



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

DEC 26 2007

CERTIFIED MAIL- RETURN RECEIPT REQUESTED

Article Number: 7005 3110 0000 5931 7198

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2008 JAN -2 PM 1:45
REGIONAL HEARING
CLERK

Emily R. Baker, Regional Administrator
U.S. General Services Administration, Region 2
Northeast and Caribbean Region
26 Federal Plaza, 16th Floor
New York, New York 10278

Re: **In the Matter of United States General Services Administration, Respondents**
Docket No. RCRA-02-2008-7501

Dear Ms. Baker:

Enclosed is the Complaint, Compliance Order and Opportunity for Hearing in the above-referenced proceeding. The Complaint alleges violations of the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901 *et seq.*

You have the right to a formal hearing to contest any of the allegations in the Complaint and/or to contest the penalty proposed in the Complaint. If you wish to contest the allegations and/or the penalty proposed in the Complaint, you must file an Answer within **thirty (30)** days of your receipt of the enclosed Complaint with the Regional Hearing Clerk of the Environmental Protection Agency ("EPA"), Region 2, at the following address:

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

If you do not file an Answer within thirty (30) days of receipt of this Complaint and have not obtained a formal extension for filing an Answer from the Regional Judicial Officer of Region 2, a default order may be entered against you and the entire proposed penalty may be assessed.

Whether or not you request a formal hearing, you may request an informal conference with EPA to discuss any issue relating to the alleged violations and the amount of the proposed penalty. EPA encourages all parties against whom it files a Complaint to pursue the possibility of settlement and to have an informal conference with EPA. However, a request for an informal

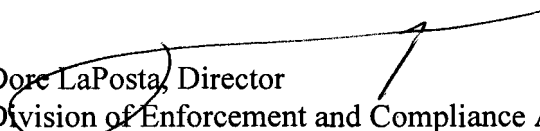
conference *does not* substitute for a written Answer, affect what you may choose to say in an Answer, or extend the thirty (30) days by which you must file an Answer requesting a hearing.

You will find enclosed a copy of the "Consolidated Rules of Practice," which govern this proceeding. (A brief discussion of some of these rules appears in the later part of the Complaint.) For your general information and use, I also enclosed an "Information Sheet for U.S. EPA Small Business Resources." This document offers some useful information and resources.

EPA encourages the use of Supplemental Environmental Projects, where appropriate, as part of any settlement. I am enclosing a brochure on "EPA's Supplemental Environmental Projects Policy." Please note that these are only available as part of a negotiated settlement and are not available if this case has to be resolved by a formal adjudication.

If you have any questions or wish to schedule an informal conference, please contact the attorney whose name is listed in the Complaint.

Sincerely,

A handwritten signature in black ink, appearing to read "Dore LaPosta", is written over a horizontal line. A small arrow points from the signature down to the text below.
Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

Enclosures

cc: Karen Maples, Regional Hearing Clerk (without enclosures)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. ENVIRONMENTAL
PROTECTION AGENCY REG-11
2008 JAN -2 PM 1:45
REGIONAL HEARING
CLERK

In the Matter of

United States General Services
Administration

Respondent.

Proceeding Under Section 9006
of the Solid Waste Disposal Act,
as amended

COMPLAINT, COMPLIANCE ORDER
AND NOTICE OF OPPORTUNITY
FOR HEARING

Docket No. RCRA-02-2008-7501

COMPLAINT

1. This is a civil administrative proceeding instituted pursuant to Section 9006 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, the Hazardous and Solid Waste Amendments of 1984, the Superfund Amendments and Reauthorization Act of 1986, and the Energy Policy Act of 2005, 42 U.S.C. § 6901 et seq. (collectively referred to as "RCRA" or the "Act").
2. Complainant in this proceeding, Dore LaPosta, Director, Division of Enforcement and Compliance Assistance of the United States Environmental Protection Agency, Region 2 (EPA), has been duly delegated the authority to institute this action.
3. Respondent is the United States General Services Administration, (hereinafter "Respondent" or "Respondent, GSA").
4. Respondent is a department, agency or instrumentality of the executive branch of the Federal government.
5. Respondent is a "person" within the meaning of Section 9001(5) of the Act, 42 U.S.C. § 6991(6), and 40 C.F.R. § 280.12.
6. 40 C.F.R. Section 280.12 defines an existing tank as a tank system used to contain an accumulation of regulated substances or for which installation has commenced on or before December 22, 1988.

7. Pursuant to 40 C.F.R. Section 280.12, a new tank is defined as a tank system used to contain an accumulation of regulated substances and for which installation has commenced after December 22, 1988.
8. Respondent has owned and operated, and continues to own and operate, an existing 1,500 gallon steel “underground storage tank” (UST), as that term is defined in Section 9001 of the Act, 42 U.S.C. §6991, and in 40 C.F.R. §280.12, located at the Silvio V. Mollo Federal Building, One Saint Andrews Plaza, New York, N.Y., (hereinafter “the Mollo Facility”).
9. Respondent has owned and operated, and continues to own and operate, an existing 3,500 or 4,000 gallon steel “underground storage tank” (UST), as that term is defined in Section 9001 of the Act, 42 U.S.C. §6991, and in 40 C.F.R. §280.12, located at the Thurgood Marshall U.S. Courthouse, 40 Foley Square, New York, N.Y., (hereinafter “the Marshall Facility”).
10. Respondent has owned and operated, and continues to own and operate, a new 500 gallon steel “underground storage tank” (UST), as that term is defined in Section 9001 of the Act, 42 U.S.C. §6991, and in 40 C.F.R. §280.12, located at the Martin Luther King Courthouse, 50 Walnut Street, Newark, N.J., (hereinafter “the MLK Facility”).
11. Pursuant to Section 9005(a) of the Act, 42 U.S.C. § 6991d(a), and 40 C.F.R. § 280.34, on or about February 15, 2007, EPA sent an Information Request Letter (IRL) to Respondent to determine the status of its compliance with the Act and 40 C.F.R. Part 280, for USTs at all GSA’s facilities in EPA, Region 2, encompassing New York State, New Jersey State, the Commonwealth of Puerto Rico and the Territory of the U.S. Virgin Islands.
12. Pursuant to §§ 2002, 9002, and 9003 of the Act, 42 U.S.C. §§ 6912, 6991a, and 6991b, EPA promulgated rules setting forth requirements for owners and operators of UST systems, set forth at 40 C.F.R. Part 280.

