

**BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 4**

| | | |
|-------------------------------------------|---|-------------------------------------|
| IN THE MATTER OF: |) | RCRA-UST-04-2010-0001 |
| |) | |
| Donald F. Strickland |) | Proceeding under Section 9006 |
| 2425 Legion Road |) | of the Resource Conservation |
| Fayetteville, North Carolina 28306 |) | and Recovery Act, 42 U.S.C. § 6991e |
| |) | |
| RESPONDENT. |) | |
| <hr style="width: 45%; margin-left: 0;"/> | | |

RESPONSE TO SECOND ORDER TO SUPPLEMENT RECORD

On January 6, 2011, this Tribunal issued a Second Order to Supplement the Record (Order) requiring Complainant to submit evidence supporting the penalty for Count III of Complainant's January 12, 2010, Complaint. Specifically, the Order requires evidence addressing the following factors of the penalty for Count III: (1) Days of Noncompliance Multiplier; and (2) Economic Benefit Component. (Order, at 3.)

I. Days of Noncompliance Multiplier (DNM)

1. Pursuant to the *U.S. EPA Penalty Guidance for Violations of UST Regulations* (1990) (UST Penalty Policy), a proposed penalty should include a DNM.
2. The DNM for the penalty for Count III of the Complaint is "1". (See Ex. A.)

II. Economic Benefit Component

1. Pursuant to the UST Penalty Policy, a proposed penalty should include an Economic Benefit Component.
2. The economic benefit component for the penalty for Count III of the Complaint is "\$0.00". (See Ex. A.)

Respectfully submitted on January 20, 2011,



Alfred R. Politzer
Counsel for Complainant

RECEIVED
2011 JAN 20 03 08 15
EPA REGION 4

IN THE MATTER OF: Donald F. Strickland, RCRA-UST-04-2010-0001

CERTIFICATE OF SERVICE

I certify that a copy of the Response to Second Order to Supplement Record was sent on Jan. 20, 2011, to the following person in the following manner:

Certified Mail

Return Receipt Requested

Donald F. Strickland
2425 Legion Road
Fayetteville, North Carolina 28306

I further certify that the Response to Order to Supplement Record was filed on Jan. 20, 2011, with the Region 4 Regional Hearing Clerk, as specified below:

Hand Delivery -- Original and one copy

Patricia Bullock
Regional Hearing Clerk
US EPA Region 4
61 Forsyth St, S.W.
Atlanta, Georgia 30303

Jan. 20, 2011

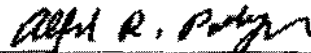

Alfred R. Politzer
Assistant Regional Counsel
US EPA Region 4
61 Forsyth St, S.W.
Atlanta, Georgia 30303

EXHIBIT A

**BEFORE THE
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| |) | |
| RESPONDENT. |) | |
| <hr/> | | |

AFFIDAVIT OF JASON POE

Jason Poe, being duly sworn, deposes and says:

1. My name is Jason Poe, and I am employed as a Compliance and Enforcement Officer in the Underground Storage Tank (UST) Section of the Resource Conservation and Recovery Act Division of the US Environmental Protection Agency, Region 4.
2. On June 25, 2009, I conducted a UST inspection at Respondent's facility located at 2425 Legion Road, Fayetteville, North Carolina 28306.
3. As a result of my inspection, I determined that Respondent had violated various federal and state UST regulatory requirements. I calculated penalties for these violations.
4. Respondent's violations included its failure to respond to an information request that I issued to Respondent during my June 25, 2009, inspection. This violation constituted Count III of Complainant's January 12, 2010, Complaint filed in this matter.
4. I calculated the penalty for Count III pursuant to the *U.S. EPA Penalty Guidance for Violations of UST Regulations* (1990) (UST Penalty Policy). This policy requires me to take into account the seriousness of the violations and any good faith efforts to comply.
5. Pursuant to the UST Penalty Policy, a proposed penalty should include a Days of Noncompliance Multiplier (DNM).

6. The DNM is based on the number of days of noncompliance. For 0-90 days of noncompliance, the DNM is 1. For 91-180 days of noncompliance, the DNM is 1.5.

7. The information request I issued to Respondent on June 25, 2009, required Respondent to reply to EPA by July 14, 2009. (See Ex. A1.) However, Respondent failed to fully comply with the information request until October 23, 2009. Therefore, Respondent was in violation of this requirement from July 15, 2009 to October 22, 2009, resulting in 100 days of noncompliance and a corresponding DNM of 1.5.

9. However, Respondent called me on July 20, 2009, and indicated that he would attempt to fax me the information. Although I did not receive all of the required information until October 23, 2010, I determined, pursuant to the UST Penalty Policy, that because Respondent made a good faith effort to send me the information within 90 days of the requirement, a DNM of 1 was more appropriate. (See Ex. A2.)

10. Pursuant to the UST Penalty Policy, a proposed penalty should include an Economic Benefit Component.

11. The economic benefit component for the penalty for Count III of the Complaint is \$0.00, because there were no avoided or delayed costs. (See Ex. A2.)



Jason Poe
UST Compliance and Enforcement Officer

Sworn to and Subscribed before me this
19th day of January, 2011.



_____, Notary Public

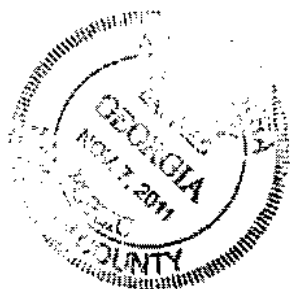


EXHIBIT A1



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
 REGION 4
 ATLANTA FEDERAL CENTER
 61 FORSYTH STREET
 ATLANTA, GEORGIA 30303-8960

UST Facility Name: DF Strickland Merchandise
 UST Facility Address: 2425 Legion Rd Fayetteville, NC 28301
 UST Owner/Operator Name: Donald F. Strickland

On 6/25/09 the United States Environmental Protection Agency conducted an underground storage tank (UST) compliance inspection of your facility to determine your compliance with 40 C.F.R. Part 280. 40 C.F.R. § 280.34 and Section 9005 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6991d, requires that owners and operators of USTs maintain certain records and provide such records for inspection upon request.

