complaint") with the Regional Hearing Clerk, Region III, U.S. Environmental Protection Agency, on July 24, 2018. On July 26, 2018, the Agency served Respondent with copies of the Complaint and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. §§ 22.1 to 22.45 ("Rules of Practice"), as required by 40 C.F.R. § 22.5(b)(1).

Respondent failed to file an Answer with the Regional Hearing Clerk within 30 days after service of the Complaint. *See* 40 C.F.R. § 22.15(a). However, on August 21, 2018, Lakhmir Bagga, Respondent's representative, sent a letter addressing the Compliance Order, in an apparent attempt to demonstrate compliance with the underground storage tank ("UST") regulations, directly to Melissa Toffel, a program officer for the UST program in Region III's Land and Chemicals Division. *See* Respondent's Answer to the Complainant (Aug. 27, 2018). On August 27, 2018, counsel for the Agency contacted Mr. Bagga to explain the consequences for failing to timely file an Answer. *Id.* Mr. Bagga clarified that the letter to Ms. Toffel should be considered Respondent's Answer to the Complaint and requested that Agency counsel file it on Respondent's behalf, which the Agency's counsel did the same day. *Id.* Two days later, the Regional Hearing Clerk forwarded this matter to the Office of Administrative Law Judges pursuant to 40 C.F.R. § 22.21(a).

I was designated to preside over this proceeding on August 30, 2018. On August 31, 2018, I issued a Prehearing Order that ordered the parties to file preliminary statements and prehearing exchanges of information. The Agency timely filed a Preliminary Statement and Initial Prehearing Exchange.

On October 22, 2018, Silky Bagga filed a letter dated October 16, 2018, on Lakhmir Bagga's behalf, requesting an extension of time to the deadlines in the Prehearing Order or for the deadlines to be dropped altogether because Mr. Bagga was in India seeking medical

treatment until November 11, 2018.[1]

On October 29, 2018, the undersigned issued an order requiring Respondent to file an Answer to the Complaint by November 16, 2018, because Respondent's letter to Ms. Toffel was not filed with the Regional Hearing Clerk, did not request a hearing upon the issues, and did not clearly and directly admit, deny, or explain *each* of the factual allegations contained in the Complaint.

On October 31, 2018, the Agency filed Complainant's Response to Respondent's October 16, 2018 Letter consenting to a reasonable extension of time and opposing a dismissal of the Complaint to the extent that the letter was construed as a motion to dismiss.

On November 16, 2018, Silky Bagga filed a letter dated two days earlier, on Lakhmir Bagga's behalf, clarifying that Respondent was not able to meet the deadlines due to Mr. Bagga's health problems. She attached a letter from Mr. Bagga's doctor which stated that "[d]ue to his current health state, Mr. Bagga would benefit from an extension of 3-4 weeks to comply with any requirements."

On November 23, 2018, the Agency filed Complainant's Rebuttal Prehearing Exchange in which it proposed a penalty of $186,095.00 and provided a detailed explanation of how it reached that amount.

On December 7, 2018, the Agency filed a Motion seeking leave to file a Joint Motion for the Appointment of a Neutral beyond the deadline established for such joint motions by the August 31st Prehearing Order.

For proceedings commenced in an EPA Regional Office, the Regional Judicial Officer serves as Presiding Officer "until the respondent files an answer[.]" 40 C.F.R. § 22.4(b). "When an answer is filed, the Regional Hearing Clerk shall forward a copy of the complaint, the answer, and any other documents filed in the proceeding to the Chief Administrative Law Judge who shall serve as Presiding Officer or assign another Administrative Law Judge as Presiding Officer." 40 C.F.R. § 22.21(a). Although Respondent indicated that its letter to a UST Program Officer should be construed as an Answer to the Complaint, the letter was insufficient to serve as an Answer because it "was not filed with the Regional Hearing Clerk, did not request a hearing upon the issues, and did not clearly and directly admit, deny, or explain *each* of the factual allegations contained in the Complaint." *See* Order for Respondent to File Answer at 2. Further, Respondent was provided the opportunity to file an Answer with this Tribunal yet failed to do so. Because an Answer has not been filed, it is inappropriate for this Tribunal to retain jurisdiction of this matter or to continue to serve as Presiding Officer.

Consequently, this matter is **REMANDED** the Regional Judicial Officer, Region III, U.S. Environmental Protection Agency for disposition consistent with the Rules of Practice. Accordingly, the undersigned declines to issue rulings on Respondent's requests for additional

[1] Silky Bagga's letters of October 16th and November 14th do not reveal her relationship to Respondent or Lakhmir Bagga.

time and the Complainant's Motion seeking leave to file the parties' Joint Motion for Appointment of a Neutral.

SO ORDERED.

Susan L. Biro
Chief Administrative Law Judge

Dated: December 10, 2018
Washington, D.C.

In the Matter of *Silky Associates, LLC*, Respondent.
Docket No. RCRA-03-2018-0131

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Order of Remand**, dated December 10, 2018, and issued by Chief Administrative Law Judge Susan L. Biro, was sent this day to the following parties in the manner indicated below.

Mary Angeles
Paralegal Specialist

Original and One Copy by Personal Delivery to:
Mary Angeles, Headquarters Hearing Clerk
U.S. Environmental Protection Agency
Office of Administrative Law Judges
Ronald Reagan Building, Room M1200
1300 Pennsylvania Ave., NW
Washington, DC 20004

Copy by Electronic Mail to:
Jennifer M. Abramson
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 3
Mail Code 3RC50
1650 Arch Street
Philadelphia, PA 19103-2029
Email: abramson.jennifer@epa.gov
For Complainant

Copy by Certified Mail to:
Attn: Lakhmir Bagga
Silky Associates, LLC
200 E. Williamsburg Road
Sandston, VA 23150
Certified Mail No: 7005 1160 0004 4342 4397
For Respondent

Dated: December 10, 2018
Washington, D.C

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

In the Matter of:	)	
	)	
Silky Associates, LLC,	)	**Docket No. RCRA-03-2018-0131**
	)	
Respondent.	)	

ORDER FOR RESPONDENT TO FILE ANSWER

The Administrative Complaint, Compliance Order and Notice of Opportunity for Hearing ("Complaint") in this matter was filed with the Regional Hearing Clerk, Region III, U.S. Environmental Protection Agency, on July 24, 2018. The Agency served a copy of the filed Complaint on Respondent on July 26, 2018. On August 27, 2018, Agency counsel filed a document styled "Respondent's Answer to the Complaint" and attached a letter dated August 2018, from a representative of Respondent addressed directly to UST Program Officer Melissa Toffel of U.S. EPA, Region III's Land and Chemicals Division. *See* Respondent's Answer to the Complainant (Aug. 27, 2018). On August 27, 2018, counsel for the Agency, contacted Respondent's representative who asked Agency counsel to treat the letter as Respondent's Answer and file it on its behalf. Accordingly, treating the letter as an Answer, Agency counsel filed the letter with the Regional Hearing Clerk on August 27, 2018, and two days later day the Regional Hearing Clerk forwarded this matter to the Office of Administrative Law Judges. I was designated to preside over this proceeding on August 30, 2018.

Respondent's letter does not appear to acknowledge the Complaint or address any allegations contained therein. Therefore, the letter does not comply with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. §§ 22.1 to 22.45 ("Rules of Practice" or "Rules").[1] With respect to filing an Answer to the Complaint, the Rules of Practice provide as follows:

> (a) *General.* Where respondent: Contests any material fact upon which the complaint is based; contends that the proposed penalty, compliance or corrective action order . . . is inappropriate; or contends that it is entitled to judgment as a matter of law, it shall file

[1] The parties are advised to familiarize themselves with the applicable statute(s) and the Rules of Practice. An informal Practice Manual, Citizen's Guide to proceedings before the Office of Administrative Law Judges ("OALJ"), and significant decisions issued by the Administrative Law Judges are accessible on the OALJ's website at www.epa.gov/oalj.

> an original and one copy of a written answer to the complaint with the Regional Hearing Clerk and shall serve copies of the answer on all other parties. Any such answer to the complaint must be filed with the Regional Hearing Clerk within 30 days after service of the complaint.
>
> (b) *Contents of the answer.* The answer shall clearly and directly admit, deny or explain each of the factual allegations contained in the complaint with regard to which respondent has any knowledge. Where respondent has no knowledge of a particular factual allegation and so states, the allegation is deemed denied. The answer shall also state: The circumstances or arguments which are alleged to constitute the grounds of any defense; the facts which respondent disputes; the basis for opposing any proposed relief; and whether a hearing is requested.
>
> (c) *Request for a hearing.* A hearing upon the issues raised by the complaint and answer may be held if requested by respondent in its answer. If the respondent does not request a hearing, the Presiding Officer may hold a hearing if issues appropriate for adjudication are raised in the answer.
>
> (d) *Failure to admit, deny, or explain.* Failure of respondent to admit, deny, or explain any material factual allegation contained in the complaint constitutes an admission of the allegation.
>
> (e) *Amendment of the answer.* The respondent may amend the answer to the complaint upon motion granted by the Presiding Officer.

40 C.F.R. § 22.15. However, Respondent's letter was not filed with the Regional Hearing Clerk, did not request a hearing upon the issues, and does not clearly and directly admit, deny, or explain *each* of the factual allegations contained in the Complaint.

Consequently, no later than **November 16, 2018**, Respondent is **ORDERED** to file an Answer that complies with the Rules of Practice and to clearly state if it desires a hearing upon the issues. Notwithstanding the Rules' instructions to file an Answer with the Regional Hearing Clerk, because the matter has now been forwarded to this Tribunal, Respondent shall file its Answer with this Tribunal and shall serve a copy on the Agency as directed below.

RESPONDENT IS CAUTIONED THAT FAILURE TO TIMELY COMPLY WITH THIS ORDER MAY RESULT IN THE ENTRY OF DEFAULT JUDGMENT AGAINST IT.

Filing and Service. Consistent with Section 22.5 of the Rules of Practice, the original and one copy of all documents intended to be part of the record in this proceeding (excluding a fully-executed Consent Agreement and Final Order, which must be filed with the Regional

Hearing Clerk), shall be filed with the Headquarters Hearing Clerk.[2] Electronic filing is strongly encouraged.[3] To file a document electronically, a party shall use a web-based tool known as the OALJ E-Filing System by visiting the website for the OALJ at www.epa.gov/oalj. Documents filed electronically are deemed to constitute both the original and one copy of the document.

Any party choosing to file electronically must first register with the OALJ E-Filing System at https://yosemite.epa.gov/OA/EAB/EAB-ALJ_Upload.nsf. There may be a delay of one to two business days between the time a party applies for registration and the time at which the party is able to upload documents into the system.

A document submitted to the OALJ E-Filing System is considered "filed" at the time and date of electronic reception, as recorded by the OALJ E-Filing System immediately upon reception. To be considered timely, documents submitted through the OALJ E-Filing System must be received by 11:59 p.m. Eastern Time on the date the document is due, unless another time is specified by the Judge. Within an hour of a document being electronically filed, the OALJ E-Filing System will generate an electronic receipt of the submission that will be sent by email to both the party submitting the document and the Headquarters Hearing Clerk.

The OALJ E-Filing System will accept any type of digital file, but the file size is limited to 70 megabytes.[4] Electronically filed textual documents must be in Portable Document Format ("PDF"). A motion and any associated brief may be filed together through the OALJ E-Filing System. However, any documents filed in support of a brief, motion, or other filing, such as copies of proposed exhibits submitted as part of party's prehearing exchange, should be filed separately as an attachment. Where a party wishes to file multiple documents in support of a brief, motion, or other filing, rather than filing a separate attachment for each such document, the documents should be compiled into a single electronic file and filed as a single attachment, to the extent technically practicable. Attached to this Order is further guidance on the use of the OALJ E-Filing System for purposes of electronic filing.

Alternatively, documents may be filed by U.S. mail, personal delivery, courier, or commercial delivery service. To file a document using the U.S. Postal Service, address the document to:

---

[2] Pursuant to the Headquarters Hearing Clerk Pilot Project, the OALJ and Headquarters Hearing Clerk shall keep the official record and be the proper filing location for all contested cases in which an answer was filed after May 1, 2012. For more information, see the OALJ's website at www.epa.gov/oalj.

[3] More information about electronic filing may be found in the Standing Order Authorizing Electronic Filing in Proceedings Before the Office of Administrative Law Judges, available on the OALJ website at www.epa.gov/oalj.

[4] If your multimedia file exceeds 70 megabytes, you may submit the file on a compact disc or thumb drive and mail it to one of the addresses above, or contact Michael Wright, a staff attorney at the OALJ, who can be reached at (202) 564-3247 or wright.michaelb@epa.gov, for instructions on alternative electronic filing methods.

Headquarters Hearing Clerk
Office of Administrative Law Judges
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Mail Code 1900R
Washington, DC 20460

To file a document using UPS, FedEx, DHL, other courier or commercial delivery service, or personal delivery, address the document to:

Headquarters Hearing Clerk
Office of Administrative Law Judges
U.S. Environmental Protection Agency
Ronald Reagan Building, Room M1200
1300 Pennsylvania Ave., NW
Washington, DC 20004

A document submitted by U.S. mail, personal delivery, courier, or commercial delivery service is considered "filed" when the Headquarters Hearing Clerk physically receives it, as reflected by the inked date stamp physically applied by the Headquarters Hearing Clerk to the paper copy of the document. The OALJ is open to receive such paper filings between 8:30 a.m. and 4:30 p.m. Eastern Time, Monday through Friday.

Regardless of the method of filing, all filed documents must be signed and must contain the contact name, telephone number, mailing address, and email address of the filing party or its authorized representative.

A copy of each document filed in this proceeding shall also be served on the undersigned and on each party. 40 C.F.R. § 22.5(b). Documents may be served by U.S. mail, personal delivery, reliable commercial delivery service, or email if the party being served has consented in writing to service by email and provided a valid email address. 40 C.F.R. § 22.5(b)(2). Documents filed through the OALJ E-Filing System are deemed to have been served on the undersigned. A document is considered served upon mailing, when placed in the custody of a reliable commercial delivery service, or upon electronic transmission. 40 C.F.R. § 22.7(c).

Privacy Act Statement; Notice of Disclosure of Confidential and Personal Information; Waiver of Confidentiality and Consent to Public Disclosure. The parties are cautioned that, unless redacted, all information filed with the OALJ will be made publicly available. Thus, the parties are hereby advised not to file any Confidential Business Information ("CBI") or Personally Identifiable Information ("PII") pertaining to any person. Where filing of such information is necessary, the parties are hereby advised to redact (i.e., remove or obscure) the CBI or PII present in the materials filed. This may include information that, if disclosed to the public, would constitute an unwarranted invasion of personal privacy, such as Social Security numbers, medical records, and personal financial information.

To the extent that any person files or submits any unredacted CBI or PII pertaining to

themselves or their client, that person thereby waives any claims to confidentiality and thereby consents to public disclosure by EPA, including posting on the Internet, of all such information they submit. Submission of such information through the OALJ E-Filing System will also be considered a waiver of confidentiality. To protect such information against public disclosure, parties must follow the procedures specified on the OALJ website at www.epa.gov/oalj.

Contact Information. For any questions about this Order, the Rules, or any other procedural, scheduling, or logistical issues, you may contact Michael B. Wright, Attorney-Advisor, at (202) 564-3247 or wright.michaelb@epa.gov.

SO ORDERED.

Susan L. Biro
Chief Administrative Law Judge

Dated: October 29, 2018
Washington, D.C.

In the Matter of *Silky Associates, LLC*, Respondent.
Docket No. RCRA-03-2018-0131

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Order for Respondent to File Answer**, dated October 29, 2018, and issued by Chief Administrative Law Judge Susan L. Biro, was sent this day to the following parties in the manner indicated below.

Mary Angeles
Paralegal Specialist

Original and One Copy by Personal Delivery to:
Mary Angeles, Headquarters Hearing Clerk
U.S. Environmental Protection Agency
Office of Administrative Law Judges
Ronald Reagan Building, Room M1200
1300 Pennsylvania Ave., NW
Washington, DC 20004

Copy by Electronic and Regular Mail to:
Jennifer M. Abramson
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 3
Mail Code 3RC50
1650 Arch Street
Philadelphia, PA 19103-2029
Email: abramson.jennifer@epa.gov
For Complainant

Copy by Certified Mail and Regular Mail to:
Lakhmir Bagga
Owner
Silky Associates, LLC
200 E. Williamsburg Road
Sandston, VA 23150
Certified Mail No. 7005-1160-0004-4342-4342
For Respondent

Dated: October 29, 2018
Washington, D.C.

OFFICE OF ADMINISTRATIVE LAW JUDGES
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C.

GUIDANCE ON USE OF OALJ E-FILING SYSTEM

The Office of Administrative Law Judges ("OALJ") utilizes a web-based tool known as the OALJ E-Filing System to allow registered users to file documents electronically. Sending a document to oaljfiling@epa.gov or an email address of a staff member within the OALJ is not a valid method of electronic filing, unless otherwise specified in writing by the presiding Administrative Law Judge. The OALJ E-Filing System is accessible at www.epa.gov/oalj. Documents filed electronically are deemed to constitute both the original and one copy of the document, and are deemed to have been both filed with the Headquarters Hearing Clerk and served electronically on the presiding Administrative Law Judge.

Any party choosing to file electronically must first register with the OALJ E-Filing System at https://yosemite.epa.gov/OA/EAB/EAB-ALJ_Upload.nsf. Registration is not automated. There may be a delay of one to two business days between the time a party applies for registration and the time at which the party is able to upload documents into the system. Parties are advised to plan accordingly.

To be considered timely, documents submitted through the OALJ E-Filing System must be received by 11:59 p.m. Eastern Time on the day the document is required to be filed, unless another time is specified by the presiding Administrative Law Judge. Immediately upon reception by the OALJ E-Filing System, the document will be marked with the official filing date and time. The OALJ E-Filing system will then generate an electronic receipt of the submission that will be sent by email to both the party submitting the document and the Headquarters Hearing Clerk. There may be a delay of approximately one hour between submission of the document and transmission of the electronic receipt.

The OALJ E-Filing System will accept any type of digital file, but the file size is limited to 70 megabytes. Electronically filed textual documents must be in Portable Document Format ("PDF").

A motion and any associated brief may be filed together through the OALJ E-Filing System. However, any documents filed in support of a brief, motion, or other filing, such as copies of proposed exhibits submitted as part of a party's prehearing exchange of information, should be submitted separately as an attachment. Where a party wishes to file multiple documents in support of a brief, motion, or other filing, rather than filing a separate attachment for each such document, the documents should be compiled into a single electronic file and filed as a single attachment, to the extent technically practicable. For example, where a party is filing copies of 12 proposed exhibits as part of its prehearing exchange, those 12 proposed exhibits should be submitted together as one attachment consisting of a single electronic file, to the extent technically practicable.

The OALJ E-Filing System is not equipped either to accommodate or to protect the privacy of confidential business information ("CBI") or sensitive personally identifiable information ("PII") that could be used to identify or trace an individual, such as Social Security numbers, medical records, or personal financial information. If a party wishes to electronically file a document containing such information, the party shall redact (i.e., remove or obscure) that information from the document before filing the redacted version of the document through the OALJ E-Filing System. If the party wishes for the presiding Administrative Law Judge to consider the CBI or PII contained in the document, the party shall also file a paper copy of the unredacted version of the document by means other than the OALJ E-Filing System, in accordance with the procedures specified on the OALJ's website at www.epa.gov/oalj. To the extent that any person files any un-redacted CBI or PII through the OALJ E-Filing System, that person thereby waives any claims to confidentiality and consents to public disclosure of all such information.

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

In the Matter of:	)	
	)	Docket No: RCRA-03-2018-0131
Silky Associates, LLC	)	
200 E. Williamsburg Road	)	Respondent's Answer to the Complaint
Sandston, VA 23150	)	
	)	
Respondent,	)	
	)	
Lucky Mart	)	
200 E Williamsburg Road	)	
Sandston, VA 23150	)	
	)	
Facility.	)	

1. On July 23, 2018, the Director of the Land and Chemicals Division of the U.S. Environmental Protection Agency, Region III ("Complainant") issued an Administrative Complaint, Compliance Order and Notice of Opportunity for Hearing ("Complaint") pursuant to 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 "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, to Silky Associates, LLC ("Respondent").

2. The Complaint alleges that the Respondent violated RCRA and the Commonwealth of Virginia federally authorized underground storage tank ("UST") regulations codified at 9 VAC § 25-580-10 *et seq*. at Respondent's Lucky Mart facility located at 200 E Williamsburg Road in Sandston, Virginia ("Facility").

3. The Complainant served a copy of the filed Complaint on the Respondent which, according to the certified mail return receipt "green" card, was delivered on July 26, 2018. Pursuant to 40 C.F.R. Part 22.5(b)(iii), proof of service of the Complaint was filed on August 2, 2018.

4. On August 9, 2018, the undersigned returned a voicemail message left by Respondent and spoke with Lakhmir Bagga on the telephone concerning the Complaint. After confirming that Respondent is acting *pro se* (i.e., not represented by counsel) and clarifying that the undersigned represents Complainant, the undersigned *inter alia* explained to Mr. Bagga the consequences of failing to file an Answer within thirty (30) days.

5. On August 21, 2018, Respondent submitted a response, by fax and by regular mail, consisting of a four page hand-written letter, a one page monthly rectifier operating record, and an executed certification, to the attention of UST Program Officer Melissa Toffel of U.S. Environmental Protection Agency, Region III's Land and Chemicals Division. Respondent's submissions are included in Attachment A.

6. On August 27, 2018, the undersigned contacted Respondent via the telephone and spoke with Lakhmir Bagga. After confirming that Respondent is acting *pro se* (i.e., not represented by counsel) and explaining that the factual allegations in the Complaint will deemed to be admitted if a timely Answer is not filed, Mr. Bagga clarified that the response submitted on August 21, 2018 should be considered as Respondent's Answer to the Complaint and requested that the undersigned file it on Respondent's behalf.

Dated: AUG 27 2018

Jennifer M. Abramson
Senior Assistant Regional Counsel

ATTACHMENT A

RESPONDENT'S ANSWER

SILKY ASSOCIATES. LLC
LUCKY MART
200 E. WILLIAMSBERG. RD.
SANDSTON VA 23150

RICHMOND VA 230

21 AUG 2018 PM 1 L

TO

MELISSA TOFFEL (3LC31)
U.S ENVIROMENTAL PROTECTION AGENCY
1650 ARCH STREET
PHILDELPHIA, PA 19103-2029

REGION III

19103-208799

D/ 8-20-15

From - Silby Associats, LLC
200 E. Williamsberg Rd
Sandston

Dear

Melissa Toffel
U.S. Environmental Protection Agency - Region III

As I/we have discussed last year about all these complaint of underground tanks and I you told me you need to do all 3 Test-

① ~~L~~ine tightning Test (every years)
② Line leak detector test (" ")
③ Cathodic Protection test, and has to be done Every 3 year

As Per your instruction I performed all these Test last-year and I have sended you all the Testing certificate, and Cathodic protection UST Corrosion person sended all the Testing Report after he Fixed and install all the rot-wrapping Anoid. or underground Corrosion Equipmentit.
And few or Couple Monthage Inspect of Mr Somosa DEQ Inspector Mr Veins Tecnision installed all the overflow instrument (or overflow tube) Only Super Brand old ~~tube~~ tube struct so that Part is Pending I so I am not Ordering and selling Super.

I believe or Remember that I am have did the both line Tiltning and leak detector

in 2016 and send the certificate to DEQ office. ~~Becaus~~ Because I remember there was one tank Reading was not coming correct, So He issued Certificate for only 4 TANK Passed one failed then I called Vinse (Petroleum Equipment Service) and he Fixed it. And He checked the Pressure is perfectly normal But he cannot issue certificate Because he was not certified to issue certificate.

As I have sended you all the Paper work ~~from~~ of Cathodic Protection and some Paper work of Vedor Rect. In 2012 ~~see~~ I think UST Corrosion Company had Repair all the underground Anod which Protect the TANK from corrosion and from date Cathodic ~~Protection~~ Protection machine was giving same and similar Reading which I note every 1st of Month and Write down on paper (Record Paper) with Date and Time and Initial.

You have told me that if you do not send all Papers you will be Penalties big and if you send all then you will not Penalties and on my request you explane that what should I do, you told me that I have to get All

Testing. I ask you what- kind. You have told me ① Line Tighting ② Leak detector ③ Cathodic Protection, and first two every year and Cathodic Protection every 3 years and I did it But Cathodic Protection Failed so I contacted the People who did Previously UST Corrosion Co. They told me that they have done in 2012.

And Line ~~Titon~~ Tighting and Leack Detector Precission Line tester do all most of the time, I spoke to ~~him~~ him today, he said Probably 4-5 time he have done in my store. I have ~~he~~ requested him to E-Mail me all the Previous Testing Record, He was Driving and when he will go to his office he will look into it and he told me to Call back in the night.

As soon as he E-Mail I will send you all that Record. and in Future I will not Fail, I will Follow all your Rules and do the TESTING in time and send the Certificate to PEQ.

Yours

Lakhwinder Singh

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II

I am sending you Current Cathodic Protection Reading Paper From 1-1-17 To 11-1-17 and 1-1-18 To 8-1-18 12-17 To ~~18~~ 3-18 CST. Disconnected the Connection to get Falls Reading After he Fixed and Repair He Connected and I was Asked to tape the Reading and I am taping all the Reading in the morning. I check Both Cathodic P.P. and Feeder Rect.

Thank you,

Gabriel Briggs

(865) 297-

1371

MONTHLY
RECTIFIER OPERATING RECORD

Date	DC Output		Hours	Remarks	Recorded
	Volt	Ampere			
1-1-17	22	44	7:15		LS
1-6-17	22	44	7:60		LS
2-1-17	22	44	7:00 AM		LS.
3-1-17	23	42	10 AM		LS.
4-1-17	23	42	7:58 AM		LS
5-1-17	22	44	7:05 AM		LS
6-1-17	23	45	7:30 AM		LS
7-1-17	23	47	7:31 AM		L.S.
8-1-17	22	47	8:00 AM		LS
9-1-17	21	48	8:00 AM		LS
10-1-17	23	46	9 AM		LS.
11-1-17	22	46	8 AM		LS
12-1-18	20	60	8 AM		LS
5-1-18	20	64			LS
6-1-18	22	66	8 AM		LS
7-1-18	22	68	8:30 AM		LS
8-1-18	20	70	8:00 AM		LS

The certification required above shall be in the following form:

> I certify that the information contained in or accompanying this [type of submission] is true, accurate, and complete. As to [the/those] identified portions of this [type of submission] for which I cannot personally verify [its/their] accuracy, I certify under penalty of law that this [type of submission] and all attachments were prepared in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

Signature: L. S Bagga
Name: LAKHMIR S BAGGA
Title: OWNER

60. All documents and reports to be submitted pursuant to this Compliance Order shall be sent to the following persons:

1. Documents to be submitted to EPA shall be sent to the attention of:

   Melissa Toffel (3LC31)
   U.S. Environmental Protection Agency - Region III
   1650 Arch Street
   Philadelphia, PA 19103-2029
   Toffel.Melissa@epa.gov
   Fax: (215) 814-5211

2. One copy of all documents submitted to EPA shall also be sent by regular mail to the attention of:

   Russell P. Ellison, III
   UST Program Coordinator
   Office of Spill Response & Remediation
   Division of Land Protection & Revitalization
   VA DEQ
   P.O. Box 1105
   Richmond, VA 23218

61. Failure to comply with any of the terms of this Compliance Order may subject Respondent to the imposition of a civil penalty of up to $58,562 for each day of continued

The certification required above shall be in the following form:

> I certify that the information contained in or accompanying this [type of submission] is true, accurate, and complete. As to [the/those] identified portions of this [type of submission] for which I cannot personally verify [its/their] accuracy, I certify under penalty of law that this [type of submission] and all attachments were prepared in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

Signature: L. S Bagga
Name: LAKHMIR S. BAGGA
Title: OWNER

60. All documents and reports to be submitted pursuant to this Compliance Order shall be sent to the following persons:

1. Documents to be submitted to EPA shall be sent to the attention of:

   Melissa Toffel (3LC31)
   U.S. Environmental Protection Agency - Region III
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8-20-18

From - Silby Associates, LLC
200 E. Williamsburg Rd
Sandston

Dear
Melissa Toffel
U.S. Environmental Protection Agency - Region III

As I/we have discussed last year about all these complaint of underground tanks and I you told me you need to do all 3 Test
① Line tightning Test (every year)
② Line leak detector test (" ")
③ Cathodic Protection test, and has to be done Every 3 year

As Per you instruction I performed all these test last year and I have sended you all the Testing certificate, and Cathodic protection UST Corrosion person sended all the Testing Report after he Fixed and install all the not working Anoid or underground Corrosion Equipment.
And few or Couple Months I spend of Mr Lomora DEA Inspector Mr Vans Tecmision installed all the overflow instrument (or overflow tube) Only Super Ground old tube stuck so that part is Pending of so I am not ordering and selling Super.

I believe or Remember that I am have did the Both line Titning and Leak detector

Testing. I ask you what kind you have told me ① Line Tighting ② Leak detector ③ Cathodic Protector, and First time every year and Cathodic Protection every 3 years and I did it But Cathodic Protection Failed so I contacted the People who did Previously UST Corrosion Co. They told me that they have done in 2012.

And Line ~~Titer~~ Tighting and Leak Detector Precission Line tester do all most of the time, I spoke to him him today, he said Probably 4-5 time he have done in my state. I have requested him to E-mail me all the Previous Testing Record, He was Driving and when he will go to his office he will look into it and he told me to Call back in the night.

As soon as he E-mail I will send you all that Record. and in Future I will not Fail, I will Follow all your Rules and do the TESTING in time and send the certificate to PEQ.

Yours

Lakhmir Boggy

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(865) 297-

1371

MONTHLY
RECTIFIER OPERATING RECORD

Date	DC Output Volt	DC Output Ampere	Hours	Remarks	Recorded
1-1-17	22	44	7-15		
1-8-17	22	44	7:40		
2-1-17	22	44	7:00 AM		
3-1-17	23	42	10 AM		
4-1-17	23	42	7:58 AM		
5-1-17	22	44	7:05 AM		
6-1-17	23	45	7:30 AM		
7-1-17	23	47	7:31 AM		
8-1-17	22	47	8:00 AM		
9-1-17	21	48	8:00 AM		
10-1-17	22	46	9 AM		
11-1-17	22	46	8 AM		
12-1-18	20	60	8 AM		
5-1-19	20	64	8:00 AM		
6-1-19	20	66	8 AM		
7-1-19	22	68	8:30 AM		
8-1-19	20	70	8:00 AM		

Attn: Melissa Toffel (3LC31)

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

In the Matter of:	)	
	)	Docket No: RCRA-03-2018-0131
Silky Associates, LLC 200 E. Williamsburg Road Sandston, VA 23150	)	
Respondent,	)	
Lucky Mart 200 E Williamsburg Road Sandston, VA 23150	)	
Facility.	)	

CERTIFICATE OF SERVICE

I certify that the foregoing RESPONDENT'S ANSWER TO THE COMPLAINT in the above referenced matter was sent this day in the following manner to the below addressees:

Original and one copy by hand-delivery: Regional Hearing Clerk

Copy by Certified Mail Return Receipt Requested: Mr. Lakhmir Bagga
Silky Associates, LLC
200 E. Williamsburg Road
Sandston, VA 23150

AUG 27 2018
Date

Jennifer M. Abramson (3RC50)
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103
Phone: (215) 814-2066
Email: Abramson.Jennifer@epa.gov

United States Environmental Protection Agency | Office of Solid Waste and Emergency Response

EPA

DIRECTIVE NUMBER: 9610.12

TITLE: U.S. EPA Penalty Guidance for Violations of UST Regulations

APPROVAL DATE: NOV 14 1990

EFFECTIVE DATE: NOV 14 1990

ORIGINATING OFFICE: Office of Underground Storage Tanks (OUST)

☒ **FINAL**

☐ **DRAFT**

STATUS:

REFERENCE (other documents):

OSWER Directive 9610.11 "UST/LUST Enforcement Procedures Guidance Manual"

OSWER OSWER OSWER
'E DIRECTIVE DIRECTIVE D

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

MEMORANDUM

SUBJECT: Final "U.S. EPA Penalty Guidance for Violations of UST Regulations"

FROM: Don R. Clay, Assistant Administrator
Office of Solid Waste and Emergency Response

James M. Strock, Assistant Administrator
Office of Enforcement

TO: Waste Management Division Directors,
Regions I-III, V-IX
Water Division Directors,
Regions IV & X
Regional Counsels, Regions I - X

Attached is the final version of the "U.S. EPA Penalty Guidance for Violations of UST Regulations" (OSWER Directive 9610.12). The purpose of this document is to provide guidance to the Regions on calculating civil penalties against owners and operators of underground storage tanks (USTs) who are in violation of the UST technical standards and financial responsibility regulations.

This version is based on the April 11, 1990 draft and incorporates Regional comments. Highlights of those comments and revisions to the document include:

- expanding the upward range of adjustments to the matrix values to facilitate reaching the statutory maximum penalty,
- replacing the environmental sensitivity factor with the environmental sensitivity and the days of non-compliance multipliers,
- reserving a chapter for a discussion of penalties for Federal field citations, and
- examples of the application of this guidance in

While the Agency has emphasized the need to stress voluntary compliance with the UST regulations because of the large size of the regulated community, we also have recognized the need to send a strong enforcement message to those owners and operators who do not comply with the regulations. This document is designed to provide the Regions flexibility in assessing penalties in response to the unique characteristics of each case, while establishing a national framework to ensure that penalties are assessed in a fair and consistent manner, and that such penalties serve to deter potential violators and assist in achieving compliance. Thus, this document provides the flexibility to assess penalties for as little as several hundred dollars and as much as several hundred thousand dollars, based on the specifics of the case.

This document supplements the "UST/LUST Enforcement Procedures Guidance Manual" (OSWER Directive 9610.11), which provides guidance to the Regions on taking enforcement actions, discusses situations in which Regional enforcement responses are warranted, and the factors to be considered in determining the appropriate enforcement response (including the assessment of civil penalties).

The penalty guidance was developed by a workgroup consisting of UST program managers, staff and attorneys from Regions IV, V and VII and OUST staff, and was reviewed by the Office of Waste Programs Enforcement and the Office of Enforcement for consistency with Agency policy. We want to thank everyone for their excellent work in this cooperative effort. If you have any questions or would like additional information, please have your staff contact Josh Baylson of OUST on FTS 475-9725.

Attachment

cc: Ron Brand, OUST
Joe Retzer, OUST
UST Regional Program Managers
UST Regional Attorneys
Susan Bromm, OWPE
Kathie Stein, OE
John Rasnic, OAQPS

U.S. EPA PENALTY GUIDANCE FOR VIOLATIONS OF UST REGULATIONS

November 1990

Office of Underground Storage Tanks
U.S. Environmental Protection Agency

NOTICE

The procedures set forth in this document are intended solely for the guidance of the U.S. EPA. They are not intended, and cannot be relied on, to create rights, substantive or procedural, enforceable by any party in litigation with the United States government. The U.S. EPA reserves its right to act at variance with this guidance and to change it at any time without public notice.

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APPENDICES

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CHAPTER 1. INTRODUCTION TO UST PENALTY GUIDANCE

This document provides guidance to U.S. Environmental Protection Agency (EPA) Regional Offices on calculating civil penalties against owner/operators of underground storage tanks (USTs) who are in violation of the UST technical standards and financial responsibility regulations. The methodology described in this guidance seeks to ensure that UST civil penalties, which can be as high as $10,000 for each tank for each day of violation, are assessed in a fair and consistent manner, and that such penalties serve to deter potential violators and assist in achieving compliance.

This penalty document is part of a series of enforcement documents which includes: (1) the Agency's UST/LUST Enforcement Procedures Guidance Manual (OSWER Directive 9610.11, July 1990), which provides guidance to U.S. EPA Regional personnel on taking enforcement actions against violations of the UST technical requirements; and (2) the draft "Interim Enforcement Response Strategy for Violations of UST Financial Responsibility Requirements," which provides guidance on taking enforcement actions against violations of the financial responsibility requirements. Although these enforcement documents are intended primarily for U.S. EPA Regional enforcement staff, State and local UST implementing agencies may find it useful to adapt some of the concepts and methodologies for their own UST enforcement programs.

This chapter briefly describes the U.S. EPA's authorities for taking enforcement action and assessing civil penalties. It also provides an overview of the enforcement actions that may be taken in response to UST violations, and indicates how the assessment of penalties fits into the enforcement framework.

1.1 U.S. EPA PENALTY AUTHORITY

The U.S. EPA's authority for assessing civil penalties for violations of UST requirements is provided by Subtitle I of the Resource Conservation and Recovery Act (RCRA). Under the Hazardous and Solid Waste Amendments of 1984, Congress added Subtitle I to RCRA in response to the growing environmental and health problems created by releases from USTs. The statutory framework for the national UST program is set forth in Sections 9002 through 9004 of Subtitle I.

Under Section 9006 of Subtitle I, EPA is authorized to take enforcement actions and assess penalties against violators of requirements promulgated under Subtitle I, including technical standards and financial responsibility requirements.[1] In particular, Section 9006(a) provides the authority to issue administrative orders requiring compliance within a reasonable specified time period. All such orders will be processed within the Agency according to the Consolidated Rules of Practice (CROP).[2] Pursuant to Section 9006(d), a Section 9006 compliance order may assess a civil penalty, provided that the penalty does not exceed $10,000 for each tank for each day of violation of the technical standards

[1] These are contained in two separate rules: the UST Technical Standards Rule, 40 CFR Part 280, Subparts A through G (promulgated September 23, 1988) and the UST Financial Responsibility Rule, 40 CFR Part 280, Subpart H (promulgated October 26, 1988).

[2] 40 CFR Part 22, "The Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits," [illegible] amended to cover administrative enforcement actions under Section 9006 (see 53 FR 53[illegible], [illegible]4, 1988).

and financial responsibility rules.[3] This document presents guidance for determining the appropriate civil penalty amount for an administrative complaint and order, and discusses use of penalties in field citations.

In addition to administrative enforcement actions, EPA may initiate judicial enforcement actions under Section 9006 to compel compliance with Subtitle I's statutory and regulatory requirements. EPA's judicial enforcement actions are processed through Federal courts and are reserved for violations of administrative orders. Under such actions, EPA is authorized to seek judicial penalties of up to $25,000 for each day of continued noncompliance with an administrative order issued under Section 9006 or a corrective action order issued under Section 9003. In these cases, Agency personnel should seek the maximum penalty.[4]

1.2 OVERVIEW OF THE UST ENFORCEMENT PROCESS

The UST/LUST Enforcement Procedures Guidance Manual (OSWER Directive 9610.11, July 1990) describes the range of enforcement actions that may be taken in response to an UST violation. These enforcement options vary from initial responses, such as warning letters or notices of violation (NOVs), which encourage compliance, to more stringent actions, such as administrative orders and judicial injunctions, which compel compliance and, if appropriate, penalize violators. Exhibit 1 presents the various enforcement actions that may be taken once a violation of an UST requirement is identified. In general, enforcement personnel will take the least costly enforcement action that appears necessary to achieve compliance and create a strong deterrent, and will escalate the severity of the enforcement response if the initial action fails.

As shown in Exhibit 1, there are two approaches to taking enforcement actions. Under the "traditional" approach, enforcement personnel may initially respond to a discovered violation by issuing a warning letter or NOV to inform the owner/operator of the violation, explain what actions need to be taken, and indicate possible consequences if the owner/operator fails to achieve compliance. If necessary, enforcement personnel may then meet with the owner/operator to negotiate an agreed-upon course of action for the owner/operator to follow to achieve compliance. However, for recalcitrant violators, or where violations pose a threat to human health and the environment, enforcement personnel will typically issue administrative complaints or take judicial action. To provide a deterrent effect, an administrative complaint may include an initial penalty target figure. Upon receipt of the complaint, a violator may pay the penalty specified, request an informal settlement conference, and/or request an administrative hearing. Regardless of the violator's response, the outcome generally will be a final penalty that the violator must pay or else face judicial prosecution. Exhibit 1 shows where the target and final penalties appear in the enforcement process.

As an alternative to the traditional approach, enforcement personnel may initiate an enforcement response using field citations (see Chapter 5). Field citations, similar to traffic tickets, are modified compliance orders issued by inspectors on-site at a facility when violations are discovered. However, the use of field citations is generally limited to first-time violators when compliance is expected and when the violation does not pose an immediate threat to human health and the environment. A typical

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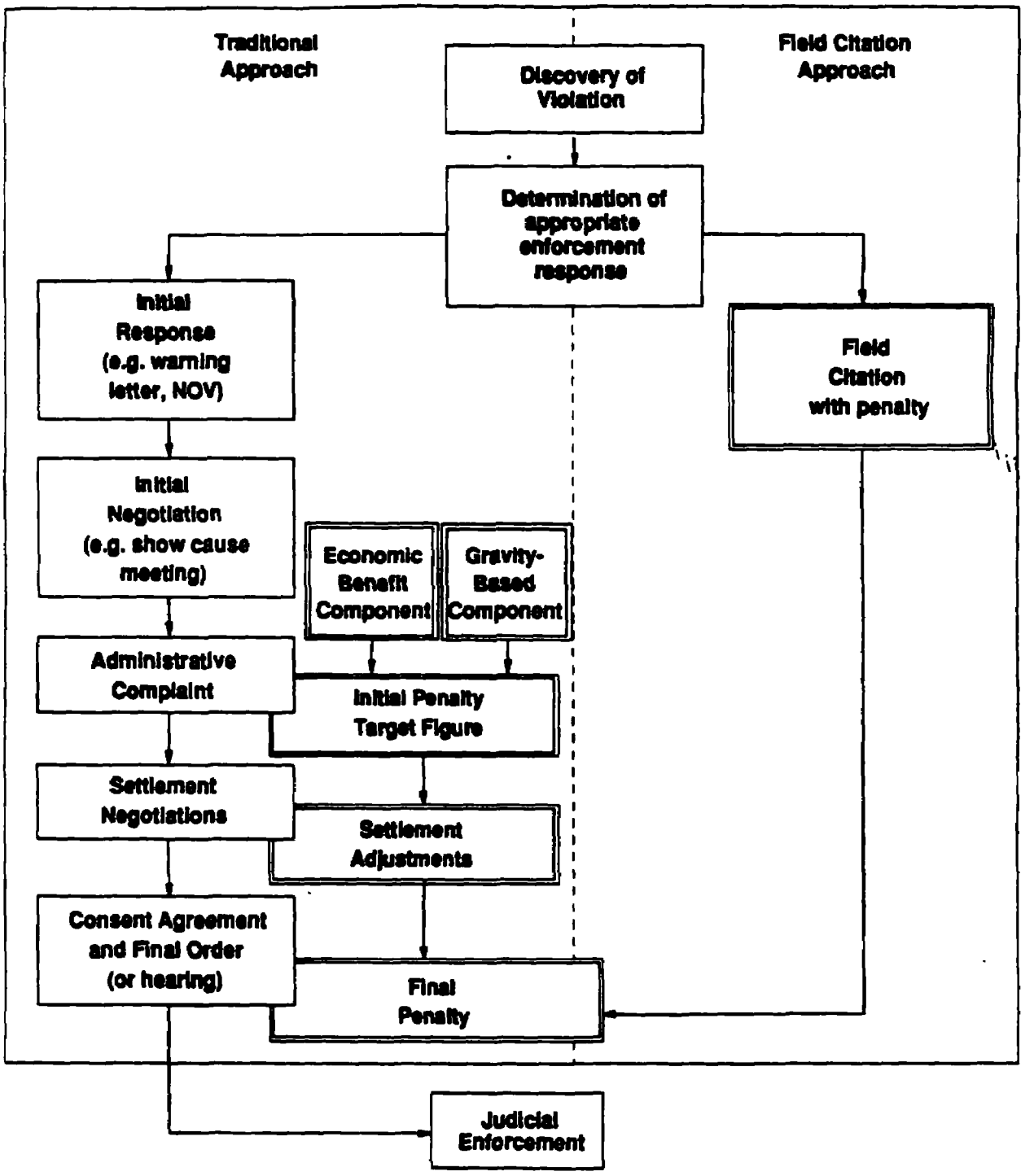
[3] This $10,000 limit also applies to violations of the Interim Prohibition provisions and any requirement of an approved State program. For violations of the May 1985 (statutory) notification requirements, the penalty may not exceed $10,000 for each tank.

[4] This guidance is in no way intended to limit the penalty amounts sought in civil judicial actions. In settling judicial cases, however, the Agency may use the narrative penalty assessment criteria set forth in this guidance to determine or justify the penalty amount that the Agency agrees to accept in settlement.

Exhibit 1

Overview of Enforcement Response Options



NOTE: This exhibit presents an overview of enforcement options only, and does not mandate a certain order of action. Actual enforcement actions may begin at any point in the process.

field citation will not only require that the violator take actions to achieve compliance, but will also assess a pre-established, non-negotiable penalty. This penalty is usually fairly low (e.g., $100) to encourage prompt payment and response. In paying the citation penalty, the violator gives up the right to appeal and consents to the requirements specified; thus, the citation is analogous to the final penalty that results from settlement negotiations. This alternative path to arriving at a penalty is also shown in Exhibit 1. If the owner/operator fails to respond to the field citation, enforcement personnel may resort to enforcement actions under the traditional approach or may initiate judicial actions.

Under the UST program's franchise approach, States will undertake most of the enforcement actions. However, in certain cases (e.g., where an owner/operator is particularly recalcitrant or the State lacks sufficient enforcement authority), Federal assistance may be needed. In such cases, the Regional office may omit initial, informal responses and proceed directly with administrative or judicial actions. However, U.S. EPA enforcement also may be needed at the beginning of an enforcement case in certain circumstances (e.g., in States without active enforcement programs or on Indian Lands). In such cases, Regional enforcement personnel may begin with either the traditional responses or may determine that it is appropriate to use field citations.

1.3 UST PENALTY ASSESSMENT FRAMEWORK

This document provides guidance on calculating penalties to be used in the administrative enforcement actions described above. Consistent with the U.S. EPA's Policy on Civil Penalties, penalties assessed under this methodology are intended to achieve the following goals:[5]

- Encourage timely resolution of environmental problems;
- Support fair and equitable treatment of the regulated community; and
- Deter potential violators from future violations.

Exhibit 2 provides an overview of the major components used to set penalties at levels that will achieve these goals. Specifically, to deter the violator from repeating the violation and to deter other potential violators from failing to comply, the penalty must place the violator in a worse position economically than if he or she had complied on time. Such deterrence is achieved by:

(1) Removing any significant economic benefit that the violator may have gained from noncompliance (the "economic benefit component"); and

(2) Charging an additional amount, based on the specific violation and circumstances of the case, to penalize the violator for not obeying the law (the "gravity-based component").

The procedures for determining the economic benefit component and gravity-based component are discussed in Chapters 2 and 3, respectively. Furthermore, to support fair and equitable treatment of the regulated community, the penalty must allow for adjustments to take into account legitimate differences between similar cases. Thus, under this methodology, the gravity-based component incorporates adjustments that reflect the specific circumstances of the violation, the violator's background and actions, and the environmental threat posed by the situation.

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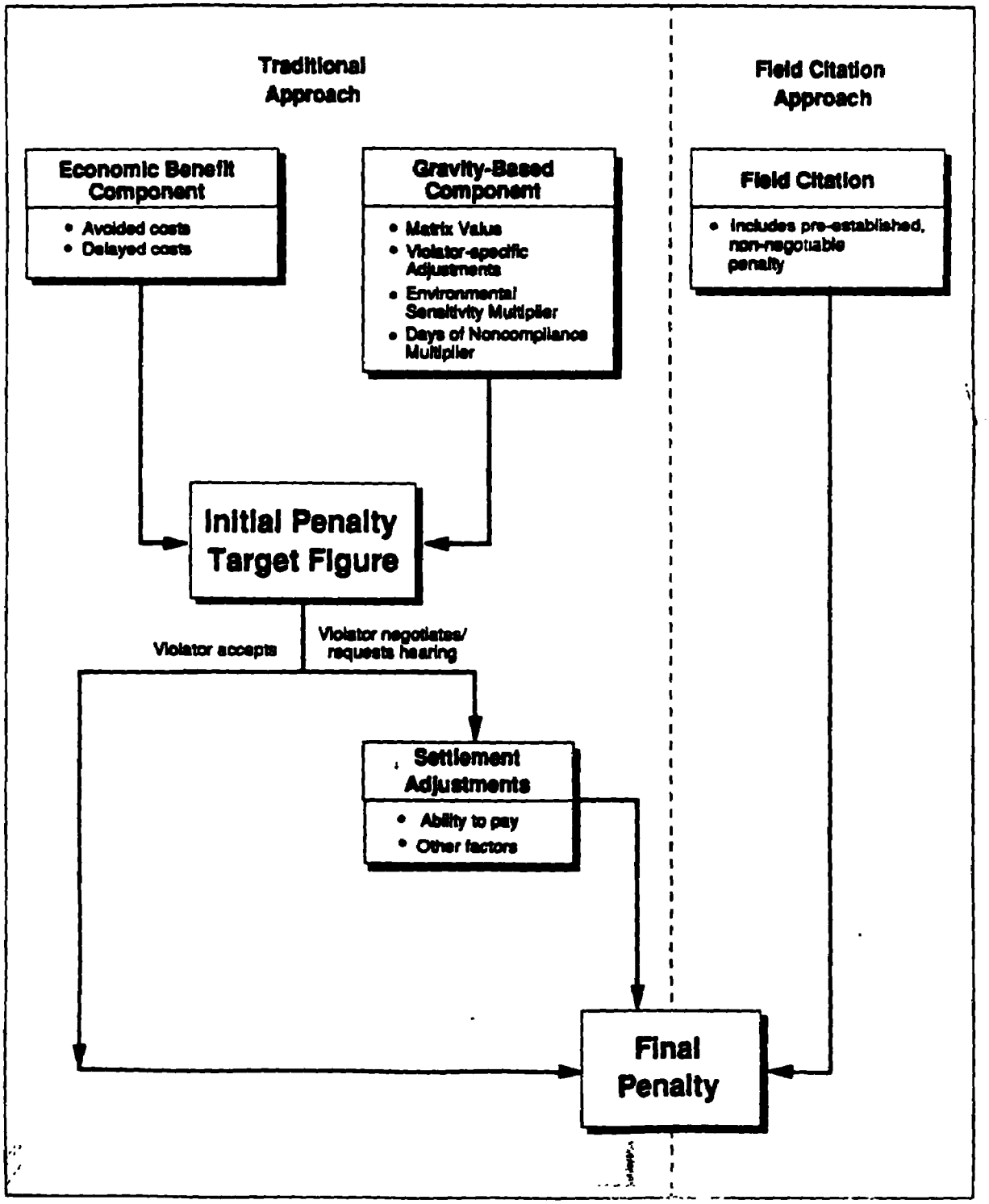
[5] The "EPA Policy on Civil Penalties" (EPA General Enforcement Policy #GM-21, February 19[illegible] and the "Framework for Statute-Specific Approaches to Penalty Assessment" (EPA General Enforcement Policy #GM-22, February 1984) establish a consistent Agency-wide approach to the assessment of civil penalties.

Exhibit 2

Process for Assessing UST Civil Penalties



The sum of the economic benefit component and the gravity-based component yields the initial penalty target figure that is assessed in the administrative complaint.[6] For each case that involves more than one violation, the Regional case team will need to decide on the number of counts addressed in the complaint. Each count should be accompanied by an appropriate penalty calculation, and the sum of these penalties will be the initial penalty target figure assessed in the complaint. Once a complaint is issued, the Agency may enter into settlement negotiations with the owner/operator to encourage timely resolution of the violation. Such negotiations provide the owner/operator with the opportunity to present evidence to support downward adjustments in the penalty. The process of adjusting the penalty during settlement negotiations is addressed in Chapter 4. The outcome of such negotiations will be the final penalty.

For specific types of cases, enforcement personnel may issue field citations, which assess penalties while encouraging a swift return to compliance without a drawn-out appeals process. The use of field citations to assess penalties is addressed in Chapter 5.

[6] However, it should be remembered that the sum of the gravity-based component plus the economic benefit component cannot be greater than the statutory maximum of $10,000 for each tank for each day of violation of the technical standards and financial responsibility regulations.

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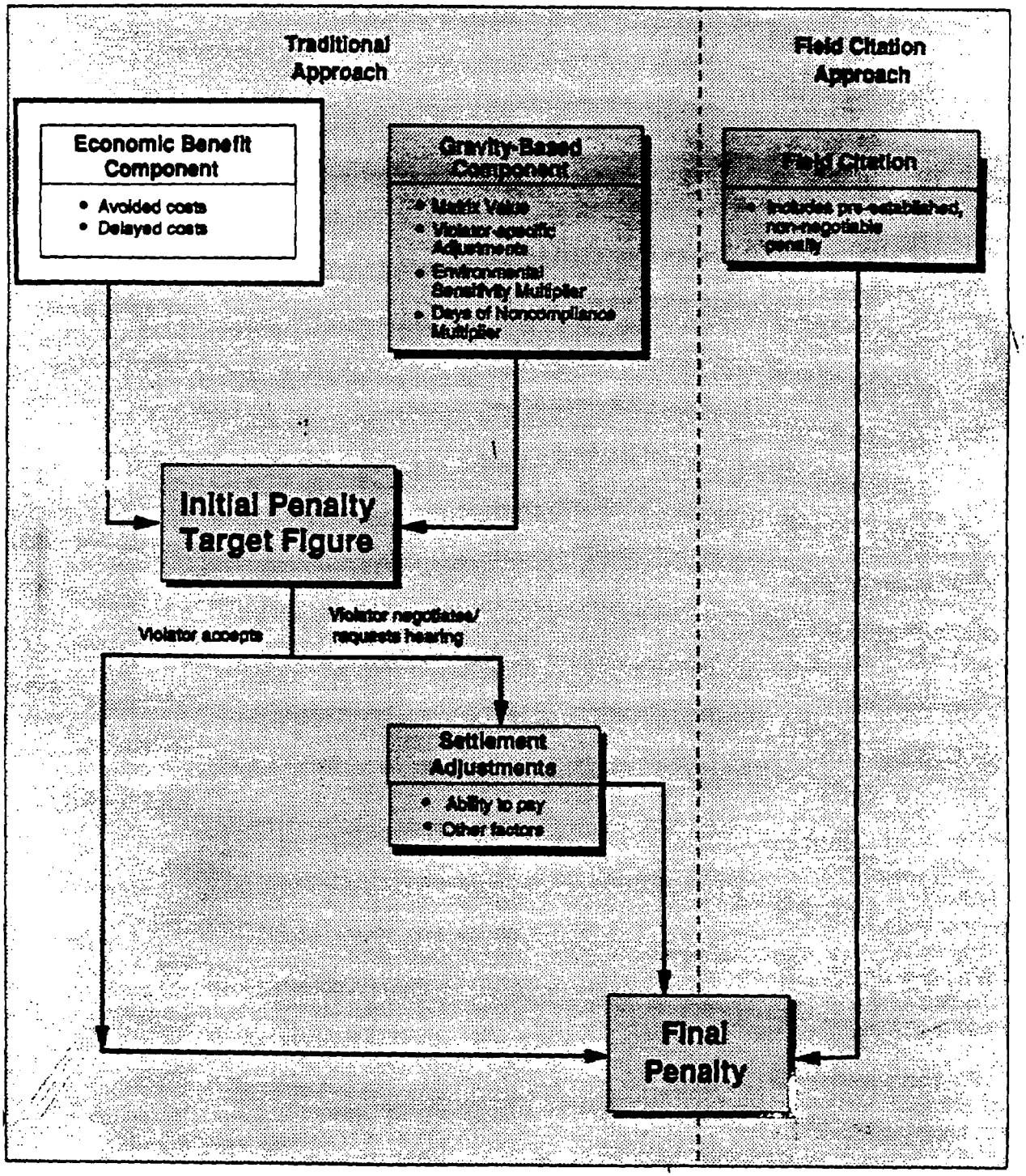
Chapter 2

Determining the Economic Benefit Component



CHAPTER 2. DETERMINING THE ECONOMIC BENEFIT COMPONENT

As explained in the preceding chapter, to ensure that the penalty deters potential violators, the initial penalty target figure assessed in the complaint must include two fundamental components:

- Economic Benefit Component, which removes any significant profit from noncompliance; and
- Gravity-Based Component, which imposes an assessment to penalize current and/or past noncompliance.

This chapter discusses the process for determining the economic benefit component. The gravity-based component is discussed in Chapter 3.

2.1 DEFINITION OF ECONOMIC BENEFIT COMPONENT

The economic benefit component represents the economic advantage that a violator has gained by delaying capital and/or non-depreciable costs and by avoiding operational and maintenance costs associated with compliance.[7] The total economic benefit component is based on the benefit from two sources: (1) avoided costs; and (2) delayed costs. All penalties assessed must include the full economic benefit unless the benefit is determined to be "incidental," i.e., less than $100.

Economic Benefit Component = Avoided Costs + Delayed Costs

***Avoided* costs** are the periodic, operation and maintenance expenditures that should have been incurred, but were not.

***Delayed* costs** are the expenditures that have been deferred by the violation, but will be incurred to achieve compliance.

The Agency-wide penalty policy prescribes the use of two methods for calculating a violator's economic benefit from noncompliance:[8] (1) the rule-of-thumb approach; and (2) the software program

[7] This policy does not outline a methodology for the recovery, as a measure of economic benefit, of profits proximately attributable to illegal or non-compliant activities. Because the Federal UST regulations do not include a permitting process, the Agency is not presently aware of situations where such profits would be realized, or where we would expect to seek recovery of such profits as a measure of economic benefit in the Federal UST program. Should EPA determine that the recovery of such profits is appropriate in a particular case, the Agency will calculate such profits in a manner consistent with the RCRA Civil Penalty Policy (October 1990).

[8] Revised guidelines for calculating the economic benefit from noncompliance are incorporated in a memorandum from Courtney Price (Assistant Administrator for Enforcement and Compliance Monitoring) entitled, "Guidance for Calculating the Economic Benefit of Noncompliance for a Civil Penalty Assessment" (November 5, 1984).

called BEN.[9] The rule-of-thumb approach (described in the sections that follow) should be used for making an initial estimate of the economic benefit of noncompliance. If the initial estimate is less than $10,000, the rule-of-thumb calculation may be used as a basis for the economic benefit assessed in the penalty. If, however, the estimate indicates that the economic benefit is greater than $10,000, the BEN model should be used. The BEN model should also be used if the violator rejects the rule-of-thumb calculation.

The BEN model, which is accessible by computer from anywhere in the country, uses a financial analysis technique known as "discounting" to determine the net present value of economic gains from noncompliance. BEN determines the economic benefit for an individual violator based on 12 specific factors, or inputs, including the violator's initial capital investment, nondepreciable expenditures, and operation and maintenance costs. For some inputs, such as income tax rate, annual inflation rate, and discount rate, BEN will provide standard values if the user does not have actual figures. This use of standard values allows for national consistency in determining economic benefit. Because the majority of UST violations will be associated with an economic benefit of less than $10,000, the rule-of-thumb approach will be used in most cases.

The procedures for calculating the economic benefit of noncompliance using the rule-of-thumb approach are described below. Because of the fundamental differences between avoided and delayed costs, the process for determining the economic benefit component will depend on the type of cost involved. The sections that follow describe methods for calculating each type of cost.

