

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY**

REGION IX

FILED

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REG. CLERK

In the Matter of:)
)
Sunrise Valero Market aka Sunrise)
Oil, Inc. and Samuel Rodriguez-) Docket No. RCRA-09-2010-0009
Ibarra,)
)
Respondents.)
)
_____)

MOTION FOR DEFAULT ORDER

The Complainant, the United States Environmental Protection Agency (“EPA”), moves for the issuance of an order under 40 C.F.R. § 22.17, finding that Respondents Sunrise Valero Market aka Sunrise Oil, Inc. (“Sunrise”) and Samuel Rodriguez-Ibarra (“Rodriguez-Ibarra”) are in default in this matter. Complainant also moves for a finding that Respondents violated Section 9003 of RCRA, 42 U.S.C. §6991b, and the regulations adopted pursuant thereto, as described generally in the Complaint and specifically in Counts I through V of the Complaint.

I. Respondents Should Be Found In Default

Title 40 of the Code of Federal Regulations (“40 CFR”) § 22.17(a) provides that a party may be found in default upon failure to timely file an answer to the Complaint. The Complaint in this matter was filed on or about June 21, 2010. Pursuant to 40 CFR § 22.15(a), an Answer to the Complaint should be filed with the Regional Hearing Clerk within thirty (30) days of service of the Complaint. The Complaint was served on the Respondents on or about July 29, 2010, as

reflected on the Certificate of Service filed in this matter on or about September 16, 2010. See, also, the Declaration of LaDonna Thomas in Support of Motion for Default, accompanying this Motion. To date, no Answer to the Complaint has been filed with the Regional Hearing Clerk. Thus, a finding of default is appropriate.

40 CFR § 22.17(c) provides that when the Presiding Officer finds that default has occurred, he shall issue a default order as to any or all parts of the proceeding unless the record shows good cause why a default order should not be issued. Respondents have failed to present any information tending to establish good cause for their failure to file an Answer to the Complaint. Accordingly, a finding of default is appropriate.

II. Respondents' Actions Violated Underground Storage Tank Requirements

Under 40 CFR § 22.17(a), default by Respondent constitutes, for purposes of this proceeding only, an admission of all facts alleged in the Complaint and a waiver of Respondents' respective rights to contest such factual allegations. Because all the factual allegations of the Complaint are admitted and deemed true upon default, and such facts are legally sufficient to establish the alleged violations by a preponderance of the evidence, a Default Order should issue finding Respondents liable for the violations.

A. *COUNT I*

Count I of the Complaint alleges that the Respondents violated Section 9003 of RCRA, 42 U.S.C. § 6991b, and 40 CFR §280.45 on two separate occasions at a gasoline service station located at 4811 East Sunrise Drive, Tucson, Arizona, (the "Facility"), on or about May 21, 2008 and on or about June 23, 2009, by failing to maintain records demonstrating compliance with the

annual line tightness test requirements of 40 CFR 280.41(b)(1)(ii) for at least a year. The factual allegations of paragraphs 1 through 34 of the Complaint, which are deemed admitted upon default, establish the facts necessary for a finding that the violations occurred as alleged in Count I.

B. COUNT II

Count II of the Complaint alleges that the Respondents violated Section 9003 of RCRA, 42 U.S.C. § 6991b, and 40 CFR §280.45 on two separate occasions by failing to maintain for at least a year records demonstrating compliance with the requirements relating to calibration, maintenance and repair of release detection equipment pursuant to 40 CFR 280.44(a). The allegations of paragraphs 1 through 42 of the Complaint, which are deemed admitted upon default, establish a thorough factual foundation for a finding that the violations occurred as alleged in Count II.