Count 1 – Failure to Upgrade Existing UST System, or Meet the New UST System Performance Standards, or Close the Existing UST System at the Mollo Facility, as Required by 40 C.F.R. § 280.21.

13. Complainant realleges each allegation contained in Paragraphs “1” through “12” with the same force and effect as if fully set forth herein.
14. Pursuant to 40 C.F.R. Section 280.21, not later than December 22, 1998, all existing UST systems had to comply with the upgrade requirements in paragraphs (b) through (d) of

that section, or with the new performance standard requirements set forth in 40 C.F.R. Section 280.20, or the closure requirements set forth in 40 C.F.R. Sections 280.70 - 280.74.

15. Pursuant to 40 C.F.R. Section 280.21(b), steel tanks must be upgraded by internal lining or cathodic protection, or both.
16. Pursuant to 40 C.F.R. Section 280.21(d), all existing UST systems must be upgraded with spill and overfill prevention equipment.
17. Pursuant to Section 9005 of the Act, 42 U.S.C. § 6991d, on May 18, 2006, an authorized representative of EPA inspected the existing UST system located at the Mollo Facility, to determine its compliance with respect to the Act and 40 C.F.R. Part 280.
18. At the time of EPA's inspection of the UST system at the Mollo Facility, the UST system did not have internal lining or cathodic protection.
19. At the time of EPA's inspection at the Mollo Facility, EPA requested records of any upgrades made to the UST system, but Respondent did not produce records demonstrating that the UST system had been upgraded in accordance with the requirements of 40 C.F.R. Section 280.21(b) through (d).
20. At the time of EPA's inspection of the UST system at the Mollo Facility, the UST system did not have spill or overfill prevention equipment.
21. At the time of EPA's inspection of the UST system at the Mollo Facility, the UST system was in use and did not meet the performance standards set forth 40 C.F.R. Section 280.21, or has not been closed pursuant to 40 C.F.R. Section 280.70 - 280.74.
22. Respondent's June 15, 2007 response to EPA's Information Request Letter acknowledged that Respondent is the owner of one 1,500 gallon steel UST system that was installed in January 1974 at the Mollo Facility.
23. Respondent's June 15, 2007 response to EPA's Information Request Letter acknowledged that the UST system at the Mollo Facility was used for storage of diesel fuel solely to power an emergency generator.
24. Question 12 of EPA's Information Request Letter requested that, if applicable, Respondent state the dates when the UST system at the Mollo Facility was provided with cathodic protection, spill and overfill prevention equipment, and to include all supporting documentation of any such upgrade.

25. Respondent's June 15, 2007 response to Question 12 of EPA's Information Request Letter stated "N/A" (i.e., "not applicable") and Respondent did not provide any documentation of cathodic protection, spill and overfill prevention equipment of the UST system at the Mollo Facility.
26. Respondent's June 15, 2007 response to EPA's Information Request Letter acknowledged that the UST system at the Mollo Facility did not have spill or overfill prevention equipment.
27. The Respondent's failure, from December 22, 1998 through October 1, 2007 to comply with the upgrade requirements specified in 40 C.F.R. Section 280.21, or with the performance standards set forth in 40 C.F.R. Section 280.20, or with the closure requirements set forth in 40 C.F.R. Sections 280.70 - 280.74 constitutes violations of 40 C.F.R. Part 280.21.

Count 2 – Failure to Upgrade Existing UST system, or Meet the New UST System Performance Standards, or Close the Existing UST System at the Marshall Facility, as Required by 40 C.F.R. § 280.21.

28. Complainant realleges each allegation contained in Paragraphs "1" through "27" with the same force and effect as if fully set forth herein.
29. Pursuant to 40 C.F.R. Section 280.21, not later than December 22, 1998, all existing UST systems had to comply with the upgrade requirements in paragraphs (b) through (d) of that section, or in the alternative, they had to comply with the closure requirements set forth at 40 C.F.R. Sections 280.70 - 280.74.
30. Pursuant to 40 C.F.R. Section 280.21(b), steel tanks must be upgraded by internal lining or cathodic protection, or both.
31. Pursuant to 40 C.F.R. Section 280.21(d), all existing UST systems must be upgraded with spill and overfill prevention equipment.
32. Pursuant to Section 9005 of the Act, 42 U.S.C. § 6991d, on May 18, 2006, an authorized representative of EPA inspected the existing UST system located at the Marshall Facility, to determine its compliance with respect to the Act and 40 C.F.R. Part 280.
33. At the time of EPA's inspection of the UST system at the Marshall Facility, the UST system did not have internal lining or cathodic protection.
34. At the time of EPA's inspection at the Marshall Facility, EPA requested records of any upgrades made to the UST system, but Respondent did not produce records

demonstrating that the UST system had been upgraded in accordance with the requirements of 40 C.F.R. Section 280.21(b) through (d).