2.2 AVOIDED COSTS

Avoided costs are the operation and maintenance expenditures that are averted by the violator's failure to comply. These are considered to be avoided because they will never be incurred even if the violator comes into compliance. For example, a violator who has failed to maintain product inventory records in the past never will have to make up for the costs saved, even if he is directed to start maintaining inventory records now. Other examples of avoided costs include: (1) failure to conduct a required periodic test; (2) failure to obtain financial assurance by the phase-in date; and (3) failure to conduct periodic maintenance of equipment. The violator's benefit from avoided costs is generally expressed as the avoided expenditures plus the interest potentially earned on the money not spent.

DETERMINING AVOIDED COSTS

$$\text{Avoided Costs} = \text{Avoided Expenditures} + \text{Avoided Expenditures} \times \text{Interest} \times \frac{\text{Number of Days}}{365 \text{ Days}} \times (1 - \text{Marginal Tax Rate})$$

Avoided Expenditures are estimated using local, comparable costs.
Interest is the equity discount rate provided in the BEN model (currently 18.1 percent).
Number of Days is from the date of noncompliance to the date of compliance.
365 Days is the number of days in a year.
Marginal Tax Rate is based on corporate tax rates or financial responsibility compliance class.

[9] For information, contact the BEN/ABEL Coordinator in the Office of Enforcement at the U.S. EPA Headquarters by phoning (202) 475-6777 or FTS 475-6777.

To determine the value of the interest, compounded annually, the equity discount rate should be used. This represents the risk-free rate (T-bill) plus the cost of financing for pollution control equipment. This rate can be obtained by calling the EPA Office of Enforcement or by accessing the BEN computer model.[10] As of the beginning of FY91, the equity discount rate was 18.1 percent. When used in the formula, this number should be expressed as a decimal and not a percentage (e.g., 0.181, instead of 18.1%).

The marginal tax rate (MTR) used in calculating the avoided costs will vary depending on the size of the business. Exhibit 3 provides a list of appropriate tax rates based on the facility or company's taxable income. As with the interest rate, this number should be expressed as a decimal, not a percentage (e.g., 0.15 instead of 15%). To determine the taxable income, enforcement staff should contact EPA's National Enforcement Investigations Center (NEIC) to determine whether the business in violation is listed in the Dun and Bradstreet Business Information Report data base.[11] The data base provides information on the annual incomes of a large number of companies across the country, including the smaller, "Mom and Pop" businesses. Although most of the incomes listed in the data base are those reported to Dun and Bradstreet, the data base also includes some estimated incomes for companies that have not reported.

If information on annual income cannot be obtained from NEIC, enforcement staff may use the company's financial responsibility compliance class as a basis for determining the appropriate marginal tax rate, as follows:

MARGINAL TAX RATES BASED ON FINANCIAL RESPONSIBILITY COMPLIANCE CLASS

Compliance Class [a]	Tax Rate
FR Classes 1 & 2	0.34 (34%)
FR Class 3	0.25 (25%)
FR Class 4	0.15 (15%)

[a] Compliance class is determined as follows: Class 1 - large petroleum marketing firms with 1,000 or more USTs or any firm with net worth over $20 million; Class 2 - large and medium-sized petroleum marketing firms with 100 to 999 USTs; Class 3 - smaller petroleum marketing firms with 13 to 99 USTs; and Class 4 - very small marketing firms with 1 to 12 USTs or less than 100 USTs at one site, all other firms with net worth of less than $20 million, and municipalities.

In the absence of specific information on the violator's FR compliance class, enforcement staff should assume that the violator is in FR Class 4 (which will result in the highest penalty).

[10] To obtain the equity discount rate from the Office of Enforcement, or to access BEN, call the BEN/ABEL coordinator at (202) 475-6777 or FTS 475-6777.

[11] For information from the Dun and Bradstreet data base call NEIC at (303) 236-3219 or FTS 8-776-3219. Using information on the violator's name and location (city and State), NEIC staff can search the data base for information on the company's annual income.

Exhibit 3

Applicable Tax Rates for Determining Avoided Costs

MARGINAL TAX RATE BASED ON FEDERAL CORPORATE TAX RATES
(from 1989 U.S. Master Tax Guide):

Taxable income over	Not over	Tax rate
$0	$50,000	15%
$50,000	$75,000	25%
$75,000	$100,000	34%
$100,000	$335,000	39%*
$335,000	.....	34%

*An additional 5% tax is applied to income between $100,000 and $335,000 to phase out the benefits of the graduated rates in that income range.

The marginal tax rate is applied to each increment of income specified above (e.g., for an income of $75,000, 15% is applied to the first $50,000 and 25% to the next $25,000). The weighted average tax rates below have been calculated for each $10,000 increment in income to reflect the actual tax burden at each income level. These values will facilitate the determination of penalty amounts by eliminating the need to calculate the tax burden on each increment of marginal taxable income. To find the weighted tax rate, round the estimated taxable income to the nearest $10,000 and use the tax rate indicated in the table.

WEIGHTED AVERAGE TAX RATES BY INCOME LEVEL**

Taxable Income not greater than	Tax Rate	Taxable Income not greater than	Tax Rate
$50,000	0.15	$200,000	0.31
$60,000	0.17	$210,000	0.31
$70,000	0.18	$220,000	0.31
$80,000	0.19	$230,000	0.32
$90,000	0.21	$240,000	0.32
$100,000	0.22	$250,000	0.32
$110,000	0.24	$260,000	0.33
$120,000	0.25	$270,000	0.33
$130,000	0.26	$280,000	0.33
$140,000	0.27	$290,000	0.33
$150,000	0.28	$300,000	0.33
$160,000	0.29	$310,000	0.34
$170,000	0.29	$320,000	0.34
$180,000	0.30	$330,000	0.34
$190,000	0.30	≥ $340,000	0.34

**This table includes the additional 5% tax applied to incomes between $100,000 and $335,000.

2.3 DELAYED COSTS

Delayed costs are the capital expenditures and one-time non-depreciable costs that have been deferred because the violator failed to comply with the requirements. Examples of delayed costs include: (1) failure to install required equipment, such as cathodic protection; and (2) failure to clean up a spill. These expenditures are considered only to be delayed, and not avoided altogether, because the violator will eventually have to incur these costs to come into compliance. The benefit from delayed costs is generally expressed as only the return on investment that could have been earned on the money not spent.

DETERMINING DELAYED COSTS

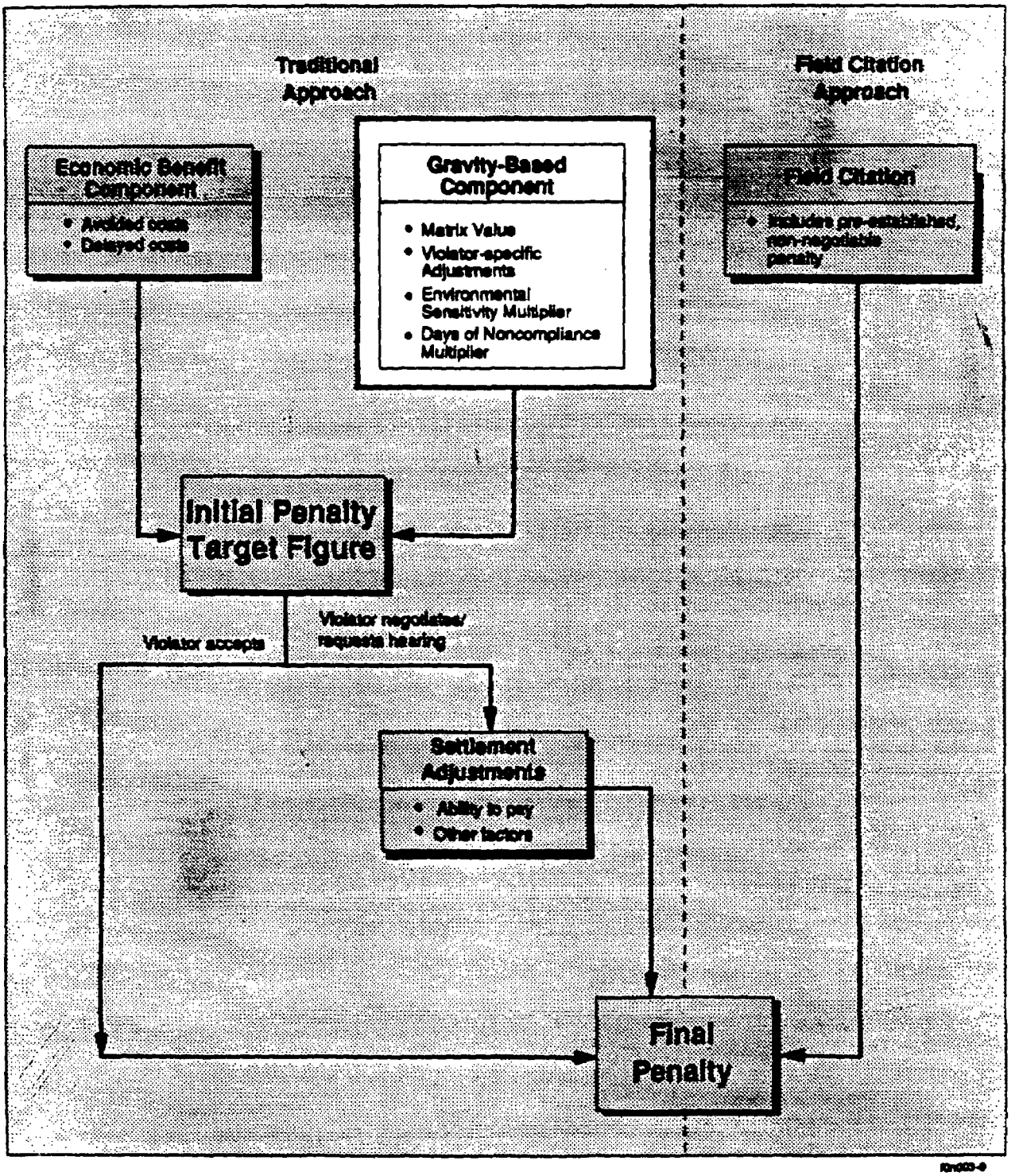
$$\text{Delayed Costs} = \frac{\text{Delayed Expenditures} \times \text{Interest} \times \text{Number of Days}}{\text{365 Days}}$$

Delayed Expenditures are estimated using local, comparable costs.
Interest is the equity discount rate used in the BEN model (currently 18.1 percent).
Number of Days is from the date of noncompliance to the date of compliance.
365 Days is the number of days in a year.

For delayed costs there is no computation of the tax rate. Although there may be a modest tax consequence for the violator because of delayed costs, this effect was deemed to be insignificant. Furthermore, such a tax consequence only would be incurred if the violation were to span more than one of the violator's tax years.

Chapter 3

Determining the Gravity-Based Component



CHAPTER 3. DETERMINING THE GRAVITY-BASED COMPONENT

The second component of a penalty, and the one that serves to deter potential violators, is the gravity-based component. The purpose of the gravity-based component is to ensure that violators are economically disadvantaged relative to owner/operators of those facilities in compliance, and to penalize current and/or past noncompliance. The gravity-based component consists of four elements:

- Matrix Value (Section 3.1);
- Violator-Specific Adjustments to the Matrix Value (Section 3.2);
- Environmental Sensitivity Multiplier (Section 3.3); and
- Days of Noncompliance Multiplier (Section 3.4).

The gravity-based component is then added to the economic benefit component to arrive at the initial penalty target figure assessed in the complaint.

DETERMINING THE GRAVITY-BASED COMPONENT

Gravity-Based Component	=	Matrix Value	x	Violator-Specific Adjustments	x	Environmental Sensitivity Multiplier	x	Days of Noncompliance Multiplier

Matrix Value is based on potential for harm and deviation from the requirement.

Violator-Specific Adjustments to the matrix value are based on violator's cooperation, willfulness, history of noncompliance, and other factors.

Environmental Sensitivity Multiplier (ESM) is a value based on the environmental sensitivity associated with the location of the facility.

Days of Noncompliance Multiplier (DNM) is a value based on the number of days of noncompliance.

If the complaint results in settlement negotiations, certain factors used to adjust the matrix value may be re-assessed during negotiations to determine whether a downward adjustment in the gravity-based component is appropriate. In general, it is the violator's responsibility to provide evidence in support of reducing the penalty assessment during the settlement stage (see Chapter 4).

3.1 DETERMINING THE MATRIX VALUE

The first step in determining the gravity-based component is determining the initial matrix value. The matrix value is based on the following two criteria:

Adjustments

- Extent of deviation from requirement - An assessment of the extent to which the violation deviates from the statutory or regulatory requirements.

- Actual or potential harm - An assessment of the likelihood that the violation could (or did) result in harm to human health or the environment and/or has (or had) an adverse effect on the regulatory program.

A matrix has been developed in which these two criteria form the axes (Exhibit 4). Three gravity levels apply to each of these criteria -- major, moderate, and minor -- and form the grid of the matrix. Thus, the matrix has nine cells, each of which contains a penalty amount. The specific cell to be used in determining the matrix value is identified by selecting a gravity level for both factors. As a guide to determining the appropriate gravity level, Appendix A provides a list of selected violations of the Federal UST requirements and the associated deviation from the requirements and potential for harm.

Based on the type of violation (see Appendix A), penalties will be assessed on a per-tank basis if the specific requirement or violation is clearly associated with one tank (e.g., tank upgrading). If the requirement addresses the entire facility (e.g., recordkeeping practices), the penalty will be assessed on a per-facility basis. For requirements that address piping, the unit of assessment will depend on whether the piping is associated with one tank or with more than one tank. Appendix A indicates the suggested unit of assessment for specific violations.

3.1.1 Extent of Deviation from Requirements

The first factor in determining the matrix value is the extent of deviation from the requirements. The categories for extent of deviation from the requirements are the following:

- Major - The violator deviates from the requirements of the regulation or statute to such an extent that there is substantial noncompliance. An example is installing a bare steel tank without cathodic protection.

- Moderate - The violator significantly deviates from the requirement of the regulation or statute, but to some extent has implemented the requirement as intended. An example is installing improperly constructed cathodic protection.

- Minor - The violator deviates slightly from the regulatory or statutory requirements, but most of the requirements are met. An example is failing to keep every maintenance record on properly constructed cathodic protection.

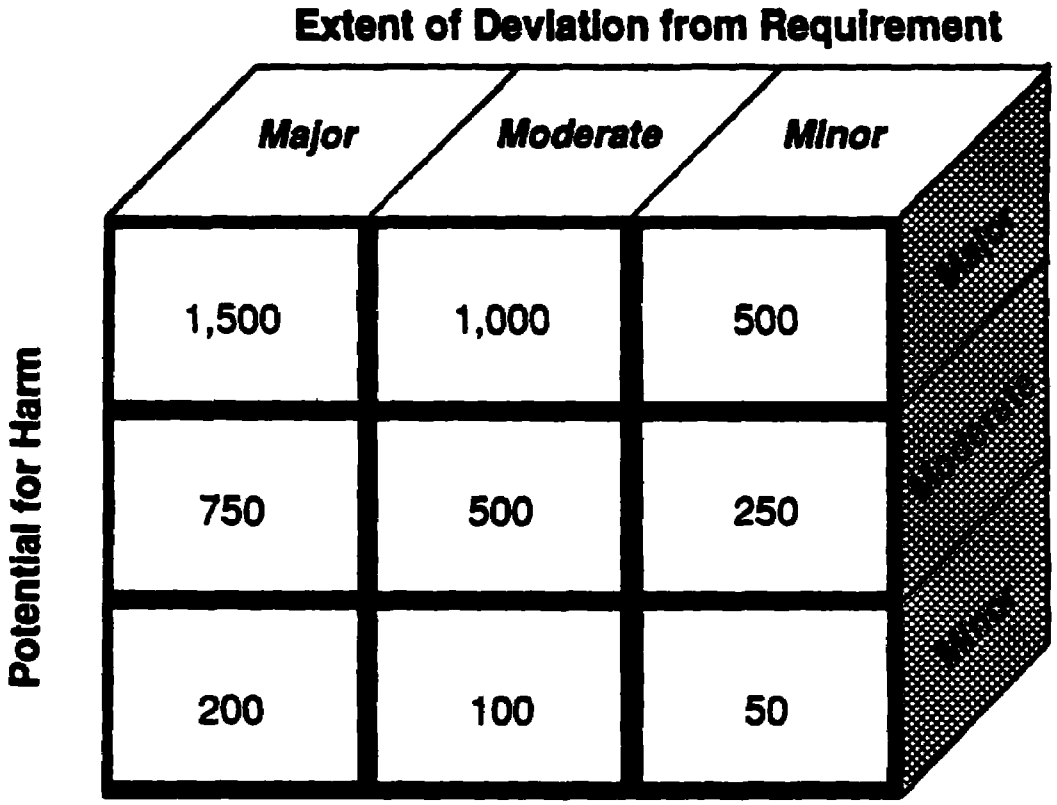
3.1.2 Potential for Harm

The second criterion for determining the matrix value of a violation is the extent to which the owner/operator's actions resulted in, or were likely to result in, a situation that could cause harm to human health or the environment. When determining this factor, it is the potential in each situation that is important, not solely whether the harm has actually occurred. Violators should not be rewarded with lower penalties simply because no harm has occurred. The potential extent of this harm, if it were to occur, is addressed by the environmental sensitivity multiplier, discussed in Section 3.3 of this chapter.

The potential-for-harm factor will also be applied to violations of administrative requirements (e.g., recordkeeping and notification requirements) that are integral to the regulatory program. For violations of these requirements, enforcement personnel should consider the "importance" of the requirement violated. For example, failure to submit tank notification data may be considered to have significant potential for harm because the Agency has few other sources of information on the location of USTs.

Exhibit 4

Matrix Values for Determining the Gravity-Based Component of a Penalty



NOTE: These amounts constitute the matrix value only. They are not the initial penalty target figure. The initial penalty target figure is calculated as follows:

Initial Penalty Target Figure = Economic Benefit + (*MATRIX VALUE* x Violator-Specific [illegible] x Environmental Sensitivity Multiplier x Days of Noncompliance Multiplier)

For purpose of this guidance, the categories for potential for harm are the following:

- Major - The violation causes or may cause a situation resulting in a substantial or continuing risk to human health and the environment and/or may have a substantial adverse effect on the regulatory program. Examples are: (1) improperly installing a fiberglass reinforced plastic tank (because a catastrophic release may result); or (2) failing to provide adequate release detection by the specified phase-in date (because without release detection a release may go unnoticed for a lengthy period of time with detrimental consequences).

- Moderate - The violation causes or may cause a situation resulting in a significant risk to human health and the environment and/or may have a significant adverse effect on the regulatory program. An example would be installing a tank that fails to meet tank corrosion protection standards (because it could result in a release, although the use of release detection is expected to minimize the potential for continuing harm from the release).

- Minor - The violation causes or may cause a situation resulting in a relatively low risk to human health and the environment and/or may have a minor adverse effect on the regulatory program. An example would be failing to provide certification of UST installation (assuming that the installation was done correctly).

3.2 VIOLATOR-SPECIFIC ADJUSTMENTS

In general, adjustments to the matrix value may be made at both the pre-negotiation and settlement stages of penalty assessment to address the unique facts of each case and to resolve the case quickly. Prior to settlement negotiations, enforcement personnel have the discretion to use any relevant information to adjust the matrix value upwards or downwards. These adjustments are solely at the discretion of EPA enforcement personnel.

Specifically, to ensure that penalties are assessed in a fair and consistent manner, and take into account case-specific differences, enforcement personnel have the option of adjusting the matrix value based on any information known about the violator's: (1) degree of cooperation or noncooperation; (2) degree of willfulness or negligence; (3) history of noncompliance; and (4) other unique factors.

VIOLATOR-SPECIFIC ADJUSTMENTS TO THE MATRIX VALUE

Adjustment Factor	Range of Percentage Adjustment
Degree of Cooperation/Noncooperation	Between 50% increase and 25% decrease
Degree of Willfulness or Negligence	Between 50% increase and 25% decrease
History of Noncompliance	Up to 50% increase only
Other Unique Factors	Between 50% increase and 25% decrease

The sections that follow discuss these four adjustment factors. In addition, the matrix value should be adjusted to reflect the environmental sensitivity and the days of noncompliance, which are discussed in Sections 3.3 and 3.4, respectively. Subsequent adjustments made during the settlement stage, including adjustments for inability to pay, are discussed in Chapter 4.

To ensure that the penalty maintains a deterrent effect, enforcement staff should consider adjustments toward increased penalties in all cases (i.e., make upwards adjustments to the matrix value). It is up to the violator to present information during settlement that mitigates use of such upward adjustments. However, to ensure that penalties are calculated fairly and consistently, any upwards adjustment may be made only if the circumstances of the case warrant such adjustments. Furthermore, for any adjustments made to the matrix value, justification must be provided on the penalty assessment worksheet (see Appendix B).

3.2.1 Degree of Cooperation/Noncooperation

The first factor that may be considered in adjusting the matrix value is the violator's cooperation or good faith efforts in response to enforcement actions. In adjusting for the violator's degree of cooperation or noncooperation, enforcement staff may consider making upward adjustments by as much as 50 percent and downward adjustments by as much as 25 percent of the matrix value.

In order to have the matrix value reduced, the owner/operator must demonstrate cooperative behavior by going beyond what is minimally required to comply with requirements that are closely related to the initial harm addressed. For example, an owner/operator may indicate a willingness to establish an environmental auditing program to check compliance at other UST facilities, if appropriate, or may demonstrate efforts to accelerate compliance with other UST regulations for which the phase-in deadline has not yet passed.[12] Because compliance with the regulation is expected from the regulated community, no downward adjustment may be made if the good faith efforts to comply primarily consist of coming into compliance. That is, there should be no "reward" for doing now what should have been done in the first place. On the other hand, lack of cooperation with enforcement officials can result in an increase of up to 50 percent of the matrix value.

3.2.2 Degree of Willfulness or Negligence

The second adjustment that may be made to the matrix value is for willfulness or negligence, which takes into account the owner/operator's culpability and intentions in committing the violation. In assessing the degree of willfulness or negligence, the following factors may be considered:

- How much control the violator had over events constituting the violation (e.g., whether the violation could have been prevented or was beyond the owner/operator's control, as in the case of a natural disaster);
- The foreseeability of the events constituting the violation;
- Whether the violator made any good faith efforts to comply and/or took reasonable precautions against the events constituting the violation; and
- Whether the violator knew or should have known of the hazards associated with the conduct; and
- Whether the violator knew of the legal requirement that was violated (resulting in an upward adjustment only).[13]

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[12] For information on establishing environmental auditing programs, see "EPA Policy on the Inclusion of Environmental Auditing Provisions in Enforcement Settlements," U.S. EPA, Office of Enforcement and Compliance M... ...mber 1986.

[13] Lack of knowledge of the legal requirements may not be used as a basis to reduce the matrix value. Rather, informed violation of the law should serve to increase the matrix value.

In certain circumstances, the amount of control that the violator has over how quickly the violation is remedied also can be relevant. Specifically, if correction of a violation is delayed by factors that the violator clearly can show were not reasonably foreseeable and out of his or her control, the penalty assigned for the duration of noncompliance may be reduced (see Section 3.4), although the original penalty for noncompliance should not be. In assessing the degree of willfulness, enforcement staff may consider making upward adjustments by as much as 50 percent and downward adjustments by as much as 25 percent of the matrix value.

3.2.3 History of Noncompliance

The third factor to be considered in adjusting the matrix value is the violator's history of noncompliance. Previous violations of any environmental regulation are usually considered clear evidence that the violator was not deterred by previous interaction with enforcement staff and enforcement actions. Unless the current violation was caused by factors entirely out of the control of the violator, prior violations should be taken as an indication that the matrix value should be adjusted upwards. When assessing the history of noncompliance, some of the factors that may be considered are:

- Number of previous violations;
- Seriousness of the previous violations;
- Time period over which previous violations occurred;
- Similarity of the previous violations;
- Enforcement tools utilized (e.g., whether the owner/operator's previous behavior required use of more stringent enforcement actions); and
- Violator's response to the previous violation(s) with respect to correction of the problem.

For purposes of this document, a "prior violation" includes any act or omission for which an accountable enforcement action has occurred (e.g., an inspection that found a violation, a notice of violation, an administrative or judicial complaint, or a consent order). A prior violation of the same or a related requirement would constitute a similar violation.

In cases of large corporations that have many divisions and/or subsidiaries, if the same corporation is involved in the current violation the adjustments for history of noncompliance will apply. In addition, enforcement staff should be wary of a company that changes operators or shifts responsibility for compliance to different persons or organizational units as a way of avoiding increased penalties. A consistent pattern of noncompliance by several divisions or subsidiaries of a corporation may be found, even though the facilities are at different locations. Again, in these situations, enforcement staff may make only upward adjustments to the matrix value by as much as 50 percent.

3.2.4 Other Unique Factors

This guidance allows an adjustment for unanticipated factors that may arise on a case-by-case basis. As with the previous factors, enforcement staff may want to make upward adjustments to the matrix value by as much as 50 percent and downward adjustments by as much as 25 percent for such reasons.

3.3 ENVIRONMENTAL SENSITIVITY MULTIPLIER (ESM)

In addition to the violator-specific adjustments discussed above, enforcement personnel may make a further adjustment to the matrix value based on potential site-specific impacts that could be caused by the violation. The environmental sensitivity multiplier takes into account the adverse environmental effects that the violation may have had, given the sensitivity of the local area to damage posed by a potential or actual release. This factor differs from the potential-for-harm factor (discussed in Section 3.1.2) which takes into account the probability that a release or other harmful action would occur because of the violation. The environmental sensitivity multiplier addressed here looks at the actual or potential impact that such a release, once it did occur, would have on the local environment and public health.

To calculate the environmental sensitivity multiplier, enforcement personnel must first determine the sensitivity of the environment. For purposes of this document, the environmental sensitivity will be either low, moderate, or high. Factors to consider in determining the appropriate sensitivity level include:

- Amount of petroleum or hazardous substance potentially or actually released (e.g., size of the tanks and number of tanks at the facility that were involved in the violation, as they relate to the potential volume of materials released);
- Toxicity of petroleum or hazardous substance released;
- Potential hazards presented by the release or potential release, such as explosions or other human health hazards;
- Geologic features of the site that may affect the extent of the release and may make remediation difficult;
- Actual or potential human or environmental receptors, including:
  - Likelihood that release may contaminate a nearby river or stream;
  - Number of drinking water wells potentially affected;
  - Proximity to environmentally sensitive areas, such as wetlands; and
  - Proximity to sensitive populations, such as children (e.g., in schools).
- Ecological or aesthetic value to environmentally sensitive areas.

Thus, a "low" sensitivity value may be given in a case where one tank containing petroleum is located in clay soil in a semi-residential area where all drinking water is supplied by municipal systems, and where little wildlife is expected to be affected. A moderate sensitivity value may be given if: several tanks were in violation; the geology of the site would allow for some movement of a plume of released substance; and several drinking water wells could have been affected. A high sensitivity value may be given if: a number of tanks (or very large tanks) were involved; there were several potential receptors of the released substance through drinking water wells or contact with contaminated surface water; and the contamination would be difficult to remediate. Each level of sensitivity is given a corresponding multiplier value, as provided below.

DETERMINING THE ENVIRONMENTAL SENSITIVITY MULTIPLIER

Environmental Sensitivity Multiplier (ESM) is based on the potential or actual environmental impact at the site, and is given a corresponding value as follows:

Environmental Sensitivity	ESM
Low	1.0
Moderate	1.5
High	2.0

3.4 DAYS OF NONCOMPLIANCE MULTIPLIER

The final adjustment that may be made to the matrix value takes into account the number of days of noncompliance. To determine the amount of the adjustment, locate the days of noncompliance multiplier (or DNM) in the table below that corresponds to the duration of the violation:

DETERMINING THE DAYS OF NONCOMPLIANCE MULTIPLIER

Days of Noncompliance Multiplier (DNM) is based on the number of days of noncompliance:

Days of Noncompliance	DNM
0 - 90	1.0
91 - 180	1.5
181 - 270	2.0
271 - 365	2.5
Each additional 6 months or fraction thereof	add 0.5

The DNM is then multiplied by the adjusted matrix value and environmental sensitivity multiplier to obtain the gravity-based component of the penalty, as follows:

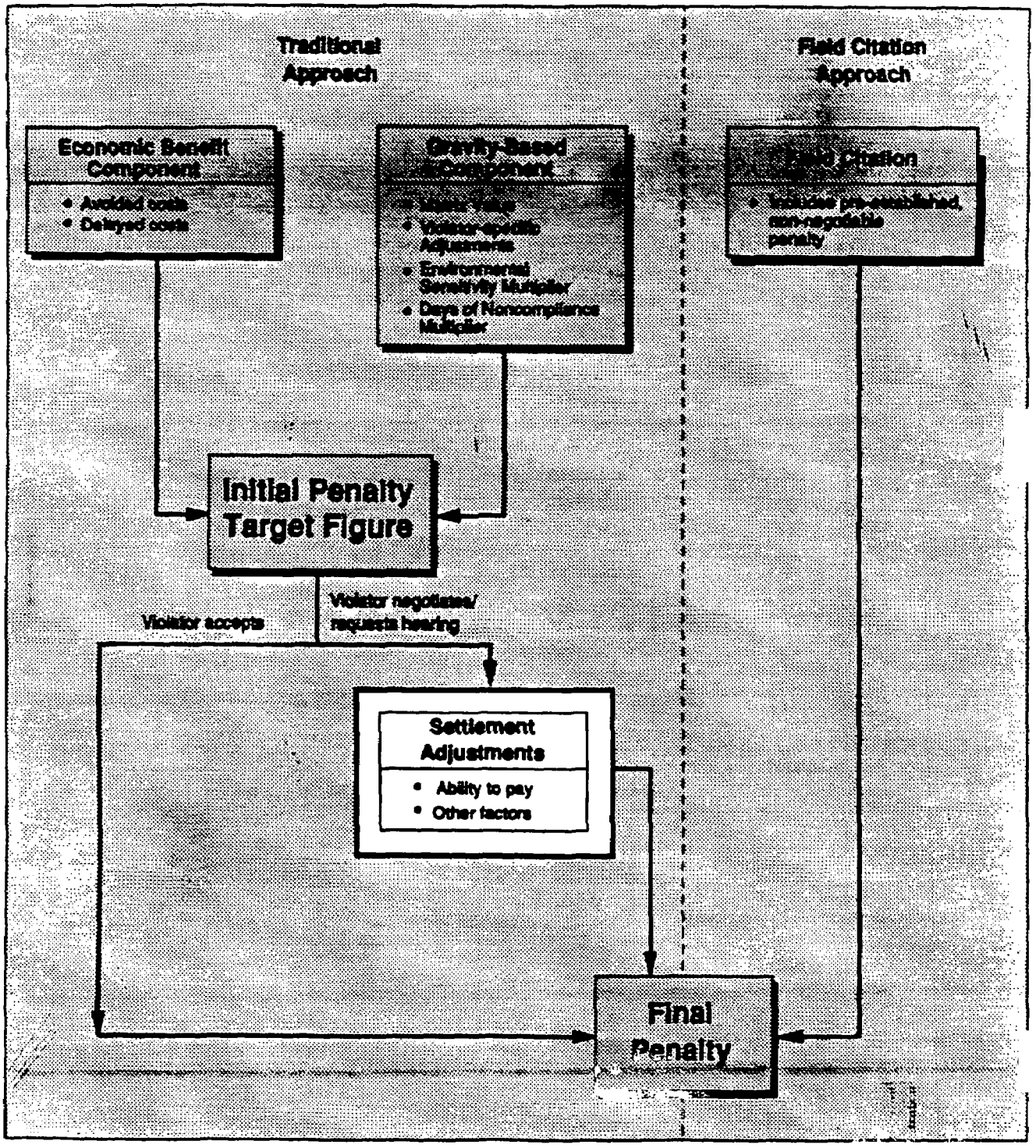
DETERMINING THE GRAVITY-BASED COMPONENT

Gravity-Based Component	=	Matrix Value	x	Violator-Specific Adjustments	x	Environmental Sensitivity Multiplier	x	Days of Noncompliance Multiplier

The economic benefit component is added to the gravity-based component to form the initial penalty target figure to be assessed in the complaint. As discussed previously, this figure cannot exceed $10,000 for each tank for each day of violation.

Chapter 4

Settlement Adjustments



CHAPTER 4. SETTLEMENT ADJUSTMENTS

After the initial penalty target figure has been presented to the potential violator in a complaint, additional adjustments may be made as part of a settlement compromise. All such adjustments are entirely within the discretion of Agency personnel. The burden is always on the owner/operator to provide evidence supporting any reduction of the penalty.

In response to a complaint, the owner/operator may request an informal conference and/or a hearing to settle the penalty and violation. The Federal Consolidated Rules of Practice (CROP) procedures for administrative actions at 40 CFR Part 22 provide for a settlement conference and a right to a public hearing, giving the owner/operator the opportunity to present data to support a penalty adjustment. At a minimum, enforcement personnel may consider adjustments based on the four violator-specific adjustment factors discussed in Chapter 3, including:

- Degree of cooperation/noncooperation;
- Degree of willfulness or negligence;
- History of noncompliance; and
- Other unique factors.

The settlement adjustment is usually not made to the economic benefit component unless new and better information about the economic benefits is made available. The Agency should maintain a record that includes a statement of the reasons for adjusting the penalty.

In addition to the adjustment factors listed above, and because of the nature of the UST regulated community, one factor that commonly will be discussed during negotiations is the owner/operator's inability to pay. An adjustment may need to be made for inability to pay to ensure fair and equitable treatment of the regulated community. It is important, however, that this reduction not allow the regulated community to regard violations of environmental requirements as a way to save money. Furthermore, a penalty should not be reduced when a violator refuses to correct a violation, has a history of noncompliance, or in cases with egregious violations, e.g., failure to abate a release that is contaminating drinking-water supplies.

The Agency should assume that the owner/operator is able to pay unless the owner/operator demonstrates otherwise. The inability to pay adjustment should be based on the amount of the initial penalty target figure and the financial condition of the business, but it is the owner/operator's responsibility to provide evidence of inability to pay. The owner/operator may provide evidence, such as tax returns, to document his or her claims. In cases when the owner/operator fails to demonstrate inability to pay, the Agency should determine whether the owner/operator is unwilling to pay, in which case no adjustments to the initial penalty target figure should be made. In cases where the owner/operator can successfully demonstrate: (1) that the company is unable to pay; or (2) that payment of all or a portion of the penalty will preclude the violator from achieving compliance, the following options may be considered:

- An installment payment plan with interest;
- A delayed payment schedule with interest;
- An in-kind mitigation activity performed by the owner/operator;
- An environmental auditing program implemented by the owner/operator; or
- Reduction of up to 80 percent [illegible] component.

A reduction of the gravity-based component should be considered only after determining that the other four options are not feasible.[14]

In order to evaluate a violator's claim regarding inability to pay, two sources of information are available to determine the likelihood that a company can afford to pay a certain civil penalty:

National Enforcement Investigation Center (NEIC). The NEIC of EPA's Office of Enforcement has developed the Superfund Financial Assessment System that can determine a company's ability to pay. For publicly owned companies, specific financial data is available from NEIC. If investigating a private company, enforcement staff can report financial data to NEIC and it will be keyed into NEIC's computerized economic computer model for analysis.[15]

ABEL. EPA's Office of Enforcement developed the "ABEL" model as part of an ongoing effort to evaluate the financial health of firms involved in enforcement proceedings. The ABEL model has been used by EPA, Regions, and States to evaluate a firm's claim regarding inability to pay based on 21 inputs gathered from the company's Federal income tax returns from the previous 3 years. Enforcement staff may access ABEL by computer dial-up on a personal computer with a modem and an ABEL user ID number.[16] In addition, OUST has developed a PC-based model called ABELPRO which is a simplified version of ABEL that is run on a PC using a LOTUS spreadsheet or Macintosh Excel.[17]

[14] The Agency is currently developing cross-media guidance on environmental mitigation projects which, when final, will supersede the "Alternative Payments" section of the Agency's February 16, 1984 penalty policy (#GM-22). Until the revised Agency guidance is finalized, the Agency's 1984 penalty policy should be consulted for additional guidance.

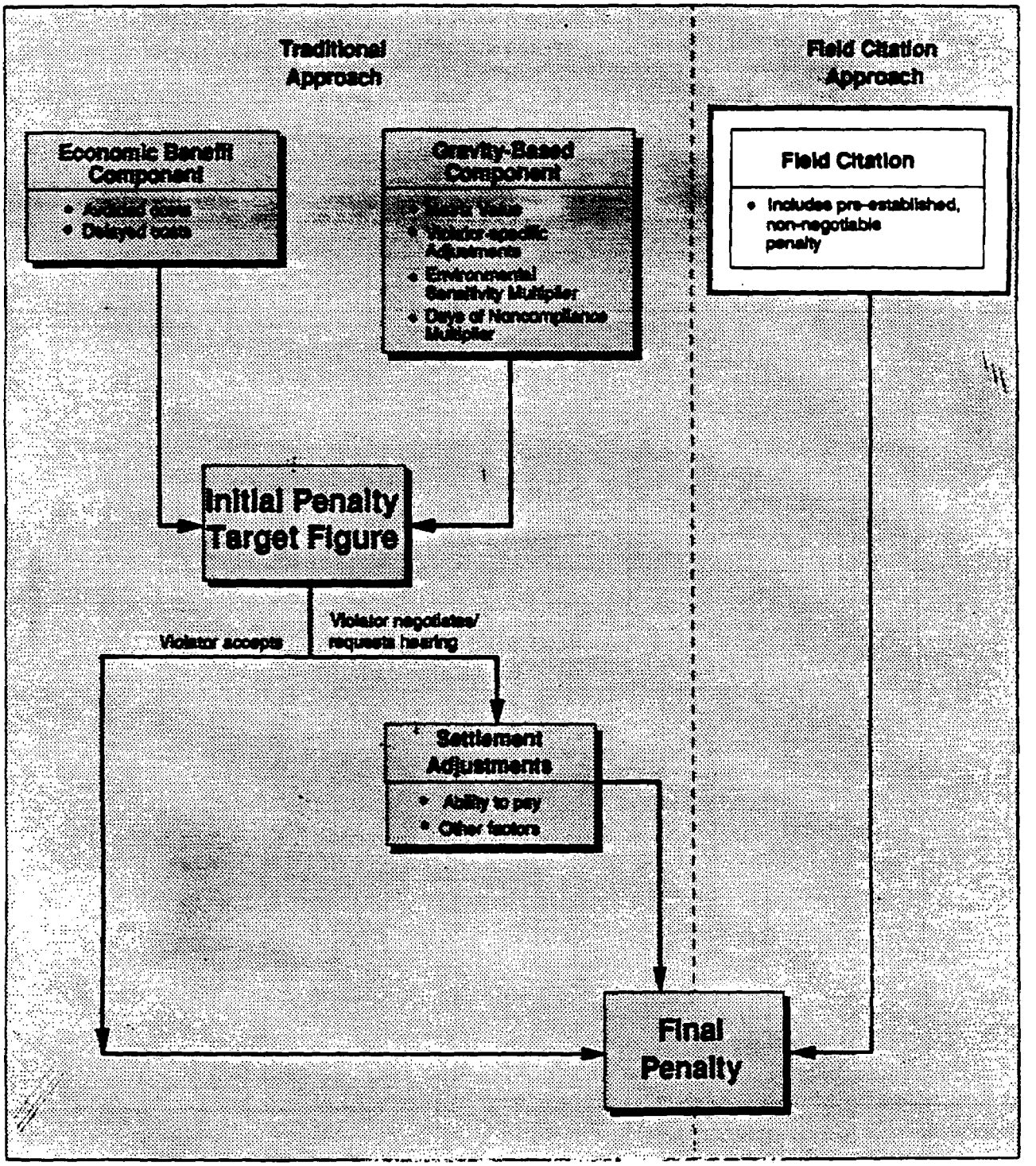
[15] For further information, contact the NEIC at (303) 236-5100 or FTS 8-776-5100.

[16] To obtain the ABEL User's Manual and user ID numbers for computer hookup, contact the BEN/ABEL Coordinator at the U.S. EPA Headquarters, by phoning (202) 475-6777 or FTS 475-6777.

[17] For information, contact the appropriate Regional Desk Officer at U.S. EPA Headquarters' Office of Underground Storage Tanks.

Chapter 5

Use of Field Citations



CHAPTER 5. USE OF FIELD CITATIONS

<Reserved>

The Office of Underground Storage Tanks (OUST) has been exploring the use of field citations as an alternative means of assessing civil penalties and obtaining compliance with UST requirements. Once the manner in which field citations will be used in the Federal UST program has been determined, this policy will be revised to reflect how field citations fit into the UST penalty policy.

APPENDIX A:

MATRIX VALUES FOR SELECTED VIOLATIONS OF FEDERAL UNDERGROUND STORAGE TANK REGULATIONS

APPENDIX A:
MATRIX VALUES FOR SELECTED VIOLATIONS OF FEDERAL UNDERGROUND STORAGE TANK REGULATIONS*

Regulatory Citation	Violation	Unit Assessment[1/]	Deviation from Requirement	Potential for Harm	Matrix Value
SUBPART B -- UST SYSTEMS: DESIGN, CONSTRUCTION, INSTALLATION, AND NOTIFICATION					
	§280.20 Performance standards for new UST systems				
§280.20(a)(1)	Installation of an improperly constructed fiberglass-reinforced plastic tank	(T)	Major	Major	$1500
§280.20(a)(2)	Installation of an improperly designed and constructed metal tank that fails to meet corrosion protection standards	(T)	Major	Moderate	$750
§280.20(a)(2)(i)	Installation of a metal tank with unsuitable dielectric coating	(T)	Major	Moderate	$750
§280.20(a)(2)(ii)	Installation of an improperly designed cathodic protection system for a metal tank	(T)	Moderate	Moderate	$500
§280.20(a)(2)(iii)	Improper installation of cathodic protection system for a metal tank	(T)	Moderate	Moderate	$500
§280.20(a)(2)(iv)	Improper operation and maintenance of tank cathodic protection system	(T)	Major	Moderate	$750
§280.20(a)(3)	Installation of an improperly constructed steel-fiberglass-reinforced-plastic tank	(T)	Major	Moderate	$750
§280.20(b)(1)	Installation of improperly constructed fiberglass-reinforced plastic piping	(P)	Major	Major	$1500
§280.20(b)(2)	Failure to provide any cathodic protection for metal piping	(P)	Major	Moderate	$750
§280.20(b)(2)(i)	Installation of piping with unsuitable dielectric coating	(T)	Major	Moderate	$750
§280.20(b)(2)(ii)	Installation of improperly designed cathodic protection for metal piping	(P)	Moderate	Moderate	$500
§280.20(b)(2)(iii)	Improper installation of cathodic protection system for piping	(P)	Moderate	Moderate	$500
§280.20(b)(2)(iv)	Improper operation and maintenance of cathodic protection system for metal piping	(P)	Major	Moderate	$750

[1/] Unit assessment refers to whether the penalty should be applied per tank (T) or per facility (F). Where the violation applies to piping (P), the assessment will depend on whether the piping is associated with one tank or more than one tank.

E: THIS LIST OF SELECTED VIOLATIONS IS NOT INTENDED TO BE E IVE AND, THEREFORE, MAY NOT INCLUDE ALL POSSIBLE VIOLATIONS

Regulatory Citation	Violation	Unit Assessment[1/]	Deviation from Requirement	Potential for Harm	Matrix Value
SUBPART B -- UST SYSTEMS: DESIGN, CONSTRUCTION, INSTALLATION, AND NOTIFICATION (Continued)					
§280.20(c)(1)	Failure to install any spill prevention system	(T)	Major	Major	$1500
§280 20(c)(1)(i)	Installation of inadequate spill prevention equipment in a new tank	(T)	Major	Major	$1500
§280.20(c)(1)	Failure to install any overfill prevention system	(T)	Major	Moderate	$750
§280.20(c)(1)(ii)	Installation of inadequate overfill prevention equipment in a new tank	(T)	Major	Moderate	$750
§280.20(d)	Failure to install tank in accordance with accepted codes and standards	(T)	Varies[2/]	Varies[2/]	see matrix
§280 20(d)	Failure to install piping in accordance with accepted codes and standards	(P)	Varies[2/]	Varies[2/]	see matrix
§280 20(e)	Failure to provide any certification of UST installation	(F)	Moderate	Minor	$100
§280.20(e)(1)-(6)	Failure to provide complete certification of UST installation	(F)	Minor	Minor	$50
	280.21 Upgrading of existing UST systems				
§280.21(b)	*Failure to meet all tank upgrade standards*	(T)	Major	Major	$1500
§280.21(b)(1)(i)	Improper installation of interior lining for tank upgrade requirements	(T)	Major	Major	$1500
§280.21(b)(1)(ii)	Failure to meet interior lining inspection requirements for tank upgrade	(T)	Major	Moderate	$750
§280.21(b)(2)(i)	Failure to ensure that tank is structurally sound before installing cathodic protection	(T)	Major	Moderate	$750
§201.21(b)(2)(ii)	Failure to provide any monthly monitoring of cathodic protection for tank upgrade requirement	(T/F)	Major	Major	$1500
§280.21(b)(2)(ii)	Failure to provide continuous monthly monitoring of cathodic protection for tank upgrade requirement	(T/F)	Moderate	Minor	$100

[2/] Deviation from requirement and potential for harm will vary depending upon specific code or standard violated.

* NOTE: THIS LIST OF SELECTED VIOLATIONS IS NOT INTENDED TO BE EXHAUSTIVE AND, THEREFORE, MAY NOT INCLUDE ALL POSSIBLE VIOLATIONS.

Regulatory Citation	Violation	Unit Assessment[1/]	Deviation from Requirement	Potential for Harm	Matrix Value
SUBPART B -- UST SYSTEMS: DESIGN, CONSTRUCTION, INSTALLATION, AND NOTIFICATION (Continued)					
§280.21(b)(2)(iii)	Failure to meet tightness test requirements for a tank upgraded with cathodic protection	(T/F)	Major	Moderate	$750
§280.21(b)(2)(iv)	Failure to meet requirements for testing for corrosion holes for a tank upgraded with cathodic protection	(T/F)	Major	Moderate	$750
§280.21(c)	Failure to install any cathodic protection for metal piping upgrade requirements	(P)	Major	Major	$1500
§280.21(c)	Failure to meet tightness test requirements for cathodically protected metal piping	(P)	Major	Moderate	$750
§280.21(d)	Failure to provide spill prevention system for an existing tank	(T)	Major	Major	$1500
§280.21(d)	Failure to provide overfill prevention system for an existing tank	(T)	Major	Moderate	$750
	280.22 Notification requirements				
§280.22(a)	Failure to notify state or local agency within 30 days of bringing an UST system into use	(T)	Major	Major	$1500
§280.22(a)	Failure to notify designated state or local agency of existing tank	(T)	Major	Major	$1500
§280.22(c)	Failure to identify on the submitted notification form all known tanks at that site	(F)	Major	Moderate	$750
§280.22(c)	Failure to submit a separate notification form for all notified tanks that are located at a separate place of operation	(F)	Major	Minor	$200
§280.22(e)-(f)	Failure to provide complete certification of all requirements on the notification form	(F)	Moderate	Minor	$100
§280.22(g)	Failure to inform tank purchaser of notification requirements	(T)	Major	Major	$1500

Regulatory Citation	Violation	Unit Assessment[1/]	Deviation from Requirement	Potential for Harm	Matrix Value
	SUBPART C -- GENERAL OPERATING REQUIREMENTS				
	280.30 Spill and overfill control				
§280.30(a)	Failure to take necessary precautions to prevent overfill/spillage during the transfer of product	(F)	Major	Major	$1500
§280.30(b)	Failure to report a spill/overfill	(F)	Major	Major	$1500
§280.30(b)	Failure to investigate and clean up a spill/overfill	(F)	Major	Major	$1500
	280.31 Operation and maintenance of corrosion protection				
§280.31(a)	Failure to operate and maintain corrosion protection system continuously	(F/T)	Major	Major	$1500
§280.31(b)(1)	Failure to ensure that cathodic protection system is tested within 6 months of installation	(F/T)	Major	Major	$1500
§280.31(b)(1)	Failure to ensure that cathodic protection system is tested every 3 years thereafter	(T/F)	Major	Moderate	$750
§280.31(b)(1)	Failure to meet one 3-year test for cathodic protection system	(T/F)	Moderate	Minor	$100
§280.31(b)(2)	Failure to inspect cathodic protection system in accordance with accepted codes	(T/F)	Major	Moderate	$750
§280.31(c)	Failure to inspect impressed current systems every 60 days	(T/F)	Major	Moderate	$750
§280.31(d)	Failure to maintain any records of cathodic protection inspections	(T/F)	Major	Moderate	$750
§280.31(d)	Failure to maintain every record of cathodic protection inspections	(T/F)	Moderate	Minor	$100
	280.32 Compatibility				
§280.32	Failure to ensure that UST system is made of or lined with materials compatible with substance stored	(T/P)	Major	Major	$1500

* NOTE: THIS LIST OF SELECTED VIOLATIONS IS NOT INTENDED TO BE EXHAUSTIVE AND, THEREFORE, MAY NOT INCLUDE ALL POSSIBLE VIOLATIONS.

Regulatory Citation	Violation	Unit Assessment[1]	Deviation from Requirement	Potential for Harm	Matrix Value
SUBPART C -- GENERAL OPERATING REQUIREMENTS (Continued)					
	280.33 Repairs allowed				
§280.33(a)	Failure to repair UST system in accordance with accepted codes and standards	(T)	Varies[2]	Varies[2]	see matrix
§280.33(b)	Failure to repair fiberglass-reinforced UST in accordance with accepted codes and standards	(T)	Varies[2]	Varies[2]	see matrix
§280.33(c)	Failure to replace metal piping that has released product	(P)	Major	Major	$1500
§280.33(d)	Failure to repair fiberglass-reinforced piping in accordance with manufacturers specifications	(P)	Major	Major	$1500
§280.33(e)	Failure to ensure that repaired tank systems are tightness tested within 30 days of completion of repair	(T)	Major	Moderate	$750
§280.33(e)	Failure to test cathodic protection system within 6 months of repair of an UST system	(T)	Major	Moderate	$750
§280.33(f)	Failure to maintain records of each repair to an UST system	(T)	Major	Major	$1500
	280.34 Reporting and recordkeeping				
(For violations of reporting and recordkeeping, see appropriate regulatory section (e.g., reporting of releases will be under Subpart D).					
SUBPART D -- RELEASE DETECTION					
	280.40 General requirements for all UST systems				
§280.40(a)(1)	Failure to provide release detection method capable of detecting a release from tank or piping that routinely contains product	(T/F)	Major	Major	$1500
§280.40(a)(2)	Failure to install, calibrate, operate, or maintain release detection method in accordance with manufacturer's instructions	(T/F)	Major	Major	$1500

NOTE: THIS LIST OF SELECTED VIOLATIONS IS NOT INTENDED TO BE EXHAUSTIVE AND, THEREFORE, MAY NOT INCLUDE ALL POSSIBLE VIOLATION

Regulatory Citation	Violation	Unit Assessment[1/]	Deviation from Requirement	Potential for Harm	Matrix Value
	SUBPART D -- RELEASE DETECTION (Continued)				
§280.40(a)(3)	Failure to provide a release detection method that meets the performance requirements in §280.43 or §280.44	(F)	Major	Major	$1500
§280.40(b)	Failure to notify implementing agency when release detection indicates release	(F)	Major	Major	$1500
§280.40(c)	Failure to provide any release detection method by phase-in date	(F)	Major	Major	$1500
§280.40(d)	Failure to close any UST system that cannot meet release detection requirements.	(F)	Major	Major	$1500
	280.41 Requirements for petroleum UST systems				
§280.41(a)	Failure to monitor tanks at least every 30 days, if appropriate	(T)	Major	Major	$1500
§280.41(a)(1)	Failure to conduct tank tightness testing every 5 years, if appropriate	(T)	Major	Major	$1500
§280.41(a)(2)	Failure to conduct annual tank tightness testing, if appropriate	(T)	Major	Major	$1500
§280.41(b)	Failure to use any underground piping monitoring method	(P)	Major	Major	$1500
	280.42 Requirements for hazardous substance UST systems				
§280.42(a)	Failure to provide release detection for an existing hazardous substance tank system	(F)	Major	Major	$1500
§280.42(b)	Failure to provide adequate release detection for a new hazardous substance UST system	(F)	Major	Major	$1500
§280.42(b)(1)	Failure to provide adequate secondary containment of tank for a hazardous substance UST	(T)	Major	Major	$1500
§280.42(b)(2)	Failure to provide adequate double-walled tank/adequate lining for a hazardous substance UST	(T)	Major	Major	$1500

*** NOTE: THIS LIST OF SELECTED VIOLATIONS IS NOT INTENDED TO BE EXHAUSTIVE AND, THEREFORE, MAY NOT INCLUDE ALL POSSIBLE VIOLATIONS.**

Regulatory Citation	Violation	Unit Assessment[1/]	Deviation from Requirement	Potential for Harm	Matrix Value
	SUBPART D -- RELEASE DETECTION (Continued)				
§280.42(b)(3)	Failure to provide adequate external liners for a hazardous substance UST	(T)	Major	Major	$1500
§280.42(b)(4)	Failure to provide adequate secondary containment of piping for a hazardous substance UST	(T)	Major	Major	$1500
	280.44 Methods of release detection for piping				
§280.44	Failure to provide any release detection for underground piping	(P)	Major	Major	$1500
§280.44(a)	Failure to provide adequate line leak detector system for underground piping	(P)	Major	Major	$1500
§280.44(b)	Failure to provide adequate line tightness testing system for underground piping system	(P)	Major	Major	$1500
§280.44(c)	Inadequate use of applicable tank release detection methods	(P)	Major	Major	$1500
	280.45 Release detection recordkeeping				
§280.45	Failure to maintain any records of release detection monitoring	(F)	Major	Major	$1500
§280.45	Failure to maintain every record of release detection monitoring	(F)	Moderate	Minor	$100
§280.45(a)	Failure to document all release detection performance claims for 5 years after installation	(F)	Moderate	Minor	$100
§280.45(b)	Failure to maintain any results of sampling, testing or monitoring for release detection for at least 1 year	(F)	Major	Major	$1500
§280.45(b)	Failure to maintain every result of sampling, testing or monitoring for release detection for at least 1 year	(F)	Moderate	Minor	$100
§280.45(b)	Failure to retain results of tightness testing until next test is conducted	(F)	Major	Major	$1500
§280.45(c)	Failure to document any calibration, maintenance, and repair of release detection	(F)	Major	Major	$1500

Regulatory Citation	Violation	Unit Assessment[1/]	Deviation from Requirement	Potential for Harm	Matrix Value
SUBPART D -- RELEASE DETECTION (Continued)					
§280.45(c)	Failure to document every calibration, maintenance, and repair of release detection	(F)	Moderate	Moderate	$500
SUBPART E -- RELEASE REPORTING, INVESTIGATION, AND CONFIRMATION					
	280.50 Reporting of suspected release				
§280.50(a)-(c)	Failure to report a suspected release within 24 hours to the implementing agency	(F)	Major	Major	$1500
	280.52 Release investigation and confirmation steps				
§280.52(a)-(b)	Failure to investigate and confirm a release (if appropriate) using accepted procedures	(F)	Major	Major	$1500
	280.53 Reporting and cleanup of spills and overfills				
§280.53(a)	Failure to report a spill/overfill (if appropriate) to implementing agency within 24 hours (or other specified time period)	(F)	Major	Major	$1500
§280.53(b)	Failure to contain and immediately clean up a spill/overfill of less than 25 gallons	(F)	Major	Major	$1500
§280.53(b)	Failure to contain and immediately clean up a hazardous substance spill/overfill	(F)	Major	Major	$1500
SUBPART F -- RELEASE RESPONSE AND CORRECTIVE ACTION					
§280.61	Failure to take initial response actions within specified time period after a release is confirmed	(F)	Major	Major	$1500

* NOTE: THIS LIST OF SELECTED VIOLATIONS IS NOT INTENDED TO BE EXHAUSTIVE AND, THEREFORE, MAY NOT INCLUDE ALL POSSIBLE VIOLATIONS.

Regulatory Citation	Violation	Unit Assessment[1/]	Deviation from Requirement	Potential for Harm	Matrix Value
	SUBPART F -- RELEASE RESPONSE AND CORRECTIVE ACTION (Continued)				
§280.62	Failure to submit report on initial abatement measures within 20 days (or other specified time) of release confirmation	(F)	Major	Major	$1500
§280.63	Failure to submit report on initial site characterization within 45 days (or other specified time) of release confirmation	(F)	Major	Major	$1500
§280.64	Failure to submit report on free report removal within 45 days (or other specified time) of release confirmation	(F)	Major	Major	$1500
	SUBPART G -- OUT-OF-SERVICE UST SYSTEMS AND CLOSURE				
	280.70 Temporary closure				
§280.70(a)	Failure to continue operation and maintenance of cathodic protection system in a temporarily closed tank system	(F/T)	Major	Moderate	$750
§280.70(a)	Failure to continue operation and maintenance of release detection in a temporarily closed tank system	(F/T)	Major	Major	$1500
§280.70(b)	Failure to comply with temporary closure requirements for a tank system for 3 or more months	(F/T)	Major	Moderate	$750
§280.70(c)	Failure to permanently close or upgrade a temporarily closed tank system after 12 months	(F/T)	Major	Major	$1500
	280.71 Permanent closure and changes-in-service				
§280.71(a)	Failure to notify implementing agency of a closure or change-in-service	(F/T)	Major	Major	$1500
§280.71(b)	Failure to remove all liquids and sludges for tank closure	(F/T)	Major	Major	$1500
§280.71(b)	Failure to remove closed tank from the ground or fill tank with an inert solid for tank closure	(F/T)	Major	Moderate	$750
§280.71(c)	Failure to empty and clean tank system and conduct a site assessment prior to a change-in-service	(F/T)	Major	Major	$1500

Regulatory Section	Violation	Unit Assessment[1/]	Deviation from Requirement	Potential for Harm	Matrix Value
SUBPART G -- OUT-OF-SERVICE UST SYSTEMS AND CLOSURE (Continued)					
	280.72 Assessing the site at closure or change-in-service				
§280.72(a)	Failure to measure (if required) for the presence of a release before a permanent closure	(T/F)	Major	Major	$1500
§280.72(b)	If contaminated soil, contaminated ground water, or free product is discovered, failure to begin corrective action	(T/F)	Major	Major	$1500
	280.74 Closure records				
§280.74	Failure to maintain closure records for at least 3 years	(F)	Major	Major	$1500
§280.74	Failure to maintain change-in-service records for at least 3 years	(F)	Major	Major	$1500
SUBPART H -- FINANCIAL RESPONSIBILITY					
§280.93(a)	Failure to comply with financial responsibility requirements by the required phase-in time	(F)	Major	Moderate	$750
§280.93(a)(1)-(2)	Failure to meet the requirement for per-occurrence coverage of insurance.	(F)	Major	Moderate	$750
§280.93(b)(1)-(2)	Failure to meet the requirement for annual aggregate coverage of insurance	(F)	Major	Moderate	$750
§280.93(f)	Failure to review and adjust financial assurance after acquiring new or additional USTs	(F)	Major	Moderate	$750
§280.94	Use of an unapproved mechanism or combination of mechanisms to demonstrate financial responsibility	(F)	Major	Moderate	$750
§280.95	Use of falsified financial documents to pass financial test of self-insurance	(F)	Major	Moderate	$750
§280.106(a)(1)	Failure to report evidence of financial responsibility to the implementing agency within 30 days of detecting a known or suspected release	(F)	Moderate	Minor	$100

*** NOTE: THIS LIST OF SELECTED VIOLATIONS IS NOT INTENDED TO BE EXHAUSTIVE AND, THEREFORE, MAY NOT INCLUDE ALL POSSIBLE VIOLATIONS.**

Regulatory Citation	Violation	Unit Assessment[1/]	Deviation from Requirement	Potential for Harm	Matrix Value
SUBPART H -- FINANCIAL RESPONSIBILITY (Continued)					
§280.106(a)(2)	Failure to report evidence of financial responsibility to the implementing agency when new tanks are installed	(F)	Moderate	Minor	$100
§280.106(b)	Failure to report evidence of financial responsibility to the implementing agency if the provider becomes incapable of providing financial assurance and the owner or operator is unable to obtain alternate coverage within 30 days.	(F)	Moderate	Minor	$100
§280.106(c)	Failure to maintain copies of the financial assurance mechanism(s) used to comply with financial responsibility rule and certification that the mechanism is in compliance with the requirements of the rule at the UST site or place of business	(F)	Moderate	Minor	$100

NOTE: THIS LIST OF SELECTED VIOLATIONS IS NOT INTENDED TO BE EXHAUSTIVE AND, THEREFORE, MAY NOT INCLUDE ALL POSSIBLE VIOLATIONS.

