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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

2013 AUG 27 PM 3:00

1650 Arch Street
Philadelphia, Pennsylvania 19103-2029
REGIONAL HEARING CLERK
REGION III, PHILA. PA

In the Matter of:)	Administrative Complaint, Compliance
)	Order and Notice of Opportunity for
)	Hearing
)	
Maryland State Police)	
1201 Reisterstown Road)	
Pikesville, MD 21208)	U.S. EPA Docket Number
)	RCRA-03-2013-0184
)	
)	Proceeding Under Section 9006 of the
)	Resource Conservation and Recovery
)	Act, as amended, 42 U.S.C. Section
RESPONDENT)	6991e

I. INTRODUCTION

This Administrative Complaint, Compliance Order and Notice of Opportunity for Hearing (“Complaint”) is issued by the United States Environmental Protection Agency (“EPA” or “Complainant”), 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 referred to hereinafter as “RCRA”), and the Consolidated Rule of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits (“Consolidated Rules of Practice”), 64 *Fed. Reg.* 40, 138 (July 23, 1999) (codified at 40 C.F.R. Part 22).

EPA hereby notifies Maryland State Police (“Respondent”) that EPA has determined that Respondent has violated certain provisions of Subtitle I of RCRA, 42 U.S.C. §§ 6991-6991i, EPA’s regulations thereunder at 40 C.F.R. Part 280, and the Maryland Authorized Underground

Storage Tank (“UST”) Program, authorized by EPA pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c. Section 9006(a)-(e) of RCRA, 42 U.S.C. § 6991e(a)-(e), authorizes EPA: (a) to take an enforcement action whenever it determines that a person is in violation of any requirement of RCRA Subtitle I, EPA’s regulations thereunder, or any regulation of a state underground storage tank program which has been authorized by EPA; and (b) to assess a civil penalty against any person who violates any requirement of RCRA Subtitle I.

On June 30, 1992, pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c, and 40 C.F.R. Part 281, Subpart A, the State of Maryland was granted final authorization to administer a state underground storage tank management program *in lieu* of the Federal underground storage tank management program established under Subtitle I of RCRA, 42 U.S.C. §§ 6991-6991i. The provisions of the Maryland underground storage tank management program, through this final authorization, have become requirements of Subtitle I of RCRA and are, accordingly, enforceable by EPA pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e. Maryland’s authorized underground storage tank program regulations are set forth in the Maryland Department of the Environment (“MDE”) Code of Maryland Regulations and will be cited as “COMAR” followed by the applicable section of the regulations.

To the extent that factual allegations or legal conclusions set forth in this Complaint are based on provisions of Maryland’s authorized underground storage tank management program regulations, those provisions are cited as authority for such allegations or conclusions. Any analogous provisions of the Federal underground storage tank management program codified at 40 C.F.R. Part 280 are cited thereafter for convenience.

EPA has given MDE prior notice of the issuance of this Complaint in accordance with Section 9006(a)(2) of RCRA, 42 U.S.C. § 6991e(a)(2).

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent is a “person” as defined in Section 9001(5) of RCRA, 42 U.S.C. § 6991(5), and COMAR § 26.10.02.04.B(40) (40 C.F.R. § 280.12).
2. At all times relevant to this Complaint, Respondent has been the “owner” and/or “operator,” as those terms are defined in Section 9001(3) and (4) of RCRA, 42 U.S.C. § 6991(3) and (4), and COMAR §26.10.02.04.B(37) and (39) (40 C.F.R. § 280.12), of two “USTs” and “UST Systems” as those terms are defined in Section 9001(1) of RCRA, 42 U.S.C. § 6991(1), and COMAR § 26.10.02.04.B(64) and (66) (40 C.F.R. § 280.12), located at 1401 Belair Road, Bel Air, MD 21014 (“Barrack D Facility”).
3. One of the two UST/UST Systems at the Barrack D Facility was installed on or about January, 1997, and is a “new tank system” as that term is defined at COMAR § 26.10.02.04.B(31) (40 C.F.R. § 280.12). The other UST/UST System at the Barrack D Facility was installed at an unknown date. The USTs consist of the following:
 - a. A 12,000-gallon UST (“Tank 5”); and
 - b. An UST of unknown capacity (“Tank 6”);
4. On June 19, 2012 an EPA inspector conducted an inspection of the Barrack D Facility, pursuant to Section 9005(a) of RCRA, 42 U.S.C. §6991d(a).
5. From at least the time of the June 19, 2012 inspection to the present, Tank 5 at the Barrack D Facility has been used to store gasoline, which is a petroleum product and is a “regulated substance” as that term is defined in Section 9001(2) of RCRA, 42 U.S.C. § 6991(2) and COMAR § 26.10.02.04.B(48) (40 C.F.R. § 280.12).