35. At the time of EPA's inspection of the UST system at the Marshall Facility, the UST system did not have spill or overfill prevention equipment.
36. At the time of EPA's inspection of the UST system at the Marshall Facility, the UST system was in use and had not been closed pursuant to 40 C.F.R. Section 280.70 - 280.74.
37. Respondent's June 15, 2007 response to EPA's Information Request Letter acknowledged that Respondent is the owner of one 3,500 or 4,000 gallon steel UST system which was installed in June 1975, at the Marshall Facility.
38. Respondent's June 15, 2007 response to EPA's Information Request Letter acknowledged that the UST system at the Marshall Facility was used for storage of diesel fuel solely to power an emergency generator.
39. Question 12 of EPA's Information Request Letter requested that, if applicable, Respondent state the dates when the UST system at the Marshall Facility was provided with cathodic protection, spill and overfill prevention equipment, and to include supporting documentation for any such upgrade.
40. Respondent's June 15, 2007 response to Question 12 of EPA's Information Request Letter stated "unknown" and Respondent did not provide any documentation of cathodic protection, spill and overfill prevention equipment.
41. Respondent's June 15, 2007 response to EPA's Information Request Letter acknowledged that the UST system at the Marshall Facility did not have spill or overfill prevention equipment.
42. The Respondent's failure, from December 22, 1998 through October 1, 2007 to comply with the upgrade requirements specified in 40 C.F.R. Section 280.21, or with the performance standards set forth in 40 C.F.R. Section 280.20, or with the closure requirements set forth in 40 C.F.R. Sections 280.70 - 280.74 constitutes violations of 40 C.F.R. Part 280.21.

Count 3 – Failure to Meet Performance Standards for New UST System at the MLK Facility, as required by 40 C.F.R. § 280.20.

43. Complainant realleges each allegation contained in Paragraphs "1" through "42" with the same force and effect as if fully set forth herein.

44. Pursuant to 40 C.F.R. Section 280.20, all new UST systems must comply with the performance standards of 40 C.F.R. Section 280.20(a) through (e), including corrosion protection for tanks and piping, and spill and overfill prevention equipment.
45. Pursuant to 40 C.F.R. Section 280.20(a), steel tanks must be protected from corrosion as specified in 40 C.F.R. Section 280.20(a)(1) through (5).
46. Pursuant to 40 C.F.R. Section 280.20(c), UST systems must have spill and overfill prevention equipment.
47. The New Jersey Department of Environmental Protection (“NJDEP”) conducted an inspection at the MLK Facility on March 1, 2007 (hereinafter “the NJDEP inspection”).
48. During the NJDEP inspection on March 1, 2007, NJDEP issued an Underground Storage Tank Field Notice of Violation (“NOV”) to the MLK Facility.
49. NJDEP’s March 1, 2007 NOV to the MLK Facility cited several violations of New Jersey state underground storage tank requirements, including failure to provide overfill and spill prevention equipment on the 500 gallon UST system at the MLK Facility.
50. The results of a cathodic protection test performed on March 26, 2007, on the 500 gallon UST at the MLK Facility revealed that the UST was not cathodically protected.
51. Respondent submitted a supplemental response on July 25, 2007 to EPA’s Information Request Letter and stated that it owned one 500 gallon steel UST system which was installed in 1992 at the MLK Facility.
52. Respondent’s July 25, 2007 supplemental response to EPA’s Information Request Letter stated that the UST system at the MLK Facility was used for storage of diesel fuel solely to power an emergency generator.
53. Respondent’s July 25, 2007 supplemental response to EPA’s Information Request Letter stated that the UST system at the MLK Facility did not have corrosion protection.
54. Respondent’s July 25, 2007 supplemental response to EPA’s Information Request Letter stated that the UST system at the MLK Facility did not have spill prevention equipment.
55. As of July 25, 2007, the UST system at the MLK Facility was in use and had not been closed pursuant to 40 C.F.R. Section 280.70 - 280.74.
56. The Respondent’s failure, from December 22, 1998 through October 1, 2007 to comply at the MLK facility with the performance standards for new UST systems, as specified in 40 C.F.R. Section 280.20, constitutes violations of 40 C.F.R. Part 280.20.

PROPOSED CIVIL PENALTY

Sections 9007 of the Act and 9006(d)(2)(A) of the Act, 42 U.S.C. § 6991e (d)(2)(A), authorizes the assessment of a civil penalty against a federal department or agency of up to \$10,000 for each tank for each day of violation of any requirement or standard promulgated by the Administrator. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection and Improvement Act of 1996, Pub. L. No. 104-34, 110 Stat. 1321 (1996), required EPA to adjust its penalties for inflation on a periodic basis. EPA issued a Civil Monetary Penalty Inflation Adjustment Rule on December 31, 1996, see 61 Fed. Reg. 69360 (1996), and on February 13, 2004, see 69 Fed. Reg. 7121 (2004) codified at 40 C.F.R. Part 19.

Under Table I of the Civil Monetary Penalty Inflation Adjustment Rule, the maximum civil penalty under 42 U.S.C. Section 6991e(d)(2) for each tank for each day of violation occurring between January 30, 1997 and March 15, 2004, is \$11,000. The maximum civil penalty for violations occurring after March 15, 2004, remains at \$11,000.

The penalties are proposed pursuant to the “U.S. EPA Penalty Guidance for Violations of UST Requirements,” dated November 1990 (“UST guidance”). The penalty amounts in this UST guidance were amended by a May 9, 1997 EPA document entitled, “Modifications to EPA Penalty Policies to implement the Civil Monetary Penalty Inflation Rule (pursuant to the Debt Collection Improvement Act of 1996)” and a September 21, 2004 document entitled, “Modifications to EPA Penalty Policies to implement the Civil Monetary Penalty Inflation Rule (pursuant to the Debt Collection Improvement Act of 1996, Effective October 1, 2004).” (These documents are available upon request.) This UST guidance provides a rational, consistent, and equitable calculation methodology for applying the statutory penalty factors to particular cases.

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

Count 1: a civil penalty of **\$27,348.00** was calculated against Respondent for its failure to upgrade or close the existing UST system at the Mollo Facility, as required by 40 C.F.R. Section 280.21.

Count 2: a civil penalty of **\$27,348.00** was calculated against Respondent for its failure to upgrade or close the existing UST system at the Marshall Facility, as required by 40 C.F.R. Section 280.21.