APPENDIX B:

UST PENALTY COMPUTATION WORKSHEET

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UST PENALTY COMPUTATION WORKSHEET

Assessments for each violation should be determined on separate worksheets and totaled. (If more space is needed, attach separate sheet.)

PART 1 - BACKGROUND

Company name_____

Regulation violated_____

_____

_____

Previous violations_____

_____

Date of requirement_____ Date of inspection_____

Date of compliance_____ Explanation (if appropriate):

1. Days of noncompliance_____
2. Number of tanks_____

PART 2 - ECONOMIC BENEFIT COMPONENT

Avoided Expenditures_____ Basis:_____

Delayed Expenditures_____ Basis: _____

Weighted Tax Rate_____ Source: _____

Interest Rate_____ Source: _____

$$\text{AVOIDED COSTS} = \left[\text{Avoided Expenditures} + \frac{\text{Avoided Expenditures} \times \text{Interest} \times \text{Number of Days}}{365 \text{ Days}}\right] \times (1 - \text{Weighted Tax Rate})$$

3. Calculated Avoided Cost:___ _____

UST PENALTY COMPUTATION WORKSHEET

DELAYED COSTS = Delayed Expenditures x Interest x Number of Days / 365 Days

4. Calculated Delayed Cost:_____

5. Economic Benefit Component:_____(carry figure to Line 16).
(Line 3 + Line 4)

PART 3 - MATRIX VALUE FOR THE GRAVITY-BASED COMPONENT

Potential for Harm:_____ Extent of Deviation_____

6. Matrix Value (MV):_____ (from document page 16 or Appendix A)

7. Per-tank MV:_____ (if violation is per facility, the amount on Line 7 will be the same as the amount on Line 6)
(Line 2 x Line 6)

PART 4 - VIOLATOR-SPECIFIC ADJUSTMENTS TO MATRIX VALUE

	Percentage Change (+ or -)	x Matrix Value	= Dollar Adjustment (+ or -)	Justification for Adjustment:
8. Degree of cooperation/ noncooperation	_____	_____	_____	
9. Degree of willfulness or negligence:	_____	_____	_____	
10. History of noncompliance:	_____	_____	_____	
11. Unique factors:	_____	_____	_____	
12. Adjusted Matrix Value (Line 7 + Lines 8-11)			_____	

UST PENALTY COMPUTATION WORKSHEET

PART 5 - GRAVITY-BASED COMPONENT

Level of
Environmental Sensitivity_____ Justification:

13. ESM (from document Page 21)_____

14. DNM (from document Page 21)_____

GRAVITY-BASED COMPONENT = Adjusted Matrix Value x Environmental Sensitivity Multiplier x Days of Noncompliance Multiplier

15. Gravity-Based Component: _____
(Line 12 x Line 13 x Line 14)

PART 6 - INITIAL PENALTY TARGET FIGURE

16. Economic Benefit Component _____
(from Line 5)

17. Gravity-Based Component_____
(from Line 15)

18. Initial Penalty Target Figure_____
(Line 16 + Line 17)

SIGNATURE_____ _____ DATE_____

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APPENDIX C:

UST PENALTY COMPUTATION EXAMPLES

EXAMPLE 1

BACKGROUND

Inspection Date: April 12, 1990

Facility Name and Description: Ed's Gas and Go is a small gas station in a semi-rural part of the county. The facility has 4 tanks, apparently installed prior to 1965. Judging from the condition of the facility and adjacent store, Ed's income appears to be less than $50,000 per year.

Violations: During the inspection, the inspector observed that Ed failed to provide a method of release detection by the December 22, 1989 deadline, in violation of 40 CFR section 280.40(c).

Owner/Operator Response: Ed claimed no knowledge of the requirements for release detection. After being informed of methods for meeting the requirement, he indicated that he would use annual tank tightness testing and monthly inventory control, in accordance with 40 CFR section 280.41(a)(2). Ed began to conduct adequate monthly inventory control and arranged to have his tanks tested within 10 days.

Previous Actions at Facility: Previously, Ed had been given a warning letter for failure to comply with the notification requirements, but had complied upon receipt of the letter. No other previous violations were identified.

Current Status at Site: The inspector observed that given the age of the tanks, and Ed's previous inability to detect any releases, there was a good chance for a release to occur and go unnoticed for a significant length of time. However, Ed's subsequent tightness tests indicated that the tanks were tight. The geology in the area is fractured shale. There are no drinking water wells or sensitive wildlife receptors within a 5-mile radius of the site.

PENALTY CALCULATION DATA

Violation: 40 CFR section 280.40(c)

Days of violation: 120 days from date of noncompliance (December 22, 1989) to date of compliance (April 22, 1990, which was 10 days after the inspection).

Avoided expenditures: $2.50 per day = $300 for 120 days (estimated cost for labor needed to conduct daily inventory control, based on 1/2 hour labor at $5.00 per hour)

Delayed expenditures: $520 x 4 tanks = $2,080, where the average cost for a tank tightness test is $520. This is considered a delayed expenditure because it was necessary to achieve compliance in this time frame.

Interest rate: 18.1% (the equity discount rate used in the BEN model for 1990).

Tax rate: 15% (the weighted average tax rate for a facility with less than $50,000 annual income).

[NOTE: The numbers used to determine avoided and delayed expenditures were chosen for example only. They do not necessarily represent true costs in any State or Region in the country.]

UST PENALTY COMPUTATION WORKSHEET

Assessments for each violation should be determined on separate worksheets and totaled. (If more space is needed, attach separate sheet.)

PART 1 - BACKGROUND

Company name Ed's Gas and Go

Regulation violated 40 CFR section 280 40(c) - Failure to provide release detection by December 22, 1989 phase-in date.

Previous violations Notification violation (1986) - warning letter issued.

Date of requirement 12/22/89

Date of inspection 4/12/90

Date of compliance 4/22/89

Explanation (if appropriate): date of compliance is 10 days after inspection.

1. Days of noncompliance 120
2. Number of tanks 4

PART 2 - ECONOMIC BENEFIT COMPONENT

Avoided Expenditures $300 Basis: $2.50 per day for monitoring

Delayed Expenditures $2080 Basis: $520 per tank for tightness test

Weighted Tax Rate 0.15 (15%) Source: MTR for income < $50,000/year

Interest Rate 0.181 (18%) Source: BEN model (equity discount rate)

$$\text{AVOIDED COSTS} = \left[\text{Avoided Expenditures} + \frac{\text{Avoided Expenditures} \times \text{Interest} \times \text{Number of Days}}{365 \text{ Days}}\right] \times (1 - \text{Weighted Tax Rate})$$

$$AC = \left[\$300 + \frac{(\$300 \times .181 \times 120)}{365}\right] \times [1 - .15] = \$270$$

3. Calculated Avoided Cost: $270

UST PENALTY COMPUTATION WORKSHEET

DELAYED COSTS = Delayed Expenditures x Interest x Number of Days / 365 Days

$$DC = \frac{\$2080 \times .181 \times 120}{365} = \$124$$

4. Calculated Delayed Cost: $124

5. Economic Benefit Component: $394 (carry figure to Line 16).
(Line 3 + Line 4)

PART 3 - MATRIX VALUE FOR THE GRAVITY-BASED COMPONENT

Potential for Harm: Major Extent of Deviation Major

6. Matrix Value (MV): $1500 (from document page 16 or Appendix A)

7. Per-tank MV: $6000 (If violation is per facility, the amount on Line 7 will be the same as the amount on Line 6)
(Line 2 x Line 6)

PART 4 - VIOLATOR-SPECIFIC ADJUSTMENTS TO MATRIX VALUE

	Percentage Change (+ or -)	x Matrix Value	= Dollar Adjustment (+ or -)	Justification for Adjustment:
8. Degree of cooperation/ noncooperation	0	$6000	0	Complied as required following inspection.
9. Degree of willfulness or negligence:	0	$6000	0	Did not knowingly violate requirements.
10. History of noncompliance:	+5%	$6000	+$300	Warning letter issued for previous violation.
11. Unique factors:	0	$6000	0	
12. Adjusted Matrix Value (Line 7 + Lines 8-11)			$6300	

UST PENALTY COMPUTATION WORKSHEET

PART 5 - GRAVITY-BASED COMPONENT

Level of Environmental Sensitivity: Moderate

Justification: Any release is not likely to have impact on nearby drinking-water sources. Potential impact on the environment would be minimal, although fractured shale would complicate remediation.

13. ESM (from document Page 21): 1.5

14. DNM (from document Page 21): 1.5

GRAVITY-BASED COMPONENT = Adjusted Matrix Value x Environmental Sensitivity Multiplier x Days of Noncompliance Multiplier

GBC = $6300 x 1.5 x 1.5 = $14,175

15. Gravity-Based Component: $14,175
(Line 12 x Line 13 x Line 14)

PART 6 - INITIAL PENALTY TARGET FIGURE

16. Economic Benefit Component: $394
(from Line 5)

17. Gravity-Based Component: $14,175
(from Line 15)

18. Initial Penalty Target Figure: $14,569
(Line 16 + Line 17)

SIGNATURE_____ DATE_____

EXAMPLE 2

BACKGROUND

Inspection Date: March 20, 1992

Facility Name and Description: Johnson's Petromart, located at Prairie View Lane, is one of eight facilities in a convenience store chain that spans three counties. This facility has a total of 5 USTs, and there are a total of 34 USTs at the 8 facilities. Based on an examination of the parent company's tax returns, it was determined that the company's taxable income was $280,000.

Violations: During the inspection, the inspector observed that the facility had no records of financial assurance coverage as required by the April 26, 1991 deadline. Subsequently, the inspector requested records for each of the 8 Johnson facilities. Upon further investigation, the inspector determined that the owner of the chain, Jack Johnson, had acquired private insurance (the owner did not qualify to self-insure) for the other 7 facilities. At the remaining facility, however, neither the owner nor the operator had obtained the required coverage, thereby constituting a violation of 40 CFR section 280.93(a). This facility is among the oldest in the Johnson's chain and is operated with 4 bare steel UST systems and one cathodically protected UST system. The other 7 facilities were opened subsequent to the interim prohibition and installed USTs that meet the Federal design, construction, and installation requirements. Therefore, obtaining insurance for these USTs was easier than for the facility in violation. The insurance company had indicated that it would be willing to ensure the remaining facility provided that the tanks were retrofitted with spill/overfill protection and cathodic protection.

Owner/Operator Response: Jack Johnson argued that it was the responsibility of the operator to upgrade his USTs so as to make them insurable. The operator of the facility claimed that he lacked the resources to upgrade his USTs and believed that the responsibility for meeting the FR requirements was the owner's. The enforcement staff determined that the owner was aware of his responsibility to insure the USTs at all of his facilities and that only he had the means to do so. The Agency attempted to enter into compliance negotiations with Jack Johnson, but to no avail. The Agency planned to issue an administrative complaint on July 1, 1992.

Previous Actions at Facility: Previously, one of the Johnson's facilities had been issued a warning letter for failure to notify the Agency after bringing a new UST into operation. The owner had complied after receiving the letter. Three other facilities had been issued warning letters for failure to maintain all of the required monitoring records for release detection.

Current Status at Site: At the time of the most recent inspection, it was determined that the facility in violation of the FR requirements had an adequate method of release detection, and no releases were determined to have occurred. The geology in the area of the facility is clay. The facility is located in a semi-residential/commercial area; however, there are no drinking water wells or sensitive wildlife receptors within a 3-mile radius of the site.

PENALTY CALCULATION DATA

Violation: 40 CFR section 280.93(a)

Days of violation: 430 days from date of noncompliance (April 26, 1991) to date of compliance (which, for purposes of assessing the penalty, was determined to be July 1, 1992, to coincide with the date of the administrative complaint).

Avoided expenditures: $27.40 per day = $11,781 for 430 days (estimated insurance premium, based on an annual premium of $2,000 per UST for 5 USTs)

Delayed expenditures: $15,000 x 4 = $60,000 (where the average cost for system retrofit is $15,000). This is considered a delayed cost because retrofitting would enable Johnson's to achieve compliance with the financial responsibility requirement.

Interest rate: 18.1% (the equity discount rate used in the BEN model for 1990).

Tax rate: 33% (the weighted average rate for a facility with $280,000 in taxable income).

[NOTE: The numbers used to determine avoided and delayed expenditures were chosen for convenience only. They do not necessarily represent true costs in any State or Region in the country.]

UST PENALTY COMPUTATION WORKSHEET

Assessments for each violation should be determined on separate worksheets and totaled. (If more space is needed, attach separate sheet.)

PART 1 - BACKGROUND

Company name Johnson's Petromart

Regulation violated 40 CFR section 280 93 (a) - Failure to provide full financial coverage by compliance deadline

Previous violations Notification violation (1989) - warning letter issued; release detection violation (1991) - warning letter issued.

Date of requirement 4/26/91

Date of inspection 3/20/92

Date of compliance 7/1/92

Explanation (if appropriate): date of compliance is considered to be date complaint is issued.

1. Days of noncompliance 430
2. Number of tanks 5 (or 4)*

*(only 4 need to be retrofit)

PART 2 - ECONOMIC BENEFIT COMPONENT

Avoided Expenditures $11,781 Basis: $27.40 per day insurance (5 tanks)

Delayed Expenditures $60,000 Basis: $15,000 per UST retrofit (4 tanks)

Weighted Tax Rate 0 33 (33%) Source: MTR for $280,000 income

Interest Rate 0 181 (18.1%) Source: BEN model (equity discount rate)

$$\text{AVOIDED COSTS} = \left[\text{Avoided Expenditures} + \frac{\text{Avoided Expenditures} \times \text{Interest} \times \text{Number of Days}}{365 \text{ Days}}\right] \times (1 - \text{Weighted Tax Rate})$$

$$AC = \left[\$11{,}781 + \frac{\$11{,}781 \times .181 \times 430}{365}\right] \times (1 - 33) = \$957$$

3. Calculated Avoided Cost: $9576

UST PENALTY COMPUTATION WORKSHEET

DELAYED COSTS = **Delayed Expenditures x Interest x Number of Days**
365 Days

$$DC = \frac{\$60,000 \times .181 \times 430}{365} = \$12,794$$

4. Calculated Delayed Cost: $12,794

5. Economic Benefit Component: $22,370 (carry figure to Line 16).
(Line 3 + Line 4)

PART 3 - MATRIX VALUE FOR THE GRAVITY-BASED COMPONENT

Potential for Harm: Moderate Extent of Deviation Major

6. Matrix Value (MV): $750 (from document page 16 or Appendix A)

7. Per-tank MV: $750 (if violation is per facility, the amount on Line 7 will be the same as the amount on Line 6)
(Line 2 x Line 6)

PART 4 - VIOLATOR-SPECIFIC ADJUSTMENTS TO MATRIX VALUE

	Percentage Change (+ or -)	x Matrix Value	= Dollar Adjustment (+ or -)	Justification for Adjustment:
8. Degree of cooperation/ noncooperation	+ 40%	$750	+ $300	Owner unwilling to negotiate terms of compliance.
9. Degree of willfulness or negligence:	+25%	$750	+ $188	Owner was aware of requirement and able to comply.
10. History of noncompliance:	+20%	$750	+ $150	Previous violation
11. Unique factors:	0	$750	0	N/A
12. Adjusted Matrix Value (Line 7 + Lines 8-11)			$1388	

UST PENALTY COMPUTATION WORKSHEET

PART 5 - GRAVITY-BASED COMPONENT

Level of Environmental Sensitivity Low

Justification: Potential impact of a release on the environment and drinking-water supplies would be minimal. Clay soil would limit migration of product.

13. ESM (from document Page 21) 1

14. DNM (from document Page 21) 3

GRAVITY-BASED COMPONENT = Adjusted Matrix Value x Environmental Sensitivity Multiplier x Days of Noncompliance Multiplier

GBC = $1388 x 1 x 3 = $4,164

15. Gravity-Based Component: $4164
(Line 12 x Line 13 x Line 14)

PART 6 - INITIAL PENALTY TARGET FIGURE

16. Economic Benefit Component $22,370
(from Line 5)

17. Gravity-Based Component $4164
(from Line 15)

18. Initial Penalty Target Figure $26,534
(Line 16 + Line 17)

SIGNATURE _____ DATE _____

EXAMPLE 3

BACKGROUND

Inspection Date: N/A

Facility Name and Description: Kelly's Kwik Stop is a convenience store that recently had its three USTs taken out of operation. Prior to their removal, the USTs were operated by the owner of the convenience store, Karen Kelly, and owned by Darby Distributors, an oil jobber. The taxable income of Darby Distributors was $400,000 in 1989.

Violations: On May 20, 1989, Ms. Kelly reported the presence of petroleum vapors outside of her convenience store. The Agency investigated the site and confirmed the presence of a petroleum release. Ms. Kelly reported that Darby Distributors had removed the 3 USTs located at her place of business on March 17, 1989; she was not aware of the requirement to notify the Agency prior to permanent closure or of the requirement to conduct a site assessment. Ms. Kelly also could not say whether Darby Distributors had fulfilled these requirements. Upon a review of the Agency's records, it was determined that Darby Distributors had failed to notify the Agency of the closure, thereby constituting a violation of 40 CFR section 280.71. The distributor was also unable to produce records demonstrating compliance with the closure / site assessment requirements, constituting a violation of 40 CFR section 280.74. The distributor also failed to assess the site for the presence of a release before permanent closure, in violation of 40 CFR section 280.72(a).

Owner/Operator Response: When the Agency contacted Darby Distributors, they indicated that they would initiate corrective action only if they, and not Ms. Kelly, were actually responsible for the release. The Agency informed them that as the owner of the USTs formerly in operation at Kelly's Kwik Stop they as well as Ms. Kelly are responsible for addressing any release from those USTs. The Agency also informed Darby Distributors that administrative orders were being prepared to compel them to clean up the release and pay penalties for violations of the closure requirements (the Agency was dealing separately with Ms. Kelly). At that time, the company requested to enter into negotiations with the Agency in order to establish a corrective action schedule and determine the amount of the penalties to be assessed.

Previous Actions at Facility: There were no previous incidents of violation at the facility.

Current Status at Site: Kelly's Kwik Stop is located in a rural part of the county. There are, however, two private drinking-water wells within a mile of the facility and several others within 4 miles of the facility. The facility is located one-half mile from a river that is used for recreational purposes as well as by various wildlife as a source of water. The geology in the area of the site is silt.

PENALTY CALCULATION DATA

Violation: 40 CFR section 280.71(a)

Days of Violation: 94 days, from the latest required date of compliance (February 17, 1989) to the actual date of compliance (May 20, 1989), where actual compliance is assumed to be coincident with Ms. Kelly's report to the Agency.

Avoided expenditures: Deemed negligible.

Delayed expenditures: None.

Interest rate: 18.1% (the equity discount rate used in the BEN model for 1989).

Tax rate: 34% (the weighted average rate for a company with taxable income greater than $340,000).

PENALTY CALCULATION DATA

Violation: 40 CFR section 280.72(a)

Days of Violation: 64 days, from the latest required date of compliance (March 17, 1989) to the actual date of compliance (May 20, 1989), where actual compliance is assumed to be coincident with Ms. Kelly's report to the Agency.

Avoided expenditures: $8,500 x 3 USTs = $25,500 (where the average cost for a site assessment at closure is $8,500 per UST).

Delayed expenditures: None.

Interest rate: 18.1% (the equity discount rate used in the BEN model for 1989).

Tax rate: 34% (the weighted average rate for a company with taxable income greater than $340,000).

PENALTY CALCULATION DATA

Violation: 40 CFR section 280.74

Days of Violation: 64 days, from the latest required date of compliance (March 17, 1989) to the actual date of compliance (May 20, 1989), where actual compliance is assumed to be coincident with Ms. Kelly's report to the Agency.

Avoided expenditures: None.

Delayed expenditures: Deemed negligible.

Interest rate: 18.1% (the equity discount rate used in the BEN model for 1989).

Tax rate: 34% (the weighted average rate for a company with taxable income greater than $340,000).

[NOTE: The numbers used to determine avoided and delayed expenditures were chosen for convenience only. They do not necessarily represent true costs in any State or Region in the country.]

UST PENALTY COMPUTATION WORKSHEET

Assessments for each violation should be determined on separate worksheets and totaled. (If more space is needed, attach separate sheet.)

PART 1 - BACKGROUND

Company name Darby Distributors

Regulation violated 40 CFR section 280 71 (a) - Failure to notify 30 days prior to tank closure.

Previous violations None

Date of requirement 2/15/89

Date of inspection N/A

Date of compliance 5/20/89

Explanation (if appropriate):

1. Days of noncompliance 94
2. Number of tanks 3

PART 2 - ECONOMIC BENEFIT COMPONENT

Avoided Expenditures 0 Basis: Costs for notification negligible.

Delayed Expenditures N/A Basis:

Weighted Tax Rate N/A Source:

Interest Rate N/A Source:

$$\text{AVOIDED COSTS} = \left[\text{Avoided Expenditures} + \text{Avoided Expenditures} \times \text{Interest} \times \frac{\text{Number of Days}}{\text{365 Days}}\right] \times (1 - \text{Weighted Tax Rate})$$

3. Calculated Avoided Costs $ 0

UST PENALTY COMPUTATION WORKSHEET

DELAYED COSTS = Delayed Expenditures x Interest x Number of Days / 365 Days

4. Calculated Delayed Cost: $0

5 Economic Benefit Component: $0 (carry figure to Line 16).
(Line 3 + Line 4)

PART 3 - MATRIX VALUE FOR THE GRAVITY-BASED COMPONENT

Potential for Harm: Major Extent of Deviation Major

6. Matrix Value (MV): $1500 (from document page 16 or Appendix A)

7. Per-tank MV: $1500 (if violation is per facility, the amount on Line 7 will be the same as the amount on Line 6)
(Line 2 x Line 6)

PART 4 - VIOLATOR-SPECIFIC ADJUSTMENTS TO MATRIX VALUE

	Percentage Change (+ or -)	x Matrix Value	= Dollar Adjustment (+ or -)	Justification for Adjustment:
8. Degree of cooperation/ noncooperation	+10%	$1500	+$150	Owner requested negotiations only after being warned of impending administrative orders
9. Degree of willfulness or negligence:	+40%	$1500	+$600	Owner appeared to take advantage of operators ignorance of requirements
10. History of noncompliance:	0	$1500	0	N/A
11. Unique factors:	0	$1500	0	N/A
12 Adjusted Matrix Value (Line 7 + Lines 8-11)			$2250	

UST PENALTY COMPUTATION WORKSHEET

PART 5 - GRAVITY-BASED COMPONENT

Level of Environmental Sensitivity: High

Justification: Release could impact several drinking-water wells and a river used by humans for recreation and by wildlife as a source of drinking water

13. ESM (from document Page 21): 2

14. DNM (from document Page 21): 1.5

GRAVITY-BASED COMPONENT = Adjusted Matrix Value x Environmental Sensitivity Multiplier x Days of Noncompliance Multiplier

GBC = $2250 x 2 x 1.5 = $6750

15. Gravity-Based Component: $6750
(Line 12 x Line 13 x Line 14)

PART 6 - INITIAL PENALTY TARGET FIGURE

16. Economic Benefit Component: 0
(from Line 5)

17. Gravity-Based Component: $6750
(from Line 15)

18. Initial Penalty Target Figure: $6750
(Line 16 + Line 17)

SIGNATURE _____ DATE _____

UST PENALTY COMPUTATION WORKSHEET

Assessments for each violation should be determined on separate worksheets and totaled. (If more space is needed, attach separate sheet.)

PART 1 - BACKGROUND

Company name Darby Distributors

Regulation violated 40 CFR section 280.72(a) - Failure to assess site at tank closure.

Previous violations None

Date of requirement 3/17/89 Date of inspection N/A

Date of compliance 5/20/89 Explanation (if appropriate):

1. Days of noncompliance 64
2. Number of tanks 3

PART 2 - ECONOMIC BENEFIT COMPONENT

Avoided Expenditures $25,500 Basis: $8500 per UST site assessment

Delayed Expenditures N/A Basis:

Weighted Tax Rate 0.34 (34%) Source: MTR for income > $335,000

Interest Rate 0.181 (18.1%) Source: BEN model (equity discount rate)

$$\text{AVOIDED COSTS} = \left[\text{Avoided Expenditures} + \frac{\text{Avoided Expenditures} \times \text{Interest} \times \text{Number of Days}}{365 \text{ Days}}\right] \times (1 - \text{Weighted Tax Rate})$$

$$AC = \left[\$25,500 + \frac{\$25,500 \times .181 \times 64}{365}\right] \times (1 - .34) = \$17,364$$

3. Calculated Avoided Cost: $17,364

UST PENALTY COMPUTATION WORKSHEET

DELAYED COSTS = $\frac{\text{Delayed Expenditures x Interest x Number of Days}}{\text{365 Days}}$

4. Calculated Delayed Cost: 0

5. Economic Benefit Component: $17,364 (carry figure to Line 16).
(Line 3 + Line 4)

PART 3 - MATRIX VALUE FOR THE GRAVITY-BASED COMPONENT

Potential for Harm: Major Extent of Deviation Major

6. Matrix Value (MV): $15000 (from document page 16 or Appendix A)

7. Per-tank MV: $6000 (if violation is per facility, the amount on Line 7 will be the same as the amount on Line 6)
(Line 2 x Line 6)

PART 4 - VIOLATOR-SPECIFIC ADJUSTMENTS TO MATRIX VALUE

	Percentage Change (+ or -)	x Matrix Value	= Dollar Adjustment (+ or -)	Justification for Adjustment:
8. Degree of cooperation/ noncooperation	+10%	$6000	+$600	Owner requested negotiations only after being warned of impending administrative orders.
9. Degree of willfulness or negligence:	+40%	$6000	+$2400	Owner appeared to take advantage of operators ignorance of requirements.
10. History of noncompliance:	0	$6000	0	N/A
11. Unique factors:		$6000	0	N/A
12. Adjusted Matrix Value (L. 7 + Lines 8-11)			$9000	

UST PENALTY COMPUTATION WORKSHEET

PART 5 - GRAVITY-BASED COMPONENT

Level of Environmental Sensitivity: High

Justification: Release could impact several drinking-water wells and a river used by humans for recreation and by wildlife as a source of drinking water.

13. ESM (from document Page 21): 2

14. DNM (from document Page 21): 1

GRAVITY-BASED COMPONENT = Adjusted Matrix Value x Environmental Sensitivity Multiplier x Days of Noncompliance Multiplier

GBC = $9000 x 2 x 1 = $18,000

15. Gravity-Based Component: $18,000
(Line 12 x Line 13 x Line 14)

PART 6 - INITIAL PENALTY TARGET FIGURE

16. Economic Benefit Component: $17,364
(from Line 5)

17. Gravity-Based Component: $18,000
(from Line 15)

18. Initial Penalty Target Figure: $35,364
(Line 16 + Line 17)

SIGNATURE_____ DATE_____

UST PENALTY COMPUTATION WORKSHEET

Assessments for each violation should be determined on separate worksheets and totaled. (If more space is needed, attach separate sheet.)

PART 1 - BACKGROUND

Company name Darby Distributors

Regulation violated 40 CFR section 280.74 - Failure to maintain records capable of demonstrating compliance with tank closure requirements

Previous violations None

Date of requirement 3/17/89 Date of inspection N/A

Date of compliance 5/20/89 Explanation (if appropriate):

1. Days of noncompliance 64
2. Number of tanks 3

PART 2 - ECONOMIC BENEFIT COMPONENT

Avoided Expenditures N/A Basis:

Delayed Expenditures 0 Basis: Cost of record keeping negligible.

Weighted Tax Rate N/A Source:

Interest Rate N/A Source:

$$\text{AVOIDED COSTS} = \left[\text{Avoided Expenditures} + \frac{\text{Avoided Expenditures} \times \text{Interest} \times \text{Number of Days}}{365 \text{ Days}}\right] \times (1 - \text{Weighted Tax Rate})$$

3. Calculated Avoided Cost: $0

UST PENALTY COMPUTATION WORKSHEET

DELAYED COSTS = Delayed Expenditures x Interest x Number of Days / 365 Days

4. Calculated Delayed Cost: $0

5. Economic Benefit Component: $0 (carry figure to Line 16).
(Line 3 + Line 4)

PART 3 - MATRIX VALUE FOR THE GRAVITY-BASED COMPONENT

Potential for Harm: Major Extent of Deviation Major

6. Matrix Value (MV): $1500 (from document page 16 or Appendix A)

7. Per-tank MV: $1500 (If violation is per facility, the amount on Line 7 will be the same as the amount on Line 6)
(Line 2 x Line 6)

PART 4 - VIOLATOR-SPECIFIC ADJUSTMENTS TO MATRIX VALUE

	Percentage Change (+ or -)	x Matrix Value	= Dollar Adjustment (+ or -)	Justification for Adjustment:
8. Degree of cooperation/ noncooperation	+10%	$1500	+$150	Owner requested negotiations only after being warned of impending administrative orders
9. Degree of willfulness or negligence:	+40%	$1500	+$600	Owner appeared to take advantage of operator's ignorance of requirements.
10. History of noncompliance:	0	$1500	0	N/A
11. Unique factors:	0	$1500	0	N/A

12. Adjusted Matrix Value (Line 7 + Lines 8-11) calculated: $2250

UST PENALTY COMPUTATION WORKSHEET

PART 5 - GRAVITY-BASED COMPONENT

Level of Environmental Sensitivity: High

Justification: Release could impact several drinking-water wells and a river used by humans for recreation and by wildlife as a source of drinking water

13. ESM (from document Page 21): 2

14. DNM (from document Page 21): 1

GRAVITY-BASED COMPONENT = Adjusted Matrix Value x Environmental Sensitivity Multiplier x Days of Noncompliance Multiplier

GBC = $2250 * 2 * 1 = $4500

15. Gravity-Based Component: $4500
(Line 12 x Line 13 x Line 14)

PART 6 - INITIAL PENALTY TARGET FIGURE

16. Economic Benefit Component: $0
(from Line 5)

17. Gravity-Based Component: $4500
(from Line 15)

18. Initial Penalty Target Figure: $4500
(Line 16 + Line 17)

Total Initial Penalty Target for Darby Distributors:
= Violation #1 + Violation #2 + Violation #3
= $6750 + $35,364 + $4500 = $46,614

Necessary [illegible]

SIGNATURE _____ DATE _____

EXAMPLE 4

BACKGROUND

Inspection Date: December 15, 1991

Facility Name and Description: Jerry's Gas and Grocery is a medium-sized facility in a commercial section of town. The facility has 4 USTs, 3 of which were installed in 1968 and one in 1989. It was estimated that the company's taxable income was $70,000 in 1990.

Violations: On October 16, 1991, the Agency discovered that Jerry's Gas and Grocery had a release. At the time of the release, an adequate method of release detection was not in use at the facility, constituting a violation of 40 CFR section 280.40(c) for the 3 tanks installed in 1968. The Agency sent written notification (after informing the owner of the release by telephone) of the release to the facility and requested, among other things, that the facility report evidence of financial responsibility within 30 days. While conducting a file review on December 15, the compliance staff observed that the facility had failed to report this evidence, in violation of 40 CFR section 280.106(a)(1). A site inspection conducted on this date indicated that an adequate method of release detection was still not in use.

Owner/Operator Response: When notified of these violations, the owner submitted evidence that he had acquired a letter of credit from a bank to meet the FR requirement and began to conduct inventory control and daily monitoring immediately, and arranged for tank tightness tests. The owner, however, had failed to initiate corrective actions (beyond the initial abatement measures) for lack of funds. The owner's failure to report his financial assurance mechanism within the required time period, therefore, delayed the contacting of the bank and the collection of funds with which to initiate corrective action.

Previous Actions at Facility: In 1989, the facility was assessed penalties for failure to notify the Agency of the new UST installation.

Current Status at Site: Because an adequate method of release detection was not in operation, the release went undetected for a matter of months. The geology in the area of the facility is fractured shale. The facility is located in a commercial area. There are no drinking water wells or sensitive wildlife receptors within a 5-mile radius of the site.

PENALTY CALCULATION DATA

Violation: 40 CFR section 280.40(c)

Days of violation: 358 days, from the latest required date of compliance (December 22, 1990) to the actual date of compliance (December 15, 1991).

Avoided expenditures: $2455 total = $895 labor for 358 days, at $2.50 per day (estimated cost for labor needed to conduct daily inventory control based on 1/2 hour labor at $5.00 per hour) + $1560 for tightness testing for 3 tanks (where the average cost for tank tightness testing is $520 per tank).

Delayed expenditures: None.

Interest rate: 18.1% (the equity discount rate used in the BEN model for 1991).

Tax rate: 18% (the weighted average rate for a company with taxal · $70,000).

PENALTY CALCULATION DATA

Violation: 40 CFR section 280.106(a)(1)

Days of Violation: 30 days from the latest required date of compliance (November 15, 1991) to the actual date of compliance (December 15, 1991).

Avoided expenditures: $8219 = Amount of interest avoided on $1,000,000 letter of credit because of failure to provide the Agency with evidence of financial responsibility (based on 30 days of interest at 10%, the rate charged by Jerry's bank for letter of credit drawdown).

Delayed expenditures: None.

Interest rate: 18.1% (the equity discount rate used in the BEN model for 1990 and 1991).

Tax rate: 18% (the weighted average rate for a company with taxable income of $70,000).

[NOTE: The numbers used to determine avoided and delayed expenditures were chosen for convenience only. They do not represent costs in any State or Region in the country.]

UST PENALTY COMPUTATION WORKSHEET

Assessments for each violation should be determined on separate worksheets and totaled. (If more space is needed, attach separate sheet.)

PART 1 - BACKGROUND

Company name Jerry's Gas & Grocery

Regulation violated 40 CFR section 280.40 (a)(1) - Failure to have release detection by compliance date (12/22/90)

Previous violations Notification (1989) - penalties assessed for failure to notify of new UST installation.

Date of requirement 12/22/90 Date of inspection 12/15/91

Date of compliance 12/15/91 Explanation (if appropriate):

1. Days of noncompliance 358
2. Number of tanks 4 (or 3)* *(only 3 tanks require release detection).

PART 2 - ECONOMIC BENEFIT COMPONENT

Avoided Expenditures $2455 Basis: $520 per UST tightness test + $2.50 per day for monitoring } × 3

Delayed Expenditures N/A Basis: N/A

Weighted Tax Rate 0.18 (18%) Source: MTR for income of $70,000

Interest Rate 0.181 (18.1%) Source: BEN model (equity discount rate)

$$\text{AVOIDED COSTS} = \left[\text{Avoided Expenditures} + \frac{\text{Avoided Expenditures} \times \text{Interest} \times \text{Number of Days}}{365 \text{ Days}}\right] \times (1 - \text{Weighted Tax Rate})$$

$$AC = \left[\$2455 + \frac{\$2455 \times .181 \times 358}{365}\right] \times (1 - .18) = \$2370$$

3. Calculated Avoided Cost: $2370

UST PENALTY COMPUTATION WORKSHEET

DELAYED COSTS = Delayed Expenditures x Interest x Number of Days / 365 Days

4. Calculated Delayed Cost: 0

5. Economic Benefit Component: $2370 (carry figure to Line 16).
(Line 3 + Line 4)

PART 3 - MATRIX VALUE FOR THE GRAVITY-BASED COMPONENT

Potential for Harm: Major Extent of Deviation Major

6. Matrix Value (MV): $1500 (from document page 16 or Appendix A)

7. Per tank MV: $4500 (if violation is per facility, the amount on Line 7 will be the same as the amount on Line 6)
(Line 2 x Line 6)

PART 4 - VIOLATOR-SPECIFIC ADJUSTMENTS TO MATRIX VALUE

	Percentage Change (+ or -)	x Matrix Value	= Dollar Adjustment (+ or -)	Justification for Adjustment:
8. Degree of cooperation/ noncooperation	0	$4500	0	Complied as required following notification.
9. Degree of willfulness or negligence:	0	$4500	0	N/A
10. History of noncompliance:	+30%	$4500	+$1350	Previous violation involving penalties
11. Unique factors:	0	$4500	0	
12. Adjusted Matrix Value (Line 7 + Lines 8-11)			$5850	

UST PENALTY COMPUTATION WORKSHEET

PART 5 - GRAVITY-BASED COMPONENT

Level of Environmental Sensitivity Moderate

Justification: Release is not likely to have impact on ground or surface water Potential impact on the environment is minimal, although potential human receptors are present. Fractured shale would complicate remediation.

13. ESM (from document Page 21) 1.5

14. DNM (from document Page 21) 2.5

GRAVITY-BASED COMPONENT = Adjusted Matrix Value x Environmental Sensitivity Multiplier x Days of Noncompliance Multiplier

GBC = $5850 · 1.5 × 2.5 = $21,938

15. Gravity-Based Component: $21,938
(Line 12 x Line 13 x Line 14)

PART 6 - INITIAL PENALTY TARGET FIGURE

16. Economic Benefit Component $2370
(from Line 5)

17. Gravity-Based Component $21,938
(from Line 15)

18. Initial Penalty Target Figure $24,308
(Line 16 + Line 17)

Adjusted Mat

SIGNATURE _____ DATE _____

UST PENALTY COMPUTATION WORKSHEET

Assessments for each violation should be determined on separate worksheets and totaled. (If more space is needed, attach separate sheet.)

PART 1 - BACKGROUND

Company name Jerry's Gas & Grocery

Regulation violated 40 CFR section 280.106(a)(1) - Failure to report evidence of financial assurance within 30 days of discovering a release.

Previous violations Notification (1989) - penalties assessed for failure to notify of new UST installation.

Date of requirement 11/15/91 Date of inspection 12/15/91

Date of compliance 12/15/91 Explanation (if appropriate):

1. Days of noncompliance 30
2. Number of tanks 4

PART 2 - ECONOMIC BENEFIT COMPONENT

Avoided Expenditures $8219 Basis: Avoided interest that would have been paid on $1,000,000 letter of credit for 30 da

Delayed Expenditures 0 Basis: Negligible

Weighted Tax Rate 0.18 (18%) Source: MTR for income of $70,000

Interest Rate 0.181 (18.1%) Source: BEN model (equity discount rate)

$$\text{AVOIDED COSTS} = \left[\text{Avoided Expenditures} + \frac{\text{Avoided Expenditures} \times \text{Interest} \times \text{Number of Days}}{365 \text{ Days}}\right] \times (1 - \text{Weighted Tax Rate})$$

$$AC = \left[\$8219 + \frac{\$8219 \times .181 \times 30}{365}\right] \times (1 - .18) = \$6840$$

3. Calculated Avoided Cost: $6840

UST PENALTY COMPUTATION WORKSHEET

DELAYED COSTS = Delayed Expenditures x Interest x Number of Days / 365 Days

4. Calculated Delayed Cost: 0

5. Economic Benefit Component: $6840 (carry figure to Line 16).
(Line 3 + Line 4)

PART 3 - MATRIX VALUE FOR THE GRAVITY-BASED COMPONENT

Potential for Harm: Moderate Extent of Deviation Major

6. Matrix Value (MV): $750 (from document page 16 or Appendix A)

7. Per-tank MV: $750 (if violation is per facility, the amount on Line 7 will be the same as the amount on Line 6)
(Line 2 x Line 6)

PART 4 - VIOLATOR-SPECIFIC ADJUSTMENTS TO MATRIX VALUE

	Percentage Change (+ or -)	x Matrix Value	= Dollar Adjustment (+ or -)	Justification for Adjustment:
8. Degree of cooperation/ noncooperation	0	$750	0	Complied as required following notification
9. Degree of willfulness or negligence:	0	$750	0	N/A
10. History of noncompliance:	+30%	$750	+$225	Previous violation involving penalties
11. Unique factors:	0	$750	0	
12. [illegible] Value (Line 7 + Lines 8-11)			$975	

UST PENALTY COMPUTATION WORKSHEET

PART 5 - GRAVITY-BASED COMPONENT

Level of Environmental Sensitivity Moderate

Justification: Release is not likely to have impact on ground or surface water. Potential impact on the environment is minimal, although potential human receptors are present. Fractured shale would complicate remediation.

13. ESM (from document Page 21) 1.5

14. DNM (from document Page 21) 1.0

GRAVITY-BASED COMPONENT = Adjusted Matrix Value x Environmental Sensitivity Multiplier x Days of Noncompliance Multiplier

GBC = $975 x 1.5 x 1 = $1462

15. Gravity-Based Component: $1462
(Line 12 x Line 13 x Line 14)

PART 6 - INITIAL PENALTY TARGET FIGURE

16. Economic Benefit Component $6840
(from Line 5)

17. Gravity-Based Component $1462
(from Line 15)

18. Initial Penalty Target Figure $8302
(Line 16 + Line 17)

Total Initial Penalty Target for Jerry's Gas & Grocery
= Violation #1 + Violation #2
= $24,308 + $8302
= $32,610

SIGNATURE _____ DATE _____

EXAMPLE 5

BACKGROUND

Inspection Date: January 8, 1990

Facility Name and Description: The Mammoth Oil facility located at 345 Pine Street has 5 USTs and is owned and operated by Mammoth Oil Company, a national petroleum marketer with taxable income over $335,000.

Violations: Upon inspection of the facility, the Agency discovered that 2 new bare steel USTs were installed on November 15, 1989 without cathodic protection. This omission constituted a violation of 40 CFR section 280.20(a)(2)(ii). The tanks failed to meet the performance standards specified in section 280.20(a)(2)(ii), or any of the codes or standards outlined by the regulations as acceptable for compliance.

Owner/Operator Response: When notified of the violation, the company's attorneys asked to enter into negotiations to determine the schedule and terms of compliance, as well as any penalties that might be assessed. The result of the negotiations was a consent order in which the owner agreed to install properly designed cathodic protection (in accordance with the National Association of Corrosion Engineers Standard RP-02-85) and pay the penalty by March 1, 1990.

Previous Actions at Facility: The facility was issued a notice of violation in 1987 for failure to notify the Agency of a new UST installation. In 1988, the company was issued two administrative orders, one compelling remediation of a release and the other assessing penalties for failure to report the release to the Agency.

Current Status at Site: At the time of the inspection, the facility was conducting a method of release detection in accordance with the requirements. The Agency determined that it was unlikely that there was a release at the present time. The geology in the area of the facility is gravel. The facility is located in an urban residential area. There are no drinking water wells or sensitive wildlife receptors within a 3-mile radius of the area.

PENALTY CALCULATION DATA

Violation: 40 CFR section 280.20(a)(2)(ii)

Days of violation: 105 days, from the required date of compliance (November 15, 1989) to the actual date of compliance (March 1, 1990).

Avoided expenditures: None.

Delayed expenditures: $3,050 x 2 USTs = $6,100 (where the average cost for installation of a cathodic protection system is $3,050 per UST).

Interest rate: 18.1% (the equity discount rate used in the BEN model for 1990).

Tax rate: 34% (the weighted average rate for a company with taxable income of $335,000).

[NOTE: The numbers used to determine avoided and delayed expenditures were chosen for convenience only. They do not necessarily represent true costs in any State or Region in the country.]

UST PENALTY COMPUTATION WORKSHEET

Assessments for each violation should be determined on separate worksheets and totaled. (If more space is needed, attach separate sheet.)

PART 1 - BACKGROUND

Company name Mammoth Oil Company

Regulation violated 40 CFR section 280.20(a)(2) - Failure to meet performance standards for cathodic protection

Previous violations Release notification (1987) - two administrative orders issued (one to compel cleanup & one to assess penalties)

Date of requirement 11/15/89 Date of inspection 1/8/90

Date of compliance 3/1/90 Explanation (if appropriate):

1. Days of noncompliance 105
2. Number of tanks 2

PART 2 - ECONOMIC BENEFIT COMPONENT

Avoided Expenditures N/A Basis:

Delayed Expenditures $6100 Basis: Cost for cathodic protection

Weighted Tax Rate 0.34 (34%) Source: MTR for income > $335,000

Interest Rate 0.181 (18.1%) Source: BEN model (equity discount rate)

$$\text{AVOIDED COSTS} = \left[\text{Avoided Expenditures} + \text{Avoided Expenditures} \times \text{Interest} \times \frac{\text{Number of Days}}{\text{365 Days}}\right] \times (1 - \text{Weighted Tax Rate})$$

3. Calculated Avoided Cost: 0

UST PENALTY COMPUTATION WORKSHEET

DELAYED COSTS = Delayed Expenditures x Interest x Number of Days / 365 Days

$$DC = \frac{\$6100 \times .181 \times 105}{365} = \$318$$

4. Calculated Delayed Cost: $318

5. Economic Benefit Component: $318 (carry figure to Line 16).
(Line 3 + Line 4)

PART 3 - MATRIX VALUE FOR THE GRAVITY-BASED COMPONENT

Potential for Harm: Moderate Extent of Deviation Moderate

6. Matrix Value (MV): $500 (from document page 16 or Appendix A)

7. Per-tank MV: $1000 (If violation is per facility, the amount on Line 7 will be the same as the amount on Line 6)
(Line 2 x Line 6)

PART 4 - VIOLATOR-SPECIFIC ADJUSTMENTS TO MATRIX VALUE

	Percentage Change (+ or -)	x Matrix Value	= Dollar Adjustment (+ or -)	Justification for Adjustment:
8. Degree of cooperation/ noncooperation	0	$1000	0	Company agreed to enter into negotiations and pay penalty
9. Degree of willfulness or negligence:	+50%	$1000	+$500	As national marketers, company would have been aware of the requirements
10. History of noncompliance:	+50%	$1000	+$500	Previous violation with two administrative orders.
11. Unique factors:	0	$1000	0	N/A

12. Adjusted Matrix Value (Line 7 + Lines 8-11) $2000

UST PENALTY COMPUTATION WORKSHEET

PART 5 - GRAVITY-BASED COMPONENT

Level of Environmental Sensitivity Moderate

Justification: Facility is located in residential area with no nearby drinking-water wells or wildlife receptors. However, gravel would permit migration of released product.

13. ESM (from document Page 21) 1.5

14. DNM (from document Page 21) 1.5

GRAVITY-BASED COMPONENT = Adjusted Matrix Value x Environmental Sensitivity Multiplier x Days of Noncompliance Multiplier

GBC = $2000 x 1.5 x 1.5 = $4500

15. Gravity-Based Component: $4500
(Line 12 x Line 13 x Line 14)

PART 6 - INITIAL PENALTY TARGET FIGURE

16. Economic Benefit Component $ 318
(from Line 5)

17. Gravity-Based Component $4500
(from Line 15)

18. Initial Penalty Target Figure $4818
(Line 16 + Line 17)

SIGNATURE_____ DATE_____

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JAN 11 2018

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Amendments to the EPA's Civil Penalty Policies to Account for Inflation (effective January 15, 2018) and Transmittal of the 2018 Civil Monetary Penalty Inflation Adjustment Rule

FROM: Susan Parker Bodine
Assistant Administrator

TO: Regional Administrators
Deputy Regional Administrators
Director, Office of Civil Enforcement

The purpose of this memorandum is twofold: (1) to amend all existing civil penalty policies to account for inflation and (2) to transmit the recently promulgated 2018 Civil Monetary Penalty Adjustment Rule (2018 Rule).[1] The 2018 Rule amends 40 C.F.R. § 19.4 to adjust the statutory civil penalties under the various environmental laws implemented by the EPA to account for inflation. The 2018 Rule was published on January 10, 2018, is effective on January 15, 2018, and is attached to this memorandum. The amendments to the EPA's penalty policies are also effective on January 15, 2018. This memorandum also clarifies the differences between the EPA's statutory maximum and minimum civil penalties and the EPA's penalty policies.

I. Background

The Federal Civil Penalties Inflation Adjustment Act Improvement Act (2015 Act)[2] was signed into law on November 2, 2015, to improve the effectiveness of statutory maximum and minimum civil monetary penalties and to maintain their deterrent effect, thereby promoting compliance with the law. The 2015 Act instructed the EPA and other federal agencies to: (1) adjust the level of statutory maximum and minimum civil penalties with an initial "catch-up" rule; and (2) make subsequent annual adjustments for

[1] 83 Fed. Reg. 1190 (Jan. 10, 2018).
[2] 28 U.S.C. § 2461 note, Pub. L.114-74 (*see* https://www.congress.gov/114/plaws/publ74/PLAW-114publ74.pdf).

inflation beginning in January 2017. The 2015 Act also prescribed the formula that federal agencies must follow in making these adjustments.

To fulfill the initial catch-up requirement, the EPA promulgated the 2016 Civil Monetary Penalty Inflation Adjustment Rule on August 1, 2016 (2016 Rule), which increased the EPA's statutory maximum and minimum civil penalties.[3] To fulfill the second requirement of the 2015 Act requiring annual adjustments, the EPA made the first annual adjustment by promulgating the 2017 Civil Monetary Penalty Inflation Adjustment Rule, effective on January 15, 2017.[4] The 2018 Rule, effective January 15, 2018, and transmitted herewith, makes the second annual adjustment.

Although not required by the 2015 Act, the EPA decided to amend its penalty policies in 2016 to better account for inflation going forward. While consistent with the purposes of the 2015 Act, these amendments and the methodology used in making these amendments are not governed by, and are distinct from, the 2015 Act and the 2018 Rule. To make these policy amendments, on July 27, 2016, the EPA's Office of Enforcement and Compliance Assurance (OECA) issued a memorandum that amended the EPA's penalty policies to account for inflation.[5] That memorandum was effective on August 1, 2016. Because the subsequent increase in inflation was minimal from August 2016 to January 2017, the EPA decided to defer further modifying the penalty policies until January 2018. This memorandum thus amends the EPA's penalty policies to account for inflation to date. Looking ahead, the EPA plans to again amend its penalty policies to account for inflation in January 2020, barring any significant changes in inflation.

II. Applicability of this Memorandum

This memorandum supersedes the inflation-based amendments to the EPA's penalty policies made in the 2016 memorandum, but is not intended to change the methodology used in that memorandum. This memorandum partially supersedes the EPA's 2013 inflation amendments memorandum because the multipliers contained in the 2013 memorandum should still be used for violations that occurred on or before November 2, 2015.

This memorandum does not modify the EPA's Expedited Settlement Agreement penalty policies nor does it modify the non-penalty dollar amounts in civil penalty policies, such as the amounts deemed "insignificant" or "de minimis" that apply when calculating economic benefit of noncompliance.

[3] The 2016 Rule was published on July 1, 2016, and became effective on August 1, 2016. 81 Fed. Reg. 43,091.
[4] The Rule was published on January 12, 2017, and became effective on January 15, 2017. 82 Fed. Reg. 3633. The Office of Civil Enforcement within OECA issued a memorandum on January 13, 2017 transmitting the rule; that memorandum is titled *Transmittal of the 2017 Annual Civil Monetary Penalty Inflation Adjustment Rule.*
[5] The July 27, 2016 memorandum is titled *Amendments to the U.S. Environmental Protection Agency's Civil Penalty Policies to Account for Inflation (Effective August 1, 2016).* Past inflation adjustment memoranda on the EPA's statutory maximum and minimum amounts and the EPA's penalty policies can be found here: https://www.epa.gov/enforcement/enforcement-policy-guidance-publications.

The penalty policies listed in Table A are the most recent narrative versions of each policy. The "narrative version" is the applicable media-specific penalty policy that comprehensively explains how the EPA enforcement practitioners should calculate penalties for purposes of administrative actions or settlements. This memorandum does not change or alter the narrative version of the media-specific penalty policies; this memorandum only alters the numerical gravity-based penalty amounts that are calculated under those policies to account for inflation.

Media enforcement programs may modify their penalty policies individually, and any such modifications may supersede application of this memorandum for that program. Practitioners should rely on the multipliers in Table A until the applicable penalty policy is modified or civil penalty policy amounts are adjusted by subsequent memorandum in accordance with inflation.

III. Amendments to the EPA's Civil Penalty Policies

Consistent with the methodology used in the July 27, 2016, penalty policy inflation amendments memorandum, the EPA is amending its penalty policies through the use of multipliers listed in Table A of this memorandum. Please note that the multipliers listed in Table A should be used for violations occurring after November 2, 2015. **For violations occurring on or before November 2, 2015, use the multipliers listed in the December 6, 2013, inflation adjustment memorandum titled *Amendments to the U.S. Environmental Protection Agency's Civil Penalty Policies to Account for Inflation (Effective December 6, 2013)*.**[6]

A. Application of Inflation Multiplier to Gravity-Based Portion of Penalty

For each violation occurring after November 2, 2015, find the applicable penalty policy in Table A and use the policy to determine the initial calculated gravity-based penalty for your case.[7] This initial gravity-based penalty will not be adjusted for inflation to reflect present value of the dollar. To adjust the penalty figure into present value, multiply the gravity-based portion of the penalty by the multiplier associated with the applicable penalty policy in Table A. Next, round the calculated gravity-based portion of the penalty amount to the nearest dollar.[8] Then, if applicable, calculate the gravity-based portion of the penalty for each violation occurring on or before November 2, 2015, using the applicable

[6] The December 6, 2013, memorandum can be found here: https://www.epa.gov/sites/production/files/2014-01/documents/guidancetoamendepapenaltypolicyforinflation.pdf.

[7] Most media specific penalty policies define "gravity" as the "seriousness of the violation." Each media specific penalty policy uses specific factors to calculate the gravity component. Many of these factors are taken from their respective statutes and some factors are unique to that specific penalty policy. Therefore, it is important for case teams to review each specific penalty policy to understand how the gravity component is defined and how it is calculated.

[8] We are instructing case teams to round to the nearest dollar because this was the approach taken in the 2015 Act, the EPA's last penalty inflation memorandum from July 27, 2016, and the Office of Management and Budget's (OMB) February 24, 2016, and December 15, 2017, memoranda that instructed federal agencies how to implement the 2016 Rule and 2018 Rule, respectively.

inflation multiplier from the guidance memorandum dated December 6, 2013. Add the gravity-based portion of the penalty for pre-November 3, 2015, violations to the gravity-based portion of the penalty for post-November 2, 2015, violations to calculate the total gravity-based penalty. Once the total gravity-based penalty has been calculated, incorporate economic benefit[9] and any other factors (e.g., ability to pay, litigation considerations, etc.) that apply as instructed by the penalty policy to arrive at the total penalty.[10]

Enforcement practitioners should apply the multipliers in Table A only to the penalty amounts adopted within the "narrative" penalty policies listed in Table A. The multipliers in Table A should not be applied to penalty policies issued after the date of this memorandum unless expressly stated in the subsequent penalty policy.

B. Derivation of the Inflation Multipliers

Because the purpose of amending the EPA's penalty policies is to account for inflation since the penalty policies were last amended for inflation in the July 27, 2016, memorandum, the majority of multipliers listed in Table A were calculated by multiplying the multipliers listed in the July 27, 2016 memorandum by the inflation increase that has occurred since the July 27, 2016 memorandum.[11]

IV. 2018 Rule and the Newly Adjusted Statutory Maximum and Minimum Amounts

The 2018 Rule was promulgated to fulfill the annual statutory maximum and minimum inflation adjustment requirement in the 2015 Act. As instructed by the 2015 Act and as explained in the 2018

[9] We are not modifying the long-standing approach of calculating economic benefit separately from the gravity-based amount, because economic benefit calculations already take inflation into account. The inflation adjustments in this guidance only apply to the gravity-based portion of the penalty.

[10] If the total penalty amount calculated is greater than the statutory maximum amount, then the statutory maximum amount would apply. Similarly, the entire penalty sought (including economic benefit) in an administrative enforcement action cannot exceed any applicable administrative penalty caps. Note that penalty amounts greater than those calculated using the EPA penalty policies and this memorandum may be appropriate in limited circumstances. For example, in a formal administrative enforcement context, the EPA may seek, and presiding officers or the Environmental Appeals Board may assess, higher penalties provided such amounts do not exceed the statutory maximum, are in accordance with statutory civil penalty factors, and consider applicable civil penalty guidelines, and provided that any deviations from applicable penalty policies are persuasively and convincingly explained. *See*, *e.g.*, 40 C.F.R. § 22.27(b) and *In Re Morton L. Friedman & Schmitt Construction Company*, 11 E.A.D. 302 (EAB 2004).

[11] In the July 27, 2016 memorandum, most of the multipliers were calculated using the increase established by the Consumer Price Index for all Urban Consumers (CPI-U) from the date the penalty policy was issued through October 2015. For the multipliers listed in Table A of this memorandum, we multiplied these figures from the July 27, 2016 memorandum by the CPI-U increase from October 2015 to October 2017. We used the October 2017 figure because this figure was used for calculating the statutory increases in the 2018 Rule. The October 2017 CPI-U was 246.663 and the October 2015 CPI-U was 237.838, yielding an increase of 1.03711. The only multiplier that does not follow this calculation framework is the EPCRA Enforcement Response Policy, which was amended on February 24, 2017 and uses 1.03711 as the multiplier in Table A of this memorandum. *See infra* note 21.

Rule, the EPA calculated the new penalty amounts by multiplying the cost-of-living multiplier[12] by the previous statutory penalty amount as adjusted by the 2017 Rule. The result is the amount listed in the farthest column on the right in Table 2 of 40 C.F.R. § 19.4 and the 2018 Rule. This amount applies to violations occurring after November 2, 2015.

A. Penalty Pleading in Administrative Litigation

Where the EPA decides to cite the statutory maximum and/or minimum penalty amount in an administrative pleading (such as in an administrative complaint), the applicable statutory maximum and/or minimum penalty amount in effect for the violations should be used.[13] The EPA should cite the statutory maximum and minimum penalty provisions and 40 C.F.R. § 19.4, along with the applicable inflation-adjusted penalty maximum levels set forth in 40 C.F.R. § 19.4. Multiple penalty-adjustment cycles should only be used when violations occurred on or before November 2, 2015 and after November 2, 2015. If this arises, the EPA should cite each applicable penalty-adjustment cycle and the corresponding penalty amount. Particularly where violations have occurred both after November 2, 2015, and before such date, case teams also may find it helpful to state that the statutory maximum and minimum civil penalty level has been adjusted over time as required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. § 2461 note; Pub. L. 101-410), as amended by the Debt Collection Improvement Act of 1996, and most recently, by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (28 U.S.C. § 2461 note; Pub. L.114-74, Section 701).

B. Statutory Administrative Penalty Caps

Note that, effective January 15, 2018, where the EPA seeks administrative penalties in a complaint, amended complaint, or through a 40 C.F.R. § 22.18 settlement, the increased administrative penalty caps in Table 2 of § 19.4 in the attached 2018 Rule apply if *some or all* of the violations occurred after November 2, 2015. The lower administrative penalty caps in Table 1 of § 19.4 apply if *all* violations occurred on or before November 2, 2015.