6. From at least the time of the June 19, 2012 inspection to the present, Tank 6 at the Barrack D Facility has been used to store used oil, which is a petroleum product and is “regulated substance” as that term is defined in Section 9001(2) of RCRA, 42 U.S.C. § 6991(2) and COMAR § 26.10.02.04.B(48) (40 C.F.R. § 280.12).

7. From at least the time of the June 19, 2012 inspection to the present, Tanks 5 and 6 at the Barrack D Facility have been part of “petroleum UST systems” as that term is defined in COMAR § 26.10.02.04.B(43) (40 C.F.R. § 280.12).

Count I

8. The allegations of Paragraph 1 through 7 of the Complaint are incorporated herein by reference.

9. Section 9005(a) of RCRA, 42 U.S.C. § 6991d(a), requires owners and operators of USTs and UST systems to furnish information relating to such USTs and UST systems to EPA upon request for purposes of, among other things, enforcement of the UST provisions of RCRA.

10. By certified mail letter dated October 11, 2012, EPA sent Respondent a Request for Information pursuant to Section 9005(a) of RCRA, 42 U.S.C. § 6991d(a) (“Barrack D Information Request”). This Request for Information required Respondent to provide certain information to EPA, including, in part, information pertaining to the operation of the USTs at the Barrack D Facility and information relating to the release prevention equipment and methods associated with the USTs at the Barrack D Facility. The Barrack D Information Request required Respondent to provide information to EPA within twenty one (21) calendar days of its receipt of the Request.

11. Upon information and belief, Respondent received the Barrack D Information Request on October 12, 2012. Thus, Respondent was required to provide the requested information by no later than November 2, 2012.

12. By certified mail letter dated January 14, 2013, and having received no response, EPA sent Respondent a Follow-Up Warning Letter pursuant to Section 9005(a) of RCRA, 42 U.S.C. § 6991d(a) (“Barrack D Follow-Up Warning Letter”). This letter required Respondent to provide to EPA the overdue information requested in the Barrack D Information Request, dated October 11, 2012. This letter also contained an explicit warning notifying Respondent of its violation of Section 9005(a) of RCRA, 42 U.S.C. § 6991d(a), as well as the potential of an enforcement action being commenced by EPA as a result.

13. Upon information and belief, Respondent received the Barrack D Follow-Up Warning Letter on January 15, 2013.

14. As of the date of this Complaint, Respondent has not provided EPA the information requested in the October 11, 2012 “Barrack D Information Request”.

15. From November 2, 2012 to at least the date of this Complaint, Respondent continues to violate Section 9005(a) of RCRA, 42 U.S.C. § 6991d(a), by failing to provide the requisite response(s) to EPA’s October 11, 2012 “Barrack D Information Request”.

III. COMPLIANCE ORDER

Pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e, Respondent is hereby ordered to:

A. Within fifteen (15) calendar days after the Compliance Order becomes a Final Order, Respondent must provide a full response to the October 11, 2012 “Barrack D Information

Request”, certified in the manner described in the “Barrack D Information Request” and attached hereto as Appendix “A”.

B. Respondent must submit its response in the following manner:

(a) Two copies to EPA by certified mail, return receipt requested, or by overnight delivery with signature verification, to:

Martin Matlin
Land and Chemicals Division
Mail Code 3LC70
United States Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103-2029

And

Benjamin M. Cohan
Senior Assistant Regional Counsel
Mail Code 3RC50
United States Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103-2029

(b) One copy to the Maryland Department of the Environment, by regular mail as follows:

Mr. Chris Ralston, Administrator
Oil Control Program
Maryland Department of the Environment
1800 Washington Blvd.
Baltimore, MD 21230-1701

C. Respondent is hereby notified that failure to comply with any of the terms of this Compliance Order may subject it to the imposition of a civil penalty of up to \$37,500 for each day of continued noncompliance, pursuant to Section 9006(a)(3) of RCRA, 42 U.S.C. §

6991e(a)(3), the Debt Collection Improvement Act of 1996 (“DCIA”), and the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. Part 19.

Upon receipt of a Compliance Order issued under RCRA Section 9006, Respondent may seek administrative review in accordance with 40 C.F.R. Part 22. The Respondent may seek judicial review of the Compliance Order pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701 – 706, once it is final and reviewable pursuant to RCRA Section 9006(b) and 40 C.F.R. Part 22.