Count 3: a civil penalty of **\$27,348.00** was calculated against Respondent for its failure to meet the performance standards for new UST system at the MLK Facility, as required by 40 C.F.R. Section 280.20.

The Total Proposed Penalty Amount for these violations is \$82,044.00

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

COMPLIANCE ORDER

Based on the foregoing, and pursuant to the authority of Sections 9006 and 9007 of the Act, 42 U.S.C. § 6991e and 6991f, Complainant issues the following Compliance Order against Respondent, which shall take effect thirty (30) days after service of this Order (i.e., the effective date), unless by that date, the Respondent has requested a hearing pursuant to 40 C.F.R. § 22.15. See 42 U.S.C. § 6991(e)(b) and 40 C.F.R. §§ 22.37(b) and 22.7(c):

1. Respondent shall, within thirty (30) days after the effective date of this Order, comply with all applicable upgrade requirements of 40 C.F.R. Section 280.21 for the UST systems at the Respondent's Mollo and Marshall Facilities, or meet new UST system performance standards in 40 C.F.R. Section 280.20, or, in the alternative, cease operation and permanently close the UST systems at these two Facilities in accordance with the requirements specified under 40 C.F.R. Sections 280.70 - 74.
2. Respondent shall, within thirty (30) days after the effective date of this Order, comply with all applicable new UST system performance standards under 40 C.F.R. Section 280.20 for the UST system at the Respondent's MLK Facility.
3. Respondent shall, within forty-five (45) calendar days after the effective date of this Order, submit to EPA written notice of its compliance (accompanied by a copy of all appropriate supporting documentation) or noncompliance for each of the requirements set forth herein. If the Respondent is in noncompliance with a particular requirement, the notice shall state the reasons for noncompliance and shall provide a schedule for achieving expeditious compliance with the requirement. Such written notice shall contain the following certification:

I certify that the information contained in this written notice and the accompanying documents is true, accurate and complete. As to the identified portions of this response for which I cannot personally verify their accuracy, I certify under penalty of law that this response and all attachments were prepared 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: _____

Respondent shall submit the notice required to be submitted pursuant to this paragraph to:

**Dennis McChesney, Chief
Ground Water Compliance Section
Division of Enforcement and Compliance Assistance
Water Compliance Branch
290 Broadway, 20th Floor
New York, NY 10007**

NOTICE OF LIABILITY FOR ADDITIONAL CIVIL PENALTIES

Pursuant to Sections 9006(a)(3) and 9007 of the Act, 42 U.S.C. §6991e(a)(3) and 6991(f), and in accordance with the Debt Collection and Improvement Act of 1996, Pub. L. No. 104-34, 110 Stat. 1321 (1996) and the regulations promulgated thereunder (see the Civil Monetary Inflation Rule, 61 Fed. Reg. 69630 (December 31, 1996) and 69 Fed. Reg. 7121 (February 13, 2004), codified at 40 C.F.R. Part 19), a violator failing to comply with a Compliance Order within the time specified in the Order is liable for a civil penalty up to \$32,500 for each day of continued noncompliance.

PROCEDURES GOVERNING THIS ADMINISTRATIVE LITIGATION

The rules of procedure governing this civil administrative litigation have been set forth in 64 Fed. Reg. 40138 (July 23, 1999), entitled, "CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENTS OF CIVIL PENALTIES, ISSUANCE OF COMPLIANCE OR CORRECTIVE ACTION ORDERS, AND THE REVOCATION, TERMINATION OR SUSPENSION OF PERMITS" (hereinafter "Consolidated Rules"), and which are to be codified at 40 C.F.R. Part 22. A copy of these rules accompanies this "Complaint, Compliance Order, and Notice of Opportunity for Hearing" (hereinafter the "Complaint").

A. Answering the Complaint

Where Respondent intends to contest any material fact upon which the Complaint is based, to contend that the proposed penalty and/or the compliance order is inappropriate or to contend that

Respondent is entitled to judgment as a matter of law, Respondent must file with the Regional Hearing Clerk of EPA, Region 2, both an original and one copy of a written answer to the Complaint, and such Answer must be filed within 30 days after service of the Complaint. 40 C.F.R. §§ 22.15(a) and 22.7(c). The address of the Regional Hearing Clerk of EPA, Region 2, is:

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

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

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

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

B. Opportunity to Request a Hearing

If requested by Respondent in its Answer, a hearing upon the issues raised by the Complaint and Answer may be held. 40 C.F.R. § 22.15(c). If, however, Respondent does not request a hearing, the Presiding Officer (as defined in 40 C.F.R. § 22.3) may hold a hearing if the Answer raises issues appropriate for adjudication. 40 C.F.R. § 22.15(c). With regard to the Compliance Order in the Complaint, unless Respondent requests a hearing pursuant to 40 C.F.R. § 22.15 within 30 days after such Order is served, such Order shall automatically become final. 40 C.F.R. § 22.37.

Any hearing in this proceeding will be held at a location determined in accordance with 40 C.F.R. § 22.21(d). A hearing of this matter will be conducted in accordance with the provisions of the Administrative Procedure Act, 5 U.S.C. §§ 551-59, and the procedures set forth in Subpart D of 40 C.F.R. Part 22.

C. Failure to Answer

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

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

D. Exhaustion of Administrative Remedies

Where Respondent fails to appeal an adverse initial decision to the Environmental Appeals Board pursuant to 40 C.F.R. § 22.30, and that initial decision thereby becomes a final order pursuant to the terms of 40 C.F.R. § 22.27(c), Respondent waives its right to confer with the Administrator. 40 C.F.R. § 22.31(e).

In order to appeal an initial decision to the Agency's Environmental Appeals Board [EAB; see 40 C.F.R. § 1.25(e)], Respondent must do so "Within thirty (30) days after the initial decision is served" upon the parties. 40 C.F.R. § 22.30(a). Pursuant to 40 C.F.R. § 22.7(c), where service is effected by mail, "...5 days shall be added to the time allowed by these Consolidated Rules of Practice for the filing of a responsive document". Note that the 45-day period provided for in 40 C.F.R. § 22.27(c) [discussing when an initial decision becomes a final order] does not pertain to or extend the time period prescribed in 40 C.F.R. § 22.30(a) for a party to file an appeal to the EAB of an adverse initial decision.