V. Multiple Penalty Cycles – Case Team Discretion

If the time period between seeking a penalty (through settlement or litigation) and the final penalty assessment[14] covers more than one penalty-adjustment cycle (for example, where a complaint is filed on

[12] The statutory cost-of-living adjustment multiplier is the percentage by which the Consumer Price Index for all Urban Consumers (CPI-U) for the month of October 2017 exceeds the CPI-U for the month of October 2016. The October 2017 CPI-U was 246.663 and the October 2016 CPI-U was 241.729, yielding an increase of 1.02041.

[13] If a respondent/defendant challenges the validity of any statutory maximum penalty amount, as adjusted in 40 C.F.R. Part 19, please notify the Office of Civil Enforcement of the challenge, so that OECA, the Region and the U.S. Department of Justice, as appropriate, can coordinate our response before it is filed.

[14] Note that enforcement personnel can only *seek* penalties. *Assessment* of penalties is effective in a formal administrative action once a final penalty order is filed with the Hearing Clerk, 40 C.F.R. §§ 22.31 and 22.6, or in civil judicial cases once the court enters a consent decree or issues a judgment awarding penalties.

December 15, 2016, but the final penalty order is not filed with the Hearing Clerk until April 1, 2018), the case team would have discretion to modify the penalty amount sought (for example, to be consistent with the penalty amounts in the most recent annual inflation adjustment rule or guidance). But such modifications would *not* be expected where doing so would be:

a. unnecessary to achieve sufficient deterrence; and

b. *either* inappropriately disruptive[15] *or* contrary to principles of judicial economy (for example, where the case has already gone to hearing based on previous penalty amounts).

In a settlement context, if defendants or respondents have signed a consent decree or consent agreement, the EPA would not expect the case team to renegotiate the penalty amount due to subsequent inflation adjustments. Prior to any such formal written settlement commitment (for example, where the parties may have reached an agreement in principle), case teams have discretion to decide whether to modify their penalty demand due to subsequent inflation adjustments (for example, depending on how far along the negotiations have progressed, the likely impact of an increased penalty on negotiations, the case team's evaluation of the likelihood that any informal agreements will not be consummated, and/or other factors).

VI. Further Information

Our goal in issuing this guidance is to make these penalty policy modifications easy to implement, but if you have any questions concerning this memorandum, please contact David Smith-Watts of the Office of Civil Enforcement at (202) 564-4083 or by email at smith-watts.david@epa.gov.

cc: Lawrence Starfield, Principal Deputy Assistant Administrator, OECA
Patrick Traylor, Deputy Assistant Administrator, OECA
Regional Counsels
Director, Office of Environmental Stewardship, Region I
Director, Division of Enforcement and Compliance Assurance, Region II
Director, Office of Enforcement, Compliance, and Environmental Justice, Region III
Director, Air, Pesticides and Toxics Management Division, Region IV
Director, Office of Enforcement and Compliance Assurance, Region V
Director, Compliance Assurance and Enforcement Division, Region VI
Director, Enforcement Coordination Office, Region VII

[15] Such disruption could be to settlement negotiations, or to other case efforts such as creating an undue burden on the EPA's resources. If the EPA has not made a penalty demand or offer, a disruptive impact on negotiations is less likely where the penalty is recalculated to be consistent with the most recent inflation-adjustment amounts. It is possible, however, that a recalculation would be unduly burdensome and disruptive to the case team's efforts where, for example, there are an extremely large number of violations, the penalty calculation is complex, and/or where contractor resources are needed to perform such a calculation. In such circumstances, the case team would have discretion to determine that recalculating the penalty is not warranted even though the EPA has not yet made a penalty demand or offer.

Director, Office of Enforcement, Compliance and Environmental Justice, Region VIII
Director, Enforcement Division, Region IX
Director, Office of Civil Rights, Enforcement and Environmental Justice, Region X
Regional Media Division Directors
Regional Superfund Enforcement Directors
Regional Enforcement Coordinators
All OECA Employees
Tom Mariani, Chief, DOJ-EES
Deputy and Assistant Chiefs, DOJ-EES
Kathie Stein, Environmental Appeals Judge
Susan Biro, Chief Administrative Law Judge
Regional Judicial Officers

Attachments (2)

1. Table A: Chart Reflecting Inflation Adjustment Multipliers
2. Rule promulgated in the *Federal Register* on January 10, 2018

Table A: Chart Reflecting Penalty Policy Inflation Adjustment Multipliers

Applicable Penalty Policy	Year Issued	Inflation Adjustment Multiplier as of January 15, 2018
CWA		
Interim Clean Water Act Settlement Penalty Policy	1995	1.60484
Civil Penalty Policy for Section 311(b)(3) and Section 311(j) of the Clean Water Act	1998	1.50405 [16]
CWA Section 404 Settlement Penalty Policy	2001	1.38809
Supplemental Guidance to the Interim Clean Water Act Settlement Penalty Policy (March 1, 1995) for Violations of the Construction Stormwater Requirements	2008	1.13894
SDWA		
UIC Program Judicial and Administrative Order Settlement Penalty Policy	1993	1.69296
New Public Water System Supervision Program Settlement Penalty Policy	1994	1.64993

[16] Case teams should apply the multiplier of 1.84767 to the per-barrel discharge penalty amounts in the last column of the penalty matrix on page 11. This is an appropriate multiplier because such civil penalties under CWA § 311(b)(7)(A) & (D) concern environmental exposure (*i.e.*, the discharge of oil and hazardous substances), and because the per-barrel penalty matrix column contained in the 1998 penalty policy reflects the statutory maximum penalty amounts in effect when this penalty authority was enacted in 1990. It is important for the penalty matrix to retain a maximum per-barrel penalty policy amount that equals the current statutory maximum and to increase the other penalty policy matrix cells proportionally by the same inflation adjustment multiplier.

CAA – Accidental Release Prevention/Risk Management Program		
Final Combined Enforcement Policy for Clean Air Act Sections 112(r)(1), 112(r)(7), and 40 C.F.R. Part 68	2012	1.06635
CAA – Stationary Source		
Clean Air Act Stationary Source Civil Penalty Policy	1991	1.79523
Appendix I – Penalty Policy for Violation of Permit Requirements	1987	2.13933
Appendix II - Vinyl Chloride Civil Penalty Policy	1985	2.26922
Appendix III - Asbestos Demolition and Renovation Civil Penalty Policy	1992	1.73952
Appendix IV - Clean Air Act Penalty Policy as Applied to Stationary Sources of Volatile Organic Compounds (VOC) Where Reformulation of Low Solvent Technology is the Applicable Method of Compliance	1987	1.79523 [17]
Appendix VI - Leak Detection and Repair Penalty Policy	2012	1.06635
Appendix VII – Penalty Policy for New Residential Wood Heaters	1989	1.96388

[17] For violations governed by Appendix IV, the EPA is using the same multiplier that applies to the 1991 "*Clean Air Act Stationary Source Civil Penalty Policy*" because the gravity-based component of such violations is calculated using the 1991 policy.

Appendix VIII - Clean Air Act Civil Penalty Policy Applicable to Persons Who Manufacture or Import Controlled Substances in Amounts Exceeding Allowances Properly Held Under 40 C.F.R. Part 82: Protection of Stratospheric Ozone	1990	1.84767
Appendix IX - Clean Air Act Civil Penalty Policy Applicable to Persons Who Perform Service for Consideration on a Motor Vehicle Air Conditioner Involving the Refrigerant or Who Sell Small Containers of Refrigerant in Violation of 40 C.F.R. Part 82, Protection of the Stratospheric Ozone, Subpart B: Servicing of Motor Vehicle Air Conditioners	1993	1.69296
Appendix X - Clean Air Act Civil Penalty Policy for Violations of 40 C.F.R. Part 82, Subpart F: Maintenance, Service, Repair, and Disposal of Appliances Containing Refrigerant	1994	1.64993
Appendix XI - National Petroleum Refinery Initiative Implementation: Application of Clean Air Action Stationary Source Penalty Policy for Violations of Benzene Waste Operations NESHAP Requirements	2007	1.18057
EPA Region 10's Civil Penalty Guidelines for the Federal Implementation Plans under the Clean Air Act for Indian Reservations in Idaho, Oregon, and Washington. 40 C.F.R. Part 49	2008	1.13894
CAA – Mobile Source		
Clean Air Act Mobile Source Civil Penalty Policy - Vehicle and Engine Certification Requirements	2009	1.14103
Clean Air Act Mobile Source Fuels Civil Penalty Policy Title II of the Clean Air Act --40 C.F.R. Part 80 Fuels Standards Requirements	2016	1.03711

North American and U.S. Caribbean Sea Emissions Control Areas Penalty Policy for Violations by Ships of the Sulfur in Fuel Standard and Related Provisions	2015	1.03711
Civil Penalty Policy for Administrative Hearings	1993	1.69296
RCRA		
RCRA Civil Penalty Policy	2003	1.53790 [18]
Guidance on the Use of Section 7003 of RCRA	1997	2.64426 [19]
Guidance for Federal Field Citation Enforcement	1993	1.69296
U.S. EPA Penalty Guidance for Violations of UST Regulations	1990	1.84767
CERCLA		
Interim Policy on Settlement of CERCLA Section 106(b)(1) Penalty Claims and Section 107(c)(3) Punitive Damages Claims for Noncompliance with Administrative Orders	1997	2.03299 [20]
CERCLA & EPCRA		
Enforcement Response Policy for Sections 304, 311 and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act	1999	1.46649

[18] The 2003 RCRA civil penalty policy contains the applicable narrative text that practitioners should continue to use.
[19] For RCRA section 7003(b) penalties, the EPA is applying this multiplier in order to ensure appropriate inflation-adjusted deterrence amounts for such serious violations, *i.e.*, the penalty policy maximum equals the statutory maximum of $14,543.
[20] For CERCLA section 106(b)(1) penalties, the EPA is applying this multiplier in order to ensure appropriate inflation-adjusted deterrence amounts for such serious violations, *i.e.*, the penalty policy maximum equals the statutory maximum of $55,907.

EPCRA		
Enforcement Response Policy for Section 313 of the Emergency Planning and Community Right-to-Know Act (1986) and Section 6607 of the Pollution Prevention Act (1990), February 24, 2017 (Amended)	2017	1.03711 [21]
FIFRA		
FIFRA Enforcement Response Policy (FIFRA ERP)	2009	1.14103
Appendix E to FIFRA ERP - Enforcement Response Policy for FIFRA Section 7(c): Establishment Reporting Requirements	2010	Use the 2009 FIFRA ERP and the 1.14103 multiplier
Appendix F to FIFRA ERP - Interim Final Penalty Policy for the Worker Protection Standard	1997	Use the 2009 FIFRA ERP and the 1.14103 multiplier
Appendix G to FIFRA ERP - Enforcement Response Policy for the Federal Insecticide, Fungicide and Rodenticide Act Good Laboratory Practice (GLP) Regulations	1991	Use the 2009 FIFRA ERP and the 1.14103 multiplier
Appendix H to the FIFRA ERP - Enforcement Response Policy for the FIFRA Pesticide Container/Containment Regulations	2012	Use the 2009 FIFRA ERP and the 1.14103 multiplier
TSCA		
Guidelines for Assessment of Civil Penalties Under Section 16 of the Toxic Substance Control Act	1980	1.55567

[21] On February 24, 2017, the EPCRA Enforcement Response Policy was amended in accordance with the 2016 Civil Monetary Penalty Inflation Adjustment Rule. The current penalty policy maximum amount of $40,779 is multiplied by 1.03711 (the CPI-U adjustment from October 2015 to October 2017) to yield a new maximum amount of $42,292.

Enforcement Response Policy for Reporting and Recordkeeping Rules and Requirements for TSCA Sections 8, 12, and 13	1999	1.55567 [22]
Amendment to the TSCA Section 5 Enforcement Response Policy – Penalty Limit for Untimely NOC Submissions	1993	1.55567
Enforcement Response Policy for TSCA §4 Test Rules	1986	1.55567
Final TSCA GLP Enforcement Response Policy	1985	1.55567
TSCA – Asbestos		
Enforcement Response Policy for the Asbestos Model Accreditation Plan (MAP) – Addendum to the AHERA ERP	1998	1.50405
Interim Final Enforcement Response Policy for the Asbestos Hazard Emergency Response Act	1989	1.96388
Enforcement Response Policy for Asbestos Abatement Projects: Worker Protection Rule	1989	1.55567
TSCA – Lead-Based Paint		
Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education (PRE) Rule; Renovation, Repair and Painting (RRP) Rule; and Lead-Based Paint Activities (LBPA) Rule	2010	1.03711

[22] The "Penalty Matrix For Violations Occurring After January 30, 1997" on page 8 of this policy should be ignored. For all violations governed by this policy, the multiplier should be applied to the penalty amounts in the "Penalty Matrix For Violations Occurring On or Before January 30, 1997" found on the same page.

Section 1018 – Disclosure Rule Enforcement Response and Penalty Policy	2007	1.58136
TSCA – PCBs		
Polychlorinated Biphenyls (PCB) Penalty Policy	1990	1.55567

is incorporated by reference in the Code of Federal Regulations, and thus more effective in supporting USPS efforts related to compliance and enforcement. The Postal Service expects that incorporation by reference of Publication 52 in the *Code of Federal Regulations,* will increase the visibility of the mailing standards contained in Publication 52 and thereby maximize their effectiveness and usefulness.

Since their removal from the DMM, the mailing standards provided in Publication 52 have undergone few changes of significance; indeed, several of those changes have expanded the options available to HAZMAT mailers. With regard to changes having a wider impact on mailers, such as those required to conform Publication 52 to the revised standards for the shipment of lithium batteries established by the Pipeline and Hazardous Materials Safety Administration (PHMSA) and the International Civil Aviation Organization (ICAO), the Postal Service has been careful to provide advance notice to interested parties, with an opportunity to comment, and to shape the final standards in response to the comments received. *See, e.g.* 82 FR 11372 (February 22, 2017), and 82 FR 34712 (July 26, 2017). Relating to violations of mailing standards for hazardous materials, the Postal Service currently has civil enforcement authority granted by the Postal Accountability and Enhancement Act of 2006, and authority to assess criminal penalties under 18 U.S.C. 1716. As a result, the Postal Service believes that the incorporation by reference of Publication 52 should have little or no impact on mailers of hazardous, restricted, or perishable materials, and the Postal Service would expect few comments in response to a proposed rule. Accordingly, the Postal Service has chosen to publish only a final rule in support of this action.

The Postal Service further believes that incorporation by reference of Publication 52 is justified in view of the unique qualities of the publication, including its length, the detailed description of conditions relating to the mailing of hazardous, restricted, or perishable materials, and the presence of numerous color figures and images in the document. In addition, the potential for serious injury to Postal Service employees and the general public, as well as the potential for damage to USPS equipment and other assets resulting from improperly prepared, packaged, or marked hazardous materials, provide support for the incorporation by reference of a separate publication dealing specifically with such matters.

List of Subjects in 39 CFR Part 113

Hazardous, restricted, and perishable mail, Incorporation by reference.

■ In consideration of the matters discussed above, the Postal Service adds new 39 CFR part 113 as follows:

PART 113—HAZARDOUS, RESTRICTED, AND PERISHABLE MAIL

Sec.

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

§ 113.1 Scope and purpose.

This part applies to the mailing and shipment of hazardous, restricted, and perishable materials. In order to mail hazardous, restricted, and perishable materials, mailers must properly prepare their mailings in accordance with the standards contained in USPS Publication 52 (incorporated by reference, see § 113.2).

§ 113.2 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved material is available for inspection by appointment only, during normal hours of operation, at the U.S. Postal Service Library, 475 L'Enfant Plaza West SW, Washington, DC 20260–1641 (call 202–268–2906), and is available from the sources listed below. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *www.archives.gov/federal-register/cfr/ibr-locations.html.*

(b) United States Postal Service, Product Classification Office, USPS Headquarters, 475 L'Enfant Plaza SW, Room 4446, Washington, DC 20260–5013: *http://pe.usps.com/text/pub52/welcome.htm.*

(1) *Publication 52, Hazardous, Restricted and Perishable Mail, dated August 2017, IBR approved for § 113.1.*

(2) [Reserved]

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2018–00266 Filed 1–9–18; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 19

[FRL–9972–92–OECA]

Civil Monetary Penalty Inflation Adjustment Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is promulgating this final rule to adjust the level of statutory civil monetary penalty amounts under the statutes EPA administers. This action is mandated by the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended through the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (''the 2015 Act''). The 2015 Act prescribes a formula for annually adjusting statutory civil penalties to reflect inflation, maintain the deterrent effect of statutory civil penalties, and promote compliance with the law. The rule does not necessarily revise the penalty amounts that EPA chooses to seek pursuant to its civil penalty policies in a particular case. EPA's civil penalty policies, which guide enforcement personnel in how to exercise EPA's statutory penalty authorities, take into account a number of fact-specific considerations, *e.g.,* the seriousness of the violation, the violator's good faith efforts to comply, any economic benefit gained by the violator as a result of its noncompliance, and a violator's ability to pay.

DATES: This final rule is effective on January 15, 2018.

FOR FURTHER INFORMATION CONTACT: David Smith-Watts, Office of Civil Enforcement, Office of Enforcement and Compliance Assurance, Mail Code 2241A, Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460, telephone number: (202) 564–4083; *smith-watts.david@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Since 1990, federal agencies have been required to issue regulations adjusting for inflation the statutory civil penalties [1] that can be imposed under

[1] The Federal Civil Penalties Inflation Adjustment Act of 1990, Public Law 101–410, 28 U.S.C. 2461 note, defines ''civil monetary penalty'' as ''any penalty, fine, or other sanction that—(A)(i) is for a specific monetary amount as provided by Federal law; or (ii) has a maximum amount provided for by Federal law; and (B) is assessed or enforced by an agency pursuant to Federal law; and (C) is assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts.''

the laws administered by that agency. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996 (DCIA), required agencies to review their statutory civil penalties every 4 years, and to adjust the statutory civil penalty amounts for inflation if the increase met the DCIA's adjustment methodology. In accordance with the DCIA, EPA reviewed and, as appropriate, adjusted the civil penalty levels under each of the statutes the agency implements in 1996 (61 FR 69360), 2004 (69 FR 7121), 2008 (73 FR 75340), and 2013 (78 FR 66643).

The 2015 Act [2] requires agencies to: (1) Adjust the level of statutory civil penalties with an initial ''catch-up'' adjustment through an interim final rulemaking; and (2) beginning January 15, 2017, make subsequent annual adjustments for inflation. The purpose of the 2015 Act is to maintain the deterrent effect of civil penalties by translating originally enacted statutory civil penalty amounts to today's dollars and rounding statutory civil penalties to the nearest dollar.

As required by the 2015 Act, EPA issued a catch up rule on July 1, 2016, which was effective August 1, 2016 (81 FR 43091), and EPA made its first annual adjustment on January 12, 2017, which was effective January 15, 2017 (82 FR 3633). Today's rule implements the second annual penalty inflation adjustments mandated by the 2015 Act. Section 4 of the 2015 Act requires each federal agency to publish annual adjustments to all civil penalties under the laws implemented by that agency. These annual adjustments are required to be published by January 15 of each year. The 2015 Act describes the method for calculating the adjustments. Each statutory maximum civil monetary penalty is multiplied by the cost-of-living adjustment, which is the percentage by which the Consumer Price Index for all Urban Consumers (CPI–U) for the month of October 2017 exceeds the CPI–U for the month of October 2016.

With this rule, the new statutory maximum (or minimum [3]) penalty levels listed in the sixth column of Table 2 of 40 CFR 19.4 will apply to all civil penalties assessed on or after January 15, 2018, for violations that occurred after November 2, 2015, when the 2015 Act was enacted. The former maximum statutory civil penalty levels, which are in the fifth column of Table 2 to 40 CFR 19.4, will now apply only to violations that occurred after November 2, 2015, where the penalties were assessed on or after January 15, 2017 but before January 15, 2018. The statutory penalty levels for violations that occurred after November 2, 2015, where the penalties were assessed on or after August 1, 2016 but before January 15, 2017, are codified in the fourth column of Table 2 to 40 CFR 19.4. The statutory civil penalty levels that apply to violations that occurred on or before November 2, 2015, are codified at Table 1 to 40 CFR 19.4.

The formula for determining the cost-of-living or inflation adjustment to statutory civil penalties consists of the following steps:

Step 1: The cost-of-living adjustment multiplier for 2018, based on the CPI–U of October 2017, is 1.02041.[4] Multiply 1.02041 by the current penalty amount. This is the raw adjusted penalty value.

Step 2: Round the raw adjusted penalty value. Section 5 of the 2015 Act states that any adjustment shall be rounded to the nearest multiple of $1. The result is the final penalty value for the year.

II. The 2015 Act Requires Federal Agencies To Publish Annual Penalty Inflation Adjustments Notwithstanding Section 553 of the Administrative Procedures Act

Section 4 of the 2015 Act directs federal agencies to publish the second annual adjustments no later than January 15, 2018. In accordance with section 553 of the Administrative Procedures Act (APA), most rules are subject to notice and comment and are effective no earlier than 30 days after publication in the **Federal Register**. However, Section 4(b)(2) of the 2015 Act provides that each agency shall make the annual inflation adjustments ''notwithstanding section 553'' of the APA. According to OMB guidance issued to Federal agencies on the implementation of the 2018 annual adjustment,[5] the phrase ''notwithstanding section 553'' means that ''the public procedure the APA generally provides—notice, an opportunity for comment, and a delay in effective date—is not required for agencies to issue regulations implementing the annual adjustment.'' Consistent with the language of the 2015 Act and OMB's implementation guidance, this rule is not subject to notice and an opportunity for public comment and will be effective immediately upon publication.

III. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *http://www2.epa.gov/laws-regulations/laws-and-executive-orders*.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

C. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA. This rule merely increases the level of statutory civil penalties that can be imposed in the context of a federal civil administrative enforcement action or civil judicial case for violations of EPA-administered statutes and their implementing regulations.

D. Regulatory Flexibility Act (RFA)

This action is not subject to the RFA. The RFA applies only to rules subject to notice and comment rulemaking requirements under the APA, 5 U.S.C. 553, or any other statute. Because the 2015 Act directs Federal agencies to publish this rule notwithstanding section 553 of the APA, this rule is not subject to notice and comment requirements or the RFA.

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[2] The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Section 701 of Pub. L.114–74) was signed into law on Nov. 2, 2015, and further amended the Federal Civil Penalties Inflation Adjustment Act of 1990.

[3] Under Section 3(2)(A) of the 2015 Act, ''civil monetary penalty'' means ''a specific monetary amount as provided by Federal law''; or ''has a maximum amount provided for by Federal law.'' EPA-administered statutes generally refer to statutory maximum penalties, with the following exceptions: Section 311(b)(7)(D) of the Clean Water Act, 33 U.S.C. 1321(b)(7)(D), refers to a minimum penalty of ''not less than $100,000 . . .''; Section 104B(d)(1) of the Marine Protection, Research, and Sanctuaries Act, 33 U.S.C. 1414b(d)(1), refers to an exact penalty of $600 ''[f]or each dry ton (or equivalent) of sewage sludge or industrial waste dumped or transported by the person in violation of this subsection in calendar year 1992 . . .''; and Section 325(d)(1) of the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. 11045(d)(1), refers to an exact civil penalty of $25,000 for each frivolous trade secret claim.

[4] Office of Management and Budget Memorandum, *Implementation of the Penalty Inflation Adjustments for 2018, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015* (OMB Memorandum M–18–03) at p. 1 (December 15, 2017).

[5] *See* OMB Memorandum M–18–03 at p. 4.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action is required by the 2015 Act, without the exercise of any policy discretion by EPA. This action also imposes no enforceable duty on any state, local or tribal governments or the private sector. Because the calculation of any increase is formula-driven pursuant to the 2015 Act, EPA has no policy discretion to vary the amount of the adjustment.

F. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. This rule merely reconciles the real value of current statutory civil penalty levels to reflect and keep pace with the levels originally set by Congress when the statutes were enacted. The calculation of the increases is formula-driven and prescribed by statute, and EPA has no discretion to vary the amount of the adjustment to reflect any views or suggestions provided by commenters. Accordingly, this rule will not have a substantial direct effect on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.

H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

I. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act (NTTAA)

The rulemaking does not involve technical standards.

K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes that this action is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994) because it does not establish an environmental health or safety standard. Rather, this action is mandated by the 2015 Act, which prescribes a formula for adjusting statutory civil penalties on an annual basis to reflect inflation.

L. Congressional Review Act (CRA)

This action is subject to the CRA, and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. The CRA allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and comment rulemaking procedures are impracticable, unnecessary or contrary to the public interest (5 U.S.C. 808(2)). The 2015 Act directs Federal agencies to publish their annual penalty inflation adjustments ''notwithstanding section 553 [of the APA].'' Because OMB has instructed Federal agencies that this provision means that ''notice, an opportunity for comment, and a delay in the effective date'' are not required for agencies to issue regulations implementing the annual adjustment,[6] EPA finds that the APA's notice and comment rulemaking procedures are impracticable, unnecessary or contrary to the public interest.

List of Subjects in 40 CFR Part 19

Environmental protection, Administrative practice and procedure, Penalties.

Dated: January 3, 2018.

E. Scott Pruitt,

Administrator.

For the reasons set out in the preamble, EPA amends title 40, chapter I, part 19 of the Code of Federal Regulations as follows:

[6] *See* OMB Memorandum M–18–03 at p. 4.

PART 19—ADJUSTMENT OF CIVIL MONETARY PENALTIES FOR INFLATION

■ 1. The authority citation for part 19 continues to read as follows:

Authority: Pub. L. 101–410, Oct. 5, 1990, 104 Stat. 890, as amended by Pub. L. 104–134, title III, sec. 31001(s)(1), Apr. 26, 1996, 110 Stat. 1321–373; Pub. L. 105–362, title XIII, sec. 1301(a), Nov. 10, 1998, 112 Stat. 3293; Pub. L. 114–74, title VII, sec. 701(b), Nov. 2, 2015, 129 Stat. 599.

■ 2. Revise § 19.2 to read as follows:

§ 19.2 Effective date.

The statutory penalty levels in the last column of Table 1 to § 19.4 apply to all violations which occurred after December 6, 2013 through November 2, 2015, and to violations occurring after November 2, 2015, where penalties were assessed before August 1, 2016. The statutory civil penalty levels set forth in the fourth column of Table 2 of § 19.4 apply to all violations which occurred after November 2, 2015, where the penalties were assessed on or after August 1, 2016 and before January 15, 2017. The statutory civil penalty levels set forth in the fifth column of Table 2 of § 19.4 apply to all violations which occurred after November 2, 2015, where the penalties were assessed after January 15, 2017 but before January 15, 2018. The statutory civil penalty levels set forth in the sixth and last column of Table 2 of § 19.4 apply to all violations which occur or occurred after November 2, 2015, where the penalties are assessed after January 15, 2018.

■ 3. In § 19.4, revise the introductory text and table 2 to read as follows:

§ 19.4 Statutory civil penalties, as adjusted for inflation, and tables.

Table 1 to § 19.4 sets out the statutory civil penalty provisions of statutes administered by EPA, with the original statutory civil penalty levels, as enacted, and the operative statutory civil penalty levels, as adjusted for inflation, for violations that occurred on or before November 2, 2015, and for violations that occurred after November 2, 2015, where penalties were assessed before August 1, 2016. Table 2 to § 19.4 sets out the statutory civil penalty provisions of statutes administered by EPA, with the third column displaying the original statutory civil penalty levels, as enacted. The fourth column of Table 2 displays the operative statutory civil penalty levels where penalties were assessed on or after August 1, 2016 but before January 15, 2017, for violations that occurred after November 2, 2015. The fifth column displays the operative statutory civil penalty levels

where penalties are assessed on or after January 15, 2017 but before January 15, 2018, for violations that occur or occurred after November 2, 2015. The sixth and last column displays the operative statutory civil penalty levels where penalties are assessed on or after January 15, 2018, for violations that occur or occurred after November 2, 2015.

* * * * *

TABLE 2 OF SECTION 19.4—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS

U.S. Code citation	Environmental statute	Statutory civil penalties, as enacted	Statutory civil penalties for violations that occurred after November 2, 2015, where penalties are assessed on or after August 1, 2016 but before January 15, 2017	Statutory civil penalties for violations that occurred after November 2, 2015, where penalties are assessed on or after January 15, 2017 but before January 15, 2018	Statutory civil penalties for violations that occurred after November 2, 2015, where penalties are assessed on or after January 15, 2018
7 U.S.C. 136*l*.(a)(1)	FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT (FIFRA).	$5,000	$18,750	$19,057	$19,446
7 U.S.C. 136*l*.(a)(2) [1]	FIFRA	1,000/500/1,000	2,750/1,772/2,750	2,795/1,801/2,795	2,852/1,838/2,795
15 U.S.C. 2615(a)(1)	TOXIC SUBSTANCES CONTROL ACT (TSCA).	25,000	37,500	38,114	38,892
15 U.S.C. 2647(a)	TSCA	5,000	10,781	10,957	11,181
15 U.S.C. 2647(g)	TSCA	5,000	8,908	9,054	9,239
31 U.S.C. 3802(a)(1)	PROGRAM FRAUD CIVIL REMEDIES ACT (PFCRA).	5,000	10,781	10,957	11,181
31 U.S.C. 3802(a)(2)	PFCRA	5,000	10,781	10,957	11,181
33 U.S.C. 1319(d)	CLEAN WATER ACT (CWA)	25,000	51,570	52,414	53,484
33 U.S.C. 1319(g)(2)(A)	CWA	10,000/25,000	20,628/51,570	20,965/52,414	21,393/53,484
33 U.S.C. 1319(g)(2)(B)	CWA	10,000/125,000	20,628/257,848	20,965/262,066	21,393/267,415
33 U.S.C. 1321(b)(6)(B)(i)	CWA	10,000/25,000	17,816/44,539	18,107/45,268	18,477/46,192
33 U.S.C. 1321(b)(6)(B)(ii)	CWA	10,000/125,000	17,816/222,695	18,107/226,338	18,477/230,958
33 U.S.C. 1321(b)(7)(A)	CWA	25,000/1,000	44,539/1,782	45,268/1,811	46,192/1,848
33 U.S.C. 1321(b)(7)(B)	CWA	25,000	44,539	45,268	46,192
33 U.S.C. 1321(b)(7)(C)	CWA	25,000	44,539	45,268	46,192
33 U.S.C. 1321(b)(7)(D)	CWA	100,000/3,000	178,156/5,345	181,071/5,432	184,767/5,543
33 U.S.C. 1414b(d)(1)	MARINE PROTECTION, RESEARCH, AND SANCTUARIES ACT (MPRSA).	600	1,187	1,206	1,231
33 U.S.C. 1415(a)	MPRSA	50,000/125,000	187,500/247,336	190,568/251,382	194,457/256,513
33 U.S.C. 1901 note (*see* 1409(a)(2)(A)).	CERTAIN ALASKAN CRUISE SHIP OPERATIONS (CACSO).	10,000/25,000	13,669/34,172	13,893/34,731	14,177/35,440
33 U.S.C. 1901 note (*see* 1409(a)(2)(B)).	CACSO	10,000/125,000	13,669/170,861	13,893/173,656	14,177/177,200
33 U.S.C. 1901 note (*see* 1409(b)(1)).	CACSO	25,000	34,172	34,731	35,440
33 U.S.C. 1908(b)(1)	ACT TO PREVENT POLLUTION FROM SHIPS (APPS).	25,000	70,117	71,264	72,718
33 U.S.C. 1908(b)(2)	APPS	5,000	14,023	14,252	14,543
42 U.S.C. 300g–3(b)	SAFE DRINKING WATER ACT (SDWA)	25,000	53,907	54,789	55,907
42 U.S.C. 300g–3(g)(3)(A)	SDWA	25,000	53,907	54,789	55,907
42 U.S.C. 300g–3(g)(3)(B)	SDWA	5,000/25,000	10,781/37,561	10,957/38,175	11,181/38,954
42 U.S.C. 300g–3(g)(3)(C)	SDWA	25,000	37,561	38,175	38,954
42 U.S.C. 300h–2(b)(1)	SDWA	25,000	53,907	54,789	55,907
42 U.S.C. 300h–2(c)(1)	SDWA	10,000/125,000	21,563/269,535	21,916/273,945	22,363/279,536
42 U.S.C. 300h–2(c)(2)	SDWA	5,000/125,000	10,781/269,535	10,957/273,945	11,181/279,536
42 U.S.C. 300h–3(c)	SDWA	5,000/10,000	18,750/40,000	19,057/40,654	19,446/41,484
42 U.S.C. 300i(b)	SDWA	15,000	22,537	22,906	23,374
42 U.S.C. 300i–1(c)	SDWA	100,000/1,000,000	131,185/1,311,850	133,331/1,333,312	136,052/1,360,525
42 U.S.C. 300j(e)(2)	SDWA	2,500	9,375	9,528	9,722
42 U.S.C. 300j–4(c)	SDWA	25,000	53,907	54,789	55,907
42 U.S.C. 300j–6(b)(2)	SDWA	25,000	37,561	38,175	38,954
42 U.S.C. 300j–23(d)	SDWA	5,000/50,000	9,893/98,935	10,055/100,554	10,260/102,606
42 U.S.C. 4852d(b)(5)	RESIDENTIAL LEAD-BASED PAINT HAZARD REDUCTION ACT OF 1992.	10,000	16,773	17,047	17,395
42 U.S.C. 4910(a)(2)	NOISE CONTROL ACT OF 1972	10,000	35,445	36,025	36,760
42 U.S.C. 6928(a)(3)	RESOURCE CONSERVATION AND RECOVERY ACT (RCRA).	25,000	93,750	95,284	97,229
42 U.S.C. 6928(c)	RCRA	25,000	56,467	57,391	58,562
42 U.S.C. 6928(g)	RCRA	25,000	70,117	71,264	72,718
42 U.S.C. 6928(h)(2)	RCRA	25,000	56,467	57,391	58,562
42 U.S.C. 6934(e)	RCRA	5,000	14,023	14,252	14,543
42 U.S.C. 6973(b)	RCRA	5,000	14,023	14,252	14,543
42 U.S.C. 6991e(a)(3)	RCRA	25,000	56,467	57,391	58,562
42 U.S.C. 6991e(d)(1)	RCRA	10,000	22,587	22,957	23,426
42 U.S.C. 6991e(d)(2)	RCRA	10,000	22,587	22,957	23,426
42 U.S.C. 7413(b)	CLEAN AIR ACT (CAA)	25,000	93,750	95,284	97,229
42 U.S.C. 7413(d)(1)	CAA	25,000/200,000	44,539/356,312	45,268/362,141	46,192/369,532
42 U.S.C. 7413(d)(3)	CAA	5,000	8,908	9,054	9,239
42 U.S.C. 7524(a)	CAA	25,000/2,500	44,539/4,454	45,268/4,527	46,192/4,619
42 U.S.C. 7524(c)(1)	CAA	200,000	356,312	362,141	369,532
42 U.S.C. 7545(d)(1)	CAA	25,000	44,539	45,268	46,192
42 U.S.C. 9604(e)(5)(B)	COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA).	25,000	53,907	54,789	55,907
42 U.S.C. 9606(b)(1)	CERCLA	25,000	53,907	54,789	55,907
42 U.S.C. 9609(a)(1)	CERCLA	25,000	53,907	54,789	55,907

TABLE 2 OF SECTION 19.4—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS—Continued

U.S. Code citation	Environmental statute	Statutory civil penalties, as enacted	Statutory civil penalties for violations that occurred after November 2, 2015, where penalties are assessed on or after August 1, 2016 but before January 15, 2017	Statutory civil penalties for violations that occurred after November 2, 2015, where penalties are assessed on or after January 15, 2017 but before January 15, 2018	Statutory civil penalties for violations that occurred after November 2, 2015, where penalties are assessed on or after January 15, 2018
42 U.S.C. 9609(b)	CERCLA	25,000/75,000	53,907/161,721	54,789/164,367	55,907/167,722
42 U.S.C. 9609(c)	CERCLA	25,000/75,000	53,907/161,721	54,789/164,367	55,907/167,722
42 U.S.C. 11045(a)	EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW ACT (EPCRA).	25,000	53,907	54,789	55,907
42 U.S.C. 11045(b)(1)(A)	EPCRA	25,000	53,907	54,789	55,907
42 U.S.C. 11045(b)(2)	EPCRA	25,000/75,000	53,907/161,721	54,789/164,367	55,907/167,722
42 U.S.C. 11045(b)(3)	EPCRA	25,000/75,000	53,907/161,721	54,789/164,367	55,907/167,722
42 U.S.C. 11045(c)(1)	EPCRA	25,000	53,907	54,789	55,907
42 U.S.C. 11045(c)(2)	EPCRA	10,000	21,563	21,916	22,363
42 U.S.C. 11045(d)(1)	EPCRA	25,000	53,907	54,789	55,907
42 U.S.C. 14304(a)(1)	MERCURY-CONTAINING AND RECHARGEABLE BATTERY MANAGEMENT ACT (BATTERY ACT).	10,000	15,025	15,271	15,583
42 U.S.C. 14304(g)	BATTERY ACT	10,000	15,025	15,271	15,583

[1] Note that 7 U.S.C. 136*l*.(a)(2) contains three separate statutory maximum civil penalty provisions. The first mention of $1,000 and the $500 statutory maximum civil penalty amount were originally enacted in 1978 (Pub. L. 95–396), and the second mention of $1,000 was enacted in 1972 (Pub. L. 92–516).

[FR Doc. 2018–00287 Filed 1–9–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2007–0085; FRL–9972–85–Region 4]

Air Plan Approval; NC; Open Burning and Miscellaneous Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Due to adverse comments received, the Environmental Protection Agency (EPA) is amending the North Carolina State Implementation Plan (SIP) to remove some provisions made effective through the direct final rule that was published on July 18, 2017. EPA stated that if adverse comments were received by the close of the comment period, the rule would be withdrawn and not take effect, or if adverse comments were received on an amendment, paragraph, or section of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. EPA received adverse comments on two specific SIP revisions. Therefore, EPA is removing only the portions of the SIP related to those two revisions.

DATES: This rule is effective January 10, 2018.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2007–0085. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information may not be publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Nacosta C. Ward, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. Ms. Ward can be reached via telephone at (404) 562–9140, or via electronic mail at *ward.nacosta@epa.gov.*

SUPPLEMENTARY INFORMATION: On July 18, 2017, EPA published a direct final rule (82 FR 32767) approving several revisions to the North Carolina SIP. The revisions consisted of changes to or the addition of the following regulations: 15A NCAC Subchapter 2D—Air Pollution Control Requirements, Section .0101, *Definitions;* Section .0103, *Copies of Referenced Federal Regulations;* Section .1901 *Purpose, Scope, and Impermissible Open Burning Section;* .1902, *Definitions;* Section .1903, *Permissible Open Burning Without An Air Quality Permit;* Section .2001, *Purpose, Scope, and Applicability;* and 15A NCAC Subchapter 2Q—Air Quality Permits, Section .0103, *Definitions;* Section .0105, *Copies of Referenced Documents;* Section .0304, *Applications;* Section .0305, *Application Submittal Content;* Section .0806, *Cotton Gins;* Section .0808, *Peak Shaving Generators;* and Section .0810, *Air Curtain Burners.* On the same day, EPA published proposed rule (82 FR 32782), proposing approval of those same revisions to the North Carolina SIP and providing a 30-day comment period for both the direct final rule and the proposed rule.[1] The direct final rule explained that if EPA received adverse comments, the Agency would withdraw the relevant portion(s) of the direct final action. EPA received adverse comments on the portions of the rulemaking related to the North Carolina regulations 15A NCAC Subchapter 2Q—Air Quality Permits, Section .0808, *Peak Shaving Generators,* and Section .0810, *Air Curtain Burners,* only. However, EPA was not able to withdraw these portions of the direct final action before the action became effective. Therefore, EPA is amending § 52.1770 by removing the portions of the SIP related to these two North Carolina regulations. EPA is not

[1] On September 6, 2017 (82 FR 42055), EPA reopened the comment period for the proposed rule, with comments due on or before September 21, 2017.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

DEC - 6 2013

ASSISTANT ADMINISTRATOR
FOR ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Amendments to the U.S. Environmental Protection Agency's Civil Penalty Policies to Account for Inflation (Effective December 6, 2013)

FROM: Cynthia Giles
Assistant Administrator

TO: Regional Administrators
Deputy Regional Administrators

The purpose of this memorandum is to amend the EPA's existing civil penalty policies to account for inflation. Specifically, with the exception of penalties assessed under expedited settlement agreement (ESA) programs, this memorandum amends all existing penalty policies to increase the initial gravity-based penalties by 4.87 percent for violations that occur after December 6, 2013, the effective date of the 2013 Civil Monetary Penalty Inflation Adjustment Rule (2013 Penalty Inflation Rule or Rule). The 4.87 percent represents the cost-of-living adjustment, calculated pursuant to the formula prescribed in Section 5(b) of the Debt Collection Improvement Act (DCIA),[1] which was applied in developing the 2013 Rule.

This memorandum also provides guidance on pleading civil penalties for violations that occur before and after the effective date of the Rule, and when to apply the new maximum civil penalty amounts that may be sought in certain administrative enforcement actions brought under the Clean Water Act (CWA), Certain Alaskan Cruise Ship Operations Act (CACSOA), Safe Drinking Water Act (SDWA), Clean Air Act (CAA), the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and the Emergency Planning and Community Right-to-Know Act (EPCRA).

I. Background

The DCIA requires each federal agency to issue regulations adjusting for inflation the statutory civil penalties that can be imposed under the laws administered by that agency. On November 6, 2013, the EPA promulgated the 2013 Penalty Inflation Rule pursuant to Section 4 of the DCIA; the Rule is effective December 6, 2013. (A copy of the Rule, as published at 78 Fed. Reg. 66643-48 (Nov. 6, 2013), is attached.) Under the Rule, only 20 out of 88 statutory penalty amounts are being increased for two reasons: (1) since 2008, when the last Penalty Inflation Adjustment Rule was promulgated, the rate of inflation has been low, resulting in a cost-of-living adjustment of only 4.87 percent for those penalties

[1] *See* the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note.

that were last adjusted in 2008; and (2) when the DCIA's mandatory rounding rules were applied to the inflation adjusted increment, the inflation adjusted amounts were, in most cases, insufficient to warrant an increase under the 2013 Rule. All violations occurring after December 6, 2013, the effective date of the Rule, are subject to the new, inflation-adjusted, statutory penalties.[2]

II. The DCIA's Formula for Calculating Cost-of-Living Adjustments to Civil Penalties

Pursuant to the DCIA, each federal agency is required to issue regulations adjusting for inflation all statutory civil monetary penalties that can be imposed pursuant to such agency's statutes. The purpose of these inflation adjustments is to maintain the deterrent effect of civil penalties, thereby promoting compliance with the law. Section 5 of the DCIA requires each agency to apply a specific formula and statutorily prescribed rounding rules to determine whether and to what extent statutory civil penalties should be increased to account for any changes in the cost-of-living. Under the DCIA, the cost-of-living adjustment (COLA) is determined by calculating the percentage increase, if any, by which the Consumer Price Index for all-urban consumers (CPI-U) for the month of June of the calendar year preceding the current adjustment exceeds the CPI-U for the month of June of the calendar year in which the amount of such civil monetary penalty was last set or adjusted. Accordingly, the COLA applied under the 2013 Rule equals the percentage by which the CPI-U for June 2012 (*i.e.*, June of the year preceding 2013, the year the Rule was published), exceeds the CPI-U for June of the year in which the amount of a specific penalty was last adjusted (*i.e.*, 2008, 2004 or 1996, as the case may be).

III. Amendments to the EPA's Civil Penalty Policies

By this memorandum, the Office of Enforcement and Compliance Assurance (OECA) is amending the EPA's existing civil penalty policies to increase the initial gravity component of the penalty calculation by 4.87 percent for those violations subject to the new Rule, *i.e.*, violations occurring after December 6, 2013. As further discussed below, this memorandum does not increase penalty amounts that may be assessed under any of the EPA's ESA programs.

While not required specifically by the Act, we believe revising our civil penalty policies to account for inflation is consistent with the Congressional intent in passing the DCIA and is necessary to implement effectively the mandated penalty increases set forth in 40 C.F.R. Part 19. In addition, this is consistent with the practice we have been implementing since 1997, when we first amended the EPA's civil penalty policies to reflect the COLA applied under the 1996 Civil Monetary Penalty Inflation Adjustment Rule.[3] Accordingly, each non-ESA civil penalty policy is now modified to apply the appropriate guidelines set forth below. These new guidelines apply to civil penalty policies, regardless of whether the policy is used for determining a specific amount to plead in a complaint or for determining a bottom-line settlement amount.

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[2] Section 6 of the DCIA provides that "[a]ny increase under this Act in a civil monetary penalty shall apply only to violations that occur ***after*** the date the increase takes effect." [Emphasis added.]

[3] *See* Memorandum dated May 9, 1997, from Steven A. Herman, Assistant Administrator for Enforcement and Compliance Assurance (OECA), "Modifications to EPA Penalty Policies to Implement the Civil Monetary Penalty Inflation Adjustment Rule;" Memorandum dated September 21, 2004, from Thomas V. Skinner, Acting Assistant Administrator of OECA, "Modifications to EPA Penalty Policies to Implement the Civil Monetary Inflation Adjustment Rule" (2004 Memorandum); and Memorandum dated December 29, 2008, from Granta Y. Nakayama, Assistant Administrator for OECA, "Amendments to EPA Civil Penalty Policies to Implement the 2008 Civil Monetary Penalty Inflation Rule (Effective January 12, 2009)" (2008 Memorandum).

A complete list of all of the EPA's non-ESA penalty policies is provided at the end of this memorandum. Subsequent to the issuance of this memorandum, the division directors in the Office of Civil Enforcement and the Office of Site Remediation Enforcement may issue revised penalty matrices under program-specific penalty policies to reflect the following guidelines, as summarized in the chart at pages 5-6.

A. If all of the violations in a particular case occurred on or before the effective date of the 2013 Rule, penalty policy calculations should be consistent with the 2008 Memorandum.

B. For those judicial and administrative cases in which some or all of the violations occurred *after* the effective date of the 2013 Rule, the penalty policy calculations are modified by following these three steps:

1. Perform the economic benefit calculation for the entire period of the violation. Do not apply any mitigation for ability to pay or litigation considerations at this point.

2. Apply the gravity component of the penalty policy in the standard way for all violations according to the provisions of subparagraph 3 below. Do not apply any mitigation or adjustment factors at this point.

3.(a) ***For those penalty policies that were issued prior to January 31, 1997***: Calculate the gravity component according to the penalty policy. For violations that occurred after January 30, 1997 through March 15, 2004, multiply the gravity component by 1.1, reflecting the 10% first-time adjustment. For violations that occurred after March 15, 2004 through January 12, 2009, multiply the gravity component by 1.2895, reflecting both the 10% first-time adjustment and the 17.23% COLA [1.10 x 1.1723 = 1.2895]. For violations that occur after January 12, 2009 through December 6, 2013, multiply the gravity component by 1.4163, reflecting the 10% first-time adjustment, the 17.23% and the 9.83% COLAs [1.10 x 1.1723 x 1.0983 = 1.4163]. For violations that occur after December 6, 2013, multiply the gravity component by 1.4853, reflecting the 10% first-time adjustment, the 17.23%, the 9.83% and the 4.87% COLAs [1.10 x 1.1723 x 1.0983 x 1.0487= 1.4853].

Assume, for example, that under the applicable penalty policy, the initial gravity-based penalty is $1,000 for each day of violation. If the violations occurred for a total of 10 days during the period after January 30, 1997 through March 15, 2004, the gravity inflation-adjusted penalty for those violations would be calculated as follows: 10 days x $1,000 = $10,000 x 1.1 = $11,000. If the violations occurred for 10 days during the period after March 15, 2004 through January 12, 2009, the gravity inflation-adjusted penalty for those violations would be calculated as follows: 10 days x $1,000 = $10,000 x 1.2895 = $12,895. If 10 days of the violations occurred after January 12, 2009 through December 6, 2013, the gravity inflation-adjusted penalty for those violations would be calculated as follows: 10 days x $1,000 = $10,000 x 1.4163= $14,163. If 10 days of the violations occurred after December 6, 2013, the gravity inflation-adjusted penalty for those violations would be calculated as follows: 10 days x $1,000 = $10,000 x 1.4853 = $14,853.

(b) ***For those penalty policies that were issued or revised after January 30, 1997, through March 15, 2004***: Calculate the gravity component according to the penalty policy. For violations that occurred after January 30, 1997 through March 15, 2004, use the gravity component set forth in the penalty policy, as the 10% first-time adjustment is reflected in those policies. For violations that occurred after March 15, 2004 through January 12, 2009, multiply the gravity component by 1.1723, reflecting the 17.23% COLA. For violations occurring after January 12, 2009 through December 6, 2013, multiply the gravity component by 1.2875, reflecting both the 17.23% and the 9.83% COLAs [1.1723 x 1.0983 = 1.2875]. For violations that occur after December 6, 2013, multiply the gravity component by 1.3502, reflecting the 17.23% COLA, the 9.83% and the 4.87% COLAs [1.1723 x 1.0983 x 1.0487 = 1.3502].

Assume, for example, that under the applicable penalty policy, the initial gravity-based penalty is $1,000 for each day of violation. If the violations occurred for 10 days during the period after March 15, 2004 through January 12, 2009, the gravity inflation-adjusted penalty for those violations would be calculated as follows: 10 days x $1,000 = $10,000 x 1.1723 = $11,723. If 10 days of the violations occurred after January 12, 2009 through December 6, 2013, the gravity inflation-adjusted penalty for those violations would be calculated as follows: 10 days x $1,000 = $10,000 x 1.2875 = $12,875. If 10 days of the violations occurred after December 6, 2013, the gravity inflation-adjusted penalty for those violations would be calculated as follows: 10 days x $1,000 = $10,000 x 1.3502 = $13,502.

(c) ***For those penalty policies that were issued or revised after March 15, 2004, through January 12, 2009***: Calculate the gravity component according to the penalty policy. For violations that occurred after March 15, 2004 through January 12, 2009, use the gravity component set forth in the penalty policy, as the 10% first-time adjustment and 17.23% COLA are reflected in those policies. For violations occurring after January 12, 2009 through December 6, 2013, multiply the gravity component by 1.0983, reflecting the 9.83% COLA. For violations occurring after December 6, 2013, multiply the gravity component by 1.1518, reflecting both the 9.83% and the 4.87% COLAs [1.0983 x 1.0487 = 1.1518].

Assume, for example, that under the applicable penalty policy, the initial gravity-based penalty is $1,000 for each day of violation. If 10 days of the violations occurred after January 12, 2009 through December 6, 2013, the gravity inflation-adjusted penalty for those violations would be calculated as follows: 10 days x $1,000 = $10,000 x 1.0983 = $10,983. If 10 days of the violations occurred after December 6, 2013, the gravity inflation-adjusted penalty for those violations would be calculated as follows: 10 days x $1,000 = $10,000 x 1.1518 = $11,518.

(d) ***For those penalty policies that were issued or revised after January 12, 2009, through December 6, 2013***: Calculate the gravity component according to the penalty policy. For violations that occurred after January 12, 2009 through December 6, 2013, use the gravity component set forth in the penalty policy, as the 9.83% COLA is reflected in these policies. For violations occurring after December 6, 2013, multiply the gravity component by 1.0487, reflecting the 4.87% COLA. Assume, for example, that under the applicable penalty policy, the initial gravity-based penalty is $1,000 for each day of violation. If 10 days of the violations occurred after December 6, 2013, the gravity inflation-adjusted penalty for those violations would be calculated as follows: 10 days x $1,000 = $10,000 x 1.0487 = $10,487.

Chart Reflecting Inflation Adjustment Multipliers		
Penalty Policy Issued Prior to January 31, 1997		
Date(s) of violation	**Inflation Adjustment Multiplier**	**Calculation Explanation**
January 31, 1997 through March 15, 2004	**1.1**	This value reflects the 10% first-time adjustment (*i.e.*, 1.1).
March 16, 2004 through January 12, 2009	**1.2895**	This value is adjusted by the COLA of 17.23% applied in the 2004 Memorandum (*i.e.*, 1.1 x 1.1723 = 1.2895).
January 13, 2009 through December 6, 2013	**1.4163**	This value is adjusted by the COLA of 9.83% applied in the 2008 Memorandum (*i.e.*, 1.1 x 1.1723 x 1.0983 = 1.4163).
After December 6, 2013	**1.4853**	This value is adjusted by the COLA of 4.87% applied in this 2013 Memorandum (*i.e.*, 1.1 x. 1.1723 x 1.0983 x 1.0487 = 1.4853).
Penalty Policy Issued or Revised after January 30, 1997 through March 15, 2004		
Date(s) of violation	**Inflation Adjustment Multiplier**	**Calculation Explanation**
January 31, 1997 through March 15, 2004	**None - use gravity component in penalty policy**	There is no multiplier here because the 10% first-time adjustment is already reflected in the penalties.
March 16, 2004 through January 12, 2009	**1.1723**	This value reflects the COLA of 17.23% applied in the 2004 Memorandum, or 1.1723.
January 13, 2009 through December 6, 2013	**1.2875**	This value is adjusted by the COLA of 9.83% applied in the 2008 Memorandum (*i.e.*, 1.1723 x 1.0983 = 1.2875).
After December 6, 2013	**1.3502**	This value is adjusted by the COLA of 4.87% applied in this 2013 Memorandum (*i.e.*, 1.1723 x 1.0983 x 1.0487 = 1.3502).

Penalty Policy Issued or Revised after March 15, 2004 through January 12, 2009		
Date(s) of violation	**Inflation Adjustment Multiplier**	**Calculation Explanation**
March 16, 2004 through January 12, 2009	**None - use gravity component in penalty policy**	There is no multiplier here because the 10% first-time adjustment and 17.23% COLA is already reflected in the penalties.
January 13, 2009 through December 6, 2013	**1.0983**	This value reflects the COLA of 9.83% applied in the 2008 Memorandum, or 1.0983.
After December 6, 2013	**1.1518**	This value is adjusted by the COLA of 4.87% applied in the 2013 Memorandum (*i.e.*, 1.0983 x 1.0487 = 1.1518).
Penalty Policy Issued or Revised after January 12, 2009 through December 6, 2013		
Date(s) of violation	**Inflation Adjustment Multiplier**	**Calculation Explanation**
January 13, 2009 through December 6, 2013	**None - use gravity component in penalty policy**	There is no multiplier here because the COLA of 9.83% applied in the 2008 Memorandum is already reflected in the penalties.
After December 6, 2013	**1.0487**	This value reflects the COLA of 4.87% applied in this 2013 Memorandum.
All Violations Occurred after December 6, 2013		
Date of Penalty Policy Revision or Issuance	**Inflation Adjustment Multiplier**	**Calculation Explanation**
Issued Prior to January 31, 1997	**1.4853**	This value is adjusted by the COLA of 4.87% applied in this 2013 Memorandum (*i.e.*, 1.1 x. 1.1723 x 1.0983 x 1.0487 = 1.4853).
January 31, 1997 through March 15, 2004	**1.3502**	This value is adjusted by the COLA of 4.87% applied in this 2013 Memorandum (*i.e.*, 1.1723 x 1.0983 x 1.0487 = 1.3502).
March 16, 2004 through January 12, 2009	**1.1518**	This value is adjusted by the COLA of 4.87% applied in this 2013 Memorandum (*i.e.*, 1.0983 x 1.0487 = 1.1518).
January 13, 2009 through December 6, 2013	**1.0487**	This value reflects the COLA of 4.87% applied in this 2013 Memorandum.

IV. Penalty Pleading

If all of the violations in a particular case occurred on or before the effective date of the 2013 Rule, the pleading practices set forth in the 2008 Memorandum should be applied. If some of the violations in a particular case occurred after the effective date of the 2013 Rule, then any penalty amount sought should reflect the newly adjusted civil penalty amounts for those violations.

For example, if a person tampered with a public water system on November 7, 2013, the maximum statutory penalty under SDWA Section 1432(c) would be $1,100,000. The prayer for relief under such facts would be written as follows:

> *Pursuant to Section 1432(c) of the Safe Drinking Water Act, 42 U.S.C. § 300i-1(c), and 40 C.F.R. Part 19, assess civil penalties against [name of Defendant] of not more than $1,100,000 for tampering with the public water supply on November 7, 2013.*

If violations occur after the effective date of the 2013 Rule (*i.e.*, after December 6, 2013), then any penalty amount pled should use the newly adjusted maximum amount, if any. For example, if an act of tampering occurs on December 7, 2013, the prayer for relief in a civil judicial complaint alleging a violation of Section 1432(c) of the SDWA would be written as follows:

> *Pursuant to Section 1432(c) of the Safe Drinking Water Act, 42 U.S.C. § 300i-1(c), and 40 C.F.R. Part 19, assess civil penalties against [name of Defendant] of not more than $1,150,000 for tampering with the public water supply on December 7, 2013.*

V. Administrative Penalty Caps for the CWA, CACSOA, SDWA, CAA, CERCLA and EPCRA

The 2013 Rule increases the statutory penalty amounts that may be sought for individual violations in administrative enforcement actions, as well as the total amounts that may be sought in a single administrative enforcement action under the CWA, the CACSOA, the SDWA, the CAA, the CERCLA and the EPCRA (commonly called "penalty caps").[4] For example, prior to the 2013 Rule, the EPA was authorized under CAA Section 205(c)(1) to assess administrative penalties not to exceed $295,000 for tampering with a vehicle or engine. After the effective date of the 2013 Rule, the EPA may assess an administrative penalty not to exceed $320,000 under CAA Section 205(c)(1). Note that the adjusted penalty caps apply if an action is filed or a complaint is amended after December 6, 2013, even if some or all of the violations occurred on or before December 6, 2013.

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[4] *E.g.*, the statutory maximum amount of administrative penalties that can be assessed under SDWA Section 1423(c)(1), 42 U.S.C. § 300h-2(c)(1), will increase from $177,500 to $187,500; the statutory maximum amount of administrative penalties that can be assessed under SDWA Section 1423(c)(2), 42 U.S.C. § 300h-2(c)(2), will increase from $177,500 to $187,500; the statutory maximum amount of administrative penalties that can be assessed under CAA Section 113(d)(1), 42 U.S.C. § 7413(d)(1), will increase from $295,000 to $320,000; the statutory maximum amount of administrative penalties that can be assessed under CAA Section 205(c)(1), 42 U.S.C. § 7524(c)(1), will increase from $295,000 to $320,000.

VI. Expedited Settlements

Expedited settlements offer "real time" enforcement in situations where violations are corrected and a penalty is obtained in a short amount of time, generally within 30-45 days of the issuance of an expedited settlement offer. Expedited settlements serve to achieve compliance while reducing transaction costs for both the EPA and the violator, as long as the violator comes into compliance promptly and pays the expedited penalty amount. Rather than apply the inflation factors across the board to expedited penalty amounts at this time, national program managers within OECA should review expedited penalty amounts periodically to determine whether they need to be adjusted to reflect inflation.

VII. Challenges in the Course of Enforcement Proceedings

If a respondent/defendant challenges the validity of any statutory maximum penalty amount, as adjusted in 40 C.F.R. Part 19, please notify the Special Litigation and Projects Division of the challenge, so that OECA, the Region and the U.S. Department of Justice, as appropriate, can coordinate our response before it is filed.