IV. NOTICE OF OPPORTUNITY FOR HEARING

Respondent has the right to request a hearing on any material fact set forth in the Complaint, or the appropriateness of the Compliance tasks set forth in the Complaint. If Respondent wishes to request a hearing, Respondent must file a written Answer to the Complaint with the Regional Hearing Clerk (3RC00), EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029, within thirty (30) days of receipt of this Complaint. A copy of such Answer shall be sent to the attorney assigned to this case, Benjamin Cohan, Senior Assistant Regional Counsel (3RC50), EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029. Such Answer should clearly and directly admit, deny or explain each of the factual allegations contained in this Complaint of which such Respondent has any knowledge. Where such Respondent has no knowledge of a particular factual allegation, the Answer should so state. 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 such Respondent disputes; (3) the basis for opposing any proposed relief; and (4) a

statement of whether a hearing is requested. All material facts not admitted, explained or denied in the Answer will be considered as admitted.

If the Respondent fails to file a written Answer within thirty (30) days of receipt of this Complaint, such failure shall constitute an admission by Respondent of all facts alleged in the Complaint and a waiver of Respondent's right to a hearing. Failure to file a written Answer may result in the filing of a Motion for Default Order; and pursuant to 40 C.F.R. § 22.37(b), the Compliance Order in this Complaint automatically becomes a Final Order if a written Answer requesting a hearing is not filed within 30 days after receipt of this Complaint.

Any hearing requested by any Respondent will be held at a location to be determined at a later date pursuant to Section 22.21(d) of the Consolidated Rules of Practice. The hearing will be conducted in accordance with the provisions of the Administrative Procedure Act, 5 U.S.C. Sections 551-559, and the Consolidated Rules of Practice. A copy of the Consolidated Rules of Practice is attached. A copy of Respondent's Answer and all other documents that Respondent files in this action should be sent to the attorney assigned to represent EPA in this matter, as follows:

Benjamin M. Cohan
Senior Assistant Regional Counsel
Mail Code 3RC50
U.S. EPA – Region III
1650 Arch Street
Philadelphia, PA 19103-2029

V. SETTLEMENT CONFERENCE

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

The procedures in the Consolidated Rules of Practice for quick resolution of a proceeding do not apply in this case because the Complaint does not propose a penalty and also because the Complaint seeks a compliance order. See Section 22.18(a) of the Consolidated Rules of Practice.

If 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. The execution of such a Consent Agreement by any Respondent shall constitute a waiver of such Respondent's right to contest the allegation of the Complaint and its right to appeal the proposed Final Order accompanying this Consent Agreement.

The staff attorney assigned to this case is Benjamin Cohan. If you have any questions or wish to arrange an informal settlement conference, please contact Mr. Cohan at (215) 814 – 2618 prior to the expiration of the thirty (30) day period following receipt of the Complaint. Once again, however, such a request for an informal conference does not relieve any Respondent of its responsibility to file an Answer within thirty (30) days following such Respondent's receipt of this Complaint.

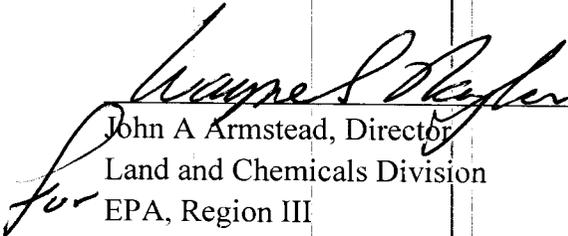
VI. SEPARATION OF FUNCTIONS; *EX PARTE* COMMUNICATIONS

The following Agency officers, and the staffs thereof, are designated as the trial staff to represent the Agency as a party in this case: The EPA Region III Office of Regional Counsel, the Director of the EPA Region III Waste and Chemicals Management, and the EPA Assistant Administrator for Enforcement and Compliance Assurance.

Please be advised that Section 22.8 of the Consolidated Rules of Practice prohibits any *ex parte* discussion of the merits of a case with, among others, the Administrator, the members of the Environmental Appeals Board, Regional Administrator, Regional Judicial Officer, or Presiding Officer, or any person who is likely to advise these officials in the decision of the case, after the Complaint has been issued, until the issuance of a final Agency decision in this case.

Date: _____

8/26/13

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

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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) U.S. EPA Docket Number
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) Resource Conservation and Recovery
) Act, as amended, 42 U.S.C. Section
) 6991e
)
)

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the date provided below, I hand-delivered and filed the original and one copy of the above captioned United States Environmental Protection Agency's Administrative Complaint, Compliance Order and Notice of Opportunity for Hearing, with the Regional Hearing Clerk, EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029, and that a true and correct copy of the Administrative Complaint, Compliance Order and Notice of Opportunity for Hearing, was sent by UPS Overnight mail, to:

Colonel Marcus L. Brown
Maryland State Police
1201 Reisterstown Road
Pikesville, MD 21208-3899

Ronald M. Levitan
Assistant Attorney General
1201 Reisterstown Road
Pikesville, MD 21208-3899

AUG 27 2013

Date



Benjamin M. Cohan
Senior Assistant Regional Counsel