INFORMAL SETTLEMENT CONFERENCE

Whether or not Respondent requests a formal hearing, EPA encourages settlement of this proceeding consistent with the provisions of the Act and its applicable regulations. 40 C.F.R. § 22.18(b). At an informal conference with a representative(s) of Complainant, Respondent may comment on the charges made in this Complaint, and Respondent may also provide whatever

additional information that it believes is relevant to the disposition of this matter, including: (1) actions Respondent has taken to correct any or all of the violations herein alleged; (2) any information relevant to Complainant's calculation of the proposed penalty; (3) the effect the proposed penalty would have on Respondents' ability to continue in business; and/or (4) any other special facts or circumstances Respondent wishes to raise.

Complainant has the authority to modify the amount of the proposed penalty, where appropriate, to reflect any settlement agreement reached with Respondent, to reflect any relevant information previously not known to Complainant, or to dismiss any or all of the charges, if Respondent can demonstrate that the relevant allegations are without merit and that no cause of action as herein alleged exists. Respondent is referred to 40 C.F.R. § 22.18.

Any request for an informal conference or any questions that Respondent may have regarding this Complaint should be directed to:

Bruce Aber
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, New York 10007-1866
(212) 637-3224 (phone)
(212) 637-3199 (fax)

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

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

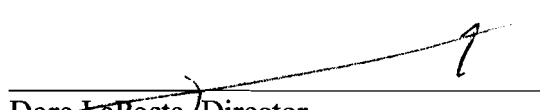
Any settlement that may be reached as a result of an informal settlement conference shall be embodied in a written consent agreement. 40 C.F.R. § 22.18(b)(2). In accepting the consent agreement, Respondent waives its right to contest the allegations in the Complaint and waives its right to appeal the final order that is to accompany the consent agreement. 40 C.F.R. § 22.18(b)(2). In order to conclude the proceeding, a final order ratifying the parties' agreement to settle will be executed. 40 C.F.R. § 22.18(b)(3)

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

RESOLUTION OF THIS PROCEEDING WITHOUT HEARING OR CONFERENCE

If, instead of filing an Answer, Respondent wishes not to contest the Compliance Order in the Complaint and wants to pay the total amount of the proposed penalty within thirty (30) days after receipt of the Complaint, Respondent should promptly contact the Assistant Regional Counsel identified above.

Dated: December 20, 2007



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

To: Emily R. Baker
Regional Administrator
U.S. General Services Administration, Region 2
Northeast and Caribbean Region
26 Federal Plaza, 16th Floor
New York, New York 10278

cc: Leonard S. Lowentritt, Esq.
Acting General Counsel
U.S. General Services Administration
1800 F. Street, N.W.
Washington, D.C. 20045

Carol Letterman, Esq.
Regional Counsel
U.S. General Services Administration, Region 2

James Hamilton, Administrator
Bureau of Water Compliance and Enforcement
New Jersey Department of Environmental Protection
P.O. Box 422
401 East State Street, 4th Floor East
Trenton, N.J. 08625-0422

Russ Brauksieck, Chief
Spill Prevention and Bulk Storage Section
NYSDEC
625 Broadway, 11th Floor
Albany, N.Y. 12233

CERTIFICATE OF SERVICE

This is to certify that I have this day caused to be mailed a copy of the foregoing Complaint, Compliance Order, and Notice of Opportunity for Hearing, bearing docket number RCRA-02-2008-7501, and a copy of the Consolidated Rules of Practice, 40 C.F.R. Part 22, by certified mail, return receipt requested, to Emily Baker, Regional Administrator, U.S. General Services Administration, Region 2, Northeast and Caribbean Region, 26 Federal Plaza, 16th Floor, New York, N.Y.. I hand-carried the original and a copy of the foregoing Complaint to the Office of Regional Hearing Clerk, United States Environmental Protection Agency, Region 2.

Dated: DEC 28 2007
New York, New York

Mildred Sa

Penalty Calculation Worksheet

Respondent: General Services Administration (GSA).

Count 1 – Failure to upgrade, or meet the performance standards or close the existing UST system at the Mollo Facility, as required by 40 C.F.R. § 280.21.

1. Days of noncompliance: January 1, 2003 to December 31, 2007.
2. Number of tanks: 1

Part 2 - Economic Benefit Component

3.	One Time Capital & One Time Costs:	\$9,968.00	See BEN computer model v. 4.3
4.	Delay Capital & Avoided Costs:	\$6,391.00	See BEN computer model v. 4.3
5.	Avoided Annually Recurring Costs :	\$ 613.00	See BEN computer model v. 4.3
6.	Initial Economic Benefit: (3-4+5):	\$4,190.00	See BEN computer model v. 4.3
7.	Final Economic Benefit at Penalty Payment Date:	\$6,258.00	See BEN computer model v. 4.3

Part 3 - Matrix Value For The Gravity-Based Component

8.	Matrix Value (MV):	\$1,500.00
9.	Per-tank MV (line 2 times line 8)	\$1,500.00

Inflation Adjustment Rule:

9.a. $\$1,500 \times 1.10$ (inflation adjustment for pre-March 15, 2004) = \$1,650.00

9.b. $\$1,500 \times 1.2895$ (inflation adjustment for post March 15, 2004 (1.10 x 1.1723)) = \$1,934.00

Potential for Harm: Major

Extent of Deviation: Major

Justification for Potential for Harm: The Potential for Harm for this violation was determined to be Major because the Mollo Facility did not employ a monthly release detection method or any inspection scheme that can be expected to minimize a potential continuous release due to the failure to upgrade. Since the Facility is located in a populated area in downtown New York City near buildings with basements and/or an underground subway system, an upgrade violation

involving the 1,500 gallon UST at the Mollo Facility might have resulted in a situation potentially posing a substantial risk of harm to human health and the environment.