VIII. Further Information

Any questions concerning the 2013 Rule and its implementation can be directed to Caroline Hermann of OCE's Special Litigation and Projects Division at (202) 564-2876 or by email at hermann.caroline@epa.gov.

List of Existing Civil Penalty Policies Modified by this Memorandum

General

- Policy on Civil Penalties and A Framework for Statute-Specific Approaches to Penalty Assessments (2/16/84)
- Guidance on Use of Penalty Policies in Administrative Litigation (12/15/95)

Clean Air Act - Stationary Sources

- Clean Air Act Stationary Source Civil Penalty Policy (10/25/91)
- Clarifications to the October 25, 1991 Clean Air Act Stationary Source Civil Penalty Policy (1/17/92)
- Combined Enforcement Policy for Clean Air Act Sections 112(r)(1), 112(r)(7), and 40 C.F.R. Part 68 (6/20/12)
- National Petroleum Refinery Initiative Implementation: Application of Clean Air Action Stationary Source Penalty Policy for Violations of Benzene Waste Operations NESHAP Requirements (11/08/07)
- Appendix I - Permit Requirements for the Construction or Modification of Major Stationary Sources of Air Pollution (Revised 3/25/87)
- Clarification of the Use of Appendix I of the Clean Air Act Stationary Source Civil Penalty Policy (7/23/95)
- Appendix II - Vinyl Chloride Civil Penalty Policy (Revised 2/8/85)
- Appendix III - Asbestos Demolition and Renovation Civil Penalty Policy (Revised 5/5/92)
- Appendix IV - Volatile Organic Compounds Where Reformulation of Low Solvent Technology is the Applicable Method of Compliance (Revised 3/25/87)
- Appendix V - Air Civil Penalty Worksheet (3/25/87)
- Appendix VI - Volatile Hazardous Air Pollutant Penalty Policy (Revised 9/12)
- Appendix VII – Residential Wood Heaters (5/18/99)
- Appendix VIII - Manufacture or Import of Controlled Substances in Amounts Exceeding Allowances Properly Held Under 40 C.F.R. Part 82: Protection of Stratospheric Ozone (11/2/90)
- Appendix IX - Penalty Policy Applicable to Persons Who Perform Service for Consideration on a Motor Vehicle Air Conditioner Involving the Refrigerant or Who Sell Small Containers of Refrigerant in Violation of 40 C.F.R. Part 82 (7/19/93)
- Appendix X - Clean Air Act Civil Penalty Policy for Violations of 40 C.F.R. Part 82, Subpart F: Maintenance, Service, Repair, and Disposal of Appliances Containing Refrigerant (6/1/94)
- Appendix XI - Clean Air Act Civil Penalty Policy for Violations of 40 C.F.R. Part 82, Subpart C: Ban on Nonessential Products Containing Class I Substances and Ban on Nonessential Products Containing or Manufactured with Class II Substances (Not Dated)

Clean Air Act - Mobile Sources

- Volatility Civil Penalty Policy (12/1/89)
- Interim Diesel Civil Penalty Policy (2/8/94)
- Clean Air Act Mobile Source Penalty Policy: Vehicle and Engine Emissions Certification Requirements (1/16/09)

Clean Water Act

- Interim Clean Water Act Settlement Penalty Policy (3/1/95)
- Clean Water Act Section 404 Settlement Penalty Policy (12/21/01)
- Civil Penalty Policy for Section 311(b)(3) and Section 311(j) of the Clean Water Act (8/1/98)
- Supplemental Guidance to the Interim Clean Water Act Settlement Penalty Policy (March 1, 1995) for Violations of the Construction Storm Water Requirements (2/5/08)

Comprehensive Environmental Response, Compensation, and Liability Act

- Interim Policy on Settlement of CERCLA Section 106(b)(1) and Section 107(c)(3) -- Punitive Damage Claims for Noncompliance with Administrative Orders (9/30/97)
- Enforcement Response Policy for Sections 304, 311, and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response, Compensation, and Liability Act (9/30/99)

Emergency Planning and Community Right-to-Know Act

- Enforcement Response Policy for Sections 304, 311, and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response, Compensation, and Liability Act (9/30/99)
- Enforcement Response Policy for Section 313 of the Emergency Planning and Community Right-to-Know Act (1986) and Section 6607 of the Pollution Prevention Act (1990) (Amended)(4/12/01)

Federal Insecticide, Fungicide, and Rodenticide Act

- FIFRA Enforcement Response Policy (12/09)
- Enforcement Response Policy for FIFRA Section 7(c) (5/10)
- Enforcement Response Policy for the Federal Insecticide, Fungicide and Rodenticide Act: Good Laboratory Practice (GLP) Regulations (9/30/91)
- FIFRA Worker Protection Standard Penalty Policy – Enforcement Interim Final (9/97)
- Enforcement Response Policy for the FIFRA Pesticide Container/Containment Regulations (Appendix H)(3/12)

Resource Conservation and Recovery Act, Subtitle C

- RCRA Civil Penalty Policy (6/23/03)
- Guidance on the Use of Section 7003 of RCRA (10/97)

RCRA, Subtitle I – UST

- U.S. EPA Penalty Guidance for Violations of UST Regulations, OSWER Directive 9610.12 (November 14, 1990)
- Guidance of Federal Field Citation Enforcement, OSWER Directive 9610.16 (October 6, 1993)

Safe Drinking Water Act - UIC

- Interim Final UIC Program Judicial and Administrative Order Settlement Penalty Policy - Underground Injection Control Guidance No. 79 (9/27/93)

Safe Drinking Water Act - PWS

- New Public Water System Supervision Program Settlement Penalty Policy (5/25/94)

Toxic Substances Control Act

- Guidelines for the Assessment of Civil Penalties Under Section 16 of TSCA (7/7/80) (Published in *Federal Register* on 9/10/80. Note that the first PCB penalty policy was published along with it, but the PCB policy is now obsolete.)
- Enforcement Response Policy for Reporting and Recordkeeping Rules and Requirements for TSCA Sections 8, 12, and 13 (3/31/1999)
- PCB Penalty Policy (4/9/90)
- TSCA Section 5 Enforcement Response Policy (6/8/89), amended (7/1/93)
- TSCA Good Laboratory Practices Regulations Enforcement Response Policy (4/9/85)
- Enforcement Response Policy for Test Rules Under Section 4 of the Toxic Substances Control Act (5/28/1986)
- Interim Final Enforcement Response Policy for the Asbestos Hazard Emergency Response Act (1/31/89)
- Enforcement Response Policy for Asbestos Abatement Projects; Worker Protection Rule (11/14/89)
- Section 1018 - Disclosure Rule Enforcement Response and Penalty Policy, December 2007
- Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule, Interim Final Policy, August 2010

Attachment (2013 Penalty Inflation Rule)

cc: (w/attachment)
Steven Chester, OECA
Lawrence Starfield, OECA
Regional Counsel, Regions I - X
Director, Office of Environmental Stewardship, Region I
Director, Division of Enforcement and Compliance Assurance, Region II
Director, Office of Enforcement, Compliance, and Environmental Justice, Region III
Director, Office of Enforcement and Compliance Assurance, Region V
Director, Compliance Assurance and Enforcement Division, Region VI
Director, Office of Enforcement, Compliance and Environmental Justice, Region VIII
Director, Enforcement Division, Region IX
Director, Office of Civil Rights, Enforcement and Environmental Justice, Region X
Regional Media Division Directors
Regional Enforcement Coordinators, Regions I - X
OECA
W. Benjamin Fisherow, Chief, EES, DOJ
Deputy and Assistant Chiefs, EES, DOJ

and amended citations in two provisions of the construction standards to show the correct incorporation-by-reference section.

In the DFR, OSHA stated that it would confirm the effective date of the DFR if it received no significant adverse comments. OSHA received eight favorable and no adverse comments on the DFR (*see* ID: OSHA–2013–0005–0008 thru –0015 in the docket for this rulemaking). Accordingly, OSHA is confirming the effective date of the final rule.

In addition to explicitly supporting the DFR, several of the commenters provided supplemental information. Mr. Charles Johnson of AltairStrickland stated that as a result of "[OSHA's] incorporating both the 1968 and the [2011] versions of the ANSI Z535 standard by reference[,] both manufacturers and employers will likely migrate to the newer versions and the older versions will likely fade away as demand declines" (ID: OSHA–2013–0005–0011). Mr. Johnson also commented that "[h]ad OSHA deleted the reference to the ANSI Z35.1–1968 language, these signs would require replacement at considerable and unnecessary cost to employers." *Id.*

A second commenter, Mr. Blair Brewster of MySafetySign.com, described several advantages and limitations of the updated ANSI signage standards, concluding that "[i]t would be arrogant to assume that a single standard is best. The ANSI Z535 designs, the traditional safety sign and tag designs, as well as the countless other designs to come, will all have their place and will all coexist" (ID: OSHA–2013–0005–0014).

A third commenter, Mr. Kyle Pitsor of the National Electrical Manufacturers Association (NEMA) stated that "[w]hile we would have preferred that the references to the outdated standards be removed entirely from OSHA's regulations, NEMA agrees that giving employers the option of using signs and tags that meet either the 1967–1968 or the most recent versions of the standards will provide the greatest flexibility without imposing additional costs" (ID: OSHA–2013–0005–0013). Mr. Pitsor also helpfully noted that, contrary to proposed §§ 1910.6(e)(66) and (e)(67) and 1926.6(h)(28)–(h)(30), the International Safety Equipment Association (ISEA) is not authorized to sell the ANSI Z535 standards proposed for incorporation by reference, and these standards are not sold on the ISEA Web site, *www.safetyequipment.org.* In response to Mr. Pitsor's comment, OSHA is correcting the incorporation-by-reference provisions in question in 29 CFR 1910.6 and 1926.6 in a separate **Federal Register** notice identifying the three locations where the public can purchase the updated ANSI Z535 standards.

Finally, OSHA received an email from Jonathan Stewart, Manager, Government Relations, NEMA, after the comment period ended (ID: OSHA–2013–0005–0015). In his email, Mr. Stewart mentioned NEMA's earlier comments to the docket (ID: OSHA–2013–0005–0013), and stated that "[w]hile reflective of NEMA's position, those comments did not include a clarification regarding the language that the NRPM used in Sec. 1926.200 Accident prevention signs and tags." He further indicated that "[t]he language, while not inaccurate, was unclear regarding which figure(s) it intended to reference in the ANSI Z535.2–2011 standard." Although this comment was late, OSHA considered it because it was a purely technical comment, pointing out an ambiguity in the cited provision's reference to figures in the updated version of the national consensus standard, ANSI Z535.2–2011. OSHA finds that the comment has merit, and accordingly is clarifying the language in 29 CFR 1926.200(b) and (c) specifying which figures employers must follow in ANSI Z535.2–2011.

List of Subjects in 29 CFR Parts 1910 and 1926

Signage, Incorporation by reference, Occupational safety and health, Safety.

Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, authorized the preparation of this final rule. OSHA is issuing this final rule pursuant to 29 U.S.C. 653, 655, and 657, 5 U.S.C. 553, Secretary of Labor's Order 1–2012 (77 FR 3912), and 29 CFR part 1911.

Signed at Washington, DC, on October 30, 2013.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2013–26336 Filed 11–5–13; 8:45 am]

BILLING CODE 4510–26–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 19

[FRL–9901–98–OECA]

RIN 2020–AA49

Civil Monetary Penalty Inflation Adjustment Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: With this action, EPA is promulgating a final rule that amends the Civil Monetary Penalty Inflation Adjustment Rule. This action is mandated by the Debt Collection Improvement Act of 1996 (DCIA) to adjust for inflation certain statutory civil monetary penalties that may be assessed for violations of EPA-administered statutes and their implementing regulations. The Agency is required to review the civil monetary penalties under the statutes it administers at least once every four years and to adjust such penalties as necessary for inflation according to a formula prescribed by the DCIA. The regulations contain a list of all civil monetary penalty authorities under EPA-administered statutes and the applicable statutory amounts, as adjusted for inflation, since 1996.

DATES: This rule is effective December 6, 2013.

FOR FURTHER INFORMATION CONTACT: Caroline Hermann, Special Litigation and Projects Division (2248A), Office of Civil Enforcement, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460, (202) 564–2876.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461 note, as amended by the DCIA, 31 U.S.C. 3701 note, each federal agency is required to issue regulations adjusting for inflation the statutory civil monetary penalties [1] ("civil penalties" or "penalties") that can be imposed under the laws administered by that agency. The purpose of these adjustments is to

[1] Section 3 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461 note, as amended by the DCIA, 31 U.S.C. 3701 note, defines "civil monetary penalty" to mean "any penalty, fine or other sanction that—(A)(i) is for a specific monetary amount as provided by federal law; or (ii) has a maximum amount provided for by federal law. . . ."

maintain the deterrent effect of civil penalties and to further the policy goals of the underlying statutes. The DCIA requires adjustments to be made at least once every four years following the initial adjustment. EPA's initial adjustment to each statutory civil penalty amount was published in the **Federal Register** on December 31, 1996 (61 FR 69360), and became effective on January 30, 1997 ("the 1996 Rule"). EPA's second adjustment to civil penalty amounts was published in the **Federal Register** on February 13, 2004 (69 FR 7121), and became effective on March 15, 2004 ("the 2004 Rule"). EPA's third adjustment to civil penalty amounts was published in the **Federal Register** on December 11, 2008 (73 FR 75340), as corrected in the **Federal Register** on January 7, 2009 (74 FR 626), and became effective on January 12, 2009 ("the 2008 Rule").

Where necessary under the DCIA, this rule, specifically Table 1 in 40 CFR 19.4, adjusts for inflation the maximum and, in some cases, the minimum amount of the statutory civil penalty that may be imposed for violations of EPA-administered statutes and their implementing regulations. Table 1 of 40 CFR 19.4 identifies the applicable EPA-administered statutes and sets out the inflation-adjusted civil penalty amounts that may be imposed pursuant to each statutory provision after the effective dates of the 1996, 2004 and 2008 rules. Where required under the DCIA formula, this rule amends the adjusted penalty amounts in Table 1 of 40 CFR 19.4 for those violations that occur after the effective date of this rule.

The formula prescribed by the DCIA for determining the inflation adjustment, if any, to statutory civil penalties consists of the following four-step process:

1. *Determine the Cost-of-Living Adjustment (COLA).* The COLA is determined by calculating the percentage increase, if any, by which the Consumer Price Index[2] for all-urban consumers (CPI–U) for the month of June of the calendar year preceding the adjustment exceeds the CPI–U for the month of June of the calendar year in which the amount of such civil monetary penalty was last set or adjusted.[3] Accordingly, the COLA applied under this rule equals the percentage by which the CPI–U for June 2012 (*i.e.*, June of the year preceding this year), exceeds the CPI–U for June of the year in which the amount of a specific penalty was last adjusted (*i.e.*, 2008, 2004 or 1996, as the case may be). Given that the last inflation adjustment was published on December 11, 2008, the COLA for most civil penalties set forth in this rule was calculated by determining the percentage by which the CPI–U for June 2012 (229.478) exceeds the CPI–U for June 2008 (218.815), resulting in a COLA of 4.87 percent. For those few civil penalty amounts that were last adjusted under the 2004 Rule, the COLA equals 20.97 percent, calculated by determining the percentage by which the CPI–U for June 2012 (229.478) exceeds the CPI–U for June 2004 (189.7). In the case of the maximum civil penalty that can be imposed under section 311(b)(7)(A) of the Clean Water Act, 33 U.S.C. 1321(b)(7)(A), which is the sole civil penalty last adjusted under the 1996 Rule, the COLA is 46.45 percent, determined by calculating the percentage by which the CPI–U for June 2012 (229.478) exceeds the CPI–U for June 1996 (156.7).

2. *Calculate the Raw Inflation Increase.* Once the COLA is determined, the second step is to multiply the COLA by the current civil penalty amount to determine the raw inflation increase.

3. *Apply the DCIA's Rounding Rule to the Raw Inflation Increase.* The third step is to round this raw inflation increase according to section 5(a) of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461 note, as amended by the DCIA, 31 U.S.C. 3701 note. The DCIA's rounding rules require that any increase be rounded to the nearest multiple of: $10 in the case of penalties less than or equal to $100; $100 in the case of penalties greater than $100 but less than or equal to $1,000; $1,000 in the case of penalties greater than $1,000 but less than or equal to $10,000; $5,000 in the case of penalties greater than $10,000 but less than or equal to $100,000; $10,000 in the case of penalties greater than $100,000 but less than or equal to $200,000; and $25,000 in the case of penalties greater than $200,000. (*See* section 5(a) of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461 note, as amended by the DCIA, 31 U.S.C. 3701 note.)

4. *Add the Rounded Inflation Increase, if any, to the Current Penalty Amount.* Once the inflation increase has been rounded pursuant to the DCIA, the fourth step is to add the rounded inflation increase to the current civil penalty amount to obtain the new, inflation-adjusted civil penalty amount. For example, in this rule, the current statutory maximum penalty amounts that may be imposed under Clean Air Act (CAA) section 113(d)(1), 42 U.S.C. 7413(d)(1), and CAA section 205(c)(1), 42 U.S.C. 7524(c)(1), are increasing from $295,000 to $320,000. These penalty amounts were last adjusted with the promulgation of the 2008 Rule, when these penalties were adjusted for inflation from $270,000 to $295,000. Applying the COLA adjustment to the current penalty amount of $295,000 results in a raw inflation increase of $14,376 for both penalties. As stated above, the DCIA rounding rule requires the raw inflation increase to be rounded to the nearest multiple of $25,000 for penalties greater than $200,000. Rounding $14,376 to the nearest multiple of $25,000 equals $25,000. That rounded increase increment of $25,000 is then added to the $295,000 penalty amount to arrive at a total inflation adjusted penalty amount of $320,000. Accordingly, once this rule is effective, the statutory maximum amounts of these penalties will increase to $320,000.

In contrast, this rule does not adjust those civil penalty amounts where the raw inflation amounts are not high enough to round up to the required multiple stated in the DCIA. For example, under section 3008(a)(3) of the Resource Conservation and Recovery Act, 42 U.S.C. 6928(a)(3), the Administrator may assess a civil penalty of up to $37,500 per day of noncompliance for each violation. This penalty was last adjusted for inflation under the 2008 Rule. Multiplying the applicable 4.87 percent COLA to the statutory civil penalty amount of $37,500, the raw inflation increase equals only $1,827.40; the DCIA rounding rule requires a raw inflation increase increment to be rounded to the nearest multiple of $5,000 for penalties greater than $10,000 but less than or equal to $100,000. Because this raw inflation increase is not sufficient to be rounded up to a multiple of $5,000, in accordance with the DCIA's rounding rule, this rule does not increase the $37,500 penalty amount. However, if during the development of EPA's next Civil Monetary Penalty Inflation Adjustment Rule, anticipated to be

[2] Section 3 of the DCIA defines "Consumer Price Index" to mean "the Consumer Price Index for all-urban consumers published by the Department of Labor." Interested parties may find the relevant Consumer Price Index, published by the Department of Labor's Bureau of Labor Statistics, on the Internet. To access this information, go to the CPI Home Page at: *ftp://ftp.bls.gov/pub/special.requests/cpi/cpiai.txt.*

[3] Section 5(b) of the DCIA defines the term "cost-of-living adjustment" to mean "the percentage (if any) for each civil monetary penalty by which—(1) the Consumer Price Index for the month of June of the calendar year preceding the adjustment, exceeds (2) the Consumer Price Index for the month of June of the calendar year in which the amount of such civil monetary penalty was last set or adjusted pursuant to law."

promulgated in 2017, the raw inflation increase can be rounded up to the next multiple of $5,000, statutory maximum penalty amounts currently at $37,500 will be increased to $42,500.

Because of the low rate of inflation since 2008, coupled with the application of the DCIA's rounding rules, only 20 of the 88 statutory civil penalty provisions implemented by EPA are being adjusted for inflation under this rule. Assuming there are no changes to the mandate imposed by the DCIA, EPA intends to review all statutory penalty amounts and adjust them as necessary to account for inflation in the year 2017 and every four years thereafter.

II. Technical Revision to Table 1 of 40 CFR 19.4 To Break Out Each of the Statutory Penalty Authorities Under Section 325(b) of the Emergency Planning and Community Right-To-Know Act (EPCRA)

EPA is revising the row of Table 1 of 40 CFR 19.4, which lists the statutory maximum penalty amounts that can be imposed under section 325(b) of EPCRA, 42 U.S.C. 11045(b), to break out separately the three penalty authorities contained in subsection (b). Since 1996, EPA has been adjusting for inflation all of the statutory maximum penalty amounts specified under EPCRA section 325(b), 42 U.S.C. 11045(b). Under past rules, the Agency has grouped the maximum penalty amounts that may be assessed under section 325(b) under the heading of 42 U.S.C. 11045(b) in Table 1 of 40 CFR 19.4. For example, under the 2008 Rule, Table 1 of 40 CFR 19.4 reflects that the statutory maximum penalties that can be imposed under any subparagraph of EPCRA section 325(b) are $37,500 and $107,500. Consistent with how the other penalty authorities are displayed under Part 19.4, Table 1 now delineates, on a subpart-by-subpart basis, the penalty authorities enumerated under section 325(b) of EPCRA, 42 U.S.C. 11045(b) (*i.e.*, 42 U.S.C. 11045(b)(1)(A), (b)(2), and (b)(3)). That is, upon the effective date of this rule, the statutory maximum penalty that can be imposed under section 325(b)(1)(A) is $37,500; the statutory maximum penalties that can be imposed under section 325(b)(2) are $37,500 and $117,500; and the statutory maximum penalties that can be imposed under section 325(b)(3) are $37,500 and $117,500.

III. Effective Date

Section 6 of the DCIA provides that "any increase under [the DCIA] in a civil monetary penalty shall apply only to violations which occur after the date the increase takes effect." (*See* section 6 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461 note, as amended by the DCIA, 31 U.S.C. 3701 note.) Thus, the new inflation-adjusted civil penalty amounts may be applied only to violations that occur after the effective date of this rule.

IV. Good Cause

Section 553(b) of the Administrative Procedure Act (APA) provides that, when an agency for good cause finds that "notice and public procedure . . . are impracticable, unnecessary, or contrary to the public interest," the agency may issue a rule without providing notice and an opportunity for public comment. EPA finds that there is good cause to promulgate this rule without providing for public comment. The primary purpose of this final rule is merely to implement the statutory directive in the DCIA to make periodic increases in civil penalty amounts by applying the adjustment formula and rounding rules established by the statute. Because the calculation of the increases is formula-driven and prescribed by statute, EPA has no discretion to vary the amount of the adjustment to reflect any views or suggestions provided by commenters. Accordingly, it would serve no purpose to provide an opportunity for public comment on this rule. Thus, notice and public comment is unnecessary.

In addition, EPA is making the technical revisions discussed above without notice and public comment. Because the technical revisions to Table 1 of 40 CFR 19.4 more accurately reflect the statutory provisions under each of the subparagraphs of section 325(b) (*i.e.*, under 42 U.S.C. 11045(b)(1)(A), (b)(2), and (b)(3)) and do not constitute substantive revisions to the rule, these changes do not require notice and comment.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and therefore is not subject to review under the Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3521. Burden is defined at 5 CFR 1320.3(b). This rule merely increases the amount of civil penalties that could be imposed in the context of a federal civil administrative enforcement action or civil judicial case for violations of EPA-administered statutes and their implementing regulations.

C. Regulatory Flexibility Act

Today's final rule is not subject to the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, which generally requires an agency to prepare a regulatory flexibility analysis for any rule that will have a significant economic impact on a substantial number of small entities. The RFA applies only to rules subject to notice and comment rulemaking requirements under the APA or any other statute. This rule is not subject to notice and comment requirements under the APA or any other statute because although the rule is subject to the APA, the Agency has invoked the "good cause" exemption under 5 U.S.C. 553(b), therefore it is not subject to the notice and comment requirements.

D. Unfunded Mandates Reform Act

This action contains no federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for state, local, or tribal governments or the private sector. The action implements mandates specifically and explicitly set forth by Congress in the DCIA without the exercise of any policy discretion by EPA. By applying the adjustment formula and rounding rules prescribed by the DCIA, this rule adjusts for inflation the statutory maximum and, in some cases, the minimum, amount of civil penalties that can be assessed by EPA in an administrative enforcement action, or by the U.S. Attorney General in a civil judicial case, for violations of EPA-administered statutes and their implementing regulations. Because the calculation of any increase is formula-driven, EPA has no policy discretion to vary the amount of the adjustment. Given that the Agency has made a "good cause" finding that this rule is not subject to notice and comment requirements under the APA or any other statute (*see* Section IV of this notice), it is not subject to sections 202 and 205 of UMRA. EPA has also determined that this action is not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This rule merely increases

the amount of civil penalties that could conceivably be imposed in the context of a federal civil administrative enforcement action or civil judicial case for violations of EPA-administered statutes and their implementing regulations.

E. Executive Order 13132 (Federalism)

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule merely increases the amount of civil penalties that could conceivably be imposed in the context of a federal civil administrative enforcement action or civil judicial case for violations of EPA-administered statutes and their implementing regulations. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This rule merely increases the amount of civil penalties that could be imposed in the context of a federal civil administrative enforcement action or civil judicial case for violations of EPA-administered statutes and their implementing regulations. This final rule will not have substantial direct effects on tribal governments, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), 15 U.S.C. 272 note, directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through the U.S. Office of Management and Budget, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. EPA lacks the discretionary authority to address environmental justice in this final rulemaking. The primary purpose of this final rule is merely to apply the DCIA's inflation adjustment formula to make periodic increases in the civil penalties that may be imposed for violations of EPA-administered statutes and their implementing regulations. Thus, because calculation of the increases is formula-driven, EPA has no discretion in updating the rule to reflect the allowable statutory civil penalties derived from applying the formula. Since there is no discretion under the DCIA in determining the statutory civil penalty amount, EPA cannot vary the amount of the civil penalty adjustment to address other issues, including environmental justice issues.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801–808, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 19

Environmental protection, Administrative practice and procedure, Penalties.

Dated: October 29, 2013.

Gina McCarthy,

Administrator, Environmental Protection Agency.

For the reasons set out in the preamble, title 40, chapter I, part 19 of the Code of Federal Regulations is amended as follows:

PART 19—ADJUSTMENT OF CIVIL MONETARY PENALTIES FOR INFLATION

■ 1. The authority citation for part 19 continues to read as follows:

Authority: Pub. L. 101–410, 28 U.S.C. 2461 note; Public Law 104–134, 31 U.S.C. 3701 note.

■ 2. Revise § 19.2 to read as follows:

§ 19.2 Effective date.

The increased penalty amounts set forth in the seventh and last column of Table 1 to § 19.4 apply to all violations under the applicable statutes and regulations which occur after December 6, 2013. The penalty amounts in the sixth column of Table 1 to § 19.4 apply to violations under the applicable statutes and regulations which occurred after January 12, 2009, through December 6, 2013. The penalty amounts in the fifth column of Table 1 to § 19.4 apply to all violations under the applicable statutes and regulations

which occurred after March 15, 2004, through January 12, 2009. The penalty amounts in the fourth column of Table 1 to § 19.4 apply to all violations under the applicable statutes and regulations which occurred after January 30, 1997, through March 15, 2004.

■ 3. Revise § 19.4 to read as follows:

§ 19.4 Penalty adjustment and table.

The adjusted statutory penalty provisions and their applicable amounts are set out in Table 1. The last column in the table provides the newly effective statutory civil penalty amounts.

TABLE 1 OF SECTION 19.4—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS

U.S. Code Citation	Environmental statute	Statutory penalties, as enacted	Penalties effective after January 30, 1997 through March 15, 2004	Penalties effective after March 15, 2004 through January 12, 2009	Penalties effective after January 12, 2009 through December 6, 2013	Penalties effective after December 6, 2013
7 U.S.C. 136*l*.(a)(1)	FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT (FIFRA).	$5,000	$5,500	$6,500	$7,500	$7,500
7 U.S.C. 136*l*.(a)(2)	FIFRA	$500/$1,000	$550/$1,000	$650/$1,100	$750/$1,100	$750/$1,100
15 U.S.C. 2615(a)(1)	TOXIC SUBSTANCES CONTROL ACT (TSCA).	$25,000	$27,500	$32,500	$37,500	$37,500
15 U.S.C. 2647(a)	TSCA	$5,000	$5,500	$6,500	$7,500	$7,500
15 U.S.C. 2647(g)	TSCA	$5,000	$5,000	$5,500	$7,500	$7,500
31 U.S.C. 3802(a)(1)	PROGRAM FRAUD CIVIL REMEDIES ACT (PFCRA).	$5,000	$5,500	$6,500	$7,500	$7,500
31 U.S.C. 3802(a)(2)	PFCRA	$5,000	$5,500	$6,500	$7,500	$7,500
33 U.S.C. 1319(d)	CLEAN WATER ACT (CWA).	$25,000	$27,500	$32,500	$37,500	$37,500
33 U.S.C. 1319(g)(2)(A)	CWA	$10,000/$25,000	$11,000/$27,500	$11,000/$32,500	$16,000/$37,500	$16,000/$37,500
33 U.S.C. 1319(g)(2)(B)	CWA	$10,000/$125,000	$11,000/$137,500	$11,000/$157,500	$16,000/$177,500	$16,000/$187,500
33 U.S.C. 1321(b)(6)(B)(i)	CWA	$10,000/$25,000	$11,000/$27,500	$11,000/$32,500	$16,000/$37,500	$16,000/$37,500
33 U.S.C. 1321(b)(6)(B)(ii).	CWA	$10,000/$125,000	$11,000/$137,500	$11,000/$157,500	$16,000/$177,500	$16,000/$187,500
33 U.S.C. 1321(b)(7)(A)	CWA	$25,000/$1,000	$27,500/$1,100	$32,500/$1,100	$37,500/$1,100	$37,500/$2,100
33 U.S.C. 1321(b)(7)(B)	CWA	$25,000	$27,500	$32,500	$37,500	$37,500
33 U.S.C. 1321(b)(7)(C)	CWA	$25,000	$27,500	$32,500	$37,500	$37,500
33 U.S.C. 1321(b)(7)(D)	CWA	$100,000/$3,000	$110,000/$3,300	$130,000/$4,300	$140,000/$4,300	$150,000/$5,300
33 U.S.C. 1414b(d)(1)[1]	MARINE PROTECTION, RESEARCH, AND SANCTUARIES ACT (MPRSA).	$600	$660	$760	$860	$860
33 U.S.C. 1415(a)	MPRSA	$50,000/$125,000	$55,000/$137,500	$65,000/$157,500	$70,000/$177,500	$75,000/$187,500
33 U.S.C. 1901 note (*see* 1409(a)(2)(A)).	CERTAIN ALASKAN CRUISE SHIP OPERATIONS (CACSO).	$10,000/$25,000	$10,000/$25,000[2]	$10,000/$25,000	$11,000/$27,500	$11,000/$27,500
33 U.S.C. 1901 note (*see* 1409(a)(2)(B)).	CACSO	$10,000/$125,000	$10,000/$125,000	$10,000/$125,000	$11,000/$137,500	$11,000/$147,500
33 U.S.C. 1901 note (*see* 1409(b)(1)).	CACSO	$25,000	$25,000	$25,000	$27,500	$27,500
42 U.S.C. 300g–3(b)	SAFE DRINKING WATER ACT (SDWA).	$25,000	$27,500	$32,500	$37,500	$37,500
42 U.S.C. 300g–3(g)(3)(A).	SDWA	$25,000	$27,500	$32,500	$37,500	$37,500
42 U.S.C. 300g–3(g)(3)(B).	SDWA	$5,000/$25,000	$5,000/$25,000	$6,000/$27,500	$7,000/$32,500	$7,000/$32,500
42 U.S.C. 300g–3(g)(3)(C).	SDWA	$25,000	$25,000	$27,500	$32,500	$32,500
42 U.S.C. 300h–2(b)(1)	SDWA	$25,000	$27,500	$32,500	$37,500	$37,500
42 U.S.C. 300h–2(c)(1)	SDWA	$10,000/$125,000	$11,000/$137,500	$11,000/$157,500	$16,000/$177,500	$16,000/$187,500
42 U.S.C. 300h–2(c)(2)	SDWA	$5,000/$125,000	$5,500/$137,500	$6,500/$157,500	$7,500/$177,500	$7,500/$187,500
42 U.S.C. 300h–3(c)	SDWA	$5,000/$10,000	$5,500/$11,000	$6,500/$11,000	$7,500/$16,000	$7,500/$16,000
42 U.S.C. 300i(b)	SDWA	$15,000	$15,000	$16,500	$16,500	$21,500
42 U.S.C. 300i–1(c)	SDWA	$20,000/$50,000	$22,000/$55,000[3]	$100,000/$1,000,000	$110,000/$1,100,000	$120,000/$1,150,000
42 U.S.C. 300j(e)(2)	SDWA	$2,500	$2,750	$2,750	$3,750	$3,750
42 U.S.C. 300j–4(c)	SDWA	$25,000	$27,500	$32,500	$37,500	$37,500
42 U.S.C. 300j–6(b)(2)	SDWA	$25,000	$25,000	$27,500	$32,500	$32,500
42 U.S.C. 300j–23(d)	SDWA	$5,000/$50,000	$5,500/$55,000	$6,500/$65,000	$7,500/$70,000	$7,500/$75,000
42 U.S.C. 4852d(b)(5)	RESIDENTIAL LEAD-BASED PAINT HAZARD REDUCTION ACT OF 1992.	$10,000	$11,000	$11,000	$16,000	$16,000
42 U.S.C. 4910(a)(2)	NOISE CONTROL ACT OF 1972.	$10,000	$11,000	$11,000	$16,000	$16,000
42 U.S.C. 6928(a)(3)	RESOURCE CONSERVATION AND RECOVERY ACT (RCRA).	$25,000	$27,500	$32,500	$37,500	$37,500
42 U.S.C. 6928(c)	RCRA	$25,000	$27,500	$32,500	$37,500	$37,500
42 U.S.C. 6928(g)	RCRA	$25,000	$27,500	$32,500	$37,500	$37,500
42 U.S.C. 6928(h)(2)	RCRA	$25,000	$27,500	$32,500	$37,500	$37,500
42 U.S.C. 6934(e)	RCRA	$5,000	$5,500	$6,500	$7,500	$7,500
42 U.S.C. 6973(b)	RCRA	$5,000	$5,500	$6,500	$7,500	$7,500

TABLE 1 OF SECTION 19.4—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS—Continued

U.S. Code Citation	Environmental statute	Statutory penalties, as enacted	Penalties effective after January 30, 1997 through March 15, 2004	Penalties effective after March 15, 2004 through January 12, 2009	Penalties effective after January 12, 2009 through December 6, 2013	Penalties effective after December 6, 2013
42 U.S.C. 6991e(a)(3)	RCRA	$25,000	$27,500	$32,500	$37,500	$37,500
42 U.S.C. 6991e(d)(1)	RCRA	$10,000	$11,000	$11,000	$16,000	$16,000
42 U.S.C. 6991e(d)(2)	RCRA	$10,000	$11,000	$11,000	$16,000	$16,000
42 U.S.C. 7413(b)	CLEAN AIR ACT (CAA)	$25,000	$27,500	$32,500	$37,500	$37,500
42 U.S.C. 7413(d)(1)	CAA	$25,000/$200,000	$27,500/$220,000	$32,500/$270,000	$37,500/$295,000	$37,500/$320,000
42 U.S.C. 7413(d)(3)	CAA	$5,000	$5,500	$6,500	$7,500	$7,500
42 U.S.C. 7524(a)	CAA	$2,500/$25,000	$2,750/$27,500	$2,750/$32,500	$3,750/$37,500	$3,750/$37,500
42 U.S.C. 7524(c)(1)	CAA	$200,000	$220,000	$270,000	$295,000	$320,000
42 U.S.C. 7545(d)(1)	CAA	$25,000	$27,500	$32,500	$37,500	$37,500
42 U.S.C. 9604(e)(5)(B)	COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA).	$25,000	$27,500	$32,500	$37,500	$37,500
42 U.S.C. 9606(b)(1)	CERCLA	$25,000	$27,500	$32,500	$37,500	$37,500
42 U.S.C. 9609(a)(1)	CERCLA	$25,000	$27,500	$32,500	$37,500	$37,500
42 U.S.C. 9609(b)	CERCLA	$25,000/$75,000	$27,500/$82,500	$32,500/$97,500	$37,500/$107,500	$37,500/$117,500
42 U.S.C. 9609(c)	CERCLA	$25,000/$75,000	$27,500/$82,500	$32,500/$97,500	$37,500/$107,500	$37,500/$117,500
42 U.S.C. 11045(a)	EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW ACT (EPCRA).	$25,000	$27,500	$32,500	$37,500	$37,500
42 U.S.C. 11045(b)(1)(A)[4].	EPCRA	$25,000	$27,500	$32,500	$37,500	$37,500
42 U.S.C. 11045(b)(2)	EPCRA	$25,000/$75,000	$27,500/$82,500	$32,500/$97,500	$37,500/$107,500	$37,500/$117,500
42 U.S.C. 11045(b)(3)	EPCRA	$25,000/$75,000	$27,500/$82,500	$32,500/$97,500	$37,500/$107,500	$37,500/$117,500
42 U.S.C. 11045(c)(1)	EPCRA	$25,000	$27,500	$32,500	$37,500	$37,500
42 U.S.C. 11045(c)(2)	EPCRA	$10,000	$11,000	$11,000	$16,000	$16,000
42 U.S.C. 11045(d)(1)	EPCRA	$25,000	$27,500	$32,500	$37,500	$37,500
42 U.S.C. 14304(a)(1)	MERCURY-CONTAINING AND RECHARGEABLE BATTERY MANAGEMENT ACT (BATTERY ACT).	$10,000	$10,000	$11,000	$16,000	$16,000
42 U.S.C. 14304(g)	BATTERY ACT	$10,000	$10,000	$11,000	$16,000	$16,000

[1] Note that 33 U.S.C. 1414b (d)(1)(B) contains additional penalty escalation provisions that must be applied to the penalty amounts set forth in this Table. The amounts set forth in this Table reflect an inflation adjustment to the calendar year 1992 penalty amount expressed in section 104B(d)(1)(A), which is used to calculate the applicable penalty amount under MPRSA section 104B(d)(1)(B) for violations that occur in any subsequent calendar year.

[2] CACSO was passed on December 21, 2000 as part of Title XIV of the Consolidated Appropriations Act of 2001, Pub. L. 106–554, 33 U.S.C. 1901 note.

[3] The original statutory penalty amounts of $20,000 and $50,000 under section 1432(c) of the SDWA, 42 U.S.C. 300i–1(c), were subsequently increased by Congress pursuant to section 403 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, Public Law No. 107–188 (June 12, 2002), to $100,000 and $1,000,000, respectively. EPA did not adjust these new penalty amounts in its 2004 Civil Monetary Penalty Inflation Adjustment Rule ("2004 Rule"), 69 FR 7121 (February 13, 2004), because they had gone into effect less than two years prior to the 2004 Rule.

[4] Consistent with how the EPA's other penalty authorities are displayed under Part 19.4, this Table now delineates, on a subpart-by-subpart basis, the penalty authorities enumerated under section 325(b) of EPCRA, 42 U.S.C. 11045(b) (*i.e.*, 42 U.S.C. 11045(b)(1)(A), (b)(2), and (b)(3)).

[FR Doc. 2013–26648 Filed 11–5–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2010–0335; FRL–9902–50–Region 6]

Approval and Promulgation of Implementation Plans; Texas; Procedures for Stringency Determinations and Minor Permit Revisions for Federal Operating Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: On September 10, 2013, EPA published a direct final rule approving portions of three revisions to the Texas State Implementation Plan (SIP) concerning the Texas Federal Operating Permits Program. The direct final action was published without prior proposal because EPA anticipated no adverse comments. EPA stated in the direct final rule that if we received relevant, adverse comments by October 10, 2013, EPA would publish a timely withdrawal in the **Federal Register**. EPA subsequently received timely adverse comments on the direct final rule. Therefore, EPA is withdrawing the direct final approval and will proceed to respond to all relevant, adverse comments in a subsequent action based on the parallel proposal published on September 10, 2013. As stated in the parallel proposal, EPA will not institute a second comment period on this action.

DATES: The direct final rule published on September 10, 2013 (78 FR 55221), is withdrawn as of November 6, 2013.

FOR FURTHER INFORMATION CONTACT: Ms. Adina Wiley (6PD–R), Air Permits Section, Environmental Protection Agency, Region 6, 1445 Ross Avenue (6PD–R), Suite 1200, Dallas, TX 75202–2733. The telephone number is (214) 665–2115. Ms. Wiley can also be reached via electronic mail at *wiley.adina@epa.gov*.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: October 28, 2013.

Ron Curry,

Regional Administrator, Region 6.

Accordingly, the amendments to 40 CFR 52.2270 published in the **Federal Register** on September 10, 2013 (78 FR

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

UPS OVERNIGHT MAIL
Lakhmir Bagga
Silky Associates, LLC
200 E. Williamsburg Road
Sandston, VA 23150

APR 1 2019

Re: Ability to Pay Analysis – Additional Information Requested
EPA Docket No. RCRA-03-2018-0131

Dear Mr. Bagga:

The U.S. Environmental Protection Agency, Region III ("EPA") acknowledges receipt of the "Collection Information Statement for Wage Earners and Self-Employed Individuals" form ("Information Statement"). Unfortunately, the partially completed Information Statement is missing information necessary for EPA to analyze your claim that Silky Associates LLC (of which you appear to be the sole officer) has an "inability to pay" a substantial penalty in the above-referenced matter. Specifically, EPA requires that the following missing information be provided:

1. **Real Property**: This portion of the Information Statement was left blank. During a telephone conversation on or about March 22, 2019, you stated that you did not own any real property. However, EPA's preliminary research indicates that you or Silky Associates LLC own the following two (2) properties:

A. 200 E. Williamsburg Road, Sandston, VA 23150: owner Silky Associates LLC: purchased in 2005 for $985,000.
B. 104 Seven Pines Ave., Sandston, VA 23150; owner: Lakhmir Bagga, purchased in 2010 for $80,850.

For each of the two (2) properties described above that are currently owned either by you or by Silky Associates LLC, please provide:

- The type of ownership (e.g., are they owned simply by you or are they jointly owned with another?);
- The purchase date of the property. Does it agree with what is listed above?;
- The current fair market value of the property (not to be confused with the tax assessment value assigned by the county);

- The current loan balance on each property;
- The amount of monthly payment on each property; and
- Information concerning the lender, contract/lienholder, (such as, name, address, telephone number, etc,).

For each of the two (2) properties described above that are no longer owned by you or by Silky Associates LLC, please provide:

- The date of disposal/sale;
- The method of such disposal/sale (e.g., was it an outright sale, a transfer to a related family member, individual or company; a contribution to a charitable organization, etc.);
- The sale price that you received for the real property; and
- The net amount you received for it after encumbrances against the properties were satisfied.

2. **Personal Assets**: This portion of the Information Statement was also left blank. Please describe any personal assets owned by you or Silky Associates LLC other than a 2009 Honda Accord. In this response, please include all vehicles, furnishings, personal effects, artwork, jewelry, collections (e.g., coins, guns, etc.), antiques or other assets. Include intangible assets such as licenses, domain names, patents, copyrights, mining claims, etc.

3. **Accounts Receivable**: List all balances due from any company or Governmental entity that owes an account payable to Silky Associates, LLC. Itemize the company from whom the balance is due, the amount of the receivable, that company's address, the status of the receivable (i.e., its age and whether it is current or in the arrears), the due date, the original amount due and the remaining balance.

The information requested above should be provided along with the following statement, signed and dated by you:

> *Under penalties of perjury, I declare that the statements and/or information provided herein are true, correct, and complete to the best of my knowledge and belief. I further understand that I may be subject to prosecution by the Environmental Protection Agency to the fullest extent possible under the law should I provide any information that is not true, correct, and complete to the best of my knowledge.*

Though the information requested above can be provided in any format, EPA has created a form for you to use to help you provide the requested information (Enclosed). Please know that EPA is unable to complete its "ability to pay" analysis without the information requested above. As the burden of raising and demonstrating an inability to pay rests with Silky Associates LLC, EPA will continue to presume that Silky Associates LLC has an ability to pay a substantial penalty until Silky Associates LLC provides information demonstrating otherwise.

Please provide the information requested above, along with the signed and dated statement **within fourteen (14) calendar days of receiving this letter** to:

Jennifer M. Abramson (3RC50)
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103

Thank you for your cooperation and prompt attention to this matter. Please do not hesitate to contact me with any questions or concerns by email at Abramson.Jennifer@epa.gov or by phone at (215) 814-2066.

Sincerely,

Jennifer M. Abramson
Senior Assistant Regional Counsel

Enclosure

cc: Melissa Toffel, EPA

ENCLOSURE

1. Real Property:

Property Description: **200 E. Williamsburg Road, Sandston, VA 23150**

Please answer the following questions:

This property is owned by Silky Associates LLC True False

If False, please state the owner of this property here_____

This property is owned solely by Silky Associates LLC or the owner identified in 1.A.a: True False

If False, please state all joint owners of the Property here_____

_____

This property was purchased in 2005 True False

If False, please state the year when the property was purchased here_____

Please state the fair market value (FMV) of the property here:_____

Please state the current loan balance here_____

Please state the Name, Address and Phone number of the lender here_____

_____

Please state the monthly loan payment amount here_____

Property Description: **104 Seven Pines Avenue, Sandston, VA 23150**

Please answer the following questions:

This property is owned by Lakhmir Bagga True False

If False, please state the owner of this property here_____

This property is owned solely by Lakhmir Bagga or the owner identified in 1.A.a: True False

If False, please state all joint owners of the property here_____

_____

This property was purchased in 2010 True False

If False, please state the year when the property was purchased here_____

Please state the fair market value (FMV) of the property here:_____

Please state the current loan balance here_____

Please state the Name, Address and Phone number of the lender here_____

_____

Please state the monthly loan payment amount here_____

The property located at **200 E. Williamsburg Road, Sandston, VA 23150** is no longer owned by either me or Silky Associates LLC True False

If True, please describe:

The date of disposal/sale here _____
Method of disposal (circle one):

outright sale
transfer to a related family member, individual or company
contribution to a charitable organization
other_____

Sale price here_____
Net amount received after paying off loans or other encumbrances on the property here_____

The property located at **104 Seven Pines Avenue, Sandston, VA 23150** is no longer owned by either me or Silky Associates LLC True False

If True, please describe:

The date of disposal/sale here _____
Method of disposal (circle one):

outright sale
transfer to a related family member, individual or company
contribution to a charitable organization
other_____

Sale price here_____
Net amount received after paying off loans or other encumbrances on the property here_____

2. Personal Property

Please describe any personal assets owned by you or Silky Associates LLC other than a 2009 Honda Accord.

Personal Assets (Describe or None)	**Estimated Net Worth**
Vehicles:_____	_____
Furnishings:_____	_____
Personal effects:_____	_____
Artwork:_____	_____
Jewelry:_____	_____
Collections (e.g., coins, guns, etc.)_____	
_____	_____
Antiques:_____	_____
Intangible assets (e.g., licenses, domain names, patents, copyrights, mining claims, etc.)_____	
_____	_____
Other:_____	_____

3. Accounts Receivable

For all balances due from any company or Governmental entity that owes an account payable to Silky Associates, LLC, provide the following information:

Company Name:_____
Company Address:_____
Amount of Receivable:_____
Status of Receivable (i.e., age, whether current or in arrears):_____

Due date:_____
Original amount due:_____
Remaining balance:_____

Company Name:_____
Company Address:_____
Amount of Receivable:_____
Status of Receivable (i.e., age, whether current or in arrears):_____

Due date:_____
Original amount due:_____
Remaining balance:_____

Company Name:_____
Company Address:_____
Amount of Receivable:_____
Status of Receivable (i.e., age, whether current or in arrears):_____

Due date:_____
Original amount due:_____
Remaining balance:_____

Under penalties of perjury, I declare that the statements and/or information provided herein are true, correct, and complete to the best of my knowledge and belief. I further understand that I will be subject to prosecution by the Environmental Protection Agency to the fullest extent possible under the law should I provide any information that is not true, correct, and complete to the best of my knowledge.

_____ _____

Date

Lakhmir Bagga
Silky Associates LLC

Lucky Mart, FIN 4011249
Penalty Calculation

COUNT I – Failure to Perform Tank Release Detection

Failure to conduct tank release detection on an UST as required by 9 VAC 25-580-140(1) (40 C.F.R. § 280.41(a))

Potential for Harm/Extent of Deviation	Major/Major
Matrix Value:	$1,500
Matrix Value: assessed per tank (Five USTs)	
Environmental Sensitivity Multiplier:	N/A
Violator Specific Adjustments	N/A
Days of noncompliance: see below	
Noncompliance Multiplier:	2.0/3.0

Tanks 1-4

Noncompliance dates: T1 (8/4/16 – 4/1/17); T2 (8/18/16 – 4/1/17); T3 (8/18/16 – 4/1/17); T4 (8/17/16 – 4/1/17) = 2.0 DNC Multiplier for each tank

Matrix Value x # of USTs x DNC x Inflationary Adjustment

After 11/2/15 = 1.84767 inflation
$1,500 x 4 USTs x 2.0 DNC x 1.84767: $22,172

Tank 5

Noncompliance dates: (7/4/16 – 1/1/18) = 546 days = 3.0 DNC Multiplier

Matrix Value x # of USTs x DNC x Inflationary Adjustment

After 11/2/15 = 1.84767 inflation
$1,500 x 1 UST x 3.0 DNC x 1.84767: $8,315

Economic Benefit: N/A, VR in place

Total **$30,487.00**

Lucky Mart, FIN 4011249
Penalty Calculation

COUNT 2 – Failure to Perform Automatic Line Leak Detector Testing

Failure to test the LLDs annually as required by 9 VAC 25-580-170(1) (40 C.F.R. § 280.44(a))

Potential for Harm/Extent of Deviation	Major/Major
Matrix Value:	$1,500
Matrix Value: assessed per piping system (*Four piping systems)	
* Tanks 2 and 3 have a siphon bar with one LLD	
Environmental Sensitivity Multiplier:	N/A
Violator Specific Adjustments	N/A

Tank 1 – no test results

Dates of Noncompliance (DNC): 8/1/13 (SOL) – 9/20/17 (Testing) = 1,511 DNC/6.0 Mult.

A. Matrix Value x # of USTs x DNC x Inflationary Adjustment
8/1/13 (SOL) – 12/6/13 = 128 DNC @ 1.4163 Inflation
Percentage of DNC =128/1,511 = 9%

$1,500 x 1 UST x 6.0 DNC x .09 x 1.4163: 1,147

B. Matrix Value x # of USTs x DNC x Inflationary Adjustment
12/7/13 – 11/2/15 = 696 DNC @ 1.4853 Inflation
Percentage of DNC =696/1,511 = 46%

$1,500 x 1 UST x 6.0 DNC x .46 x 1.4853: 6,149

C. Matrix Value x # of USTs x DNC x Inflationary Adjustment
11/3/15 – 9/20/17 = 687 DNC @ 1.78156 Inflation
Percentage of DNC =687/1,511 = 45%

$1,500 x 1 UST x 6.0 DNC x .45 x 1.84767: 7,483

Total: **$14,779**

Tanks 2, 4 and 5 – One test result provided dated 11/6/13, all three LLDs pass

Dates of Noncompliance (DNC): 8/1/13 (SOL) – 11/6/13 (date of test)
11/6/14 – 9/20/17 (Testing) = 1,146 DNC/5.0 Mult.

A. Matrix Value x # of USTs x DNC x Inflationary Adjustment
8/1/13 (SOL) – 11/6/13 = 97 DNC @ 1.4163 Inflation
Percentage of DNC =97/1,146 = 8%
$1,500 x 3 USTs x 5.0 DNC x .08 x 1.4163: 2,549

B. Matrix Value x # of USTs x DNC x Inflationary Adjustment
11/6/14 – 11/2/15 = 362 DNC @ 1.4853 Inflation
Percentage of DNC =362/1,146 = 32%

$1,500 x 3 USTs x 5.0 DNC x .32 x 1.4853: 10,694

C. Matrix Value x # of USTs x DNC x Inflationary Adjustment
11/3/15 – 9/20/17 = 687 DNC @ 1.78156 Inflation
Percentage of DNC =687/1,146 = 60%

$1,500 x 3 USTs x 5.0 DNC x .60 x 1.84767: 24,944

Total: **$38,187**

Economic Benefit: use estimated cost of 250 per LLD
T1 = $678
T2, T4 and T5 = $1,502
Eco Ben Model - $2,180

Total: **$55,146**

Present Values as of Noncompliance Date (NCD)	01-Aug-2013
A) On-Time Capital & One-Time Costs	$0
B) Delay Capital & One-Time Costs	$0
C) Avoided Annually Recurring Costs	$496
D) Initial Economic Benefit (A-B+C)	$496
E) Final Econ. Ben. at Penalty Payment Date,	
01-Dec-2017	**$678**

Your model version may be outdated:
www.epa.gov/enforcement/econmodels.html

For-Profit (not C-Corp.) w/ VA tax rates

Discount/Compound Rate	7.5%
Discount/Compound Rate Calculated By	BEN
Compliance Date	20-Sep-2017
Capital Investment:	
Cost Estimate	$0
Cost Estimate Date	N/A
Cost Index for Inflation	N/A
Consider Future Replacement (Useful Life)	N/A (N/A)
One-Time, Nondepreciable Expenditure:	
Cost Estimate	$0
Cost Estimate Date	N/A
Cost Index for Inflation	N/A
Tax Deductible?	N/A
Annually Recurring Costs:	
Cost Estimate	$250
Cost Estimate Date	10-May-2017
Cost Index for Inflation	PCI
User-Customized Specific Cost Estimates:	N/A
On-Time Capital Investment	
Delay Capital Investment	
On-Time Nondepreciable Expenditure	
Delay Nondepreciable Expenditure	

Present Values as of Noncompliance Date (NCD)	01-Aug-2013
A) On-Time Capital & One-Time Costs	$0
B) Delay Capital & One-Time Costs	$0
C) Avoided Annually Recurring Costs	$108
D) Initial Economic Benefit (A-B+C)	$108
E) Final Econ. Ben. at Penalty Payment Date,	
01-Dec-2017	$148

Your model version may be outdated:
www.epa.gov/enforcement/econmodels.html

For-Profit (not C-Corp.) w/ VA tax rates

Discount/Compound Rate	7.5%
Discount/Compound Rate Calculated By:	BEN
Compliance Date	06-Nov-2013
Capital Investment:	
Cost Estimate	$0
Cost Estimate Date	N/A
Cost Index for Inflation	N/A
Consider Future Replacement (Useful Life)	N/A (N/A)
One-Time Nondepreciable Expenditure:	
Cost Estimate	$0
Cost Estimate Date	N/A
Cost Index for Inflation	N/A
Tax Deductible?	N/A
Annually Recurring Costs:	
Cost Estimate	$750
Cost Estimate Date	10-May-2017
Cost Index for Inflation	PCI
User-Customized Specific Cost Estimates:	N/A
On-Time Capital Investment	
Delay Capital Investment	
On-Time Nondepreciable Expenditure	
Delay Nondepreciable Expenditure	

Present Values as of Noncompliance Date (NCD).	06-Nov-2014
A) On-Time Capital & One-Time Costs	$0
B) Delay Capital & One-Time Costs	$0
C) Avoided Annually Recurring Costs	$1,084
D) Initial Economic Benefit (A-B+C)	$1,084
E) Final Econ. Ben. at Penalty Payment Date,	
01-Dec-2017	$1,354

Your model version may be outdated:
www.epa.gov/enforcement/econmodels.html

For-Profit (not C-Corp.) w/ VA tax rates

Discount/Compound Rate	7.5%
Discount/Compound Rate Calculated By	BEN
Compliance Date	20-Sep-2017
Capital Investment.	
Cost Estimate	$0
Cost Estimate Date	N/A
Cost Index for Inflation	N/A
Consider Future Replacement (Useful Life)	N/A (N/A)
One-Time Nondepreciable Expenditure.	
Cost Estimate	$0
Cost Estimate Date	N/A
Cost Index for Inflation	N/A
Tax Deductible?	N/A
Annually Recurring Costs.	
Cost Estimate	$750
Cost Estimate Date	10-May-2017
Cost Index for Inflation	PCI
User-Customized Specific Cost Estimates.	N/A
On-Time Capital Investment	
Delay Capital Investment	
On-Time Nondepreciable Expenditure	
Delay Nondepreciable Expenditure	

Lucky Mart, FIN 4011249
Penalty Calculation

COUNT 3 – Failure to Provide Piping Release Detection

Failure to have a secondary method of piping release detection as required by 9 VAC 25-580-140(2)(a)(2) (40 C.F.R. § 280.41(b)(1))

Potential for Harm/Extent of Deviation	Major/Major
Matrix Value:	$1,500
Matrix Value: assessed per piping system (*Four piping systems)	
* Tanks 2 and 3 have a siphon bar with connected piping	
Environmental Sensitivity Multiplier:	N/A
Violator Specific Adjustment:	N/A

Tank 1 – LTT on 1/30/12

Dates of Noncompliance (DNC): Test was due 1/30/13
8/1/13 (SOL) – 9/20/17 (Testing) = 1,511 DNC/6.0 Mult.

A. Matrix Value x # of USTs x DNC x Inflationary Adjustment
8/1/13 (SOL) – 12/6/13 = 128 DNC @ 1.4163 Inflation
Percentage of DNC =128/1,511 = 9%

$1,500 x 1 UST x 6.0 DNC x .09 x 1.4163: 1,147

B. Matrix Value x # of USTs x DNC x Inflationary Adjustment
12/7/13 – 11/2/15 = 696 DNC @ 1.4853 Inflation
Percentage of DNC =696/1,511 = 46%

$1,500 x 1 UST x 6.0 DNC x .46 x 1.4853: 6,149

C. Matrix Value x # of USTs x DNC x Inflationary Adjustment
11/3/15 – 9/20/17 = 687 DNC @ 1.84767 Inflation
Percentage of DNC =687/1,511 = 45%

$1,500 x 1 UST x 6.0 DNC x .45 x 1.84767: 7,483

Total: **$14,779**

Tank 2 – LTT on 1/30/12 and 11/6/13 (both pass)

Dates of Noncompliance (DNC): 8/1/13 (SOL) – 11/6/13 (tested)
11/6/14 (next test due) – 9/20/17 (Testing) = 1,146 DNC/ 5.0 Mult.

A. Matrix Value x # of USTs x DNC x Inflationary Adjustment
8/1/13 – 11/6/13 = 97 DNC @ 1.4163 Inflation
Percentage of DNC =97/1,146 = 8%

$1,500 x 1 UST x 5.0 DNC x .08 x 1.4163: 850

B. Matrix Value x # of USTs x DNC x Inflationary Adjustment
11/6/14 – 11/2/15 = 362 DNC @ 1.4853 Inflation
Percentage of DNC =362/1,146 = 32%

$1,500 x 1 UST x 5.0 DNC x .32 x 1.4853: 3,565

C. Matrix Value x # of USTs x DNC x Inflationary Adjustment
11/3/15 – 9/20/17 = 687 DNC @ 1.84767 Inflation
Percentage of DNC =687/1,146 = 60%

$1,500 x 1 UST x 5.0 DNC x .60 x 1.84767: 8,315
Total: **$12,730**

Tanks 4 and 5 – One test result provided dated 11/6/13, both lines pass

Dates of Noncompliance (DNC): 8/1/13 (SOL) – 11/6/13 (date of test)
11/6/14 (test due) – 9/20/17 (Testing) = 1,146 DNC/ 5.0 Mult.