You are hereby requested to provide the following records, if applicable to your facility, which were not available at the time of the inspection:

- Identify all underground storage tanks in existence at the subject facility. Include the year of installation, composition of tank and piping, tank size, and identify if permanently closed, in temporary closure, or in active use, and the product stored.
- Provide copies of current UST notification forms filed with and certificates received from the Georgia Department of Natural Resources, Environmental Protection Division (GA EPD) for all UST systems owned and/or operated at the subject facility.
- Identify and document the release detection method used for each currently active UST system at the subject facility, as required by 40 C.F.R. Part 280.41. Provide documentation for the past twelve months of tank and piping release detection performed for each UST system. Include any tank or piping tightness tests, SIE results, inventory control records, ground water monitoring results, vapor monitoring results, automatic tank gauging records, automatic line leak detectors (annual tests) or other records of release detection.
- Identify the type of corrosion protection system (sacrificial anode or impressed current) used for each UST system containing buried metallic components. Provide documentation of the last two cathodic protection system tests required by 40 C.F.R. § 280.31(b) (every 3 years), and/or, documentation of the last three impressed current system tests required by 40 C.F.R. § 280.31(c) (required every 60 days), whichever is applicable.
- Identify any type of repairs made to tanks or piping, and submit records that indicate the system was tightness tested prior to being returned to service, as required by 40 C.F.R. §§ 280.33(a) and 280.33(d), whichever is applicable.
- Identify and document the method of overflow prevention, e.g., ball float valve, flapper valve, audible/visible alarm, etc.
- Other: Line Leak detector Test

The records should be postmarked within 14 business days of the inspection and mailed to the undersigned Enforcement officer at the following address:

United States Environmental Protection Agency
 Region 4
 Atlanta Federal Center
 Underground Storage Tank Section (GWDW)
 61 Forsyth Street, SW
 Atlanta, Georgia 30303-8960

ATTN: Jason Poe F13111 6/25/09
 Enforcement Officer Credential Number Date

Booni L. Manuel Cashier 6/25/09
 Received By Position Date



EXHIBIT A2

UST PENALTY COMPUTATION WORKSHEET

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

PART 1 - BACKGROUND

Company Name: DE Strickland Merchandise

Regulation violated: 40 CFR 280.34 - Failure to respond to information request

Previous violations: _____

Date of requirement: 7/15/2009

Date of Inspection: 4/25/2009

Date of compliance: 10/23/2009

Explanation (if appropriate): _____

1. Days of noncompliance: 100 (Because Mr Strickland ^{made} ~~was~~ in contact with me 7/20/2009 I will keep the multiplier 1. Though Mr. Strickland did not actually send info until 10/23/2009)
2. Number of tanks: _____

PART 2 - ECONOMIC BENEFIT COMPONENT

Avoided Expenditures: _____ Basis: 0

Delayed Expenditures: _____ Basis: 0

Weighted Tax Rate: _____ Source: 15

Interest Rate: _____ Source: 072 BEN Model

Avoided = $\left[\frac{\text{Avoided Expenditures} + \text{Delayed Expenditures} \times \text{Interest} \times \text{No. Of Days}}{365 \text{ Days}} \right] \times (1 - \text{Weighted Tax Rate})$

Costs

3. Calculated Avoided Cost: \$ 0

UST PENALTY COMPUTATION WORKSHEET

Delayed Costs = $\frac{\text{Delayed Expenditures} \times \text{Interest} \times \text{Number of Days}}{365 \text{ Days}}$
 $\frac{\$ \times \% \times \text{days}}{365} = \0.00

- 4. Calculated Delayed Cost: \$ 0
- 5. Economic Benefit Component: \$ 0
(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): \$2130 (From document page 16 or Appendix A)
- 7. Per-tank MV: \$2130 If violation is per facility, the amount on Line 7 (Line 2 x Line 6) will be the same as the amount on Line 6)

PART 4 - VIOLATOR-SPECIFIC ADJUSTMENTS TO MATRIX VALUE

| | Percentage Change (+ or -) | x Matrix Value | = Dollar Adjustment (+ or -) | Justification |
|----------------------------------------------|----------------------------------|-------------------|------------------------------------|---------------|
| 8. Degree of cooperation/ noncooperation: | <u>0</u> | <u>0</u> | <u>\$0</u> | |
| 9. Degree of willfulness or negligence: | <u>0</u> | <u>0</u> | <u>\$0</u> | |
| 10. History of noncompliance: | <u>0</u> | <u>0</u> | <u>\$0</u> | |
| 11. Unique factors: | <u>0</u> | <u>0</u> | <u>\$0</u> | |

Adjusted Matrix Value
(Line 7 + Lines 8-11): 2130

UST PENALTY COMPUTATION WORKSHEET

PART 5 - GRAVITY-BASED COMPONENT

Level of

Environmental Sensitivity: Low Justification: Few receptors

13. ESM (from document Page 21): 1.0

14. DNM (from document Page 21): 1.0 (Keeping DNM @ 1.0)

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): \$ 2130

PART 6 - INITIAL PENALTY TARGET FIGURE

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

17. Gravity-Based Component: \$ 2130

18. Initial Penalty Target Figure: \$ 2130
(Line 16 + Line 17)

SIGNATURE: [Handwritten Signature]

DATE: 1/15/2011