Justification for Extent of Deviation: The Extent of Deviation for this violation was determined to be Major. Respondent has been in substantial noncompliance with the regulatory requirements since 1998, because no upgrade on the UST system has been performed at the Mollo Facility.

Part 4 - Violator-Specific Adjustments To Matrix Value

Note: Lines 10 a., 11a., 12a. and 13a., below, have the Matrix Value of \$1,650.00, which reflects an inflation adjustment increase of 10% for pre-March 15, 2004 violations. Lines 10.b., 11.b., 12.b., and 13.b, below, have the Matrix Value of \$1,934.00, which reflects an inflation adjustment increase of 17.23% for post-March 15, 2004 violations. See Modifications to EPA Penalty Policies to Implement the Civil Monetary Inflation Adjustment Rule (Pursuant to Debt Collection Improvement Act of 1996, Effective October 1, 2004).

	% Change (+/-)	MV	Total Dollar Adjustment
10. a. Degree of cooperation:	0	\$1,650.00	\$0
b. or noncooperation:		\$1,934.00	\$0
11. a. Degree of willfulness	20%	\$1,650.00	\$330
b. or negligence:	20%	\$1,934.00	\$386
12. a. History of noncompliance:	0	\$1,650.00	\$0
b.		\$1,934.00	
13. a. Unique factors:	0	\$1,650.00	\$0
b.		\$1,934.00	

Justification for Degree of Cooperation/ Noncooperation: Based on information presently available to EPA, no adjustment was made.

Justification for Degree of Willfulness or Negligence: A twenty (20) percent upward adjustment was made, because Respondent, General Services Administration (GSA), knew of the legal requirement to upgrade UST systems prior to the December 22, 1998 deadline, yet GSA failed to comply with this requirement for the UST system at the Mollo Facility, and such non-compliance continues ten years later. In the Fall of 1998, EPA conducted an outreach program for federal agencies, including the Respondent, to discuss the December 22, 1998 UST upgrade deadline, and EPA met with GSA and other federal agencies on November 24, 1998 in furtherance of this

outreach effort. As a follow-up to the meeting, EPA issued a letter, dated December 2, 1998, requesting that federal agencies submit UST compliance information. GSA's January, 1999 response to EPA's letter included a 1998 Tank Inventory Report which did not identify the UST system at the Mollo Facility.

Justification for History of Noncompliance: No adjustment was made.

Justification for Unique Factors: Based on information presently available to EPA, no adjustment was made.

Part 5 - Gravity-Based Component

14. a. Adjusted Matrix Value (AMV) for Pre-March 15, 2004 period of violation: (line 9.a. plus Dollar Adjustment in line 11a.): $\$1,650 + \$330 = \$1,980$.

b. Adjusted Matrix Value (AMV) for Post-March 15, 2004 period of violation (line 9.b. plus Dollar Adjustment in line 11. b.): $\$1,934 + \$386 = \$2,320$.

15. Environmental Sensitivity Multiplier (ESM):1.5.
Environmental Sensitivity: Moderate

Justification for Level of Environmental Sensitivity: The Environmental Sensitivity Multiplier for this violation was determined to be "moderate," corresponding to a sensitivity level of 1.5. The Respondent's Mollo Facility is located in a populated area in downtown New York City, with buildings that have basements and subsurface improvements. The ground water in this area, however, is not used for potable purposes.

16. Days of Noncompliance Multiplier (DNM): $(1,825 \text{ days}) = 6.5$

Pre 3/15/04 component of DNM: 3.0 (438 days of violation).

Post 3/15/04 component of DNM: 3.5 (1,386 days of violation). The post 3/15/04 component of DNM, which is 3.5, was calculated by subtracting the pre 3/15/04 component (3.0) from the DNM for the entire 5 year period of the violation (6.5). (This methodology avoided the use of a higher DNM multiplier than appropriate).

17. Gravity-based Component:

Pre March 15, 2004 violation period: $\$1,980 \text{ (AMV)} \times 1.5 \text{ (ESM)} \times 3.0 \text{ (DNM)} = \$8,910$.

Post-March 15, 2004 violation period: $\$2,320 \text{ (AMV)} \times 1.5 \text{ (ESM)} \times 3.5 \text{ (DNM)} = \$12,180$.

Total Gravity Based Penalty: $\$8,910 + \$12,180 = \mathbf{\$21,090}$

Part 6 - Initial Penalty Target Figure

- 18. Economic Benefit Component (from line 7): **\$6,258.00**
- 19. Gravity-Based Component:(from line 17): **\$21,090.00**
- 20. **Initial Penalty Target Figure:** (line 18 plus line 19): **\$27,348.00**

Count 2 – Failure to upgrade or meet the performance standards or close the existing UST system at the Marshall Facility, as required by 40 C.F.R. § 280.21.

1. Days of noncompliance: January 1, 2003 to December 31, 2007.
2. Number of tanks: 1

Part 2 - Economic Benefit Component

3.	One Time Capital & One Time Costs:	\$9,968.00	See BEN computer model v. 4.3
4.	Delay Capital & Avoided Costs:	\$6,391.00	See BEN computer model v. 4.3
5.	Avoided Annually Recurring Costs :	\$ 613.00	See BEN computer model v. 4.3
6.	Initial Economic Benefit: (3-4+5):	\$4,190.00	See BEN computer model v. 4.3
7.	Final Economic Benefit at Penalty Payment Date:	\$6,258.00	See BEN computer model v. 4.3

Part 3 - Matrix Value For The Gravity-Based Component

8.	Matrix Value (MV):	\$1,500.00
9.	Per-tank MV (line 2 times line 8)	\$1,500.00

Inflation Adjustment Rule:

9.a. $\$1,500 \times 1.10$ (inflation adjustment for pre-March 15, 2004) = \$1,650.00

9.b. $\$1,500 \times 1.2895$ (inflation adjustment for post March 15, 2004 (1.10 x 1.1723)) = \$1,934.00

Potential for Harm: Major

Extent of Deviation: Major

Justification for Potential for Harm: The Potential for Harm for this violation was determined to be Major, because the Marshall Facility did not employ a monthly release detection method or any inspection scheme that can be expected to minimize a potential continuous release due to the failure to upgrade. Since the Marshall Facility is located in a populated area in downtown New York City near buildings with basements and/or an underground subway system, a violation involving the 3,500 gallon or 4,000 gallon UST at the Marshall Facility might have resulted in a situation potentially posing a substantial risk of harm to human health and the environment.