A. Matrix Value x # of USTs x DNC x Inflationary Adjustment
8/1/13 (SOL) – 11/6/13 = 97 DNC @ 1.4163 Inflation
Percentage of DNC =97/1,146 = 8%

$1,500 x 2 USTs x 5.0 DNC x .08 x 1.4163: 1,700

B. Matrix Value x # of USTs x DNC x Inflationary Adjustment
11/6/14 – 11/2/15 = 362 DNC @ 1.4853 Inflation
Percentage of DNC =362/1,146 = 32%

$1,500 x 2 USTs x 5.0 DNC x .32 x 1.4853: 7,129

C. Matrix Value x # of USTs x DNC x Inflationary Adjustment
11/3/15 – 9/20/17 = 687 DNC @ 1.84767 Inflation
Percentage of DNC =687/1,146 = 60%

$1,500 x 2 USTs x 5.0 DNC x .60 x 1.84767:	16,629
Total:	**$25,458**

Economic Benefit:	Included as part of LLD testing costs	---

Total:	**$52,967**

Lucky Mart, FIN 4011249
Penalty Calculation

COUNT 4 – Failure to Have Overfill Prevention Equipment

Failure to have overfill prevention equipment as required by 9 VAC 25-580-60(4) (40 C.F.R. § 280.21(d))

Potential for Harm/Extent of Deviation	Moderate/Major
Matrix Value:	$750
Matrix Value: assessed per tank (Five USTs)	
Environmental Sensitivity Multiplier:	N/A
Violator Specific Adjustments	N/A

Tanks 1 - 5

Overfill installed on T2, T3, T4 on 4/10/18; for T5 installed on 4/11/18; T1 was still red-tagged as of the date of the Complaint.
Dates of Noncompliance (DNC): 8/1/13 (SOL) – 4/10/18 (Install) = 1,713 DNC/6.5 Mult.

A. Matrix Value x # of USTs x DNC x Inflationary Adjustment
8/1/13 (SOL) – 12/6/13 = 128 DNC @ 1.4163 Inflation
Percentage of DNC =128/1,713 = 7%

$750 x 5 USTs x 6.5 DNC x .07 x 1.4163: 2,417

B. Matrix Value x # of USTs x DNC x Inflationary Adjustment
12/7/13 – 11/2/15 = 696 DNC @ 1.4853 Inflation
Percentage of DNC =696/1,713 = 41%

$750 x 5 USTs x 6.5 DNC x .41 x 1.4853: 14,844

C. Matrix Value x # of USTs x DNC x Inflationary Adjustment
11/3/15 – 4/10/18 = 889 DNC @ 1.84767 Inflation
Percentage of DNC =889/1,713 = 52%

$750 x 5 USTs x 6.5 DNC x .52 x 1.84767: 23,419

Total: **$40,680**

Economic Benefit:	Contractor invoice for Labor - $550 Est. $400 per piece for drop tubes - $2,000 Total for project - $2,550		
		Eco Ben Model -	$809

Total: **$41,489**

Run Name = Overfill

Present Values as of Noncompliance Date (NCD):	01-Aug-2013
A) On-Time Capital & One-Time Costs	$1,776
B) Delay Capital & One-Time Costs	$1,185
C) Avoided Annually Recurring Costs	$0
D) Initial Economic Benefit (A-B+C)	$591
E) Final Econ. Ben. at Penalty Payment Date,	
01-Dec-2017	$809

Your model version may be outdated:
www.epa.gov/enforcement/econmodels.html
For-Profit (not C-Corp.) w/ VA tax rates

Discount/Compound Rate	7.5%
Discount/Compound Rate Calculated By	BEN
Compliance Date	10-Apr-2018
Capital Investment:	
Cost Estimate	$2,550
Cost Estimate Date	10-Apr-2018
Cost Index for Inflation	PCI
Consider Future Replacement (Useful Life)	y (15)
One-Time, Nondepreciable Expenditure:	
Cost Estimate	$0
Cost Estimate Date	N/A
Cost Index for Inflation	N/A
Tax Deductible?	N/A
Annually Recurring Costs:	
Cost Estimate	$0
Cost Estimate Date	N/A
Cost Index for Inflation	N/A
User-Customized Specific Cost Estimates:	N/A
On-Time Capital Investment	
Delay Capital Investment	
On-Time Nondepreciable Expenditure	
Delay Nondepreciable Expenditure	

Lucky Mart, FIN 4011249
Penalty Calculation

COUNT 5 – Failure to Test Cathodic Protection System

Failure to test cathodic protection system as required by 9 VAC 25-580-90(2)(a) (40 C.F.R. § 280.31(b)(1))

Potential for Harm/Extent of Deviation	Moderate/Major
Matrix Value:	$750
Matrix Value: assessed per facility (1 Facility)	
Environmental Sensitivity Multiplier:	N/A
Violator Specific Adjustments	N/A

Tanks 1 - 5

Dates of Noncompliance (DNC): 4/17/15 (test due) – 12/6/17 (Testing) = 964 DNC/4.5 Mult.

A. Matrix Value x # of USTs x DNC x Inflationary Adjustment
4/17/15 – 11/2/15 = 200 DNC @ 1.4853 Inflation
Percentage of DNC =200/964 = 21%

$750 x 1 facility x 4.5 DNC x .21 x 1.4853: 1,053

B. Matrix Value x # of USTs x DNC x Inflationary Adjustment
11/3/15 – 12/6/17 = 764 DNC @ 1.78156 Inflation
Percentage of DNC =764/964 = 79%

$750 x 1 facility x 4.5 DNC x .79 x 1.84767: 4,926

Total: **$5,979**

Economic Benefit: Using cost of $350, per invoice dated 12/12/17

Eco Ben Model - $27

Total: **$6,006**

Run Name = CP

Present Values as of Noncompliance Date (NCD),	17-Apr-2015
A) On-Time Capital & One-Time Costs	$188
B) Delay Capital & One-Time Costs	$166
C) Avoided Annually Recurring Costs	$0
D) Initial Economic Benefit (A-B+C)	$23
E) Final Econ. Ben. at Penalty Payment Date,	
01-Dec-2017	**$27**

Your model version may be outdated:
www.epa.gov/enforcement/econmodels.html

For-Profit (not C-Corp.) w/ VA tax rates

Discount/Compound Rate	7.2%
Discount/Compound Rate Calculated By:	BEN
Compliance Date	06-Dec-2017
Capital Investment:	
Cost Estimate	$0
Cost Estimate Date	N/A
Cost Index for Inflation	N/A
Consider Future Replacement (Useful Life)	N/A (N/A)
One-Time, Nondepreciable Expenditure:	
Cost Estimate	$350
Cost Estimate Date	12-Dec-2017
Cost Index for Inflation	PCI
Tax Deductible?	Y
Annually Recurring Costs:	
Cost Estimate	$0
Cost Estimate Date	N/A
Cost Index for Inflation	N/A
User-Customized Specific Cost Estimates:	N/A
On-Time Capital Investment	
Delay Capital Investment	
On-Time Nondepreciable Expenditure	
Delay Nondepreciable Expenditure	

Lucky Mart, FIN 4011249
Penalty Calculation

TOTAL PENALTY

Violation I - Failure to conduct tank release detection (5 USTs)	**$30,487.00**
Violation II - Failure to test LLDs (4 piping systems)	**$55,146.00**
Violation III - Failure to conduct LTT/monthly piping RD (4 piping systems)	**$52,967.00**
Violation IV - Failure to have overfill (5 USTs)	**$41,489.00**
Violation V - Failure to have CP tested (1 Facility)	**$6,006.00**
Total	**$186,095.00**

PES Petroleum Equipment Services Inc

6944 McClellan Road
Mechanicsville, VA 23111

Invoice

Date	Invoice #
4/11/2013	7697

Exhibit M
Motion for Default Order
Docket No. RCRA-03-2018-0131

Bill To
Lucky Mart 200 E. Williamsburg Road Sandston, VA 23150

Terms	Due Date
COD	4/11/2013

Description	Qty	Amount
Install drop tubes in all tanks		0.00
4/10 Cut and installed new drop tubes in both Reg 110, tanks and Kerosene tank could not get old drop tubes out of Premium and Diesel tanks, plannd make front ground old drop tubes and will return in morning) 4/11 Replaced drop tube in Diesel tank but couldnot get old drop tube out of Premium tank (need to have fill connections removed to get old drop tube out)		0.00 0.00
2 Trips Labor 1 Man @ 7 hours on job @ $60.00/hour =	7	0.00 420.00
Travel: 1 man @ 2 hour riding time @ $60.00 /hour =	2	120.00

Subtotal	$540.00
Sales Tax	$0.00
Total	$540.00
Payments/Credits	$0.00
Balance Due	$540.00

Phone #	Fax #
804 559 2700	804 559 2758

Exhibit N
Motion for Default Order
Docket No. RCRA-03-2018-0131

EasDevs.com
1855-777-6390
550 N Central
Expressway #12685
McKinney Texa

71SO-400C - vapor-tight overfill valve

$590.00

PTS
PRECISION TANK SERVICE, INC.

INVOICE

804-737-7717
9 pages

INVOICE NUMBER	171206D-00
INVOICE DATE	12/13/2017
ACCOUNT NUMBER	60997

IF YOU HAVE ANY QUESTIONS REGARDING THIS INVOICE, PLEASE CALL 800.533.9099 EXT 100

LAKHMIR BAGGA
LUCKY MART
200 E. WILLIAMSBURG HWY
SANDSTON, VA 23150

RE: LUCKY MART
200 E. WILLIAMSBURG HWY
SANDSTON, VA
PO#:

Exhibit O
Motion for Default Order
Docket No. RCRA-03-2018-0131

TERMS ARE NET 10 DAYS

DESCRIPTION OF SERVICES	EXT PRICE
Cathodic Protection System Test @ 6060	6060.00

QTY	PART NUMBER	DESCRIPTION	UNIT PRICE	EXT PRICE

PAID

THANK YOU FOR CHOOSING PTS!

SUB TOTAL	
SALES TAX	
TOTAL	$300.00

Remit to
Precision Tank Service, Inc.
P.O. Box 2040
Conway, NC 29591

To insure proper credit please include the invoice number on your check.
For your convenience we now accept ALL major credit cards. You can pay over the phone or online at www.precisiontankservice.com

CHAPTER 580.

UNDERGROUND STORAGE TANKS: TECHNICAL STANDARDS AND CORRECTIVE ACTION REQUIREMENTS.

PART I.

Definitions, Applicability and Interim Prohibition.

9 VAC 25-580-10. Definitions.

The following words and terms, when used in this chapter, shall have the following meaning unless the context clearly indicates otherwise:

"Aboveground release" means any release to the surface of the land or to surface water. This includes, but is not limited to, releases from the aboveground portion of a UST system and aboveground releases associated with overfills and transfer operations as the regulated substance moves to or from a UST system.

"Ancillary equipment" means any devices including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps used to distribute, meter, or control the flow of regulated substances to and from a UST.

"Belowground release" means any release to the subsurface of the land and to groundwater. This includes, but is not limited to, releases from the belowground portions of an underground storage tank system and belowground releases associated with overfills and transfer operations as the regulated substance moves to or from an

underground storage tank.

"Beneath the surface of the ground" means beneath the ground surface or otherwise covered with earthen materials.

"Board" means the State Water Control Board.

"Building official" means the executive official of the local government building department empowered by §36-105 of the Code of Virginia to enforce and administer the Virginia Uniform Statewide Building Code (USBC).

"Cathodic protection" is a technique to prevent corrosion of a metal surface by making that surface the cathode of an electrochemical cell. For example, a tank system can be cathodically protected through the application of either galvanic anodes or impressed current.

"Cathodic protection tester" means a person who can demonstrate an understanding of the principles and measurements of all common types of cathodic protection systems as applied to buried or submerged metal piping and tank systems. At a minimum, such persons must have education and experience in soil resistivity, stray current, structure-to-soil potential, and component electrical isolation measurements of buried metal piping and tank systems.

"CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 USC §9601 et seq.).

"Compatible" means the ability of two or more substances to maintain their respective physical and chemical properties upon contact with one another for the design life of the tank system under conditions likely to be encountered in the UST.

"Connected piping" means all underground piping including valves, elbows, joints, flanges, and flexible connectors attached to a tank system through which regulated substances flow. For the purpose of determining how much piping is connected to any individual UST system, the piping that joins two UST systems should be allocated equally between them.

"Corrosion expert" means a person who, by reason of thorough knowledge of the physical sciences and the principles of engineering and mathematics acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. Such a person must be accredited or certified as being qualified by the National Association of Corrosion Engineers or be a registered professional engineer who has certification or licensing that includes education and experience in corrosion control of buried or submerged metal piping systems and metal tanks.

"De minimis" means trivial and beyond the intent of regulation, as that term is used at 53 Fed. Reg. 37108-37109.

"Department of Waste Management" means the Virginia Department of Waste Management which has jurisdiction over the proper handling and disposal of solid and hazardous wastes in the Commonwealth of Virginia.

"Dielectric material" means a material that does not conduct direct electrical current. Dielectric coatings are used to electrically isolate UST systems from the surrounding soils. Dielectric bushings are used to electrically isolate portions of the UST system (e.g., tank from piping).

"Electrical equipment" means underground equipment that contains dielectric fluid that is necessary for the operation of equipment such as transformers and buried electrical cable.

"Excavation zone" means the volume containing the tank system and backfill material bounded by the ground surface, walls, and floor of the pit and trenches into which the UST system is placed at the time of installation.

"Existing tank system" means a tank system used to contain an accumulation of regulated substances or for which installation has commenced on or before December 22, 1988. Installation is considered to have commenced if:

1. The owner or operator has obtained all federal, state, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system; and if,

2. a. Either a continuous on-site physical construction or installation program has begun; or,

b. The owner or operator has entered into contractual obligations--which cannot be cancelled or modified without substantial loss--for physical construction at the site or installation of the tank system to be completed within a reasonable time.

"Farm tank" is a tank located on a tract of land devoted to the production of crops or raising animals, including fish, and associated residences and improvements. A farm tank must be located on the farm property. "Farm" includes fish hatcheries, rangeland and nurseries with growing operations.

"Flow-through process tank" is a tank that forms an integral part of a production process through which there is a steady, variable, recurring, or intermittent flow of materials during the operation of the process. Flow-through process tanks do not include tanks used for the storage of materials prior to their introduction into the production process or for the storage of finished products or by-products from the production process.

"Free product" refers to a regulated substance that is present as a nonaqueous phase liquid (e.g., liquid not dissolved in water).

"Gathering lines" means any pipeline, equipment, facility, or building used in the transportation of oil or gas during oil or gas production or gathering operations.

"Hazardous substance UST system" means an underground storage tank system that contains a hazardous substance defined in §101(14) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980 (42 USC §9601 et seq.) (but not including any substance regulated as a hazardous waste under subtitle C of RCRA) or any mixture of such substances and petroleum, and which is not a petroleum UST system.

"Heating oil" means petroleum that is No. 1, No. 2, No. 4--light, No. 4--heavy, No. 5--light, No. 5--heavy, and No. 6 technical grades of fuel oil; other residual fuel oils (including Navy Special Fuel Oil and Bunker C); and other fuels when used as substitutes for one of these fuel oils. Heating oil is typically used in the operation of heating equipment, boilers, or furnaces.

"Hydraulic lift tank" means a tank holding hydraulic fluid for a closed-loop mechanical system that uses compressed air or hydraulic fluid to operate lifts, elevators, and other similar devices.

"Liquid trap" means sumps, well cellars, and other traps used in association with oil and gas production, gathering, and extraction operations (including gas production plants), for the purpose of collecting oil, water, and other liquids. These liquid traps may temporarily collect liquids for subsequent disposition or reinjection into a production or pipeline stream, or may collect and separate liquids from a gas stream.

"Maintenance" means the normal operational upkeep to prevent an underground storage tank system from releasing product.

"Motor fuel" means petroleum or a petroleum-based substance that is motor gasoline, aviation gasoline, No. 1 or No. 2 diesel fuel, or any grade of gasohol, and is typically used in the operation of a motor engine.

"New tank system" means a tank system that will be used to contain an accumulation of regulated substances and for which installation has commenced after December 22, 1988 (See also "existing tank system").

"Noncommercial purposes" with respect to motor fuel means not for resale.

"On the premises where stored" with respect to heating oil means UST systems located on the same property where the stored heating oil is used.

"Operational life" refers to the period beginning when installation of the tank system has commenced until the time the tank system is properly closed under Part VII.

"Operator" means any person in control of, or having responsibility for, the daily operation of the UST system.

"Overfill release" is a release that occurs when a tank is filled beyond its capacity, resulting in a discharge of the regulated substance to the environment.

"Owner" means:

1. In the case of a UST system in use on Novermber 8, 1984, or brought into use after that date, any person who owns a use on November 8, 1984, or brought into use after that date, any person who owns a UST system used for storage, use, or dispensing of regulated substances; and

2. In the case of any UST system in use before November 8, 1984, but no longer in use on that date, any person who owned such UST immediately before the discontinuation of its use.

"Person" means an individual, trust, firm, joint stock company, corporation, including a government corporation, partnership, association, any state or agency of it, municipality, county, town, commission, political subdivision of a state, any interstate body, consortium, joint venture, commercial entity, the government of the United States or any unit or agency of it.

"Petroleum UST system" means an underground storage tank system that contains petroleum or a mixture of petroleum with de minimis quantities of other regulated substances. Such systems include those containing motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

"Pipe" or "piping" means a hollow cylinder or tubular conduit that is constructed of nonearthen materials.

"Pipeline facilities (including gathering lines)" are new and existing pipe rights-of-way and any associated equipment, facilities, or buildings.

"RCRA" means the federal Resource Conservation and Recovery Act of 1976 as amended (42 USC §6901 et seq.).

"Regulated substance" means an element, compound, mixture, solution, or substance that, when released into the environment, may present substantial danger to the public health or welfare, or the environment. The term "regulated substance" includes:

1. Any substance defined in §101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980 (42 USC §9601 et seq.), but not any substance regulated as a hazardous waste under subtitle C of the Resource Conservation and Recovery Act (RCRA) of 1976 (42 USC §6901 et seq.); and

2. Petroleum, including crude oil or any fraction of it, that is liquid at standard conditions of temperature and pressure (60°F 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.

"Release" means any spilling, leaking, emitting, discharging, escaping, leaching or disposing from an UST into groundwater, surface water or subsurface soils.

"Release detection" means determining whether a release of a regulated substance has occurred from the UST system into the environment or into the interstitial space between the UST system and its secondary barrier or secondary containment around it.

"Repair" means to restore a tank or UST system component that has caused a release of product from the UST system.

"Residential tank" is a tank located on property used primarily for dwelling purposes.

"SARA" means the Superfund Amendments and Reauthorization Act of 1986.

"Septic tank" is a water-tight covered receptacle designed to receive or process, through liquid separation or biological digestion, the sewage discharged from a building sewer. The effluent from such receptacle is distributed for disposal through the soil and settled solids and scum from the tank are pumped out periodically and hauled to a treatment facility.

"Storm water or waste water collection system" means piping, pumps, conduits, and any other equipment necessary to collect and transport the flow of surface water run-off resulting from precipitation, or domestic, commercial, or industrial wastewater to and from retention areas or any areas where treatment is designated to occur. The collection of storm water and wastewater does not include treatment except where incidental to conveyance.

"Surface impoundment" is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials) that is not an injection well.

"Tank" is a stationary device designed to contain an accumulation of regulated substances and constructed of nonearthen materials (e.g., concrete, steel, plastic) that provide structural support.

"Underground area" means an underground room, such as a basement, cellar, shaft or vault, providing enough space for physical inspection of the exterior of the tank situated on or above the surface of the floor.

"Underground release" means any belowground release.

"Underground storage tank" or "UST" means any one or combination of tanks (including underground pipes connected to it) that is used to contain an accumulation of regulated substances, and the volume of which (including the volume of underground pipes connected to it) is 10% or more beneath the surface of the ground. This term does not include any:

1. Farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;

2. Tank used for storing heating oil for consumption on the premises where stored, except for tanks having a capacity of more than 5,000 gallons and used for storing heating oil;

3. Septic tank;

4. Pipeline facility (including gathering lines) regulated under:

a. The Natural Gas Pipeline Safety Act of 1968 (49 USC App. 1671, et seq.), or

b. The Hazardous Liquid Pipeline Safety Act of 1979 (49 USC App. 2001, et seq.);

c. Which is an intrastate pipeline facility regulated under state laws comparable to the provisions of the law referred to in subdivisions 4 a or 4 b of this definition;

5. Surface impoundment, pit, pond, or lagoon;

6. Storm water or wastewater collection system;

7. Flow-through process tank;

8. Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations; or

9. Storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor.

The term "underground storage tank" or "UST" does not include any pipes connected to any tank which is described in subdivisions 1 through 9 of this definition.

"Upgrade" means the addition or retrofit of some systems such as cathodic protection, lining, or spill and overfill controls to improve the ability of an underground storage tank system to prevent the release of product.

"UST system" or "tank system" means an underground storage tank, connected underground piping, underground ancillary equipment, and containment system, if any.

"Wastewater treatment tank" means a tank that is designed to receive and treat an influent wastewater through physical, chemical, or biological methods.

9 VAC 25-580-20. Applicability.

A. The requirements of this chapter apply to all owners and operators of a UST system as defined in 9 VAC 25-580-10 except as otherwise provided in subsections B, C, and D of this section. Any UST system listed in subsection C of this section must meet the requirements of 9 VAC 25-580-30.

B. The following UST systems are excluded from the requirements of this chapter:

1. Any UST system holding hazardous wastes listed or identified under Subtitle C of the Solid Waste Disposal Act (33 USC §1251 et seq.), or a mixture of such hazardous waste and other regulated substances;

2. Any wastewater treatment tank system that is part of a wastewater treatment facility regulated under §402 or §307(b) of the Clean Water Act;

3. Equipment or machinery that contains regulated substances for operational purposes such as hydraulic lift tanks and electrical equipment tanks;

4. Any UST system whose capacity is 110 gallons or less;

5. Any UST system that contains a de minimis concentration of regulated substances; and

6. Any emergency spill or overflow containment UST system that is expeditiously emptied after use.

C. Deferrals. Parts II, III, IV, V, and VII of this chapter do not apply to any of the following types of UST systems:

1. Wastewater treatment tank systems;

2. Any UST systems containing radioactive material that are regulated under the Atomic Energy Act of 1954 (42 USC 2011 et seq.);

3. Any UST system that is part of an emergency generator system at nuclear power generation facilities regulated by the Nuclear Regulatory Commission under 10 CFR 50, Appendix A;

4. Airport hydrant fuel distribution systems; and

5. UST systems with field-constructed tanks.

D. Deferrals. Part IV does not apply to any UST system that stores fuel solely for use by emergency power generators.

9 VAC 25-580-30. Interim prohibition for deferred UST systems.

No person may install a UST system listed in subsection C of 9 VAC 25-580-20 for the purpose of storing regulated substances unless the UST system (whether of single-wall or double-wall construction):

1. Will prevent releases due to corrosion or structural failure for the operational life of the UST system;

2. Is cathodically protected against corrosion, constructed of noncorrodible material, steel clad with a noncorrodible material, or designed in a manner to prevent the release or threatened release of any stored substance; and

3. Is constructed or lined with material that is compatible with the stored substance.

9 VAC 25-580-40. Permitting and inspection requirements for all UST systems.

In all instances of installation, upgrade, repair and closure where a UST system is constructed, enlarged, altered, repaired or closed all UST systems must be permitted and inspected in accordance with 9 VAC 25-580-50, 9 VAC 25-580-60, 9 VAC 25-580-110, 9 VAC 25-580-160, 9 VAC 25-580-170, 9 VAC 25-580-310 and 9 VAC 25-580-320.

PART II.

UST Systems: Design, Construction, Installation, and Notification.

9 VAC 25-580-50.	Performance standards for new UST systems.
9 VAC 25-580-60.	Upgrading of existing UST systems.
9 VAC 25-580-70.	Notification requirements.

9 VAC 25-580-50. Performance standards for new UST systems.

Owners and operators must obtain a permit, the required inspections and a Certificate of Use issued in accordance with the provisions of the Virginia Uniform Statewide Building Code. No UST system shall be installed or placed into use without the owner and operator having obtained the required permit, inspections and Certificate of Use from the building official under the provisions of the Virginia Uniform Statewide Building Code (§36-97 et seq. of the Code of Virginia).

In the case of state-owned facilities the Department of General Services shall function as the building official in accordance with §36-98.1 of the Code of Virginia.

In the case of federal facilities the building official must be contacted. Owners and operators must obtain a permit, the required inspections and a Certificate of Use must be issued in accordance with the provisions of the Virginia Uniform Statewide Building Code.

In order to prevent releases due to structural failure, corrosion, or spills and overfills for as long as the UST system is used to store regulated substances, all owners and operators of new UST systems must meet the following requirements.

1. Tanks.

Each tank must be properly designed and constructed, and any portion underground that routinely contains product must be protected from corrosion, in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory as specified below:

a. The tank is constructed of fiberglass-reinforced plastic;

NOTE: The following industry codes may be used to comply with subdivision 1 a of this section: Underwriters Laboratories Standard 1316, "Standard for Glass-Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products"; Underwriters Laboratories of Canada CAN4-S615-M83, "Standard for Reinforced Plastic Underground Tanks for Petroleum Products"; or American Society of Testing and Materials Standard D4021-86, "Standard Specification for Glass-Fiber-Reinforced Polyester Underground Petroleum Storage Tanks."

b. The tank is constructed of steel and cathodically protected in the following manner:

(1) The tank is coated with a suitable dielectric material;

(2) Field-installed cathodic protection systems are designed by a corrosion expert;

(3) Impressed current systems are designed to allow determination of current operating status as required in subdivision 3 of 9 VAC 25-580-90; and

(4) Cathodic protection systems are operated and maintained in accordance with 9 VAC 25-580-90;

NOTE: The following codes and standards may be used to comply with subdivision 1 b of this section:

(a) Steel Tank Institute "Specification for STI-P3 System of External Corrosion Protection of Underground Steel Storage Tanks";

(b) Underwriters Laboratories Standard 1746, "Corrosion Protection Systems for Underground Storage Tanks";

(c) Underwriters Laboratories of Canada CAN4-S603-M85, "Standard for Steel Underground Tanks for Flammable and Combustible Liquids," and CAN4-G03.1-M85, "Standard for Galvanic Corrosion Protection Systems for Underground Tanks for Flammable and Combustible Liquids," and CAN4-S631-M84, "Isolating Bushings for Steel Underground Tanks Protected with Coatings and Galvanic Systems"; or

(d) National Association of Corrosion Engineers Standard RP-02-85, "Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems," and Underwriters Laboratories Standard 58 "Standard for Steel Underground Tanks for Flammable and Combustible Liquids."

c. The tank is constructed of a steel-fiberglass reinforced-plastic composite; or

NOTE: The following industry codes may be used to comply with subdivision 1 c of this section: Underwriters Laboratories Standard 1746, "Corrosion Protection Systems for Underground Storage Tanks," or the Association for Composite Tanks ACT-100, "Specification for the Fabrication of FRP Clad Underground Storage Tanks."

d. The tank construction and corrosion protection are determined by the board to be designed to prevent the release or threatened release of any stored regulated substance in a manner

that is no less protective of human health and the environment than subdivisions 1 a through c of this section.

2. Piping. The piping that routinely contains regulated substances (e.g., fill pipes, product lines) and is in contact with the ground must be properly designed, constructed, and protected from corrosion in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory as specified below:

a. The piping is constructed of fiberglass-reinforced plastic.

NOTE: The following codes and standards may be used to comply with subdivision 2 b of this section:

(1) Underwriters Laboratories Subject 971, "UL Listed Non-Metal Pipe";

(2) Underwriters Laboratories Standard 567, "Pipe Connectors for Flammable and Combustible and LP Gas";

(3) Underwriters Laboratories of Canada Guide ULC-107, "Glass Fiber Reinforced Plastic Pipe and Fittings for Flammable Liquids"; and

(4) Underwriters Laboratories of Canada Standard CAN 4-S633-M81, "Flexible Underground Hose Connectors."

b. The piping is constructed of steel and cathodically protected in the following manner:

(1) The piping is coated with a suitable dielectric material;

(2) Field-installed cathodic protection systems are designed by a corrosion expert;

(3) Impressed current systems are designed to allow determination of current operating status as required in subsection C of 9 VAC 25-580-90; and

(4) Cathodic protection systems are operated and maintained in accordance with 9 VAC 25-580-90; or

NOTE: The following codes and standards may be used to comply with subdivision 2 b of this section:

(a) National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code";

(b) American Petroleum Institute Publication 1615, "Installation of Underground Petroleum Storage Systems";

(c) American Petroleum Institute Publication 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems"; and

(d) National Association of Corrosion Engineers Standard RP-01-69, "Control of External Corrosion on Submerged Metallic Piping Systems."

c. The piping construction and corrosion protection are determined by the board to be designed to prevent the release or threatened release of any stored regulated substance in a manner that is no less protective of human health and the environment than the requirements in subdivisions 2 a through b of this section.

3. Spill and overfill prevention equipment.

a. Except as provided in subdivision 3 b of this section, to prevent spilling and overfilling associated with product transfer to the UST system, owners and operators must use the following spill and overfill prevention equipment:

(1) Spill prevention equipment that will prevent release of product to the environment when the transfer hose is detached from the fill pipe (for example, a spill catchment basin); and

(2) Overfill prevention equipment that will:

(a) Automatically shut off flow into the tank when the tank is no more than 95% full; or

(b) Alert the transfer operator when the tank is no more than 90% full by restricting the flow into the tank or triggering a high-level alarm.

b. Owners and operators are not required to use the spill and overfill prevention equipment specified in subdivision 3 a of this section if:

(1) Alternative equipment is used that is determined by the board to be no less protective of human health and the environment than the equipment specified in subdivision 3 a (1) or (2) of this section; or

(2) The UST system is filled by transfers of no more than 25 gallons at one time.

4. Installation. All tanks and piping must be properly installed in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory in accordance with the manufacturer's instructions.

NOTE: Tank and piping system installation practices and procedures described in the following codes may be used to comply with the requirements of subsection 4 of this section:

a. American Petroleum Institute Publication 1615, "Installation of Underground Petroleum Storage System";

b. Petroleum Equipment Institute Publication RP100, "Recommended Practices for Installation of Underground Liquid Storage Systems"; or

c. American National Standards Institute Standard B31.3, "Petroleum Refinery Piping," and American National Standards Institute Standard B31.4 "Liquid Petroleum Transportation Piping System."

NOTE: These industry codes require that prior to bringing the system into use the following tests be performed: (i) tank tightness test (air); (ii) pipe tightness test (air or hydrostatic); and (iii) precision system test in accordance with NFPA 329 (detection of .05 gal/hr leak rate).

5. Certification of installation. All owners and operators must ensure that one or more of options a through d of the following methods of certification, testing, or inspection is performed, and a Certificate of Use has been issued in accordance with the provisions of the Virginia Uniform Statewide Building Code to demonstrate compliance with subsection 4 of this section. A certification of compliance on the UST Notification form must be submitted to the board in accordance with 9 VAC 25-580-70.

a. The installer has been certified by the tank and piping manufacturers;

b. The installation has been inspected and certified by a registered professional engineer with education and experience in UST system installation;

c. All work listed in the manufacturer's installation checklists has been completed;

d. The owner and operator have complied with another method for ensuring compliance with subsection 4 of this section that is determined by the board to be no less protective of human health and the environment.

F. Release detection. Release detection shall be provided in accordance with Part IV of this chapter.

9 VAC 25-580-60. Upgrading of existing UST systems.

Owners and operators must obtain a permit and the required inspections in accordance with the provisions of the Virginia Uniform Statewide Building Code (§36.97 et seq. of the Code of Virginia).

A permit from the building official must be obtained prior to upgrading any UST system. No upgraded UST system shall be placed into use unless and until the system is inspected in accordance with the provisions of the Virginia Uniform Statewide Building Code (§36.97 et seq. of the Code of Virginia).

In the case of state facilities the Department of General Services shall function as the building official in accordance with §36-98.1 of the Code of Virginia.

In the case of federal facilities the buildingt official must be contacted. Owners and operators must obtain a permit and the required inspections in accordance with the provisions of the Virginia Uniform Statewide Building Code (§36.97 et seq. of the Code of Virginia).

1. Alternatives allowed. Not later than December 22, 1998, all existing UST systems must comply with one of the following requirements:

a. New UST system performance standards under 9 VAC 25-580-50;

b. The upgrading requirements in subsections 2 through 5 of this section; or

c. Closure requirements under Part VII of this chapter, including applicable requirements for corrective action under Part VI.

2. Tank upgrading requirements. Steel tanks must be upgraded to meet one of the following requirements in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory:

a. Interior lining. A tank may be upgraded by internal lining if:

(1) The lining is installed in accordance with the requirements of 9 VAC 25-580-110, and

(2) Within 10 years after lining, and every five years thereafter, the lined tank is internally inspected and found to be structurally sound with the lining still performing in accordance with original design specifications.

b. Cathodic protection. A tank may be upgraded by cathodic protection if the cathodic protection system meets the requirements of 9 VAC 25-580-50 1 b (2), (3), and (4) and the integrity of the tank is ensured using one of the following methods:

(1) The tank is internally inspected and assessed to ensure that the tank is structurally sound and free of corrosion holes prior to installing the cathodic protection system; or

(2) The tank has been installed for less than 10 years and is monitored monthly for releases in accordance with subsections 4 through 8 of 9 VAC 25-580-160; or

(3) The tank has been installed for less than 10 years and is assessed for corrosion holes by conducting two tightness tests that meet the requirements of subsection C of 9 VAC 25-580-160. The first tightness test must be conducted prior to installing the cathodic protection system. The second tightness test must be conducted between three and six months following the first operation of the cathodic protection system; or

(4) The tank is assessed for corrosion holes by a method that is determined by the board to prevent releases in a manner that is no less protective of human health and the environment than subdivisions 2 b (1) through (3) of this section.

c. Internal lining combined with cathodic protection. A tank may be upgraded by both internal lining and cathodic protection if:

(1) The lining is installed in accordance with the requirements of 9 VAC 25-580-110; and

(2) The cathodic protection system meets the requirements of subdivisions 1 b (2), (3), and (4) of 9 VAC 25-580-50.

NOTE: The following codes and standards may be used to comply with this section:

(a) American Petroleum Institute Publication 1631, "Recommended Practice for the Interior Lining of Existing Steel Underground Storage Tanks";

(b) National Leak Prevention Association Standard 631, "Spill Prevention, Minimum 10 Year Life Extension of Existing Steel Underground Tanks by Lining Without the Addition of Cathodic Protection";

(c) National Association of Corrosion Engineers Standard RP-02-85, "Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems"; and

(d) American Petroleum Institute Publication 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems."

3. Piping upgrading requirements. Metal piping that routinely contains regulated substances and is in contact with the ground must be cathodically protected in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory and must meet the requirements of subdivisions 2 b (2), (3) and (4) of 9 VAC 25-580-50.

NOTE: The codes and standards listed in the note following subdivision 2 b of 9 VAC 25-580-50 may be used to comply with this requirement.

4. Spill and overfill prevention equipment. To prevent spilling and overfilling associated with product transfer to the UST system, all existing UST systems must comply with new UST system spill and overfill prevention equipment requirements specified in subsection 3 of 9 VAC 25-580-50.

E. Release detection. Release detection shall be provided in accordance with Part IV of this chapter.

9 VAC 25-580-70. Notification requirements.

A. Any owner who brings an underground storage tank system into use after May 8, 1986, must within 30 days of bringing such tank into use, submit, in the form prescribed in APPENDIX I of this chapter, a notice of existence of such tank system to the board. Any change in ownership, tank status (e.g., temporarily/permanently closed out), tank/piping systems (e.g., upgrades such as addition of corrosion protection, internal lining, release detection), substance stored (e.g., change from petroleum to hazardous substance) requires the UST owner to submit an amended notification form within 30 days after such change/upgrade occurs or is brought into use. Owners may provide notice for several tanks using one notification form, but owners with tanks located at more than one place of operation must file a separate notification form for each separate place of operation.

B. Under Virginia UST notification requirements effective July 1, 1987, owners of property who have actual knowledge of underground storage tanks on such property that were taken out of service before January 1, 1974, yet still in the ground, must notify the board on the notification form.

NOTE: Under the federal UST Notification Program, owners and operators of UST systems that were in the ground on or after May 8, 1986, unless taken out of operation on or before January 1, 1974, were required to notify the board in accordance with the

Hazardous and Solid Waste Amendments of 1984, P.L. 98-616 (42 USC §9603) on a form published by EPA on November 8, 1985, (50 FR 46602) unless notice was given pursuant to §103(c) of CERCLA. Owners and operators who have not complied with the notification requirements may use portions I through VI of the notification form contained in APPENDIX I of this chapter.

C. Notices required to be submitted under subsection A of this section must provide all of the information in Sections I through VI of the prescribed form (APPENDIX I) for each tank for which notice must be given. Notices for tanks installed after December 22, 1988, must also provide all of the information in Section VII of the prescribed form (APPENDIX I) for each tank for which notice must be given.

D. All owners and operators of new UST systems must certify in the notification form compliance with the following requirements:

1. Installation of tanks and piping under subsection 5 of 9 VAC 25-580-50;

2. Cathodic protection of steel tanks and piping under subsections 1 and 2 of 9 VAC 25-580-50;

3. Financial responsibility under financial responsibility regulations promulgated by the board.

4. Release detection under 9 VAC 25-580-140 and 9 VAC 25-580-150.

E. All owners and operators of new UST systems must ensure that the installer certifies in the notification form that the methods used to install the tanks and piping comply with the requirements in subsection 4 of 9 VAC 25-580-50.

F. Beginning October 24, 1988, any person who sells a tank intended to be used as an underground storage tank must notify the purchaser of such tank of the owner's notification obligations under subsection A of this section. The statement provided in APPENDIX II of this chapter may be used to comply with this requirement.

PART III.

General Operating Requirements.

9 VAC 25-580-80.	Spill and overfill control.
9 VAC 25-580-90.	Operation and maintenance of corrosion protection.
9 VAC 25-580-100.	Compatibility.
9 VAC 25-580-110.	Repairs allowed.
9 VAC 25-580-120.	Reporting and recordkeeping.

9 VAC 25-580-80. Spill and overfill control.

A. Owners and operators must ensure that releases due to spilling or overfilling do not occur. The owner and operator must ensure that the volume available in the tank is greater than the volume of product to be transferred to the tank before the transfer is made and that the transfer operation is monitored constantly to prevent overfilling and spilling.

NOTE: The transfer procedures described in National Fire Protection Association Publication 385 may be used to comply with subsection A of this section. Further guidance on spill and overfill prevention appears in American Petroleum Institute Publication 1621, "Recommended Practice for Bulk Liquid Stock Control at Retail Outlets," and National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code."

B. The owner and operator must report, investigate, and clean up any spills and overfills in accordance with 9 VAC 25-580-220.

9 VAC 25-580-90. Operation and maintenance of corrosion protection.

All owners and operators of steel UST systems with corrosion protection must comply with the following requirements to ensure that releases due to corrosion are prevented for as long as the UST system is used to store regulated substances:

1. All corrosion protection systems must be operated and maintained to continuously provide corrosion protection to the metal components of that portion of the tank and piping that routinely contain regulated substances and are in contact with the ground.

2. All UST systems equipped with cathodic protection systems must be inspected for proper operation by a qualified cathodic protection tester in accordance with the following requirements:

a. Frequency. All cathodic protection systems must be tested within six months of installation and at least every three years after that; and

b. Inspection criteria. The criteria that are used to determine that cathodic protection is adequate as required by this section must be in accordance with a code of practice developed by a nationally recognized association.

NOTE: National Association of Corrosion Engineers Standard RP-02-85, "Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems," may be used to comply with subdivision 2 b of this section.

3. UST systems with impressed current cathodic protection systems must also be inspected every 60 days to ensure the equipment is running properly. These systems only provide the necessary corrosion protection when in continuous operation. Such equipment shall be installed so that it cannot be inadvertently shut off; and

4. For UST systems using cathodic protection, records of the operation of the cathodic protection must be maintained (in accordance with 9 VAC 25-580-120) to demonstrate compliance with the performance standards in this section. These records must provide the following:

a. The results of the last three inspections required in subdivision 3 of this section; and

b. The results of testing from the last two inspections required in subdivision 2 of this section.

9 VAC 25-580-100. Compatibility.

Owners and operators must use a UST system made of or lined with materials that are compatible with the substance stored in the UST system.

NOTE: Owners and operators storing alcohol blends may use the following codes to comply with the requirements of this section:

1. American Petroleum Institute Publication 1626, "Storing and Handling Ethanol and Gasoline-Ethanol Blends at Distribution Terminals and Service Stations"; and

2. American Petroleum Institute Publication 1627, "Storage and Handling of Gasoline-Methanol/Cosolvent Blends at Distribution Terminals and Service Stations."

9 VAC 25-580-110. Repairs allowed.

Owners and operators must obtain a permit and the required inspections in accordance with the provisions of the Virginia Uniform Statewide Building Code (§36-97 et seq. of the Code of Virginia).

A permit from the building official must be obtained prior to repairing any UST system. No repaired UST system shall be placed into use unless and until the system is inspected in accordance with the provisions of the Virginia Uniform Statewide Building Code (§36-97 et seq. of the Code of Virginia).

In the case of state facilities the Department of General Services shall function as the building official in accordance with §36-98.1 of the Code of Virginia.

In the case of federal facilities the building official must be contacted. Owners and operators must obtain a permit and the required inspections in accordance with the provisions of the Virginia Uniform Statewide Building Code (§36-97 et seq. of the Code of Virginia)..

Owners and operators of UST systems must ensure that repairs will prevent releases due to structural failure or corrosion as long as the UST system is used to store regulated substances. The repairs must meet the following requirements:

1. Repairs to UST systems must be properly conducted in accordance with a code of practice developed by a nationally recognized association or an independent testing laboratory.

NOTE: The following codes and standards may be used to comply with subdivision 1 of this section: National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code"; American Petroleum Institute Publication 2200, "Repairing Crude Oil, Liquefied Petroleum Gas, and Product Pipelines"; American Petroleum Institute Publication 1631, "Recommended Practice for the Interior Lining of Existing Steel Underground Storage Tanks"; and National Leak Prevention Association Standard 631, "Spill Prevention, Minimum 10 Year Life Extension of Existing Steel Underground Tanks by Lining Without the Addition of Cathodic Protection."

2. Repairs to fiberglass-reinforced plastic tanks may be made by the manufacturer's authorized representatives or in accordance with a code of practice developed by a nationally recognized association or an independent testing laboratory.

3. Metal pipe sections and fittings that have released product as a result of corrosion or other damage must be replaced. Fiberglass pipes and fittings may be repaired in accordance with the manufacturer's specifications.

4. Repaired tanks and piping must be tightness tested in accordance with subsection 3 of 9 VAC 25-580-160 and subdivision 2 of 9 VAC 25-580-170 within 30 days following the date of the completion of the repair except as provided in subdivisions 4 a through c of this section:

a. The repaired tank is internally inspected in accordance with a code of practice developed by a nationally recognized association or an independent testing laboratory;

b. The repaired portion of the UST system is monitored monthly for releases in accordance with a method specified in subsections 4 through 8 of 9 VAC 25-580-160; or

c. Another test method is used that is determined by the board to be no less protective of human health and the environment than those listed above.

5. Within six months following the repair of any cathodically protected UST system, the cathodic protection system must be tested in accordance with subsections 2 and 3 of 9 VAC 25-580-90 to ensure that it is operating properly.

6. UST system owners and operators must maintain records of each repair for the remaining operating life of the UST system that demonstrate compliance with the requirements of this section.

9 VAC 25-580-120. Reporting and recordkeeping.

Owners and operators of UST systems must cooperate fully with inspections, monitoring and testing conducted by the board, as well as requests for document submission, testing, and monitoring by the owner or operator pursuant to §9005 of Subtitle I of the Resource Conservation and Recovery Act, as amended.

1. Reporting. Owners and operators must submit the following information to the board:

a. Notification for all UST systems (9 VAC 25-580-70), which includes certification of installation for new UST systems (9 VAC 25-580-50 5),

b. Reports of all releases including suspected releases (9 VAC 25-580-190), spills and overfills (9 VAC 25-580-220), and confirmed releases (9 VAC 25-580-240);

c. Corrective actions planned or taken including initial abatement measures (9 VAC 25-580-250), site characterization (9 VAC 25-580-260), free product removal (9 VAC 25-580-270), and corrective action plan (9 VAC 25-580-280); and

d. An amended notification form must be submitted within 30 days after permanent closure or change-in-service (9 VAC 25-580-320).

2. Recordkeeping. Owners and operators must maintain the following information:

a. Documentation of operation of corrosion protection equipment (9 VAC 25-580-90);

b. Documentation of UST system repairs (9 VAC 25-580-110);

c. Recent compliance with release detection requirements (9 VAC 25-580-180); and

d. Results of the site investigation conducted at permanent closure (9 VAC 25-580-350).

3. Availability and maintenance of records. Owners and operators must keep the records required either:

a. At the UST site and immediately available for inspection by the board; or

b. At a readily available alternative site and be provided for inspection to the board upon request.

In the case of permanent closure records required under 9 VAC 25-580-350, owners and operators are also provided with the additional alternative of mailing closure records to the board if they cannot be kept at the site or an alternative site as indicated above.

PART IV.

Release Detection.

9 VAC 25-580-130. General requirements for all petroleum and hazardous substance UST systems.

A. Owners and operators of new and existing UST systems must provide a method, or combination of methods, of release detection that:

1. Can detect a release from any portion of the tank and the connected underground piping that routinely contains product;

2. Is installed, calibrated, operated, and maintained in accordance with the manufacturer's instructions, including routine maintenance and service checks for operability or running condition; and

3. Meets the performance requirements in 9 VAC 25-580-160 or

9 VAC 25-580-170, with any performance claims and their manner of determination described in writing by the equipment manufacturer or installer. In addition, methods used after December 22, 1990, except for methods permanently installed prior to that date, must be capable of detecting the leak rate or quantity specified for that method in subsections 2, 3 and 4 of 9 VAC 25-580-160 or subdivisions 1 and 2 of 9 VAC 25-580-170 with a probability of detection of 0.95 and a probability of false alarm of 0.05.

B. When a release detection method operated in accordance with the performance standards in 9 VAC 25-580-160 or 9 VAC 25-580-170 indicates a release may have occurred, owners and operators must notify the board in accordance with Part V of this chapter.

C. Owners and operators of all UST systems must comply with the release detection requirements of this part by December 22 of the year listed in the following table:

SCHEDULE FOR PHASE-IN OF RELEASE DETECTION

Year system was installed	Year when release detection is required (by December 22 of the year indicated)				
	1989	1990	1991	1992	1993
Before 1965 or date unknown	RD*	P			
1965-1969		P/RD			
1970-1974		P	RD		
1975-1979		P		RD	
1980-1988		P			RD

New tanks (after December 22, 1988) immediately upon installation.

P = Must begin release detection for all pressurized piping in accordance with subdivision 2 a of 9 VAC 25-580-140.

RD = Must begin release detection for tanks and suction piping in accordance with subsection 1 and subdivision 2 b of 9 VAC 25-580-140, and 9 VAC 25-580-150.

* = Heating oil tanks greater than 5,000 gallons capacity installed before 1965 or date unknown are allowed until December 22, 1990, to comply with this requirement.

D. Any existing UST system that cannot apply a method of release detection that complies with the requirements of this part must complete the closure procedures in Part VII by the date on which release detection is required for that UST system under subsection C of this section.

9 VAC 25-580-140. Requirements for petroleum UST systems.

Owners and operators of petroleum UST systems must provide release detection for tanks and piping as follows:

1. Tanks. Tanks must be monitored at least every 30 days for releases using one of the methods listed in subsections 4 through 8 of 9 VAC 25-580-160 except that:

a. UST systems that meet the performance standards in subsections 1 through 5 of 9 VAC 25-580-50 or subsections 1 through 4 of 9 VAC 25-580-60 may use both monthly inventory control requirements in subsection 1 or 2 of 9 VAC 25-580-160, and tank tightness testing (conducted in accordance with subsection 3 of 9 VAC 25-580-160 at least every five years until December 22, 1998, or until 10 years after the tank is installed or upgraded under subsection 2 of 9 VAC 25-580-60, whichever is later;

b. UST systems that do not meet the performance standards in 9 VAC 25-580-50 or 9 VAC 25-580-60 may use monthly inventory controls (conducted in accordance with subsection 1 or 2 of 9 VAC 25- 580-160) and annual tank tightness testing (conducted in accordance with subsection 3 of 9 VAC 25-580-160) until December 22, 1998, when the tank must be upgraded under 9 VAC 25-580-60 or permanently closed under 9 VAC 25-580-320; and

c. Tanks with capacity of 550 gallons or less may use weekly tank gauging (conducted in accordance with subsection 2 of 9 VAC 25-580-160).

2. Piping. Underground piping that routinely contains regulated substances must be monitored for releases in a manner that meets one of the following requirements:

a. Pressurized piping. Underground piping that conveys regulated substances under pressure must:

(1) Be equipped with an automatic line leak detector conducted in accordance with subdivision 1 of 9 VAC 25-580-170; and

(2) Have an annual line tightness test conducted in accordance with subdivision 2 of 9 VAC 25-580-170 or have monthly monitoring conducted in accordance with subdivision 3 of 9 VAC 25-580-170.

b. Suction piping. Underground piping that conveys regulated substances under suction must either have a line tightness test conducted at least every three years and in accordance with subdivision 2 of 9 VAC 25-580-170, or use a monthly monitoring method conducted in accordance with subdivision 3 of 9 VAC 25-580-170. No release detection is required for suction piping that is designed and constructed to meet the following standards:

(1) The below-grade piping operates at less than atmospheric pressure;

(2) The below-grade piping is sloped so that the contents of the pipe will drain back into the storage tank if the suction is released;

(3) Only one check valve is included in each suction line;

(4) The check valve is located directly below and as close as practical to the suction pump; and

(5) A method is provided that allows compliance with subdivisions 2 b (2) through (4) of this section to be readily determined.

9 VAC 25-580-150. Requirements for hazardous substance UST systems.

Owners and operators of hazardous substance UST systems must provide release detection that meets the following requirements:

1. Release detection at existing UST systems must meet the requirements for petroleum UST systems in 9 VAC 25-580-140. By December 22, 1998, all existing hazardous substance UST systems must meet the release detection requirements for new systems in subdivision 2 of this section.

2. Release detection at new hazardous substance UST systems must meet the following requirements:

a. Secondary containment systems must be designed, constructed and installed to:

(1) Contain regulated substances released from the tank system until they are detected and removed;

(2) Prevent the release of regulated substances to the environment at any time during the operational life of the UST system; and

(3) Be checked for evidence of a release at least every 30 days.

NOTE: The provisions of 40 CFR 265.193, Containment and Detection of Releases, may be used to comply with these requirements.

b. Double-walled tanks must be designed, constructed, and installed to:

(1) Contain a release from any portion of the inner tank within the outer wall; and

(2) Detect the failure of the inner wall.

c. External liners (including vaults) must be designed, constructed, and installed to:

(1) Contain 100% of the capacity of the largest tank within its boundary;

(2) Prevent the interference of precipitation or ground-water intrusion with the ability to contain or detect a release of regulated substances; and

(3) Surround the tank completely (i.e., it is capable of preventing lateral as well as vertical migration of regulated substances).

d. Underground piping must be equipped with secondary containment that satisfies the requirements of subdivision 2 a of this section (e.g., trench liners, jacketing of double-walled pipe). In addition, underground piping that conveys regulated under pressure must be equipped with an automatic line leak detector in accordance with subdivision 1 of 9 VAC 25-580-170.

e. Other methods of release detection may be used if owners and operators:

(1) Demonstrate to the board that an alternate method can detect a release of the stored substance as effectively as any of the methods allowed in subsections 2 through 8 of 9 VAC 25-580-160 can detect a release of petroleum;

(2) Provide information to the board on effective corrective action technologies, health risks, and chemical and physical properties of the stored substance, and the characteristics of the UST site; and

(3) Obtain approval from the board to use the alternate release detection method before the installation and operation of the new UST system.

9 VAC 25-580-160. Methods of release detection for tanks.

Owners and operators must obtain a permit and the required inspections in accordance with 9 VAC 25-580-50 or 9 VAC 25-580-60 for the methods of release detection contained in subsections 4 through 8 of 9 VAC 25-580-160.

Each method of release detection for tanks used to meet the requirements of 9 VAC 25-580-140 must be conducted in accordance with the following and be designed to detect releases at the earliest possible time for the specific method chosen:

1. Inventory control. Product inventory control (or another test of equivalent performance) must be conducted monthly to detect a release of at least 1.0% of flow-through plus 130 gallons on a monthly basis in the following manner:

a. Inventory volume measurements for regulated substance inputs, withdrawals, and the amount still remaining in the tank are recorded each operating day;

b. The equipment used is capable of measuring the level of product over the full range of the tank's height to the nearest one-eighth of an inch;

c. The regulated substance inputs are reconciled with delivery receipts by measurement of the tank inventory volume before and after delivery;

d. Deliveries are made through a drop tube that extends to within one foot of the tank bottom;

e. Product dispensing is metered and recorded according to regulations of the Bureau of Weights and Measures of the Virginia Department of Agriculture and Consumer Services for meter calibration within their jurisdiction; for all other product dispensing meter calibration, an accuracy of six cubic inches for every five gallons of product withdrawn is required; and

f. The measurement of any water level in the bottom of the tank is made to the nearest one-eighth of an inch at least once a month.

NOTE: Practices described in the American Petroleum Institute Publication 1621, "Recommended Practice for Bulk Liquid Stock Control at Retail Outlets," may be used, where applicable, as guidance in meeting the requirements of this subsection.

2. Manual tank gauging. Manual tank gauging must meet the following requirements:

a. Tank liquid level measurements are taken at the beginning and ending of a period of at least 36 hours during which no liquid is added to or removed from the tank;

b. Level measurements are based on an average of two consecutive stick readings at both the beginning and ending of the period;

c. The equipment used is capable of measuring the level of product over the full range of the tank's height to the nearest 1/8 of an inch;

d. A leak is suspected and subject to the requirements of Part V if the variation between beginning and ending measurements exceeds the weekly or monthly standards in the following table:

Nominal tank capacity	Weekly standard (one test)	Monthly standard (average of four tests)
550 gallons or less	10 gallons	5 gallons
551-1,000 gallons	13 gallons	7 gallons
1,001-2,000 gallons	26 gallons	13 gallons

e. Only tanks of 550 gallons or less nominal capacity may use this as the sole method of release detection. Tanks of 551 to 2,000 gallons may use the method in place of manual inventory control in subsection 1 of 9 VAC 25-580-160. Tanks of greater than 2,000 gallons nominal capacity may not use this method to meet the requirements of this part.

3. Tank tightness testing. Tank tightness testing (or another test of equivalent performance) must be capable of detecting a 0.1 gallon per hour leak rate from any portion of the tank that routinely contains product while accounting for the effects of thermal expansion or contraction of the product, vapor pockets, tank deformation, evaporation or condensation, and the location of the water table.

4. Automatic tank gauging. Equipment for automatic tank gauging that tests for the loss of product and conducts inventory control must meet the following requirements:

a. The automatic product level monitor test can detect a 0.2 gallon per hour leak rate from any portion of the tank that routinely contains product; and

b. Inventory control (or another test of equivalent performance) is conducted in accordance with the requirements of subsection 1 of 9 VAC 25-580-160.

5. Vapor monitoring. Testing or monitoring for vapors within the soil gas of the excavation zone must meet the following requirements:

a. The materials used as backfill are sufficiently porous (e.g., gravel, sand, crushed rock) to readily allow diffusion of vapors from releases into the excavation area;

b. The stored regulated substance, or a tracer compound placed in the tank system, is sufficiently volatile (e.g., gasoline) to result in a vapor level that is detectable by the monitoring devices located in the excavation zone in the event of a release from the tank;

c. The measurement of vapors by the monitoring device is not rendered inoperative by the groundwater, rainfall, or soil moisture or other known interferences so that a release could go undetected for more than 30 days;

d. The level of background contamination in the excavation zone will not interfere with the method used to detect releases from the tank;

e. The vapor monitors are designed and operated to detect any significant increase in concentration above background of the regulated substance stored in the tank system, a component or components of that substance, or a tracer compound placed in the tank system;

f. In the UST excavation zone, the site is assessed to ensure compliance with the requirements in subdivisions 5 a through d of this section and to establish the number and positioning of monitoring wells that will detect releases within the excavation zone from any portion of the tank that routinely contains product; and

g. Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering.

6. Groundwater monitoring. Testing or monitoring for liquids on the groundwater must meet the following requirements:

a. The regulated substance stored is not readily miscible in water and has a specific gravity of less than one;

b. Groundwater is never more than 20 feet from the ground surface and the hydraulic conductivity of the soils between the UST system and the monitoring wells or devices is not less than 0.01 cm/sec (e.g., the soil should consist of gravels, coarse to medium sands, coarse silts or other permeable materials);

c. The slotted portion of the monitoring well casing must be designed to prevent migration of natural soils or filter pack into the well and to allow entry of regulated substance on the water table into the well under both high and low groundwater conditions;

d. Monitoring wells shall be sealed from the ground surface to the top of the filter pack;

e. Monitoring wells or devices intercept the excavation zone or are as close to it as is technically feasible;

f. The continuous monitoring devices or manual methods used can detect the presence of at least 1/8 of an inch of free product on top of the ground water in the monitoring wells;

g. Within and immediately below the UST system excavation zone, the site is assessed to ensure compliance with the requirements in subdivisions 6 a through e of this section and to establish the number and positioning of monitoring wells or devices

that will detect releases from any portion of the tank that routinely contains product; and

h. Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering.

7. Interstitial monitoring. Interstitial monitoring between the UST system and a secondary barrier immediately around or beneath it may be used, but only if the system is designed, constructed and installed to detect a leak from any portion of the tank that routinely contains product and also meets one of the following requirements:

a. For double-walled UST systems, the sampling or testing method can detect a release through the inner wall in any portion of the tank that routinely contains product;

NOTE: The provisions outlined in the Steel Tank Institute's "Standard for Dual Wall Underground Storage Tanks" may be used as guidance for aspects of the design and construction of underground steel double-walled tanks.

b. For UST systems with a secondary barrier within the excavation zone, the sampling or testing method used can detect a release between the UST system and the secondary barrier;

(1) The secondary barrier around or beneath the UST system consists of artificially constructed material that is sufficiently thick and impermeable (at least 10&suprfdsh;6 cm/sec for the regulated substance stored) to direct a release to the monitoring point and permit its detection;

(2) The barrier is compatible with the regulated substance stored so that a release from the UST system will not cause a deterioration of the barrier allowing a release to pass through undetected;

(3) For cathodically protected tanks, the secondary barrier must be installed so that it does not interfere with the proper operation of the cathodic protection system;

(4) The groundwater, soil moisture, or rainfall will not render the testing or sampling method used inoperative so that a release could go undetected for more than 30 days;

(5) The site is assessed to ensure that the secondary barrier is always above the groundwater and not in a 25-year flood plain, unless the barrier and monitoring designs are for use under such conditions; and,

(6) Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering.

c. For tanks with an internally fitted liner, an automated device can detect a release between the inner wall of the tank and the liner, and the liner is compatible with the substance stored.

8. Other methods. Any other type of release detection method, or combination of methods, can be used if:

a. It can detect a 0.2 gallon per hour leak rate or a release of 150 gallons within a month with a probability of detection of 0.95 and a probability of false alarm of 0.05; or

b. The board may approve another method if the owner and operator can demonstrate that the method can detect a release as effectively as any of the methods allowed in subsections 3 through 8 of this section. In comparing methods, the board shall consider the size of release that the method can detect and the frequency and reliability with which it can be detected. If the method is approved, the owner and operator must comply with any conditions imposed by the board on its use to ensure the protection of human health and the environment.

9 VAC 25-580-170. Methods of release detection for piping.

Owners and operators must obtain a permit and the required inspections in accordance with 9 VAC 25-580-50 or 9 VAC 25-580-60 for the methods of release detection contained in subdivisions 1 through 3 of 9 VAC 25-580-170.

Each method of release detection for piping used to meet the requirements of 9 VAC 25-580-140 must be conducted in accordance with the following:

1. Automatic line leak detectors. Methods which alert the operator to the presence of a leak by restricting or shutting off the flow of regulated substances through piping or triggering an audible or visual alarm may be used only if they detect leaks of three gallons per hour at 10 pounds per square inch line pressure within one hour. An annual test of the operation of the leak detector must be conducted in accordance with the manufacturer's requirements;

2. Line tightness testing. A periodic test of piping may be conducted only if it can detect a 0.1 gallon per hour leak rate at one and one-half times the operating pressure; and

3. Applicable tank methods. Any of the methods in subsections 5 through 8 of 9 VAC 25-580-160 may be used if they are designed to detect a release from any portion of the underground piping that routinely contains regulated substances.

9 VAC 25-580-180. Release detection record keeping.

All UST system owners and operators must maintain records in accordance with 9 VAC 25-580-120 demonstrating compliance with all applicable requirements of this part. These records must include the following:

1. All written performance claims pertaining to any release detection system used, and the manner in which these claims have been justified or tested by the equipment manufacturer or installer, must be maintained for five years from the date of installation or as long as the method of release detection is used, whichever is greater;

2. The results of any sampling, testing, or monitoring must be maintained for at least one year, or for another reasonable period of time determined by the board, except that the results of tank tightness testing conducted in accordance with subsection 3 of 9 VAC 25-580-160 must be retained until the next test is conducted; and

3. Written documentation of all calibration, maintenance, and repair of release detection equipment permanently located on-site must be maintained for at least one year after the servicing work is completed or for such longer period as may be required by the board. Any schedules of required calibration and maintenance provided by the release detection equipment manufacturer must be retained for five years from the date of installation.

PART V.

Release Reporting, Investigation, and Confirmation.

9 VAC 25-580-190. Reporting of suspected releases.

Owners and operators of UST systems must report to the board within 24 hours and follow the procedures in 9 VAC 25-580-210 for any of the following conditions:

1. The discovery by owners and operators or others of released regulated substances at the UST site or in the surrounding area (such as the presence of free product or vapors in soils, basements, sewer and utility lines, and nearby surface water);

2. Unusual operating conditions observed by owners and operators (such as the erratic behavior of product dispensing equipment, the sudden loss of product from the UST system, or an unexplained presence of water in the tank), unless system equipment is found to be defective but not leaking, and is immediately repaired or replaced;

3. Monitoring results from a release detection method required under 9 VAC 25-580-140 and 9 VAC 25-580-150 that indicate a release may have occurred unless:

a. The monitoring device is found to be defective, and is immediately repaired, recalibrated or replaced, and additional monitoring does not confirm the initial result; or

b. In the case of inventory control, a second month of data or in the case of manual tank gauging, a second week or month as prescribed in the chart under subdivision 2 d of 9 VAC 25-580-160 does not confirm the initial result.

9 VAC 25-580-200. Investigation due to off-site impacts.

When required by the board, owners and operators of UST systems must follow the procedures in 9 VAC 25-580-210 to determine if the UST system is the source of off-site impacts. These impacts include the discovery of regulated substances (such as the presence of free product or vapors in soils, basements, sewer and utility lines, and state waters) that has been observed by the board or brought to its attention by another party.

9 VAC 25-580-210. Release investigation and confirmation steps.

Unless corrective action is initiated in accordance with Part VI, owners and operators must immediately investigate and confirm all suspected releases of regulated substances requiring reporting under 9 VAC 25-580-190 within seven days, or another reasonable time period specified by the board upon written request made and approved within seven days after reporting of the suspected release.

The following steps are required for release investigation and confirmation:

1. System test. Owners and operators must conduct tests (according to the requirements for tightness testing in subsection 3 of 9 VAC 25-580-160 and subdivision 2 of 9 VAC 25-580-170) that determine whether a leak exists in that portion of the tank that routinely contains product, or the attached delivery piping, or both.

a. Owners and operators must repair, replace or upgrade the UST system, and begin corrective action in accordance with Part VI if the test results for the system, tank, or delivery piping indicate that a leak exists.

b. Further investigation is not required if the test results for the system, tank, and delivery piping do not indicate that a leak exists and if environmental contamination is not the basis for suspecting a release.

c. Owners and operators must conduct a site check as described in subdivision 2 of this section if the test results for the system, tank, and delivery piping do not indicate that a leak exists but environmental contamination is the basis for suspecting a release.

2. Site check. Owners and operators must measure for the presence of a release where contamination is most likely to be present at the UST site. In selecting sample types, sample locations, and measurement methods, owners and operators must consider the nature of the stored substance, the type of initial alarm or cause for suspicion, the type of backfill, the depth of groundwater, and other factors appropriate for identifying the presence and source of the release. Samples shall be tested according to established EPA analytical methods or methods approved by the board.

a. If the test results for the excavation zone or the UST site indicate that a release has occurred, owners and operators must begin corrective action in accordance with Part VI of this chapter

b. If the test results for the excavation zone or the UST site do not indicate that a release has occurred, further investigation is not required.

9 VAC 25-580-220. Reporting and cleanup of spills and overfills.

A. Owners and operators of UST systems must contain and immediately clean up a spill or overfill and report to the board within 24 hours and begin corrective action in accordance with Part VI of this chapter in the following cases:

1. Spill or overfill of petroleum that results in a release to the environment that exceeds 25 gallons or that causes a sheen on nearby surface water; and

2. Spill or overfill of a hazardous substance that results in a release to the environment that equals or exceeds its reportable quantity under CERCLA (40 CFR 302).

B. Owners and operators of UST systems must contain and immediately clean up a spill or overfill of petroleum that is less than 25 gallons and a spill or overfill of a hazardous substance that is less than the reportable quantity. If cleanup cannot be accomplished within 24 hours owners and operators must immediately notify the board.

NOTE: Pursuant to 40 CFR §302.6 and 355.40, a release of a hazardous substance equal to or in excess of its reportable quantity must also be reported immediately (rather than within 24 hours) to the National Response Center under §102 and 103 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980 (42 USC §9602 and 9603) and to appropriate state and local authorities under Title III of the Superfund Amendments and Reauthorization Act (SARA) of 1986.

PART VI.

Release Response and Corrective Action for Ust Systems Containing Petroleum or Hazardous Substances.

9 VAC 25-580-230. General.

Owners and operators of petroleum or hazardous substance UST systems must, in response to a confirmed release from the UST system, comply with the requirements of this part except for USTs excluded under subsection B of 9 VAC 25-580-20 and UST systems subject to RCRA Subtitle C corrective action requirements under §3004(u) of the Resource Conservation and Recovery Act, as amended.

9 VAC 25-580-240. Initial response.

Upon confirmation of a release in accordance with 9 VAC 25-580-210 or after a release from the UST system is identified in any other manner, owners and operators must perform the following initial response actions within 24 hours of a release:

1. Report the release to the board (e.g., by telephone or electronic mail);

2. Take immediate action to prevent any further release of the regulated substance into the environment; and

3. Identify and mitigate fire, explosion, and vapor hazards.

9 VAC 25-580-250. Initial abatement measures and site check.

A. Unless directed to do otherwise by the board, owners and operators must perform the following abatement measures:

1. Remove as much of the regulated substance from the UST system as is necessary to prevent further release to the environment;

2. Visually inspect any aboveground releases or exposed below ground releases and prevent further migration of the released substance into surrounding soils and groundwater;

3. Continue to monitor and mitigate any additional fire and safety hazards posed by vapors or free product that have migrated from the UST excavation zone and entered into subsurface structures (such as sewers or basements);

4. Remedy hazards posed by contaminated soils that are excavated or exposed as a result of release confirmation, site investigation, abatement, or corrective action activities. If these remedies include treatment or disposal of soils, the owner and operator must comply with applicable state and local requirements;

5. Measure for the presence of a release where contamination is most likely to be present at the UST site, unless the presence and source of the release have been confirmed in accordance with the site check required by subdivision 2 of 9 VAC 25-580-210 or the closure site assessment of subsection A of 9 VAC 25-580-330. In selecting sample types, sample locations, and measurement methods, the owner and operator must consider the nature of the stored substance, the type of backfill, depth to groundwater and other factors as appropriate for identifying the presence and source source of the release. Samples shall be tested according to established EPA analytical methods or methods approved the board; and

6. Investigate to determine the possible presence of free product, and begin free product removal as soon as practicable and in accordance with 9 VAC 25-580-270.

B. Within 20 days after release confirmation, or within another reasonable period of time determined by the board upon written request made and approved within 20 days after release confirmation, owners and operators must submit a report to the board summarizing the initial abatement steps taken under subsection A of this section and any resulting information or data.

9 VAC 25-580-260. Site characterization.

A. Owners and operators must assemble information about the site and the nature of the release, including information gained while confirming the release or completing the initial abatement measures in 9 VAC 25-580-230 and 9 VAC 25-580-240. This information must include, but is not necessarily limited to, the following:

1. Data on the material released and the estimated quantity of release;

2. Data from available sources or site investigations concerning the following:

a. Site assessment to include: data on the physical/chemical properties of the contaminant; nature and quantity and extent of the release; evidence that free product is found to need recovery; geologic/hydrologic site charcterization; current and projected land/water uses; water quality; subsurface soil conditions; evidence that contaminated soils are in contact with the groundwater; locations of subsurface conduits (e.g., sewers, utility lines, etc.); and climatological conditions. Samples collected for this site characterization shall be tested according to established EPA analytical methods or methods approved by the board;

b. Risk (exposure) assessment to include: evidence that wells of the area have been affected; use and approximate locations of wells potentially affected by the release; identification of potential and impacted receptors; migration routes; surrounding populations; potential for additional environmental damage;

c. Remediation assessment to include: potential for remediation and applicability of different remediation technologies to the site.

3. Results of the site check required under subdivision A 5 of 9 VAC 25-580-250; and

4. Results of the free product investigations required under subdivision A 6 of 9 VAC 25-580-250, to be used by owners and operators to determine whether free product must be recovered under 9 VAC 25-580-270.

B. Within 45 days of release confirmation or another reasonable period of time determined by the board upon written request made and approved within 45 days after release confirmation, owners and operators must submit the information collected in compliance with subsection A of this section to the board in a manner that demonstrates its applicability and technical adequacy, or in a format and according to the schedule required by the board.

9 VAC 25-580-270. Free product removal.

At sites where investigations under subdivision A 6 of 9 VAC 25-580-250 indicate the presence of free product, owners and operators must remove free product to the maximum extent practicable as determined by the board while continuing, as necessary, any actions initiated under 9 VAC 25-580-240 through 9 VAC 25-580-260, or preparing for actions required under 9 VAC 25-580-280 through 9 VAC 25-580-290. In meeting the requirements of this section, owners and operators must:

1. Conduct free product removal in a manner that minimizes the spread of contamination into previously uncontaminated zones by using recovery and disposal techniques appropriate to the hydrogeologic conditions at the site, and that properly treats, discharges or disposes of recovery by-products in compliance with applicable local, state and federal regulations;

2. Use abatement of free product migration as a minimum objective for the design of the free product removal system;

3. Handle any flammable products in a safe and competent manner to prevent fires or explosions; and

4. Unless directed to do otherwise by the board, prepare and submit to the board, within 45 days after confirming a release, a free product removal report that provides at least the following information:

a. The name of the persons responsible for implementing the free product removal measures;

b. The estimated quantity, type, and thickness of free product observed or measured in wells, bore holes, and excavations;

c. The type of free product recovery system used;

d. Whether any discharge will take place on-site or off-site during the recovery operation and where this discharge will be located;

e. The type of treatment applied to, and the effluent quality expected from, any discharge;

f. The steps that have been or are being taken to obtain necessary permits for any discharge; and

g. The disposition of the recovered free product.

9 VAC 25-580-280. Corrective action plan.

A. At any point after reviewing the information submitted in compliance with 9 VAC 25-580-240 through 9 VAC 25-580-260, the board may require owners and operators to submit additional information or to develop and submit a corrective action plan for responding to contaminated soils and groundwater. If a plan is required, owners and operators must submit the plan according to a schedule and format established by the board. Alternatively, owners and operators may, after fulfilling the requirements of 9 VAC 25-580-240 through 9 VAC 25-580-260, choose to submit a corrective action plan for responding to contaminated soil and ground water. In either case, owners and operators are responsible for submitting a plan that provides for adequate protection of human health and the environment as determined by the board, and must modify their plan as necessary to meet this standard.

B. In conjunction with the information provided under subdivision A 2 of 9 VAC 25-580-260 (site assessment, risk (exposure) assessment, and remediation assessment), the corrective action plan must include the following information:

1. Detailed conceptual design including narrative description of technologies and how they will be applied at the site;

2. Projected remediation end points/degree of remediation;

3. Schedule of project implementation;

4. Schedule to achieve projected end points;

5. Operational and post-operational monitoring schedules (to include data submittals);

6. Proposed disposition of any wastes and discharges (if applicable);

7. Actions taken to obtain any necessary federal, state and local permits to implement the plan; and

8. Proposed actions to notify persons directly affected by the release or the planned corrective action.

C. The board will approve the corrective action plan only after ensuring that implementation of the plan will adequately protect human health, safety, and the environment. In making this determination, the board will consider the following factors as appropriate:

1. The physical and chemical characteristics of the regulated substance, including its toxicity, persistence, and potential for migration;

2. The hydrogeologic characteristics of the facility and the surrounding area;

3. The proximity, quality, and current and future uses of nearby surface water and groundwater;

4. The potential effects of residual contamination on nearby surface water and groundwater;

5. The site, risk (exposure), and remediation assessments as required by subdivision A 2 of 9 VAC 25-580-260; and

6. Any information assembled in compliance with this part.

D. Upon approval of the corrective action plan or as directed by the board, owners and operators must implement the plan, including modifications to the plan made by the board. They must monitor, evaluate, and report the results of implementing the plan in accordance with a schedule and in a format established by the board.

E. Owners and operators may, in the interest of minimizing environmental contamination and promoting more effective cleanup, begin cleanup of soil and ground water before the corrective action plan is approved provided that they:

1. Notify the board of their intention to begin cleanup and obtain written approval to proceed with an agreed upon activity;

2. Comply with any conditions imposed by the board, including halting cleanup or mitigating adverse consequences from cleanup activities; and

3. Incorporate these self-initiated cleanup measures in the corrective action plan that is submitted to the board for approval.

9 VAC 25-580-290. Corrective action plan (CAP) permit.

A. Owners and operators shall file a complete application for and obtain a Corrective action plan (CAP) permit from the board for any corrective action plan required by 9 VAC 25-580-280 of this chapter.

B. If the corrective action plan involves a point source discharge of pollutants to surface waters, the CAP permit application shall be processed in accordance with the procedures and the requirements set forth in the board's permit regulation (9 VAC 25-30-10 et seq.) and the provisions of that regulation shall apply mutatis mutandis. The CAP permit shall include, but not be limited to, a schedule and format for the corrective action plan, the corrective action plan, and all of the pertinent conditions set forth in 9 VAC 25-30-10 et seq.

C. If the corrective action plan involves only the management of pollutants that are not point source discharges to surface waters, the owner and operator shall be exempt from the requirement to obtain a Virginia Pollution Abatement (VPA) permit under 9 VAC 25-30-10 et seq. conditioned upon:

1. The owner and operator shall obtain the CAP permit which shall contain the conditions, and be processed in accordance with the procedures and requirements, set forth in 9 VAC 25-30-10 et seq.;

2. The CAP permit shall include, where appropriate, a schedule and format for the corrective action plan and the corrective action plan; and

3. The application shall be publicly noticed in accordance with 9 VAC 25-580-300 and subsections A and B of 9 VAC 25-30-10 et seq.

D. If the corrective action plan involves the introduction of pollutants into publicly owned treatment works, owners and operators shall also comply with the board's and any publicly owned treatment work's pretreatment program requirements.

9 VAC 25-580-300. Public participation.

A. For each confirmed release that requires a corrective action plan, the board will require the owner and operator to provide notice to the public by means designed to reach those members of the public directly affected by the release or the planned corrective action. This notice may include, but is not limited to, public notice in local newspapers, block advertisements, public service announcements, publication in a state register, letters to individual households, or personal contacts by field staff.

B. The board must ensure that site release information and decisions concerning the corrective action plan are made available to the public for inspection upon request.

C. Before approving a corrective action plan, the board may hold a public meeting to consider comments on the proposed

corrective action plan if there is sufficient public interest, or for any other reason.

D. The board will require the owner and operator to give public notice that complies with subsection A of this section if implementation of an approved corrective action plan does not achieve the established cleanup levels in the plan and termination of that plan is under consideration by the board.

E. These public participation requirements do not supersede any public participation requirements of other regulations.

F. In the event the owner and operator have failed to give the required notice to the public, the board will provide such notice to the extent required by applicable federal law.

G. In those cases where the board implements the corrective plan, the board will provide such notice to the extent required by applicable federal law.

PART VII.

Out-of-Service UST Systems and Closure.

9 VAC 25-580-310. Temporary closure.

Owners and operators must obtain a permit and the required inspections in accordance with the provisions of the Virginia Uniform Statewide Building Code (§36-97 et seq. of the Code of Virginia).

A permit from the building official must be obtained prior to temporary tank closure. No UST system shall be temporarily closed unless and until the sytem is inspected in accordance with the provisions of the Virginia Uniform Statewide Building Code (§36-97 et seq. of the Code of Virginia).

In the case of state-owned facilities the Department of General Services shall function as the building official in accordance with §36-98.1 of the Code of Virginia.

In the case of federal facilities the building official must be contacted. Owners and operators must obtain a permit and the required inspections in accordance with the provisions of the Virginia Uniform Statewide Building Code (§36-97 et seq. of the Code of Virginia).

1. When an UST system is temporarily closed, owners and operators must continue operation and maintenance of corrosion protection in accordance with 9 VAC 25-580-90, and any release detection in accordance with Part IV. Parts V and VI must be complied with if a release is suspected or confirmed. However, release detection is not required as long as the UST system is empty. The UST system is empty when all materials have been removed using commonly employed practices so that no more than 2.5 centimeters (one inch) of residue, or 0.3% by weight of the total capacity of the UST system, remain in the system.

2. When a UST system is temporarily closed for three months or more, owners and operators must also comply with the following requirements:

a. Leave vent lines open and functioning; and

b. Cap and secure all other lines, pumps, manways, and ancillary equipment.

3. When a UST system is temporarily closed for more than 12 months, owners and operators must permanently close the UST system if it does not meet either performance standards in 9 VAC 25-580-50 for new UST systems or the upgrading requirements in 9 VAC 25-580-60, except that the spill and overfill equipment requirements do not have to be met. Owners and operators must permanently close the substandard UST systems at the end of this 12-month period in accordance with 9 VAC 25-580-320 through 9 VAC 25-580-350, unless the building official provides an extension of of the 12-month temporary closure period. Owners and operators must complete a site assessment in accordance with 9 VAC 25-580-330 before such an extension can be applied for.

9 VAC 25-580-320. Permanent closure and changes-in-service.

Owners and operators must obtain a permit and the required inspections from the building official prior to permanent tank closure or a change-in-service in accordance with the Virginia Uniform Statewide Building Code (§36-47 et seq. of the Code of Virginia).

A permit from the building official must be obtained prior to permanent tank closure or a change-in-service. No UST sysem shall be permanently closed or changed-in-service unless and until the system is inspected in accordance with the provisions of the Virginia Statewide Building Code(§36-47 et seq. of the Code of Virginia).

If such closure is in response to immediate corrective actions that necessitate timely tank removal, then the building official must be notified and the official's directions followed until a permit is issued.

In the case of state facilities the Department of General Services shall function as the building official in accordance with §36-98.1 of the Code of Virginia.

In the case of federal facilities the building official must be contacted. Owners and operators must obtain a permit and the required inspections in accordance with the provisions of the Virginia Uniform Statewide Building Code.

1. Owners and operators must within 30 days after either permanent closure or a change-in-service submit an amended UST notification form (Appendix I) to the board.

2. The required assessment of the excavation zone under 9 VAC 25-580-330 must be performed after notifying the building official but before completion of the permanent closure or a change in service.

3. To permanently close a tank, owners and operators must empty and clean it by removing all liquids and accumulated sludges. When the owner or operator suspects that the residual sludges are hazardous in nature the Department of Waste Management regulations shall be followed to facilitate the proper treatment, storage, manifesting, transport, and disposal. All tanks taken out of service permanently must also be either removed from the ground or filled with an inert solid material.

4. Continued use of an UST system to store a nonregulated substance is considered a change-in-service. Before a change-in-service, owners and operators must empty and clean the tank by removing all liquid and accumulated sludge and conduct a site assessment in accordance with 9 VAC 25-580-330.

NOTE: The following cleaning and closure procedures may be used to comply with this section:

a. American Petroleum Institute Recommended Practice 1604, "Removal and Disposal of Used Underground Petroleum Storage Tanks";

b. American Petroleum Institute Publication 2015, "Cleaning Petroleum Storage Tanks";

c. American Petroleum Institute Recommended Practice 1631, "Interior Lining of Underground Storage Tanks," may be used as guidance for compliance with this section; and

d. The National Institute for Occupational Safety and Health "Criteria for a Recommended Standard – Working in Confined Space" may be used as guidance for conducting safe closure procedures at some hazardous substance tanks.

9 VAC 25-580-330. Assessing the site at closure or change-in-service.

A. Before permanent closure or a change-in-service is completed, owners and operators must measure for the presence of a release where contamination is most likely to be present at the UST site. In selecting sample types (soil or water) and sample locations, and measurement methods, owners and operators must consider the method of closure, the nature of the stored substance, the type of backfill, the depth to groundwater, and other factors appropriate for identifying the presence of a release. Samples shall be tested according to established EPA analytical methods or methods approved by the board. Where the suspected release is a petroleum product, the samples shall be analyzed for total petroleum hydrocarbons (TPH). The requirements of this section are satisfied if one of the external release detection methods allowed in subsections 5 and 6 of 9 VAC 25-580-160 is operating in accordance with the requirements in 9 VAC 25-580-160 at the time of closure, and indicates no release has occurred.

B. In all cases where a sample or samples are analyzed, the owner and operator shall submit, along with the amended UST notification form as required in subsection 1 of 9 VAC 25-580-320, a copy of the laboratory results (including a statement as to the test method used), a description of the area sampled, and a site map depicting tanks, piping, and sample locations.

C. If contaminated soils, contaminated groundwater, or free product as a liquid or vapor is discovered under subsection A of this section, or by any other manner, owners and operators must begin corrective action in accordance with Part VI.

9 VAC 25-580-340. Applicability to previously closed UST systems.

When directed by the board, the owner and operator of a UST system permanently closed before December 22, 1988, must assess the excavation zone and close the UST system in accordance with this part if releases from the UST may, in the judgment of the board, pose a current or potential threat to human health and the environment.

9 VAC 25-580-350. Closure records.

Owners and operators must maintain records in accordance with 9 VAC 25-250-130 that are capable of demonstrating compliance with closure requirements under this part. The results of the

excavation zone assessment required in 9 VAC 25-580-330 must be maintained for at least three years after completion of permanent closure or change-in-service in one of the following ways:

1. By the owners and operators who took the UST system out of service;

2. By the current owners and operators of the UST system site; or

3. By mailing these records to the board if they cannot be maintained at the closed facility.

PART VIII.

Delegation.

9 VAC 25-580-360. Delegation of authority.

The executive director, or in his absence a designee acting for him, may perform any act of the board provided under this chapter, except as limited by §62.1-44.14 of the Code of Virginia.

APPENDIX I.

VIRGINIA UNDERGROUND STORAGE TANK NOTIFICATION FORMS.

Notification for Underground Storage Tanks, EPA Form (50 FR 46602).

VA DEQ Water Form 7530-1 (7/97)

Notification for Underground Storage Tanks

State Agency Name and Address
DEQ-Water Division-UST Program
P.O. Box 10009
Richmond, VA 23240-0009

STATE USE ONLY

ID NUMBER

DATE RECEIVED

TYPE OF NOTIFICATION

☐ A. NEW FACILITY ☐ B. AMENDED ☐ C. CLOSURE

_____ No. of tanks at facility _____ No. of continuation sheets attached

A. NEW _____
B. AMENDED _____
C. ENTERED INTO UST-DMS _____
D. Comments: _____

INSTRUCTIONS

Please type or print in ink all items except "signature" in section VIII. This form must be completed for each location containing underground storage tanks. If more than five (5) tanks are owned at this location, photocopy pages 3, 4 and 5, and staple continuation sheets to the form.

GENERAL INFORMATION

Notification is required by Virginia law for all underground storage tanks that have been used to store regulated substances and were in the ground as of May 8, 1986, or that are brought into use after May 8, 1986. The information requested is required by §62.1-44.34:9.6 & 7 of the Virginia State Water Control Law, Article 9.

The primary purpose of this notification program is to locate and evaluate underground storage tanks that store or have stored petroleum or hazardous substances. It is expected that the information you provide will be based on reasonable available records, or in the absence of such records, your knowledge, belief, or recollection.

Who Must Notify?

A. Virginia State Water Control Law Article 9 § 62.1-44.34:9.6 & 7, requires that unless exempted, owners of underground storage tanks that store regulated substances must notify the State Water Control Board of the existence of their tanks. Owner means:

1) 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 substances, and

2) in the case of any underground storage tank in use before November 8, 1984; but no longer in use after that date, any person who owned such tank immediately before the discontinuation of its use, and

B. Owners of property who have actual knowledge of underground storage tanks on such property that were taken out of service before January 1, 1974, yet still in the ground.

What UST's Must Be Notified? Underground storage tank or "UST" means any one or combination of tanks (including underground pipes connected thereto) that is used to contain an accumulation of regulated substances, and the volume of which (including the volume of underground pipes connected thereto) is 10% or more beneath the surface of the ground.

What UST's Are Excluded From Notification Requirements?

1. Farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;
2. Tank used for storing heating oil for consumption on the premises where stored.
3. Septic tank;
4. Pipeline facility (including gathering lines) regulated under:
   a. The Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App. 1671, et seq.), or
   b. The Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. 2001, et seq.), or
   c. Which is an intrastate pipeline facility regulated under state laws comparable to the provisions of the law referred to in subdivisions 4.a or 4.b of this definition;
5. Surface impoundment, pit, pond, or lagoon;
6. Storm-water or wastewater collection system;
7. Flow-through process tank;
8. Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations; or
9. Storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor.

The Following Need Not Notify, But May Be Regulated.

10. Wastewater treatment tank systems;
11. Any UST systems containing radioactive material that are regulated under the Atomic Energy Act of 1954 (42 USC 2011 and following);
12. Any UST system that is part of an emergency generator system at nuclear power generation facilities regulated by the Nuclear Regulatory Commission under 10 CFR Part 50, Appendix A;
13. Airport hydrant fuel distribution systems; and
14. UST systems with field-constructed tanks

What Substances Are Covered? "Regulated substance" means an element, compound, mixture, solution, or substance that, when released into the environment, may present substantial danger to the public health or welfare, or the environment. The term "regulated substance" includes:

1. Any substance defined in § 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, but not any substance regulated as a hazardous waste under subtitle C of the Resource Conservation and Recovery Act (RCRA) of 1976; and
2. 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.

When to Notify?

A. Any owner who brings an underground storage tank system into use must within 30 days of bringing such tank into use, submit a notice of existence of such tank system to the board. **Any change in:** ownership; tank status (e.g., temporarily / permanently closed out); tank/piping systems (e.g., upgrades such as addition of corrosion protection, internal lining, release detection); substance stored (e.g., change from petroleum to hazardous substance) requires the UST owner to submit an amended notification form within 30 days after such change/upgrade occurs or is brought into use. Owners may provide notice for several tanks using one notification form, but owners with tanks located at more than one place of operation must file a separate notification form for each separate place of operation.

Under Virginia UST notification requirements effective July 1, 1987, owners of property who have actual knowledge of underground storage tanks on such property that were taken out of service before January 1, 1974, yet still in the ground, must notify the board on the notification form.

Notices required to be submitted must provide all of the information in Sections I through IX of this form (Section X as required) for each tank for which notice must be given. Notices for tanks installed after December 22, 1988, must also provide all of the information in Section XI of this form for each tank for which notice must be given.

B. All owners and operators of new UST systems must certify in the notification form compliance with the following requirements of Virginia Regulation 9 VAC 25-580-10, et seq:

1. Installation of tanks and piping under subsection E of § 2.1;
2. Cathodic protection of steel tanks and piping under subsections A and B of § 2.1;
3. Release detection under §§ 4.2, and 4.3.
4. Financial responsibility under Virginia Regulation 9 VAC 25-590-10, et seq

C. All owners and operators of new UST systems must ensure that the installer certifies in the notification form that the methods used to install the tanks and piping comply with the requirements in subsection D of § 2.1 of 9 VAC 25-580-10, et seq.

D. Beginning October 24, 1988, any person who sells a tank intended to be used as an underground storage tank must notify the purchaser of such tank of the owner's notification obligations under subsection A of this section. The statement provided in Appendix II of VR 680-13-02 may be used to comply with this requirement.

I. OWNERSHIP OF TANK(S)

Owner Name (Corporation, Individual, Public Agency, or Other Entity)

Street Address

City State ZIP Code

County

Phone Number (Include Area Code)

II. LOCATION OF TANK(S)

If known, give the geographic location of tank(s) by degrees, minutes, and seconds. Example: Lat. 42, 36, 12N Long. 85, 24, 17W

Latitude _____ Longitude _____

(If same as Section I, mark box here) ☐

Facility or Company Site Identifier, as applicable

Street Address (P. O. Box not acceptable)

City State ZIP Code

County Municipality

III. TYPE OF OWNER

☐ Federal Government ☐ Commercial
☐ State Government ☐ Private
☐ Local Government

IV. INDIAN LANDS

Tanks are located on land within an Indian Reservation or on other trust lands. ☐

Tanks are owned by Native American nation, tribe, or individual. ☐

Tribe or Nation: _____

V. TYPE OF FACILITY

Select the Appropriate Facility Description:

____ Gas Station/Convenience Store	____ State Government	____ Contractor
____ Petroleum Distributor	____ Railroad	____ Trucking/Transport
____ Air Taxi (Airline)	____ Federal - Non-Military	____ Utilities
____ Aircraft Owner	____ Federal - Military	____ Residential
____ Auto Dealership	____ Commercial	____ Farm
____ Local Government	____ Industrial	____ Other (Explain) _____

VI. CONTACT PERSON IN CHARGE OF TANKS

Name (Print)	Job Title	Mailing Address	Phone Number (Include Area Code)

VII. FINANCIAL RESPONSIBILITY

I have met the financial responsibility requirements in accordance with VR680-13-03 utilizing the following method(s).

Mark All that Apply

☐ Self Insurance	☐ Guarantee	☐ Virginia Underground Petroleum Storage Tank Fund
☐ Commercial Insurance	☐ Surety Bond	☐ Trust Fund
☐ Risk Retention Group	☐ Letter of Credit	☐ Other Method Allowed (Specify)

_____

VIII. CERTIFICATION (Read and sign after completing all sections)

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. *(To be signed by either the owner or the owner's authorized representative)*

Name and official title of owner (Print)	Signature	Date Signed
Name and official title of owner's authorized representative (Print)	Signature	Date Signed

IX. DESCRIPTION OF UNDERGROUND STORAGE TANKS (Complete for each tank at this location.)

Tank Identification Number	Tank No. ____	Tank No. ____	Tank No. ____	Tank No. ____	Tank No. ____
1. Status of Tank (Mark only one) Currently in Use					
Temporarily Out of Use (Remember to fill out section X.)					
Permanently Out of Use (Remember to fill out section X.)					
Amendment of Information					
2. Date of Installation (mo./year)					
3. Estimated Total Capacity (gallons)					
4. Tank Material of Construction (Mark all that apply)					
Asphalt Coated or Bare Steel					
Cathodically Protected Steel					
Epoxy Coated Steel					
Composite (Steel with Fiberglass)					
Fiberglass Reinforced Plastic					
Lined Interior					
Double Walled					
Polyethylene Tank Jacket					
Concrete					
Excavation Liner					
Unknown					
Other (Please specify)					
Has tank been repaired?					
5. Piping Material of Construction (Mark all that apply) Bare Steel					
Galvanized Steel					
Fiberglass Reinforced Plastic					
Copper					
Cathodically Protected					
Double Walled					
Secondary Containment					
Unknown					
Other (Please specify)					
Has piping been repaired?					
6. Piping (Type) (Mark only one)					
Suction: no valve at tank					
Suction: valve at tank					
Pressure					
Gravity Fed					

Tank Identification Number	Tank No. ____	Tank No. ____	Tank No. ____	Tank No. ____	Tank No. ____
7. Substance Currently or Last Stored In Greatest Quantity by Volume					
Gasoline					
Diesel					
Gasohol					
Kerosene					
Heating Oil					
Used Oil					
Other (Please specify)					
Hazardous Substance					
CERCLA name and/or					
CAS Number					
Mixture of Substances					
Please specify					

X. TANKS OUT OF USE, OR CHANGE IN SERVICE

1. Closing of Tank					
A. Estimated date last used (mo./day/year)					
B. Estimate date tank closed (mo./day/year)					
C. Tank was removed from ground					
D. Tank was closed in ground					
E. Tank filled with inert material					
Describe					
F. Change in service					
2. Closure Assessment Completed (Site Map and Soil Sampling Results must be submitted with this form.)					
3. Evidence of a leak detected					

XI. CERTIFICATION OF COMPLIANCE (COMPLETE FOR ALL NEW AND UPGRADED TANKS AT THIS LOCATION)

Tank Identification Number	Tank No. ____	Tank No. ____	Tank No. ____	Tank No. ____	Tank No. ____
Installation					
A. Installer certified by tank and piping manufacturers					
B. Installation inspected by a registered engineer					
C. Manufacturer's installation check-lists have been completed					
D. Obtained certificate of use issued by local permitting official					
E. Another method allowed by State Water Control Board. (Please specify)					

2. Release Detection (Mark all that apply)	TANK	PIPING	TANK	PIPING	TANK	PIPING	TANK	PIPING	TANK	PIPING
A. Manual tank gauging										
B. Tank tightness testing										
C. Inventory controls										
D. Automatic gauging										
E. Vapor monitoring										
F. Groundwater monitoring										
G. Interstitial monitoring, double walled tank and/or piping										
H. Interstitial monitoring/secondary containment										
I. Automatic line leak detectors										
J. Line tightness testing										
K. Other method allowed by State Water Control Board. (Please specify)										

3. Spill and Overfill Protection					
A. Overfill device installed					
B. Spill device installed					

OATH: I certify the information concerning installation that is provided in section XI is true to the best of my belief and knowledge.

Installer: _____ (Name) _____ (Signature) _____ (Date)

_____ (Position) _____ (Company)

APPENDIX II.

STATEMENT FOR SHIPPING TICKETS AND INVOICES.

A Federal law (the Resource Conservation and Recovery Act (RCRA), as amended (Pub.L. 98-616)) requires owners of certain underground storage tanks to notify designated state or local agencies by May 8, 1986, of the existence of their tanks. Notifications for tanks brought into use after May 8, 1986, must be made within 30 days. Consult EPA's regulations, issued on November 8, 1985 (40 CFR Part 280) to determine if you are affected by this law.

STATE WATER CONTROL BOARD

Title of Regulation: **9 VAC 25-590-10 et seq. Petroleum Underground Storage Tank Financial Responsibility Requirements (amending 9 VAC 25-590-10 through 9 VAC 25-590-230, and Appendices I, II, and V through X; adding 9 VAC 25-590-240, 9 VAC 25-590-250, 9 VAC 25-590-260, and Appendix XI).**

Statutory Authority: §§ 62.1-44.34:9 and 62.1-44.34:12 of the Code of Virginia.

9 VAC 25-590-10. Definitions.

The following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise:

"Accidental release" means any sudden or nonsudden release of petroleum from an underground storage tank that results in a need for corrective action or compensation, or both, for bodily injury or property damage neither expected nor intended by the tank owner or operator.

"Annual aggregate" means the maximum financial responsibility requirement that an owner or operator is required to demonstrate annually.

"Board" means the State Water Control Board.

"Bodily injury" means the death or injury of any person incident to an accidental release from a petroleum underground storage tank; but not including any death, disablement, or injuries covered by workers' compensation, disability benefits or unemployment compensation law o other similar law. Bodily injury may include payment of medical, hospital, surgical, and funera

expenses arising out of the death or injury of any person. This term shall not include liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for bodily injury.

"Controlling interest" means direct ownership of at least 50% of the voting stock of another entity.

"Corrective action" means all actions necessary to abate, contain and cleanup a release from an underground storage tank to mitigate the public health or environmental threat from such releases and to rehabilitate state waters in accordance with Parts V (9 VAC 25-580-190 et seq.) and VI (9 VAC 25-580-230 et seq.) of 9 VAC 25 Chapter 580, Underground Storage Tanks: Technical Standards and Corrective Action Requirements. The term does not include those actions normally associated with closure or change in service as set out in Part VII (9 VAC 25-580-320 et seq.) of 9 VAC 25 Chapter 580 or the replacement of an underground storage tank.

"Financial reporting year" means the latest consecutive 12-month period for which any of the following reports used to support a financial test is prepared: (i) a 10 K report submitted to the U.S. Securities and Exchange Commission (SEC); (ii) an annual report of tangible net worth submitted to Dun and Bradstreet; (iii) annual reports submitted to the Energy Information Administration or the Rural Electrification Administration; or (iv) a year-end financial statement authorized under 9 VAC 25-590-60 B or C of this chapter. "Financial reporting year" may thus comprise a fiscal or calendar year period.

"Gallons of petroleum pumped" means either the amount pumped into or the amount pumped out of a petroleum underground storage tank.

"Legal defense cost" is any expense that an owner or operator or provider of fir

assurance incurs in defending against claims or actions brought (i) by the federal government or the board to require corrective action or to recover the costs of corrective action, or to collect civil penalties under federal or state law or to assert any claim on behalf of the Virginia Petroleum Storage Tank Fund; (ii) by or on behalf of a third party for bodily injury or property damage caused by an accidental release; or (iii) by any person to enforce the terms of a financial assurance mechanism.

"Local government" means a municipality, county, town, commission, separately chartered and operated special district, school board, political subdivision of a state, or other special purpose government which provides essential services.

"Occurrence" means an accident, including continuous or repeated exposure to conditions, which results in a release from an underground storage tank.

NOTE: This definition is intended to assist in the understanding of this chapter and is not intended either to limit the meaning of "occurrence" in a way that conflicts with standard insurance usage or to prevent the use of other standard insurance terms in place of "occurrence."

"Operator" means any person in control of, or having responsibility for, the daily operation of the UST system.

"Owner" means:

1. 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 storage, use, or dispensing of regulated substances; and

2. In the case of any UST system in use before November 8, 1984, but no longer in use

on that date, any person who owned such UST immediately before the discontinuation of its use.

The term "owner" shall not include any person, who, without participating in the management of an underground storage tank or being otherwise engaged in petroleum production, refining, and marketing, holds indicia of ownership primarily to protect the holder's security interest in the tank.

"Owner" or "operator," when the owner or operator are separate parties, refers to the person who is obtaining or has obtained financial assurances.

"Person" means an individual, trust, firm, joint stock company, corporation, including a government corporation, partnership, association, any state or agency thereof, municipality, county, town, commission, political subdivision of a state, any interstate body, consortium, venture, commercial entity, the government of the United States or any unit or agency thereof.

"Petroleum" means petroleum, including crude oil or any fraction thereof, that is liquid at standard conditions of temperature and pressure (60°F and 14.7 pounds per square inch absolute).

"Petroleum marketing facilities" include all facilities at which petroleum is produced or refined and all facilities from which petroleum is sold or transferred to other petroleum marketers or to the public.

"Petroleum marketing firms" means all firms owning petroleum marketing facilities. Firms owning other types of facilities with USTs as well as petroleum marketing facilities are considered to be petroleum marketing firms.

"Property damage" means the loss or destruction of, or damage to, the property of any third party including any loss, damage or expense incident to an accidental release from a petroleum underground storage tank. This term shall not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for property damage. However, such exclusions for property damage shall not include corrective action associated with releases from tanks which are covered by the policy.

"Provider of financial assurance" means a person that provides financial assurance to an owner or operator of an underground storage tank through one of the mechanisms listed in 9 VAC 25-590-60 through 9 VAC 25-590-120 and 9 VAC 25-590-250, including a guarantor, insurer, group self-insurance pool, surety, or issuer of a letter of credit.

"Release" means any spilling, leaking, emitting, discharging, escaping, leaching or disposing from an UST into ground water, surface water, or upon lands, subsurface soils or storm drain systems.

"Responsible person" means any person who is an owner or operator of an underground storage tank at the time the release is reported to the board.

"Substantial business relationship" means the extent of a business relationship necessary under Virginia law to make a guarantee contract issued incident to that relationship valid and enforceable. A guarantee contract is issued "incident to that relationship" if it arises from and depends on existing economic transactions between the guarantor and the owner or operator.

"Tangible net worth" means the tangible assets that remain after deducting liabilities; such assets do not include intangibles such as goodwill and rights to patents or royalties. For purposes of this definition, "assets" means all existing and all probable future economic benefits

obtained or controlled by a particular entity as a result of past transactions.

"Termination" under Appendix III and Appendix IV means only those changes that could result in a gap in coverage as where the insured has not obtained substitute coverage or has obtained substitute coverage with a different retroactive date than the retroactive date of the original policy.

"Underground storage tank" or "UST" means any one or combination of tanks (including underground pipes connected thereto) that is used to contain an accumulation of regulated substances, and the volume of which (including the volume of underground pipes connected thereto) is 10% or more beneath the surface of the ground. This term does not include any:

1. Farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;

2. Tank used for storing heating oil for consumption on the premises where stored

3. Septic tank;

4. Pipeline facility (including gathering lines) regulated under:

   a. The Natural Gas Pipeline Safety Act of 1968 (49 USC App. 1671, et seq.),

   b. The Hazardous Liquid Pipeline Safety Act of 1979 (49 USC App. 2001, et seq.), or

   c. Which is an intrastate pipeline facility regulated under state laws comparable to the provisions of the law referred to in subdivision 4 a or 4 b of this definition;

5. Surface impoundment, pit, pond, or lagoon;

6. Stormwater or wastewater collection system;

7. Flow-through process tank;

8. Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations; or

9. Storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor.

The term "underground storage tank" or "UST" does not include any pipes connected to any tank which is described in subdivisions 1 through 9 of this definition.

"UST system" or "tank system" means an underground storage tank, connected underground piping, underground ancillary equipment, and containment system, if any.

"9 VAC 25-580-10 et seq." means the Underground Storage Tanks: Technical Standards and Corrective Action Requirements regulation promulgated by the board.

9 VAC 25-590-20. Applicability.

A. This chapter applies to owners and operators of all petroleum UST systems regulated under 9 VAC 25-580-10 et seq., except as otherwise provided in this section.

B. Owners and operators of petroleum UST systems are subject to these requirements if they are in operation on or after the date for compliance established in 9 VAC 25-590-30.

C. State and federal government entities whose debts and liabilities are the debts and liabilities of the Commonwealth of Virginia or the United States have the requisite financial strength and stability to fulfill their financial assurance requirements and are relieved of the requirements to further demonstrate an ability to provide financial responsibility under this chapter.

D. The requirements of this chapter do not apply to owners and operators of any UST system described in 9 VAC 25-580-20 B or C.

E. If the owner and operator of a petroleum underground storage tank are separate persons, only one person is required to demonstrate financial responsibility; however, both parties are liable in event of noncompliance.

9 VAC 25-590-30. Compliance dates.

Owners of petroleum underground storage tanks are required to comply with the requirements of this chapter by the following dates:

1. All petroleum marketing firms owning 1,000 or more USTs and all other UST owners that report a tangible net worth of $20 million or more to the U.S. Securities and Exchange Commission (SEC), Dun and Bradstreet, the Energy Information Administration, or Rural Electrification Administration: January 24, 1989; except that compliance for owners and operators using the mechanisms specified in 9 VAC 25-590-70 or 9 VAC 25-590-90 is required by July 24, 1989.

2. All petroleum marketing firms owning 100-999 USTs: October 26, 1989;

3. All petroleum marketing firms owning 13-99 USTs at more than one facility: April 26, 1991;

4. All petroleum UST owners not described in subdivision 1, 2, or 3 of this section, excluding local government entities: December 31, 1993;

5. All local government entities (including Indian tribes) not included in subdivision 6 of this section: February 18, 1994; or

6. Indian tribes that own USTs on Indian lands which meet the applicable technical requirements of 9 VAC 25-580-10 et seq.: December 31, 1998.

9 VAC 25-590-40. Amount and scope of financial responsibility requirement.

A. Owners or operators of petroleum underground storage tanks shall demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks in the following per-occurrence amounts:

1. For owners or operators of petroleum underground storage tanks that are located at petroleum marketing facilities, or that handle an average of more than 10,000 gallons of petroleum per month based on annual throughput for the previous calendar year; $1 million.

2. For all other owners or operators of petroleum underground storage tanks; $500,000.

B. Owners and operators of petroleum underground storage tanks shall demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks in at least the following annual aggregate amounts:

1. For owners and operators of 1 to 100 petroleum underground storage tanks, $1 million; and

2. For owners and operators of 101 or more petroleum underground storage tanks, $2 million.

C. Owners and operators who demonstrate financial responsibility shall maintain copies of

those records on which the determination is based. The following documents may be used for purposes of demonstrating financial responsibility by owners or operators to support a financial responsibility requirement determination:

1. Copies of invoices from petroleum suppliers which indicate the gallons of petroleum pumped into all underground storage tanks on an annual basis.

2. Copies of disposal or recycling receipts which indicate the gallons of petroleum pumped out of all underground storage tanks on an annual basis.

3. Letters from petroleum suppliers or disposal or recycling firms on the supplier's, disposer's or recycler's letterhead, which are signed by the appropriate financial officer and which indicate the gallons of petroleum pumped into or out of all of the owner's or operator's underground storage tanks on an annual basis.

4. Any other form of documentation which the board may deem to be acceptable evidence to support the financial responsibility requirement determination.

D. For the purposes of this section, "a petroleum underground storage tank" means a single containment unit and does not mean combinations of single containment units.

E. If the owner or operator uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility for: (i) taking corrective action; (ii) compensating third parties for bodily injury and property damage caused by sudden accidental releases; or (iii) compensating third parties for bodily injury and property damage caused by nonsudden accidental releases, the amount of assurance provided by each mechanism or combination of mechanisms shall be in the full amount specified in subsection A of this section.

F. If an owner or operator uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility for different petroleum underground storage tanks, the annual aggregate required for each mechanism shall be the amount specified in subsection B.

G. If assurance is being demonstrated by a combination of mechanisms, the owner or operator shall demonstrate financial responsibility in the appropriate amount of annual aggregate assurance specified in subsection B of this section, by the first-occurring effective date anniversary of any one of the mechanisms combined (other than a financial test or guarantee) to provide assurance.

H. The amounts of assurance required under this section exclude legal defense costs.

I. The required per-occurrence and annual aggregate coverage amounts do not in any way limit the liability of the owner or operator.

9 VAC 25-590-50. Allowable mechanisms and combinations of mechanisms.

A. Subject to the limitations of subsection B of this section, an owner or operator may use any one or combination of the mechanisms listed in 9 VAC 25-590-60 through 9 VAC 25-590-120 to demonstrate financial responsibility under this chapter for one or more underground storage tanks. A local government owner or operator may use any one or combination of the mechanisms listed in 9 VAC 25-590-60 through 9 VAC 25-590-110 and 9 VAC 25-590-250 to demonstrate financial responsibility under this chapter for one or more underground storage tanks.

B. An owner or operator may use self-insurance in combination with a guarantee only if, for the purpose of meeting the requirements of the financial test under this chapter, the financia

statements of the owner or operator are not consolidated with the financial statements of guarantor.

9 VAC 25-590-60. Financial test of self-insurance.

A. An owner or operator and/or guarantor, may satisfy the requirements of 9 VAC 25-590-40 by passing a financial test as specified in this section. To pass the financial test of self-insurance, the owner or operator and/or guarantor shall meet the requirements of subsections B or C, and D of this section based on year-end financial statements for the latest completed financial reporting year.

B. 1. The owner or operator and/or guarantor shall have a tangible net worth at least equal to the total of the applicable aggregate amount required by 9 VAC 25-590-40 B for which a financial test is used to demonstrate financial responsibility, except as provided in 9 VAC 25-590-210.

2. In addition to the requirements set forth in subdivision 1 of this subsection, the owner or operator and/or guarantor shall also have a tangible net worth of at least 10 times:

a. The sum of the corrective action cost estimates, the current closure and postclosure care cost estimates, and amount of liability coverage for which a financial test for self-insurance is used in each state of business operations to demonstrate financial responsibility to the EPA under 40 CFR §§ 264.101(b), 264.143, 264.145, 265.143, 265.145, 264.147, and 265.147 (1997), to another state implementing agency under a state program authorized by EPA under 40 CFR Part 271 (1997) or the Virginia Waste Management Board under 9 VAC 20-60-590 C, 9 VAC 20-60-590 E, 9 VAC 20-60-590 G, 9 VAC 20-60-790 L, 9 VAC 20-60-810 C, 9 VAC 20-60-810 E, 9 VAC

810 G of the Virginia Hazardous Waste Management Regulations; and

b. The sum of current plugging and abandonment cost estimates for which a financial test for self-insurance is used in each state of business operations to demonstrate financial responsibility to EPA under 40 CFR 144.63 (1997) or to a state implementing agency under a state program authorized by EPA under 40 CFR Part 145 (1997).

3. The owner and operator and/or guarantor shall comply with either subdivision a or b below:

a. (1) The financial reporting year-end financial statements of the owner or operator and/or guarantor shall be examined by an independent certified public accountant and be accompanied by the accountant's report of the examination; and

(2) The financial reporting year-end financial statements of the owner or operator and/or guarantor cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.

b. (1) (a) File financial statements annually with the U.S. Securities and Exchange Commission, the Energy Information Administration, or the Rural Electrification Administration; or

(b) Report annually the tangible net worth of the owner or operator and/or guarantor to Dun and Bradstreet, and Dun and Bradstreet shall have assigned a financial strength rating which at least equals the amount of financial responsibility required by the owner or operator under subdivisions 1 and 2 of

this subsection. Relevant Dun and Bradstreet ratings are as follows (current Dun and Bradstreet ratings will be used for demonstration requirements which exceed the annual aggregate amounts listed below):

Annual Aggregate Requirement	Dun and Bradstreet Rating
$20,000	EE ($20,000 to $34,999)
$40,000	DC ($50,000 to $74,999)
$80,000	CB ($125,000 to $199,999)
$150,000	BB ($200,000 to $299,999)
$200,000	BB ($200,000 to $299,999); and

(2) The financial reporting year-end financial statements of the owner or operator and/or guarantor, if, independently audited, cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.

4. The owner or operator and/or guarantor shall have a letter signed by the chief financial officer worded identically as specified in Appendix I/Alternative I or Appendix XI.

C. 1. The owner or operator and/or guarantor shall have a tangible net worth at least equal to the total of the applicable aggregate amount required by 9 VAC 25-590-40 B for which a financial test is used to demonstrate financial responsibility, except as provided in 9 VAC 25-590-210.

2. In addition to the requirements set forth in subdivision 1 of this subsection, the

or operator and/or guarantor shall also have a tangible net worth of at least six times:

a. The financial test requirements for self insurance of the corrective action cost estimates, the current closure and post-closure care cost estimates, and amount of liability coverage in each state of business operations to the EPA under 40 CFR 264.101(b), 264.143, 264.145, 265.143, 265.145, 264.147, and 265.147 (1997), to another state implementing agency under a state program authorized by EPA under 40 CFR Part 271 (1997) or the Virginia Waste Management Board under 9 VAC 20-60-590 C, 9 VAC 20-60-590 E, 9 VAC 20-60-590 G, 9 VAC 20-60-790 L, 9 VAC 20-60-810 C, 9 VAC 20-60-810 E, 9 VAC 20-60-810 G of the Virginia Hazardous Waste Management Regulations; and

b. The financial test requirements for self-insurance of current plugging and abandonment cost estimates in each state of business operations to EPA under 40 CFR 144.63 (1997) or to a state implementing agency under a state program authorized by EPA under 40 CFR Part 145 (1997).

3. The financial reporting year-end financial statements of the owner or operator and/or guarantor shall be examined by an independent certified public accountant and be accompanied by the accountant's report of the examination.

4. The financial reporting year-end financial statements of the owner or operator and/or guarantor cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.

5. If the financial statements of the owner or operator and/or guarantor are not submittec annually to the U.S. Securities and Exchange Commission, the Energy Informatior

Administration or the Rural Electrification Administration, the owner or operator and guarantor shall obtain a special report by an independent certified public accountant stating that:

a. The accountant has compared the data that the letter from the chief financial officer specified as having been derived from the latest financial reporting year-end financial statements of the owner or operator and/or guarantor with the amounts in such financial statements; and

b. In connection with that comparison, no matters came to the accountant's attention which caused him to believe that the specified data should be adjusted.

6. The owner or operator and/or guarantor shall have a letter signed by the chief financial officer, worded identically as specified in Appendix I/Alternative II.

D. To meet the financial demonstration test under subsections B or C of this section, the chief financial officer of the owner or operator and/or guarantor shall sign, within 120 days of the close of each financial reporting year, as defined by the 12-month period for which financial statements used to support the financial test are prepared, a letter worded identically as specified in Appendix I with the appropriate alternative or Appendix XI, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted.

E. If an owner or operator using the test to provide financial assurance finds that he no longer meets the requirements of the financial test based on the financial reporting year-end financial statements, the owner or operator shall obtain alternative coverage within 150 days of the end of the year for which financial statements have been prepared.

F. The board may require reports of financial condition at any time from the owner or op or

and/or guarantor. If the board finds, on the basis of such reports or other information, that the owner or operator and/or guarantor no longer meets the financial test requirements of subsection B or C and D of this section, the owner or operator shall obtain alternate coverage within 30 days after notification of such finding.

G. If the owner or operator fails to obtain alternate assurance within 150 days of finding that he no longer meets the requirements of the financial test based on the financial reporting year-end financial statements, or within 30 days of notification by the board that he or she no longer meets the requirements of the financial test, the owner or operator shall notify the board of such failure within 10 days.

9 VAC 25-590-70. Guarantee.

A. An owner or operator may satisfy the requirements of 9 VAC 25-590-40 by obtaining a guarantee that conforms to the requirements of this section. The guarantor shall be:

1. A firm that:

a. Possesses a controlling interest in the owner or operator;

b. Possesses a controlling interest in a firm described under subdivision A 1 a of this section; or

c. Is controlled through stock ownership by a common parent firm that possesses a controlling interest in the owner or operator; or

2. A firm engaged in a substantial business relationship with the owner or operator and issuing the guarantee as an act incident to that business relationship.

B. Within 120 days of the close of each financial reporting year, the guarantor shal

demonstrate that it meets the financial test criteria of 9 VAC 25-590-60 B or C and D based on year-end financial statements for the latest completed financial reporting year by completing the letter from the chief financial officer described in Appendix I or Appendix XI and shall deliver the letter to the owner or operator. If the guarantor fails to meet the requirements of the financial test at the end of any financial reporting year, within 120 days of the end of that financial reporting year, the guarantor shall send by certified mail, before cancellation or nonrenewal of the guarantee, notice to the owner or operator. If the board notifies the guarantor that he no longer meets the requirements of the financial test of 9 VAC 25-590-60 B or C and D, the guarantor shall notify the owner or operator within 10 days of receiving such notification from the board. In both cases, the guarantee will terminate no less than 120 days after the date the owner or operator receives the notification, as evidenced by the return receipt. The owner or operator shall obtain alternate coverage as specified in 9 VAC 25-590-190.

C. The guarantee shall be worded identically as specified in Appendix II, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

D. An owner or operator who uses a guarantee to satisfy the requirements of 9 VAC 25-590-40 shall establish a standby trust fund when the guarantee is obtained. Under the terms of the guarantee, all amounts paid by the guarantor under the guarantee will be deposited directly into the standby trust fund in accordance with instructions from the board under 9 VAC 25-590-170. This standby trust fund shall meet the requirements specified in 9 VAC 25-590-120.

9 VAC 25-590-80. Insurance and group self-insurance pool coverage.

A. 1. An owner or operator may satisfy the requirements of 9 VAC 25-590-40 by obtaining liability insurance that conforms to the requirements of this section from a qualified i... ...er

or group self-insurance pool.

2. Such insurance may be in the form of a separate insurance policy or an endorsement to an existing insurance policy

3. Group self-insurance pools shall comply with § 62.1-44.34:12 of the Code of Virginia and the State Corporation Commission Bureau of Insurance Regulation No. 33 (14 VAC 5-380-10 et seq.).

B. Each insurance policy shall be amended by an endorsement worded in no respect less favorable than the coverage as specified in Appendix III, or evidenced by a certificate of insurance worded identically as specified in Appendix IV, except that instructions in brackets shall be replaced with the relevant information and the brackets deleted.

C. Each insurance policy shall be issued by an insurer or a group self-insurance pool that, at a minimum, is licensed to transact the business of insurance or eligible to provide insurance as an excess or approved surplus lines insurer in the Commonwealth of Virginia.

D. Each insurance policy shall provide first dollar coverage. The insurer or group self-insurance pool shall be liable for the payment of all amounts within any deductible applicable to the policy to the provider of corrective action or damaged third party, as provided in this chapter, with a right of reimbursement by the insured for any such payment made by the insurer or group. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in 9 VAC 25-590-60 through 9 VAC 25-590-110 and 9 VAC 25-590-250.

9 VAC 25-590-90. Surety bond.

A. An owner or operator may satisfy the requirements of 9 VAC 25-590-40 by obtaining a surety bond that conforms to the requirements of this section. The surety company issuing the bond shall be licensed to operate as a surety in the Commonwealth of Virginia and be among those listed as acceptable sureties on federal bonds in the latest Circular 570 of the U.S. Department of the Treasury.

B. The surety bond shall be worded identically as specified in Appendix V, except that instructions in brackets shall be replaced with the relevant information and the brackets deleted.

C. Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. In all cases, the surety's liability is limited to the per-occurrence and annual aggregate penal sums.

D. The owner or operator who uses a surety bond to satisfy the requirements of 9 VAC 590-40 shall establish a standby trust fund when the surety bond is acquired. Under the terms of the bond, all amounts paid by the surety under the bond will be deposited directly into the standby trust fund in accordance with instructions from the board under 9 VAC 25-590-170. This standby trust fund shall meet the requirements specified in 9 VAC 25-590-120.

9 VAC 25-590-100. Letter of credit.

A. An owner or operator may satisfy the requirements of 9 VAC 25-590-40 by obtaining an irrevocable standby letter of credit that conforms to the requirements of this section. The issuing institution shall be an entity that has the authority to issue letters of credit in the Commonwealth of Virginia and whose letter-of-credit operations are regulated and examined by a federal agency or the State Corporation Commission.