Justification for Extent of Deviation: The Extent of Deviation for this violation was determined to be Major. Respondent has been in substantial noncompliance with the regulatory

requirements since 1998, because no upgrade on the UST system has been performed at the Marshall Facility.

Part 4 - Violator-Specific Adjustments To Matrix Value

Note: Lines 10 a., 11a., 12a. and 13a., below, have the Matrix Value of \$1,650.00, which reflects an inflation adjustment increase of 10% for pre-March 15, 2004 violations. Lines 10.b., 11.b., 12.b., and 13.b, below, have the Matrix Value of \$1,934.00, which reflects an inflation adjustment increase of 17.23% for post-March 15, 2004 violations. See Modifications to EPA Penalty Policies to Implement the Civil Monetary Inflation Adjustment Rule (Pursuant to Debt Collection Improvement Act of 1996, Effective October 1, 2004).

	% Change (+/-)	MV	Total Dollar Adjustment
10. a. Degree of cooperation:	0	\$1,650.00	\$0
b. or noncooperation:		\$1,934.00	\$0
11. a. Degree of willfulness	20%	\$1,650.00	\$330
b. or negligence:	20%	\$1,934.00	\$386
12. a. History of noncompliance:	0	\$1,650.00	\$0
b.		\$1,934.00	
13. a. Unique factors:	0	\$1,650.00	\$0
b.		\$1,934.00	

Justification for Degree of Cooperation/ Noncooperation: Based on information presently available to EPA, no adjustment was made.

Justification for Degree of Willfulness or Negligence: A twenty (20) percent upward adjustment was made, because Respondent, General Services Administration (GSA), knew of the legal requirement to upgrade UST systems prior to the December 22, 1998 deadline, yet GSA failed to comply with this requirement for the UST system at the Marshall Facility, and such non-compliance continues ten years later. In the Fall of 1998, EPA conducted an outreach program for federal agencies, including the Respondent, to discuss the December 22, 1998 UST upgrade deadline, and EPA met with GSA and other federal agencies on November 24, 1998 in furtherance of this outreach effort. As a follow-up to the meeting, EPA issued a letter, dated December 2, 1998, requesting that federal agencies submit UST compliance information. GSA's January, 1999 response to EPA's letter included a 1998 Tank Inventory Report which did not identify the UST system at the Marshall Facility.

Justification for History of Noncompliance: No adjustment was made.

Justification for Unique Factors: Based on information presently available to EPA, no adjustment was made.

Part 5 - Gravity-Based Component

14. a. Adjusted Matrix Value (AMV) for Pre-March 15, 2004 period of violation: (line 9.a. plus Dollar Adjustment in line 11a.): $\$1,650 + \$330 = \$1,980$.

b. Adjusted Matrix Value (AMV) for Post-March 15, 2004 period of violation (line 9.b. plus Dollar Adjustment in line 11. b.): $\$1,934 + \$386 = \$2,320$.

15. Environmental Sensitivity Multiplier (ESM):1.5.
Environmental Sensitivity: Moderate.

Justification for Level of Environmental Sensitivity: The Environmental Sensitivity Multiplier for this violation was determined to be “moderate,” corresponding to a sensitivity level of 1.5. The Respondent’s Marshall Facility is located in a populated area in downtown New York City with buildings that have basements and subsurface improvements. The ground water in this area, however, is not used for potable purposes.

16. Days of Noncompliance Multiplier (DNM): $(1,825 \text{ days}) = 6.5$

Pre 3/15/04 component of DNM: 3.0 (438 days of violation).

Post 3/15/04 component of DNM: 3.5 (1,386 days of violation). The post 3/15/04 component of DNM, which is 3.5, was calculated by subtracting the pre 3/15/04 component (3.0) from the DNM for the entire 5 year period of the violation (6.5). (This methodology avoided the use of a higher DNM multiplier than appropriate).

17. Gravity-based Component:

Pre March 15, 2004 violation period: $\$1,980 \text{ (AMV)} \times 1.5 \text{ (ESM)} \times 3.0 \text{ (DNM)} = \$8,910$.

Post-March 15, 2004 violation period: $\$2,320 \text{ (AMV)} \times 1.5 \text{ (ESM)} \times 3.5 \text{ (DNM)} = \$12,180$.

Total Gravity Based Penalty: $\$8,910 + \$12,180 = \mathbf{\$21,090}$

Part 6 - Initial Penalty Target Figure

18. Economic Benefit Component (from line 7): **\$6,258.00**

19. Gravity-Based Component:(from line 17): **\$21,090.00**

20. **Initial Penalty Target Figure:** (line 18 plus line 19): **\$27,348.00**

Count 3 – Failure to Meet Performance Standards for the new UST system at the MLK Facility, as required by 40 C.F.R. § 280.20.

1. Days of noncompliance: January 1, 2003 to December 31, 2007.
2. Number of tanks: 1

Part 2 - Economic Benefit Component

3.	One Time Capital & One Time Costs:	\$9,968.00	See BEN computer model v. 4.3
4.	Delay Capital & Avoided Costs:	\$6,391.00	See BEN computer model v. 4.3
5.	Avoided Annually Recurring Costs :	\$ 613.00	See BEN computer model v. 4.3
6.	Initial Economic Benefit: (3-4+5):	\$4,190.00	See BEN computer model v. 4.3
7.	Final Economic Benefit at Penalty Payment Date:	\$6,258.00	See BEN computer model v. 4.3

Part 3 - Matrix Value For The Gravity-Based Component

8.	Matrix Value (MV):	\$1,500.00
9.	Per-tank MV (line 2 times line 8)	\$1,500.00

Inflation Adjustment Rule:

9.a. $\$1,500 \times 1.10$ (inflation adjustment for pre-March 15, 2004) = \$1,650.00

9.b. $\$1,500 \times 1.2895$ (inflation adjustment for post March 15, 2004 (1.10 x 1.1723)) = \$1,934.00

Potential for Harm: Major

Extent of Deviation: Major

Justification for Potential for Harm: The Potential for Harm for this violation was determined to be Major because the MLK Facility did not employ a monthly release detection method or any inspection scheme that can be expected to minimize a potential continuous release due to the failure to upgrade. Since the Facility is located in a populated area in the City of Newark, New Jersey, near buildings with basements and possibly in the vicinity of an underground subway system, a violation involving the 500 gallon UST at the MLK Facility might have resulted in a situation potentially posing a substantial risk of harm to human health and the environment.

Justification for Extent of Deviation: The Extent of Deviation for this violation was determined to be Major. Respondent has been in substantial noncompliance with the regulatory requirements since 1998, because performance standards have not been met for the UST at the MLK Facility.

Part 4 - Violator-Specific Adjustments To Matrix Value

Note: Lines 10 a., 11a., 12a. and 13a., below, have the Matrix Value of \$1,650.00, which reflects an inflation adjustment increase of 10% for pre-March 15, 2004 violations. Lines 10.b., 11.b., 12.b., and 13.b, below, have the Matrix Value of \$1,934.00, which reflects an inflation adjustment increase of 17.23% for post-March 15, 2004 violations. See Modifications to EPA Penalty Policies to Implement the Civil Monetary Inflation Adjustment Rule (Pursuant to Debt Collectiion Improvement Act of 1996, Effective October 1, 2004).

	% Change (+/-)	MV	Total Dollar Adjustment
10. a. Degree of cooperation:	0	\$1,650.00	\$0
b. or noncooperation:		\$1,934.00	\$0
11. a. Degree of willfulness	20%	\$1,650.00	\$330
b. or negligence:	20%	\$1,934.00	\$386
12. a. History of noncompliance:	0	\$1,650.00	\$0
b.		\$1,934.00	
13. a. Unique factors:	0	\$1,650.00	\$0
b.		\$1,934.00	

Justification for Degree of Cooperation/ Noncooperation: Based on information presently available to EPA, no adjustment was made.

Justification for Degree of Willfulness or Negligence: A twenty (20) percent upward adjustment was made, because Respondent, General Services Administration (GSA), knew of the legal requirement to upgrade UST systems prior to the December 22, 1998 deadline, yet GSA failed to comply with this requirement for the UST system at the MLK Facility, and such non-compliance continues ten years later. In the Fall of 1998, EPA conducted an outreach program for federal agencies, including the Respondent, to discuss the December 22, 1998 UST upgrade deadline, and EPA met with GSA and other federal agencies on November 24, 1998 in furtherance of this outreach effort. As a follow-up to the meeting, EPA issued a letter, dated December 2, 1998, requesting that federal agencies submit UST compliance information. GSA's January, 1999 response to EPA's letter included a 1998 Tank Inventory Report which did not identify the UST system at the MLK Facility.

Justification for History of Noncompliance: No adjustment was made.

Justification for Unique Factors: Based on information presently available to EPA, no adjustment was made.

Part 5 - Gravity-Based Component

14. a. Adjusted Matrix Value (AMV) for Pre-March 15, 2004 period of violation: (line 9.a. plus Dollar Adjustment in line 11a.): $\$1,650 + \$330 = \$1,980$.

b. Adjusted Matrix Value (AMV) for Post-March 15, 2004 period of violation (line 9.b. plus Dollar Adjustment in line 11. b.): $\$1,934 + \$386 = \$2,320$.

15. Environmental Sensitivity Multiplier (ESM):1.5.
Environmental Sensitivity: Moderate

Justification for Level of Environmental Sensitivity: The Environmental Sensitivity Multiplier for this violation was determined to be “moderate,” corresponding to a sensitivity level of 1.5. The Respondent’s MLK Facility is located in a populated area in the City of Newark, New Jersey, with buildings that have basements and subsurface improvements. The ground water in this area, however, is not used for potable purposes.

16. Days of Noncompliance Multiplier (DNM): (1,825 days) = 6.5

Pre 3/15/04 component of DNM: 3.0 (438 days of violation).

Post 3/15/04 component of DNM: 3.5 (1,386 days of violation). The post 3/15/04 component of DNM, which is 3.5, was calculated by subtracting the pre 3/15/04 component (3.0) from the DNM for the entire 5 year period of the violation (6.5). (This methodology avoided the use of a higher DNM multiplier than appropriate).

17. Gravity-based Component:

Pre March 15, 2004 violation period: $\$1,980$ (AMV) x 1.5 (ESM) x 3.0 (DNM) = $\$8,910$.

Post-March 15, 2004 violation period: $\$2,320$ (AMV) x 1.5 (ESM) x 3.5 (DNM) = $\$12,180$.

Total Gravity Based Penalty: $\$8,910 + \$12,180 = \mathbf{\$21,090}$

Part 6 - Initial Penalty Target Figure

- 18. Economic Benefit Component (from line 7): **\$6,258.00**
- 19. Gravity-Based Component:(from line 17): **\$21,090.00**
- 20. **Initial Penalty Target Figure:** (line 18 plus line 19): **\$27,348.00**

The Total Proposed Penalty Amount for these violations is: \$82,044.00