B. The letter of credit shall be worded identically as specified in Appendix VI, except that

instructions in brackets are to be replaced with the relevant information and the brackets deleted.

C. An owner or operator who uses a letter of credit to satisfy the requirements of 9 VAC 25-590-40 shall also establish a standby trust fund when the letter of credit is acquired. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the board will be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the board under 9 VAC 25-590-170. This standby trust fund shall meet the requirements specified in 9 VAC 25-590-120.

D. The letter of credit shall be irrevocable with a term specified by the issuing institution. The letter of credit shall provide that credit will be automatically renewed for the same term as the original term, unless, at least 120 days before the current expiration date, the issuing institution notifies the owner or operator by certified mail of its decision not to renew the letter of credit. Under the terms of the letter of credit, the 120 days will begin on the date when the owner or operator receives the notice, as evidenced by the return receipt.

9 VAC 25-590-110. Trust fund.

A. An owner or operator may satisfy the requirements of 9 VAC 25-590-40 by establishing an irrevocable trust fund that conforms to the requirements of this section. The trustee shall be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency or the State Corporation Commission.

B. The trust fund shall be irrevocable and shall continue until terminated at the written direction of the grantor and the trustee, or by the trustee and the State Water Control Board, i the grantor ceases to exist. Upon termination of the trust, all remaining trust property, less fina trust administration expenses, shall be delivered to the owner or operator. The wording of the

trust agreement shall be identical to the wording specified in Appendix VII, and shal accompanied by a formal certification of acknowledgment as specified in Appendix VIII.

C. The irrevocable trust fund, when established, shall be funded for the full required amount of coverage, or funded for part of the required amount of coverage and used in combination with other mechanism or mechanisms that provide the remaining required coverage.

D. If the value of the trust fund is greater than the required amount of coverage, the owner or operator may submit a written request to the board for release of the excess.

E. If other financial assurance as specified in this chapter is substituted for all or part of the trust fund, the owner or operator may submit a written request to the board for release of the excess.

F. Within 60 days after receiving a request from the owner or operator for release of fur specified in subsection D or E of this section, the board will instruct the trustee to release to the owner or operator such funds as the board specifies in writing.

9 VAC 25-590-120. Standby trust fund.

A. An owner or operator using any one of the mechanisms authorized by 9 VAC 25-590-70, 9 VAC 25-590-90 and 9 VAC 25-590-100 shall establish a standby trust fund when the mechanism is acquired. The trustee of the standby trust fund shall be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency or the State Corporation Commission.

B. The standby trust agreement or trust agreement shall be worded identically as specified in Appendix VII, except that instructions in brackets are to be replaced with the re ant

information and the brackets deleted, and accompanied by a formal certification of acknowledgment as specified in Appendix VIII

C. The board will instruct the trustee to refund the balance of the standby trust fund to the provider of financial assurance if the board determines that no additional corrective action costs or third party liability claims will occur as a result of a release covered by the financial assurance mechanism for which the standby trust fund was established.

D. An owner or operator may establish one trust fund as the depository mechanism for all funds assured in compliance with this rule.

9 VAC 25-590-130. Substitution of financial assurance mechanisms by owner or operator.

A. An owner or operator may substitute any alternate financial assurance mechanisms as specified in this chapter, provided that at all times he maintains an effective financial assurance mechanism or combination of mechanisms that satisfies the requirements of 9 VAC 25-590-40.

B. After obtaining alternate financial assurance as specified in this chapter, an owner or operator may cancel a financial assurance mechanism by providing notice to the provider of financial assurance.

9 VAC 25-590-140. Cancellation or nonrenewal by a provider of financial assurance.

A. Except as otherwise provided, a provider of financial assurance may cancel or fail to renew an assurance mechanism by sending a notice of termination by certified mail to the owner or operator.

1. Termination of a local government guarantee, a guarantee, a surety bond, or a letter of credit may not occur until 120 days after the date on which the owner or operator

receives the notice of termination, as evidenced by the return receipt.

2. Termination of insurance or group self-insurance pool coverage, except for nonpayment or misrepresentation by the insured, may not occur until 60 days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt. Termination for nonpayment of premium or misrepresentation by the insured may not occur until a minimum of 15 days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt.

B. If a provider of financial responsibility cancels or fails to renew for reasons other than incapacity of the provider as specified in 9 VAC 25-590-190, the owner or operator shall obtain alternate coverage as specified in this section within 60 days after receipt of the notice of termination. If the owner or operator fails to obtain alternate coverage within 60 days after receipt of the notice of termination, the owner or operator shall immediately notify the board of such failure and submit:

1. The name and address of the provider of financial assurance;

2. The effective date of termination; and

3. The evidence of the financial assurance mechanism subject to the termination maintained in accordance with 9 VAC 25-590-160 B.

9 VAC 25-590-150. Reporting by owner or operator.

A. An owner or operator shall submit the appropriate original forms listed in 9 VAC 25-590-160 B documenting current evidence of financial responsibility to the board within 30 days after the owner or operator identifies or confirms a release from an underground storage tank required to

be reported under 9 VAC 25-580-220 or 9 VAC 25-580-240. For all subsequent releases within the same period of time for which the documents submitted according to this subsection are still effective, the owner or operator shall submit a letter which identifies the owner's or operator's name and address and the underground storage tanks' location by site name, street address, board incident designation number and a statement that the financial responsibility documentation previously provided to the board is currently in force.

B. An owner or operator shall submit the appropriate forms listed in 9 VAC 25-590-160 B documenting current evidence of financial responsibility to the board if the owner or operator fails to obtain alternate coverage as required by this chapter within 30 days after the owner or operator receives notice of:

1. Commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a provider of financial assurance as a debtor;

2. Suspension or revocation of the authority of a provider of financial assurance to issue a financial assurance mechanism;

3. Failure of a guarantor to meet the requirements of the financial test; or

4. Other incapacity of a provider of financial assurance.

C. An owner or operator shall submit the appropriate forms listed in 9 VAC 25-590-160 B documenting current evidence of financial responsibility to the board as required by 9 VAC 25-590-60 G and 9 VAC 25-590-140 B.

D. An owner or operator shall certify compliance with the financial responsibility requirements of this chapter as specified in the new tank notification form when notifying the board of the

installation of a new underground storage tank under 9 VAC 25-580-70.

E. The board may require an owner or operator to submit evidence of financial assurance as described in 9 VAC 25-590-160 B or other information relevant to compliance with this chapter at any time.

9 VAC 25-590-160. Recordkeeping.

A. Owners or operators shall maintain evidence of all financial assurance mechanisms used to demonstrate financial responsibility under this chapter for an underground storage tank until released from the requirements of this chapter under 9 VAC 25-590-180. An owner or operator shall maintain such evidence at the underground storage tank site or the owner's or operator's place of work in this Commonwealth. Records maintained off-site shall be made available upon request of the board.

B. Owners or operators shall maintain the following types of evidence of financial responsibility:

1. An owner or operator using an assurance mechanism specified in 9 VAC 25-590-60 through 9 VAC 25-590-110 and 9 VAC 25-590-250 shall maintain a copy of the instrument worded as specified.

2. An owner or operator using a financial test or guarantee, or a local government financial test or a local government guarantee supported by the local government financial test, shall maintain a copy of the chief financial officer's letter based on year-end financial statements for the most recent completed financial reporting year. Such evidence shall be on file no later than 120 days after the close of the financial reporting year.

3. An owner or operator using a guarantee, surety bond, or letter of credit shall maintain a copy of the signed standby trust fund agreement and copies of any amendments to the agreement.

4. A local government owner or operator using a local government guarantee with standby trust under 9 VAC 25-590-250 shall maintain a copy of the signed standby trust fund agreement and copies of any amendments to the agreement.

5. A local government owner or operator using the local government bond rating test under 9 VAC 25-590-250 shall maintain a copy of its bond rating published within the last 12 months by Moody's or Standard & Poor's.

6. A local government owner or operator using the local government guarantee under 9 VAC 25-590-250, where the guarantor's demonstration of financial responsibility relies on the bond rating test under 9 VAC 25-590-250 shall maintain a copy of the guarantor's bond rating published within the last 12 months by Moody's or Standard & Poor's.

7. An owner or operator using an insurance policy or group self-insurance pool coverage shall maintain a copy of the signed insurance policy or group self-insurance pool coverage policy, with the endorsement or certificate of insurance and any amendments to the agreements.

8. An owner or operator using a local government fund under 9 VAC 25-590-250 shall maintain the following documents:

a. A copy of the state constitutional provision or local government statute, charter, ordinance or order dedicating the fund; and

b. Year-end financial statements for the most recent completed financial reporting year showing the amount in the fund. If the fund is established under 40 CFR 280.107(a)(3) (1997) (as incorporated by reference in 9 VAC 25-590-250) using incremental funding backed by bonding authority, the financial statements shall show the previous year's balance, the amount of funding during the year, and the closing balance in the fund.

c. If the fund is established under 40 CFR 280.107(a)(3) (1997) (as incorporated by reference in 9 VAC 25-590-250) using incremental funding backed by bonding authority, the owner or operator shall also maintain documentation of the required bonding authority, including either the results of a voter referendum (under 40 CFR 280.107(a)(3)(i) (1997)) (as incorporated by reference in 9 VAC 25-590-250), or attestation by the Virginia Attorney General as specified under 40 CFR 280.107(a)(3)(ii) (1997) (as incorporated by reference in 9 VAC 25-590-250).

9. A local government owner or operator using the local government guarantee supported by the local government fund shall maintain a copy of the guarantor's year-end financial statements for the most recent completed financial reporting year showing the amount of the fund.

10. a. An owner or operator using an assurance mechanism specified in 9 VAC 25-590-60 through 9 VAC 25-590-110 or 9 VAC 25-590-250 shall maintain an updated copy of a certification of financial responsibility worded identically as specified in Appendix IX, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

b. The owner or operator shall update this certification whenever the fi

assurance mechanism or mechanisms used to demonstrate financial responsibility changes.

9 VAC 25-590-170. Drawing on financial assurance mechanism.

A. Except as specified in subsection D of this section, the board shall require the guarantor, surety, or institution issuing a letter of credit to place the amount of funds stipulated by the board, up to the limit of funds provided by the financial assurance mechanism, into the standby trust if:

1. a. The owner or operator fails to establish alternate financial assurance within 60 days after receiving notice of cancellation of the guarantee, surety bond, letter of credit; and

b. The board determines or suspects that a release from an underground storage tank covered by the mechanism has occurred and so notifies the owner or operator, or the owner or operator has notified the board pursuant to Parts V (9 VAC 25-580-190 et seq.) and VI (9 VAC 25-580-230 et seq.) of 9 VAC 25 Chapter 580 of a release from an underground storage tank covered by the mechanism; or

2. The conditions of subsection B of this section are satisfied.

B. The board may draw on a standby trust fund when:

1. The board makes a final determination that a release has occurred and immediate or long-term corrective action for the release is needed, and the owner or operator, after appropriate notice and opportunity to comply, has not conducted corrective action as required under Part VI(9 VAC 25-580-230 et seq.); or

2. The board has received either:

a. Certification from the owner or operator and the third party liability claimant claimants and from attorneys representing the owner or operator and the third party liability claimant or claimants that a third party liability claim should be paid. The certification shall be worded identically as specified in Appendix X, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted; or

b. A valid final court order establishing a judgment against the owner or operator for bodily injury or property damage caused by an accidental release from an underground storage tank covered by financial assurance under this chapter and the board determines that the owner or operator has not satisfied the judgment.

C. If the board determines that the amount of corrective action costs and third party liability claims eligible for payment under subsection B of this section may exceed the balance of the standby trust fund and the obligation of the provider of financial assurance, the first priority for payment shall be corrective action costs necessary to protect human health and the environment. The board shall direct payment from the standby trust fund for third party liability claims in the order in which the board receives certifications under subdivision B 2 a of this section and valid court orders under subdivision B 2 b of this section.

D. A local government acting as guarantor under 40 CFR 280.106(e) (1997) (as incorporated by reference in 9 VAC 25-590-250), the local government guarantee without standby trust, shall make payments as directed by the director under the circumstances described in subsection A, B or C of this section.

9 VAC 25-590-180. Release from the requirements.

An owner or operator is no longer required to maintain financial responsibility under this chapter for an underground storage tank after the tank has been properly closed or a change-in-service properly completed or, if corrective action is required, after corrective action has been completed and the tank has been properly closed as required by Part VII (9 VAC 25-580-320 et seq.) of 9 VAC 25 Chapter 580.

9 VAC 25-590-190. Bankruptcy or other incapacity of owner, operator or provider of financial assurance.

A. Within 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming an owner or operator as debtor, the owner or operator shall notify the board by certified mail of such commencement and submit the appropriate forms listed in 9 VAC 25-590-160 B documenting current financial responsibility.

B. Within 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a guarantor providing financial assurance as debtor, such guarantor shall notify the owner or operator by certified mail of such commencement as required under the terms of the guarantee specified in 9 VAC 25-590-70.

C. Within 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a local government owner or operator as debtor, the local government owner or operator shall notify the director by certified mail of such commencement and submit the appropriate forms listed in 9 VAC 25-590-160 B documenting current financial responsibility.

D. Within 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a guarantor providing a local government financial

assurance as debtor, such guarantor shall notify the local government owner or operator by certified mail of such commencement as required under the terms of the guarantee specified in 40 CFR 280.106 (1997) (as incorporated by reference in 9 VAC 25-590-250).

E. An owner or operator who obtains financial assurance by a mechanism other than the financial test of self-insurance will be deemed to be without the required financial assurance in the event of a bankruptcy or incapacity of its provider of financial assurance, or a suspension or revocation of the authority of the provider of financial assurance to issue a guarantee, insurance policy, group self-insurance pool coverage policy, surety bond, or letter of credit. The owner or operator shall obtain alternate financial assurance as specified in this regulation within 30 days after receiving notice of such an event. If the owner or operator does not obtain alternate coverage within 30 days after such notification, he shall immediately notify the board in writing.

F. Within 30 days after receipt of written notification that the Virginia Petroleum Storage Tank Fund has become incapable of covering assured corrective action or third party compensation costs, the owner or operator shall obtain alternate financial assurance in accordance with 9 VAC 25-590-40.

9 VAC 25-590-200. Replenishment of guarantees, letters of credit or surety bonds.

A. If at any time after a standby trust is funded upon the instruction of the board with funds drawn from a guarantee, letter of credit, or surety bond, and the amount in the standby trust is reduced below the full amount of coverage required, the owner or operator shall by the anniversary date of the financial mechanism from which the funds were drawn:

1. Replenish the value of financial assurance to equal the full amount of coverage required; or

2. Acquire another financial assurance mechanism for the amount by which funds in the standby trust have been reduced.

B. For purposes of this section, the full amount of coverage required is the amount of coverage to be provided by 9 VAC 25-590-40. If a combination of mechanisms was used to provide the assurance funds which were drawn upon, replenishment shall occur by the earliest anniversary date among the mechanisms.

9 VAC 25-590-210. Virginia Petroleum Storage Tank Fund.

A. The Virginia Petroleum Storage Tank Fund will be used for costs in excess of the financial responsibility requirements specified under subsection B of this section up to $1 million per occurrence for both taking corrective action and compensating third parties for bodily injury and property damage caused by accidental releases from petroleum underground storage tanks in accordance with the following:

1. Corrective action disbursements for accidental releases with no associated third party disbursements from the fund shall not exceed:

a. $995,000 for the $5,000 corrective action requirement;

b. $990,000 for the $10,000 corrective action requirement;

c. $980,000 for the $20,000 corrective action requirement;

d. $970,000 for the $30,000 corrective action requirement;

e. $950,000 for the $50,000 corrective action requirement.

Third party disbursements for accidental releases with no corrective action disbursements from the fund shall not exceed:

a. $985,000 for the $15,000 third party requirement;

b. $970,000 for the $30,000 third party requirement;

c. $940,000 for the $60,000 third party requirement;

d. $880,000 for the $120,000 third party requirement;

e. $850,000 for the $150,000 third party requirement.

Combined corrective action and third party disbursements from the fund shall not exceed:

a. $980,000 for the $20,000 combined requirement;

b. $960,000 for the $40,000 combined requirement;

c. $920,000 for the $80,000 combined requirement;

d. $850,000 for the $150,000 combined requirement;

e. $800,000 for the $200,000 combined requirement.

The first priority for disbursements from the fund shall be for corrective action costs necessary to protect human health and the environment.

2. Compensation for bodily injury and property damage shall be paid to third parties only (i) in accordance with final court orders in cases which have been tried to final judgment no longer subject to appeal, (ii) in accordance with final arbitration awards not subject to appeal, or (iii) where the board approved the settlement of claim between the owner or operator and the third party prior to execution by the parties.

The Commonwealth has not waived its sovereign immunity and does not believe that it is a necessary party to a private action against an owner or operator for third party

injury and property damage.

3. Owner or operator managed cleanups. An owner or operator responding to a release and conducting a board approved corrective action plan in accordance with Parts V and VI (9 VAC 25-580-190 through 9 VAC 25-580-310) may proceed to pay for all costs incurred for such activities. An accounting submitted to the board of all costs incurred will be reviewed and those costs in excess of the financial responsibility requirements up to $1 million which are reasonable and have been approved by the board will be reimbursed from the fund.

4. Owners or operators shall pay the financial responsibility requirement specified in this section for each occurrence.

5. No person shall receive reimbursement from the fund for any costs or damages incurred:

a. Where the person, his employee or agent, or anyone within the privity or knowledge of that person, has violated substantive environmental regulations under 9 VAC 25-580-10 et seq. or this chapter;

b. Where the release occurrence is caused, in whole or in part, by the willful misconduct or negligence of the person, his employee or agent, or anyone within the privity or knowledge of that person;

c. Where the person, his employee or agent, or anyone within the privity or knowledge of that person, has (i) failed to carry out the instructions of the board, committed willful misconduct or been negligent in carrying out or conducting actions under Part V or VI (9 VAC 25-580-190 through 9 VAC 25-580-310) or (ii) has violated applicable federal

or state safety, construction or operating laws or regulations in carrying out conducting actions under Parts V or VI (9 VAC 25-580-190 through 9 VAC 25-580-310);

d. Where the claim has been reimbursed or is reimbursable, by an insurance policy;

e. Where the costs or damages were incurred pursuant to Article 4.1 (§ 10.1-1429.1 et seq.) of Chapter 14 of Title 10.1 of the Code of Virginia and the regulations promulgated thereunder;

f. For corrective action taken prior to December 22, 1989, by an owner or operator of an underground storage tank, or an owner of an underground storage tank exempted in subdivisions 1 and 2 of the definition of an underground storage tank in 9 VAC 25-590-10, or an owner of an aboveground storage tank with a capacity of 5,000 gallons or less used for storing heating oil for consumption on the premises where stored; or

g. Prior to January 1, 1992, by an operator of a facility for containment and cleanup of a release from a facility of a product subject to § 62.1-44.34:13 of the Code of Virginia.

6. No person shall receive reimbursement from the fund for third party bodily injury or property damage:

a. Where the release, occurrence, injury or property damage is caused, in whole or in part, by the willful misconduct or negligence of the owner or operator, his employee or agent, or anyone within his privity or knowledge;

b. Where the claim cost has been reimbursed or is reimbursable by an ins[illegible]e

policy;

c. Where the costs or damages were incurred pursuant to Article 4.1 (§ 10.1-1429.1 et seq.) of Chapter 14 of Title 10.1 of the Code of Virginia and the regulations promulgated thereunder;

d. Where the release was reported before December 22, 1989; or

e. Where the owner or operator does not demonstrate the reasonableness and necessity of the claim costs.

B. 1. The fund will be used to demonstrate financial responsibility requirements for owners or operators in excess of the amounts specified in this subdivision up to the per occurrence and annual aggregate requirements specified in 9 VAC 25-590-40 for both taking corrective action and compensating third parties for bodily injury and property damage caused by accidental releases from petroleum underground storage tanks.

a. Owners and operators with 600,000 gallons or less of petroleum pumped on an annual basis into all underground storage tanks owned or operated, $5,000 per occurrence for taking corrective action and $15,000 per occurrence for compensating third parties, with an annual aggregate of $20,000.

b. Owners and operators with between 600,001 to 1,200,000 gallons of petroleum pumped on an annual basis into all underground storage tanks owned or operated, $10,000 per occurrence for taking corrective action and $30,000 per occurrence for compensating third parties, with an annual aggregate of $40,000.

c. Owners and operators with between 1,200,001 to 1,800,000 gallons of petroleum

pumped on an annual basis into all underground storage tanks owned or operated, $20,000 per occurrence for taking corrective action and $60,000 per occurrence for compensating third parties, with an annual aggregate of $80,000.

d. Owners and operators with between 1,800,001 to 2,400,000 gallons of petroleum pumped on an annual basis into all underground storage tanks owned or operated, $30,000 per occurrence for taking corrective action and $120,000 per occurrence for compensating third parties, with an annual aggregate of $150,000.

e. Owners and operators with in excess of 2,400,000 gallons of petroleum pumped on an annual basis into all underground storage tanks owned or operated, $50,000 per occurrence for taking corrective action and $150,000 per occurrence for compensating third parties, with an annual aggregate of $200,000.

2. The fund may be used to satisfy only the portion of an owner or operator's financial responsibility requirement specified in subdivision 1 of this subsection and, therefore, shall be used in combination with one or more of the mechanisms specified in 9 VAC 25-590-60 through 9 VAC 25-590-110 and 9 VAC 25-590-250.

3. The requirements of 9 VAC 25-590-40 B apply solely to financial responsibility demonstration requirements under this section, and shall not affect reimbursements paid under this section.

C. This fund may also be used for the following:

1. Costs incurred by the board for taking immediate corrective action to contain or mitigate the effects of any release of petroleum into the environment from an underground storage tank if such action is necessary, in the judgment of the board to protect human

health and the environment.

2. Costs incurred by the board for taking both corrective action and compensating third parties up to $1 million for any release of petroleum into the environment from an underground storage tank:

a. Whose owner or operator cannot be determined by the board within 90 days; or

b. Whose owner or operator is incapable, in the judgment of the board, of carrying out such corrective action properly and paying for third party liability claims.

3. Costs incurred by the board for taking corrective action for any release of petroleum into the environment from tanks which are otherwise specifically listed in 9 VAC 25-590-10 as exemptions in the definition of an underground storage tank.

4. All other uses authorized by § 62.1-44.34:11 of the Code of Virginia.

D. The board shall seek recovery of fund moneys expended for corrective action in accordance with § 62.1-44.34:11 of the Code of Virginia where the owner or operator has violated substantive environmental regulations under 9 VAC 25-580-10 et seq. or this chapter.

E. The board shall have the right of subrogation for moneys expended from the fund as compensation for bodily injury, death, or property damage against any person who is liable for such injury, death or damage.

F. No funds shall be paid for reimbursement of costs incurred by an owner or operator for corrective action and for compensating third parties for bodily injury and property damage prior to December 22, 1989.

G. No disbursements shall be made from the fund for owners or operators who are federal

government entities or whose debts and liabilities are the debts and liabilities of the U States.

H. The fund will be managed to provide for cleanup of each occurrence to an acceptable level of risk.

9 VAC 25-590-220. Notices to the State Water Control Board.

All requirements of this regulation for notification to the State Water Control Board shall be addressed as follows:

Director

Department of Environmental Quality

629 E. Main Street

P.O. Box 10009

Richmond, Virginia 23240-0009

9 VAC 25-590-230. Delegation of authority.

The Director of the Department of Environmental Quality or a designee acting for him may perform any act of the board provided under this chapter, except as limited by § 62.1-44.14 of the Code of Virginia.

9 VAC 25-590-240. Lender liability.

The U.S. Environmental Protection Agency regulations on lender liability contained in the Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks (UST) (40 CFR 280.200 through 280.230 (1997)) are incorporated by reference into this chapter as amended by the word or phrase substitutions given in

25-590-260.

9 VAC 25-590-250. Local government financial responsibility demonstration.

The U.S. Environmental Protection Agency regulations on local government financial responsibility demonstration contained in the Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks (UST) (40 CFR 280.104 through 280.107 (1997)) are incorporated by reference into this chapter as amended by the word or phrase substitutions given in 9 VAC 25-590-260.

9 VAC 25-590-260. Word or phrase substitutions.

In 9 VAC 25-590-240 and 9 VAC 25-590-250, the following substitutions apply:

1. All terms which are defined in 9 VAC 25-590-10 shall be given the definition contained in 9 VAC 25-590-10;

2. a. Director of the Department of Environmental Quality for director of the implementing agency;

b. Department of Environmental Quality for the implementing agency;

c. UST preventative and operating requirements under 9 VAC 25-580-10 et seq. for UST technical standards;

d. 9 VAC 25-580-10 et seq. and 9 VAC 25-590-10 et seq. for 40 CFR Part 280 (1997);

e. 9 VAC 25-580-230 through 9 VAC 25-580-300 for 40 CFR Part 280, Subpart F (1997);

f. 9 VAC 25-590-10 et seq. for 40 CFR Part 280, Subpart H (1997);

g. 9 VAC 25-580-50 for 40 CFR 280.20;

h. 9 VAC 25-580-60 for 40 CFR 280.21;

i. 9 VAC 25-580-70 for 40 CFR 280.22 (1997);

j. 9 VAC 25-580-90 for 40 CFR 280.31;

k. 9 VAC 25-580-200 through 9 VAC 25-580-300 for 40 CFR 280.51 through 280.67;

l. 9 VAC 25-580-310 for 40 CFR 280.70;

m. 9 VAC 25-580-320 through 9 VAC 25-580-350 for 40 CFR 280.71 through 280.74;

n. 9 VAC 25-580-330 for 40 CFR 280.72;

o. 9 VAC 25-590-20 through 9 VAC 25-590-160 for 40 CFR 280.90 through 280.111;

p. 9 VAC 25-590-40 for 40 CFR 280.93;

q. 9 VAC 25-590-170 for 40 CFR 280.112 (1997); and

r. 9 VAC 25-590-190 for 40 CFR 280.114.

APPENDIX I.

LETTER FROM CHIEF FINANCIAL OFFICER.

NOTE: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.

I am the chief financial officer of [insert name and address of the owner or operator or guarantor]. This letter is in support of the use of [insert "the financial test of self-insurance," and/or "Guarantee"] to demonstrate financial responsibility for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage"] caused by t

"sudden accidental releases" and/or "nonsudden accidental releases"] in the amount of at least [insert dollar amount] per occurrence and [insert dollar amount] annual aggregate arising from operating (an) underground storage tank(s).

Underground storage tanks at the following facilities are assured by this financial test by this [insert "owner or operator," and/or "guarantor"]: [List for each facility the name and address of the facility where tanks assured by this financial test are located, and whether tanks are assured by this financial test. If separate mechanisms or combinations of mechanisms are being used to assure any of the tanks at this facility, list each tank assured by this financial test by the tank identification number provided in the notification submitted pursuant to 9 VAC 25-580-70 (Underground Storage Tanks: Technical Standards and Corrective Action Requirements)].

A [insert "financial test," and/or "guarantee"] is also used by this [insert "owner or operator" or "guarantor"] to demonstrate evidence of financial responsibility in the following amounts under other EPA regulations or state programs authorized by EPA under 40 CFR Parts 271 and 145 (1997):

EPA Regulation for each state of business operations (specify state):

	Amount
Closure (Sections 264.143 and 265.143)	$___
Post-Closure Care (Sections 264.145 and 265.145)	$___
Liability Coverage (Sections 264.147 and 265.147)	$___
Corrective Action (Section 264.101(b))	$___

Plugging and Abandonment (Section 144.63) . . . . . $___

Other State Programs (specify state):

Closure . . . . . $___

Post-Closure Care . . . . . $___

Liability Coverage . . . . . $___

Corrective Action . . . . . $___

Plugging and Abandonment . . . . . $___

Virginia Hazardous Waste Management Regulations:

Closure (9 VAC 20-60-810 C and 9 VAC 20-60-590 C) . . $___

Post-Closure Care (9 VAC 20-60-810 E and 9 VAC 20-60-590 E) $___

Liability Coverage (9 VAC 20-60-810 G and 9 VAC 20-60-590 G) $___

Corrective Action (9 VAC 20-60-790 L 2) . . . . . $___

Plugging and Abandonment (40 CFR Section 144.63) (1997) $___

TOTAL $___

This [insert "owner or operator," or "guarantor"] has not received an adverse opinion, a disclaimer of opinion, or a "going concern" qualification from an independent auditor on his financial statements for the latest completed fiscal year.

[Fill in the information for Alternative I if the criteria of 9 VAC 25-590-60 B are being u[illegible] demonstrate compliance with the financial test requirements. Fill in the information for Alternative

II if the criteria of 9 VAC 25-590-60 C are being used to demonstrate compliance with the financial test requirements.]

ALTERNATIVE I

1. Amount of annual UST aggregate coverage being assured by a financial test, and/or guarantee.....$____

2. Amount of corrective action, closure and post-closure care costs, liability coverage, and plugging and abandonment costs covered by a financial test, and/or guarantee.....$____

3. Sum of lines 1 and 2.....$____

4. Total tangible assets.....$____

5. Total liabilities [if any of the amount reported on line 3 is included in total liabilities, you may deduct that amount from this line or add that amount to line 6].....$____

6. Tangible net worth [subtract line 5 from line 4].....$____

7. Is line 6 at least equal to line 1 above? Yes.... No.....

8. Is line 6 at least equal to the sum of line 1 plus 10 times line 2? Yes.... No....

9. Have financial statements for the latest financial reporting year been filed with the Securities and Exchange Commission? Yes.... No....

10. Have financial statements for the latest financial reporting year been filed with the Energy Information Administration? Yes.... No....

11. Have financial statements for the latest financial reporting year been filed with the

Rural Electrification Administration? Yes.... No....

12. Has financial information been provided to Dun and Bradstreet, and has Dun and Bradstreet provided a financial strength rating at least equal to the amount of annual UST aggregate coverage being assured according to the table below?

Annual Aggregate Requirement	Dun and Bradstreet Rating
$20,000	EE ($20,000 to $34,999)
$40,000	DC ($50,000 to $74,999)
$80,000	CB ($125,000 to $199,999)
$150,000	BB ($200,000 to $299,999)
$200,000	BB ($200,000 to $299,999)

[Answer "Yes" only if both criteria have been met.] Yes.... No....

13. If you did not answer yes to one of lines 9 through 12, please attach a report from a certified public accountant certifying that there are no material differences between the data reported in lines 4 through 8 above and the financial statements for the

financial reporting year.

ALTERNATIVE II

1. Amount of annual UST aggregate coverage being assured by a financial test, and/or guarantee

2. Amount of corrective action closure and post-closure care costs, liability coverage, and plugging and abandonment costs covered by a financial test, and/or guarantee.....$___

3. Sum of lines 1 and 2.....$___

4. Total tangible assets.....$___

5. Total liabilities [if any of the amount reported on line 3 is included in total liabilities, you may deduct that amount from this line or add that amount to line 6].....$___

6. Tangible net worth [subtract line 5 from line 4].....$___

7. Total assets in the U.S. [required only if less than 90% of assets are located in the U.S.].....$___

8. Is line 6 at least equal to line 1 above? Yes___ No___

9. Is line 6 at least equal to the sum of line 1 plus 6 times the sum of line 2? Yes___ No___

10. Are at least 90% of assets located in the U.S.? [If "No," complete line 11.] Yes___ No___

11. Is line 7 at least equal to the sum of line 1 plus 6 times the sum of line 2? Yes___

No___

[Fill in either lines 12-15 or lines 16-18:]

12. Current assets.....$___

13. Current liabilities.....$___

14. Net working capital subtract line 13 from line 12.....$___

15. Is line 14 at least equal to the sum of line 1 plus 6 times the sum of line 2? Yes___ No___

16. Current bond rating of most recent bond issue? -------

17. Name of rating service -------

18. Date of maturity of bond -------

19. Have financial statements for the latest financial reporting year been filed with the SEC, the Energy Information Administration, or the Rural Electrification Administration? Yes___ No___

[If "no," please attach a report from an independent certified public accountant certifying that there are no material differences between the data reported in lines 4-18 above and the financial statements for the latest financial reporting year.]

[For Alternatives I and II complete the certification with this statement.]

I hereby certify that the wording of this letter is identical to the wording specified in Appendix I of this chapter as such regulations were constituted on the date shown immediately below.

[Signature]

[Name]

[Title]

[Date]

APPENDIX II.

GUARANTEE.

[NOTE: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.]

Guarantee made this [date] by [name of guaranteeing entity], a business entity organized under the laws of the state of [insert name of state], herein referred to as guarantor, to the State Water Control Board of the Commonwealth of Virginia and to any and all third parties, and obligees, on behalf of [owner or operator] of [business address].

Recitals.

(1) Guarantor meets or exceeds the financial test criteria of 9 VAC 25-590-60 B or C and D of Virginia Petroleum Underground Storage Tank Financial Responsibility Requirements, 9 VAC 25-590-10 et seq., and agrees to comply with the requirements for guarantors as specified in 9 VAC 25-590-70 B.

(2) [Owner or operator] owns or operates the following underground storage tank(s) covered by this guarantee: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this

instrument, list the tank identification number provided in the notification submitted pursuant to 9 VAC 25-580-70. (Underground Storage Tanks: Technical Standards and Corrective Action Requirements), and the name and address of the facility]. This guarantee satisfies this chapter's requirements for assuring funding for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases" if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the above-identified underground storage tank(s) in the amount of [insert dollar amount] per occurrence and [insert dollar amount] annual aggregate.

(3) [Insert appropriate phrase: "On behalf of our subsidiary" (if guarantor is corpo parent of the owner or operator); "On behalf of our affiliate" (if guarantor is a related firm of the owner or operator); or "Incident to our business relationship with" (if guarantor is providing the guarantee as an incident to a substantial business relationship with owner or operator)] [owner or operator], guarantor guarantees to the State Water Control Board and to any and all third parties that:

In the event that [owner or operator] fails to provide alternate coverage within 60 days after receipt of a notice of cancellation of this guarantee and the State Water Control Board has determined or suspects that a release has occurred at an underground storage tank covered by this guarantee, the guarantor, upon instructions from the State Water Control Board, shall fund a standby trust fund in accordance with the provisions of 9 VAC 25-590-170, in an amount not to exceed the coverage limits specified above.

In the event that the State Water Control Board determines that [owner or operator] has failed to perform corrective action for releases arising out of the operation of the above-identified tank(s) in accordance with 9 VAC 25-580-230 through 9 VAC 25-580-300 (Underground Storage Tanks: Technical Standards and Corrective Action Requirements), the guarantor upon written instructions from the State Water Control Board shall fund a standby trust in accordance with the provisions of 9 VAC 25-590-170, in an amount not to exceed the coverage limits specified above.

If [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by ["sudden" and/or "nonsudden"] accidental releases arising from the operation of the above-identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor, upon written instructions from the State Water Control Board, shall fund a standby trust in accordance with the provisions of 9 VAC 25-590-170 to satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage specified above.

(4) Guarantor agrees that if, at the end of any fiscal year before cancellation of this guarantee, the guarantor fails to meet the financial test criteria of 9 VAC 25-590-60 B or C and D, guarantor shall send within 120 days of such failure, by certified mail, notice to [owner or operator]. The guarantee will terminate 120 days from the date of receipt of the notice by [owner or operator], as evidenced by the return receipt.

(5) Guarantor agrees to notify [owner or operator] by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming guarantor as

debtor, within 10 days after commencement of the proceeding.

(6) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to 9 VAC 25-580-10 et seq. and 9 VAC 25-590-10 et seq..

(7) Guarantor agrees to remain bound under this guarantee for so long as [owner or operator] shall comply with the applicable financial responsibility requirements of 9 VAC 25-590-10 et seq. for the above-identified tank(s), except that guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator], such cancellation to become effective no earlier than 120 days after receipt of such notice by [owner or operator], as evidenced by the return receipt.

(8) The guarantor's obligation does not apply to any of the following:

(a) Any obligation of [insert owner or operator] under a workers compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;

(e) Bodily damage or property damage for which [insert owner or operator] is obl

to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 9 VAC 25-590-40.

(9) Guarantor expressly waives notice of acceptance of this guarantee by the State Water Control Board, by any or all third parties, or by [owner or operator].

I hereby certify that the wording of this guarantee is identical to the wording specified in Appendix II of 9 VAC 25-590-10 et seq. as such regulations were constituted on the effective date shown immediately below.

Effective date:

[Name of guarantor]

[Authorized signature for guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary:

APPENDIX III.

ENDORSEMENT.

[NOTE: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.]

Name: [name of each covered location]

Address: [address of each covered location]

Policy number:

Period of coverage: [current policy period]

Name of [Insurer or Group Self Insurance Pool]:

Address of [Insurer or Group Self Insurance Pool]:

Name of Insured:

Address of Insured:

Endorsement:

1. This endorsement certifies that the policy to which the endorsement is attached provides liability insurance covering the following underground storage tanks in connection with the insured's obligation to demonstrate financial responsibility under the Virginia Petro[illegible] Underground Storage Tank Financial Requirements Regulation (9 VAC 25-590-10 et seq.).

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 9 VAC 25-580-70 (Underground Storage Tanks: Technical Standards and Corrective Action Requirements), and the name and address of the facility.]

for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases";] in accordance with and subject to the limits of liability, exclusions, conditions, and other terms of the policy; [if coverage is different for different

or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tank(s) identified above.

The limits of liability are [insert the dollar amount of the corrective action "each occurrence" and third party "each occurrence" and "annual aggregate" limits of the Insurer's or Group's liability; if the amount of coverage is different for different types of coverage or for different underground storage tanks or locations, indicate the amount of coverage for each type of coverage and/or for each underground storage tank or location], exclusive of legal defense costs, which are subject to a separate limit under the policy. This coverage is provided under [policy number]. The effective date of said policy is [date].

2. The insurance afforded with respect to such occurrences is subject to all of the terms and conditions of the policy; provided, however, that any provisions inconsistent with subsections (a) through (d) for occurrence policies and (a) through (e) for claims-made policies of this Paragraph 2 are hereby amended to conform with subsections (a) through (e):

a. Bankruptcy or insolvency of the insured shall not relieve the ["Insurer" or "Pool"] of its obligations under the policy to which this endorsement is attached.

b. The ["Insurer" or "Pool"] is liable for the payment of amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third-party, with a right of reimbursement by the insured for any such payment made by the ["Insurer" or "Pool"]. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in 9 VAC 25-590-60 through 9 VAC 25-590-110.

c. Whenever requested by the State Water Control Board, the ["Insurer" or "Pool"]

agrees to furnish to State Water Control Board the signed duplicate original of the policy and endorsements.

d. Cancellation or any other termination of the insurance by the ["Insurer" or "Pool"], except for nonpayment of premium or misrepresentation by the insured, will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the insured. Cancellation for nonpayment of premium or misrepresentation by the insured will be effective only upon written notice and only after expiration of a minimum of 15 days after a copy of such written notice is received by the insured.

[Insert for claims-made policies:

e. The insurance covers claims otherwise covered by the policy that are reported to the ["Insurer" or "Pool"] within six months of the effective date of cancellation or nonrenewal of the policy except where the new or renewed policy has the same retroactive date or a retroactive date earlier than that of the prior policy, and which arise out of any covered occurrence that commenced after the policy retroactive date, if applicable, and prior to such policy renewal or termination date. Claims reported during such extended reporting period are subject to the terms, conditions, limits, including limits of liability, and exclusions of the policy.]

I hereby certify that the wording of this endorsement is in no respect less favorable than the coverage specified in APPENDIX III of 9 VAC 25-590-10 et seq. and has been so certified by the State Corporation Commission of the Commonwealth of Virginia. I further certify that the ["Insurer" or "Pool"] is ["licensed to transact the business of insurance or eligible to provide insurance as an excess or surplus lines insurer in the Commonwealth of Virginia"].

[Signature of authorized representative of Insurer or Group Self Insurance Pool]

[Name of person signing]

[Title of person signing], Authorized Representative of [name of Insurer or Group Self Insurance Pool]

[Address of Representative]

APPENDIX IV.

CERTIFICATE OF INSURANCE.

[NOTE: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.]

Name: [name of each covered location]

Address: [address of each covered location]

Policy number:

Endorsement (if applicable):

Period of coverage: [current policy period]

Name of [Insurer or Group Self Insurance Pool]:

Address of [Insurer or Group Self Insurance Pool]:

Name of Insured:

Address of Insured:

Certification:

1. [Name of Insurer or Group Self Insurance Pool], [the "Insurer" or "Pool"], as identified above, hereby certifies that it has issued liability insurance covering the following underground storage tank(s) in connection with the insured's obligation to demonstrate financial responsibility under the Virginia Petroleum Underground Storage Tank Financial Requirements Regulation (9 VAC 25-590-10 et seq.).

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 9 VAC 25-590-70 (Underground Storage Tanks; Technical Standards and Corrective Action Requirements), and the name and address of the facility.]

for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"]; in accordance with and subject to the limits of liability, exclusions, conditions, and other terms of the policy; [if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tank(s) identified above.

The limits of liability are [insert the dollar amount of the corrective action "each occurrence" and third party "each occurrence" and "annual aggregate" limits of the Insurer's or Group's liability; if the amount of coverage is different for different types of coverage or for different underground storage tanks or locations, indicate the amount of coverage for each type of coverage and/or for each underground storage tank or location], exclusive of legal d e

costs, which are subject to a separate limit under the policy. This coverage is provided under [policy number]. The effective date of said policy is [date].

2. The ["Insurer" or "Pool"] further certifies the following with respect to the insurance described in Paragraph 1:

a. Bankruptcy or insolvency of the insured shall not relieve the ["Insurer" or "Pool"] of its obligations under the policy to which this certificate applies.

b. The ["Insurer" or "Pool"] is liable for the payment of amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third party, with a right of reimbursement by the insured for any such payment made by the ["Insurer" or "Pool"]. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in 9 VAC 25-590-60 through 9 VAC 25-590-110.

c. Whenever requested by the State Water Control Board, the ["Insurer" or "Pool"] agrees to furnish to the State Water Control Board a signed duplicate original of the policy and all endorsements.

d. Cancellation or any other termination of the insurance by the ["Insurer" or "Pool"], except for nonpayment of premium or misrepresentation by the insured, will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the insured. Cancellation for nonpayment of premium or misrepresentation by the insured will be effective only upon written notice and only after expiration of a minimum of 15 days after a copy of such written notice is received by the insured.

[Insert for claims-made policies]

e. The insurance covers claims otherwise covered by the policy that are reported to the ["Insurer" or "Pool"] within six months of the effective date of cancellation or nonrenewal of the policy except where the new or renewed policy has the same retroactive date or a retroactive date earlier than that of the prior policy, and which arise out of any covered occurrence that commenced after the policy retroactive date, if applicable, and prior to such policy renewal or termination date. Claims reported during such extended reporting period are subject to the terms, conditions, limits, including limits of liability, and exclusions of the policy.

I hereby certify that the wording of this instrument is identical to the wording in APPENDIX IV of 9 VAC 25-590-10 et seq. and that the ["Insurer" or "Pool"] is ["licensed to transact the business of insurance, or eligible to provide insurance as an excess or approved surplus lines insurer, in the Commonwealth of Virginia"].

[Signature of authorized representative of Insurer]

[Type name] [Title], Authorized Representative of [name of Insurer or Group Self Insurance Pool]

[Address of Representative]

APPENDIX V.

PERFORMANCE BOND.

[NOTE: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.]

Date bond executed:

Period of coverage:

Principal: [legal name and business address of owner or operator.]

Type of organization: [insert "individual" "joint venture," "partnership," or "corporation"]

State of incorporation (if applicable):

Surety(ies): [name(s) and business address(es)]

Scope of coverage: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 9 VAC 25-580-70 (Underground Storage Tanks: Technical Standards and Corrective Action Requirements), and the name and address of the facility. List the coverage guaranteed by the bond: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases" "arising from operating the underground storage tank"].

Penal sums of bond:

Corrective Action (per occurrence) $.....

Third Party Liability (per occurrence) $.....

Annual aggregate $.....

Surety's bond number:

Know all Persons by These Presents, that we, the principal and Surety(ies), hereto are firmly bound to the State Water Control Board of the Commonwealth of Virginia, in the above penal sums for the payment of which we bind ourselves, our heirs, executors,

administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sums jointly and severally only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each surety binds itself, jointly and severally with the Principal, for the payment of such sums only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sums.

Whereas said Principal is required under § 62.1-44.34:8 through § 62.1-44.34:12 of the Code of Virginia, Subtitle I of the Resource Conservation and Recovery Act (RCRA), as amended, and under the Virginia Petroleum Underground Storage Tank Financial Requirements Regulation (9 VAC 25-590-10 et seq.), to provide financial assurance for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tanks identified above, and

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, therefore, the conditions of the obligation are such that if the Principal shall faithfully ["take corrective action, in accordance with Part VI of 9 VAC 25-580-230 through 25-580-300. (Underground Storage Tanks: Technical Standards and Corrective Action Requirements) and the State Water Control Board's instructions for," and/or "comp

injured third parties for bodily injury and property damage caused by" either "sudden" or "nonsudden" or "sudden and nonsudden"] accidental releases arising from operating the tank(s) identified above, or if the Principal shall provide alternate financial assurance, as specified in 9 VAC 25-590-10 et seq., within 120 days after the date the notice of cancellation is received by the Principal from the Surety(ies), then this obligation shall be null and void; otherwise it is to remain in full force and effect.

Such obligation does not apply to any of the following:

(a) Any obligation of [insert owner or operator] under a workers compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;

(e) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 9 VAC 25-590-40.

The Surety(ies) shall become liable on this bond obligation only when the Principal has

failed to fulfill the conditions described above.

Upon notification by the State Water Control Board that the Principal has failed to ["take corrective action, in accordance with Part VI of 9 VAC 25-580-230 through 25-580-300 and the State Water Control Board's instructions," and/or "compensate injured third parties"] as guaranteed by this bond, the Surety(ies) shall either perform ["corrective action in, accordance with 9 VAC 25-580-10 et seq. and the board's instructions," and/or "third party liability compensation"] or place funds in an amount up to the annual aggregate penal sum into the standby trust fund as directed by the State Water Control Board under 9 VAC 25-590-170.

Upon notification by the State Water Control Board that the Principal has failed to provide alternate financial assurance within 60 days after the date the notice of cancellation is received by the Principal from the Surety(ies) and that the State Water Control Board has determined or suspects that a release has occurred, the Surety(ies) shall place funds in an amount not exceeding the annual aggregate penal sum into the standby trust fund as directed by the State Water Control Board under 9 VAC 25-590-170.

The Surety(ies) hereby waive(s) notification of amendments to applicable laws, statutes, rules, and regulations and agrees that no such amendment shall in any way alleviate its (their) obligation on this bond.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the annual aggregate to the penal sum shown on the face of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said annual aggl

penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the principal, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by the principal, as evidenced by the return receipt.

The Principal may terminate this bond by sending written notice to the Surety(ies).

In Witness Thereof, the Principal and Surety(ies) have executed this Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in Appendix V of 9 VAC 25-590-10 et seq. as such regulations were constituted on the date this bond was executed.

PRINCIPAL

[Signature(s)]

[Name(s)]

[Title(s)]

[Corporate seal]

CORPORATE SURETY(IES)

[Name and address]

State of Incorporation:

Liability limit..... ..... $

[Signature(s)]

[Name(s) and title(s)]

[Corporate seal]

[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for surety above.]

Bond premium:.....$ . . .

APPENDIX VI.

IRREVOCABLE STANDBY LETTER OF CREDIT.

[NOTE: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.]

[Name and address of issuing institution]

[Name and address of the Executive Director of the State Water Control Board of the Commonwealth of Virginia and Director(s) of other state implementing agency(ies)]

Dear Sir or Madam: We hereby establish our Irrevocable Standby Letter of Credit No . . . . in your favor, at the request and for the account of [owner or operator name] of [address] up to the aggregate amount of [in words] U.S. dollars ($[insert dollar amount]), available upon presentation [insert, if more than one director of a state implementing agency is a beneficiary, "by any one of you"] of

(1) your sight draft, bearing reference to this letter of credit, No. . . . and

(2) your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of §§ 62.1-44.34:8 through 62.1-44.34:12 of the Code of Virginia and Subtitle I of the Resource Conservation and Recovery Act of 1976, as amended."

This letter of credit may be drawn on to cover [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"] arising from operating the underground storage tank(s) identified below in the amount of [in words] $ [insert dollar amount] per occurrence and [in words] $ [insert dollar amount] annual aggregate:

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 9 VAC 25-580-70 (Underground Storage Tanks: Technical Standards and Corrective Action Requirements), and the name and address of the facility.]

The letter of credit may not be drawn on to cover any of the following:

(a) Any obligation, of [insert owner or operator] under a workers compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;

(e) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 9 VAC 25-590-40 (Virginia Petroleum Underground Storage Tank Financial Responsibility Requirements).

This letter of credit is effective as of [date] and shall expire on [date], but such expiration date shall be automatically extended for a period of [at least the length of the original term] on [expiration date] and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify [owner or operator] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event that [owner or operator] is so notified, any unused portion of the credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by [owner or operator], as shown on the signed return receipt.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of [owner or operator] in accordance with your instructions.

We certify that the wording of this letter of credit is identical to the wording specified in

Appendix VI of 9 VAC 25-590-10 et seq. as such regulations were constituted on the date shown immediately below.

[Signature(s) and title(s) of official(s) of issuing institution]

[Date]

This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published and copyrighted by the International Chamber of Commerce," or "the Uniform Commercial Code"].

APPENDIX VII.

TRUST AGREEMENT.

[NOTE: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.]

Trust agreement, the "Agreement," entered into as of [date] by and between [name of the owner or operator], a [name of state] [insert "corporation," "partnership," "association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert "Incorporated in the state of . . . . . " or "a national bank"], the "Trustee."

Whereas, the State Water Control Board of the Commonwealth of Virginia has established certain regulations applicable to the Grantor, requiring that an owner or operator of an underground storage tank shall provide assurance that funds will be available when needed for corrective action and third party compensation for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from the operation of the underground storage tank. The attached Schedule A lists the number of tanks at each facility and the name(s) and

address(es) of the facility(ies) where the tanks are located that are covered by the standby trust agreement.

Whereas, the Grantor has elected to establish [insert either "a guarantee," "surety bond," or "letter of credit"] to provide all or part of such financial assurance for the underground storage tanks identified herein and is required to establish a standby trust fund able to accept payments from the instrument (This paragraph is only applicable to the standby trust agreement.);

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee;

Now, therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

(c) "9 VAC 25-590-10 et seq." is the Petroleum Underground Storage Tank Financial Requirements Regulation promulgated by the State Water Control Board for the Commonwealth of Virginia.

Section 2. Identification of the Financial Assurance Mechanism.

This Agreement pertains to the [identify the financial assurance mechanism, either a guarantee, surety bond, or letter of credit, from which the standby trust fund is established to receive payments (This paragraph is only applicable to the standby trust agreement.)].

Section 3. Establishment of Fund.

The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of the State Water Control Board of the Commonwealth of Virginia. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. [The Fund is established initially as a standby to receive payments and shall not consist of any property.] Payments made by the provider of financial assurance pursuant to the State Water Control Board's instruction are transferred to the Trustee and are referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor as provider of financial assurance, any payments necessary to discharge any liability of the Grantor established by the State Water Control Board.

Section 4. Payment for ["Corrective Action" and/or "Third Party Liability Claims"].

The Trustee shall make payments from the Fund as the State Water Control Board shall direct, in writing, to provide for the payment of the costs of [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"] arising from operating the tanks covered by the financial assurance mechanism identified in this Agreement.

The Fund may not be drawn upon to cover any of the following:

(a) Any obligation of [insert owner or operator] under a workers compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert owner or operator] arising from, and in the

course of, employment by [insert owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;

(e) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 9 VAC 25-590-40.

The Trustee shall reimburse the Grantor, or other persons as specified by the State Water Control Board, from the Fund for corrective action expenditures and/or third party liability c. in such amounts as the State Water Control Board shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the State Water Control Board specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined here.

Section 5. Payments Comprising the Fund.

Payments made to the Trustee for the Fund shall consist of cash and securities acceptable to the Trustee.

Section 6. Trustee Management.

The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing

Trustee from time to time, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiaries and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims, except that:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the tanks, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 USC § 80a-2(a), shall not be acquired or held, unless they are securities or other obligations of the federal or a state government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the federal or state government; and

(iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment.

The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment

Company Act of 1940, 15 USC § 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee.

Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer, conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at

all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the federal or state government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses.

All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Advice of Counsel.

The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any questions arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 11. Trustee Compensation.

The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 12. Successor Trustee.

The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in writing sent to the Grantor and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 13. Instructions to the Trustee.

All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Schedule B or such other designees as the Grantor may designate by amendment to Schedule B. The trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests and instructions by the State Water Control Board to the Trustee shall be in writing, signed by the Executive Director of the State Water Control Board, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice

contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the State Water Control Board hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the State Water Control Board, except as provided for herein.

Section 14. Amendment of Agreement.

This Agreement may be amended by an instrument in writing executed by the Grantor and the Trustee, or by the Trustee and the State Water Control Board if the Grantor ceases to exist.

Section 15. Irrevocability and Termination.

Subject to the right of the parties to amend this Agreement as provided in Section 14, this Trust shall be irrevocable and shall continue until terminated at the written direction of the Grantor and the Trustee, or by the Trustee and the State Water Control Board, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 16. Immunity and Indemnification.

The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the State Water Control Board issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 17. Choice of Law.

This Agreement shall be administered, construed, and enforced according to the laws of the Commonwealth of Virginia, or the Comptroller of the Currency in the case of National Association banks.

Section 18. Interpretation.

As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals (if applicable) to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in Appendix VII of 9 VAC 25-590-10 et seq. as such regulations were constituted on the date written above.

[Signature of Grantor]

[Name of the Grantor]

[Title]

Attest:

[Signature of Trustee]

[Name of the Trustee]

[Title]

[Seal]

[Signature of Witness]

[Name of Witness]

[Title]

[Seal]

APPENDIX VIII.

CERTIFICATION OF ACKNOWLEDGMENT.

[Note: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.]

State of . . . .

County of . . . .

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that she/he signed her/his name thereto by like order.

[Signature of Notary Public]

[Name of Notary Public]

My Commission expires:

APPENDIX IX.

CERTIFICATION OF FINANCIAL RESPONSIBILITY.

[Note: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.]

[Owner or operator] hereby certifies that it is in compliance with the requirements of 9 VAC 25-590-10 et seq. (Petroleum Underground Storage Tank Financial Requirements Regulation).

The financial assurance mechanism[s] used to demonstrate financial responsibility under 9 VAC 25-590-10 et seq. is [are] as follows:

Indicate type of Mechanism (Note: the Fund may not be used as the sole mechanism):

____ Virginia Petroleum Storage Tank Fund ("the Fund")

____ Letter from Chief Financial Officer

____ Guarantee

____ Insurance Endorsement or Certificate

____ Letter of Credit

____ Surety Bond

____ Trust Fund

Name of Issuer (for mechanism other than the Fund):

_____

Mechanism Number (if applicable):_____

Amount of coverage for mechanism other than the Fund:

$_____ corrective action per occurrence

$_____ third party liability per occurrence

$_____ annual aggregate

Amount of coverage under Virginia Petroleum Storage Tank Fund:

$_____ per occurrence and $_____ annual aggregate

Effective period of coverage: _____ to _____

Do(es) mechanism(s) cover(s): taking corrective action and/or compensating third parties for bodily injury and property damage caused by either sudden accidental releases or nonsudden accidental releases or accidental releases? ____ Yes ____ No

If "No," specify in the following space the items the mechanism covers:

[Signature of owner or operator]

[Name of owner or operator] [Title] [Date]

[Signature of notary]

[Name of notary] [Date] My Commission expires:

APPENDIX X.

CERTIFICATION OF VALID CLAIM.

[Note: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.]

The undersigned, as principals and as legal representatives of [insert owner or operator] and [insert name and address of third party claimant], hereby certify that the claim of bodily injury

[and/or] property damage caused by an accidental release arising from operating [owner's or operator's] underground storage tank should be paid in the amount of $[. . . .].

[Signatures] [Signature(s)]

Owner or Operator Claimant(s)

Attorney for Attorney(s) for

Owner or Operator Claimant(s)

(Notary) Date (Notary) Date

APPENDIX XI.

LETTER FROM CHIEF FINANCIAL OFFICER (SHORT FORM).

[Note: This Appendix may only be used by owners or operators who do not own or operate hazardous waste facilities or underground injection control wells.]

[Note: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.]

I am the chief financial officer of [insert: name and address of the owner or operator or guarantor]. This letter is in support of the use of [insert "the financial test of self-insurance," and/or "Guarantee"] to demonstrate financial responsibility for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage"] caused by [insert "sudden accidental releases" and/or "nonsudden accidental releases"] in the amount of at least [insert dollar amount] per occurrence and [insert dollar amount] annual aggregate arising from operating (an) underground storage tank(s).

Underground storage tanks at the following facilities are assured by this financial test by this [insert "owner or operator," and/or "guarantor"]: [List for each facility the name and address of the facility where tanks assured by this financial test are located, and whether tanks are assured by this financial test. If separate mechanisms or combinations of mechanisms are being used to assure any of the tanks at this facility, list each tank assured by this financial test by the tank identification number provided in the notification submitted pursuant to 9 VAC 25-580-70 (Underground Storage Tanks: Technical Standards and Corrective Action Requirements)].

I am not required to demonstrate evidence of financial responsibility for any other EPA regulation or state programs authorized by EPA.

This [insert "owner or operator," or "guarantor"] has not received an adverse opinion, a disclaimer of opinion, or a "going concern" qualification from an independent auditor on the financial statements for the latest completed financial reporting year.

[Fill in the information below to demonstrate compliance with the financial test requirements.]

1. Amount of annual UST aggregate coverage being assured by a financial test, and/or guarantee..... $---

2. Total tangible assets.....$---

3. Total liabilities [if any of the amount reported on line 1 is included in total liabilities, you may deduct that amount from this line or add that amount to line 4].....$---

4. Tangible net worth [subtract line 3 from line 2].....$---

5. Is line 4 at least equal to line 1 above? Yes... No...

6. Have financial statements for the latest financial reporting year been filed with the

Securities and Exchange Commission? Yes... No...

7. Have financial statements for the latest financial reporting year been filed with the Energy Information Administration? Yes... No...

8. Have financial statements for the latest financial reporting year been filed with the Rural Electrification Administration? Yes... No...

9. Has financial information been provided to Dun and Bradstreet, and has Dun and Bradstreet provided a financial strength rating at least equal to the amount of annual UST aggregate coverage being assured according to the table below?

Annual Aggregate Requirement	Dun and Bradstreet Rating
$20,000	EE ($20,000 to $34,999)
$40,000	DC ($50,000 to $74,999)
$80,000	CB ($125,000 to $199,999)
$150,000	BB ($200,000 to $299,999)

$200,000 BB ($200,000 to $299,999)

[Answer "Yes" only if BOTH criteria have been met.] Yes... No...

10. If you did not answer yes to one of lines 6 through 9, please attach a report from a certified public accountant certifying that there are no material differences between the data reported in lines 2 through 5 above and the financial statements for the latest financial reporting year.

I hereby certify that the wording of this letter is identical to the wording specified in Appendix XI of this chapter as such regulations were constituted on the date shown immediately below.

[Signature]

[Name]

[Title]

[Date]