C. COUNT III

Count III of the Complaint alleges that the Respondents violated Section 9003 of RCRA, 42 U.S.C. § 6991b, and 40 CFR §280.45 on two separate occasions by failing to maintain for at least a year records demonstrating compliance with the requirements relating to calibration or maintenance of the automatic tank gauge release detection system in accordance with the manufacturer's instructions pursuant to 40 CFR 280.40(a)(2). The allegations of paragraphs 1 through 49 of the Complaint, which are deemed admitted upon default, establish a thorough factual foundation for a finding that the violations occurred as alleged in Count III.

D. *COUNT IV*

Count IV of the Complaint alleges that, commencing since at least on or about June 23, 2009 and continuing through to the present, Respondents have violated and continue to violate Section 9003 of RCRA, 42 U.S.C. § 6991b and 40 CFR §280.20(c) by failing to use spill prevention equipment that will prevent a release of product to the environment when the transfer hose is detached from the fill pipe. The allegations of paragraphs 1 through 54 of the Complaint, which are deemed admitted upon default, establish a thorough factual foundation for a finding that the violations occurred as alleged in Count IV.

E. *COUNT V*

Count V of the Complaint alleges that the Respondents violated Section 9003 of RCRA, 42 U.S.C. § 6991b, and 40 CFR §280.20(b)(2), from June 23, 2009 through at least October 1, 2009 by failing to ensure that the piping that routinely contains regulated substances and is in contact with the ground was properly designed, constructed and protected from corrosion in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory. The allegations of paragraphs 1 through 59 of the Complaint, which are deemed admitted upon default, establish a thorough factual foundation for a finding that the violations occurred as alleged in Count V.

* * *

Respondents have violated RCRA Section 9001 *et seq.*, 42 USC §6991 *et seq.*, and 40 CFR §§280.20(b)(2), 280.20(c), and 280.45. Respondents are subject to the powers vested in the EPA Administrator by Section 9006 of RCRA, 42 USC § 6991e.

Accordingly, the Presiding Officer should issue a Default Order finding the Respondents liable for the violations described in Counts I through V.

III. An Appropriate Penalty Should Be Assessed

In assessing a penalty, the Presiding Officer must determine the amount of the penalty based on the evidence in the case, in accordance with the statutory criteria set forth in Section 9006(c) of RCRA, 42 USC §6991e(c), and considering any civil penalty guidelines issued under RCRA. 40 CFR § 22.27(b). Based on the nature, circumstances, extent, and gravity of the violations described in Counts I through V of the Complaint, Complainant proposes that a civil penalty in the amount of \$21,225 be assessed against the Respondents.

EPA proposes that Respondents be ordered to pay a civil penalty calculated in accordance with Section 9006 of RCRA, 42 USC § 6991e, as adjusted by the Debt Collection Improvement Act of 1996, *see* 69 Fed. Reg. 7121 (Feb. 13, 2004) and 74 Fed. Reg. 75340 (Dec. 11, 2008), using the US EPA "Penalty Guidance For Violations of UST Regulations," OSWER Directive 9610.12, November 14, 1990, (the "UST Penalty Policy"), as adjusted by the Adjusted Penalty Policy Matrices Package issued by EPA's Office of Enforcement and Compliance Assurance on November 16, 2009, and the revisions to that memorandum dated April 6, 2010, (the "OECA Penalty Memo"). Please note that the UST Penalty Policy includes Appendix A, which sets forth penalty recommendations for specific violations of the UST regulations. *See*, Attachment A to the Declaration of LaDonna Thomas in Support of Motion for Default (the "Thomas Declaration"). These recommendations are then adjusted for inflation. The Penalty Policy Matrices as adjusted for inflation are included in the OECA Penalty Memo, Attachment B to the

Thomas Declaration, at Exhibits 4.A and 4.B. EPA's recommendations with respect to the penalty for this matter are as follows:

A. Count I - Failure to Maintain Records Demonstrating That Annual Line Tightness Tests Were Conducted or Monthly Monitoring on Pressurized Piping Was Performed

1. UST owners and operators are required to provide release detection for underground piping that routinely contains regulated substances. Where the piping conveys such substances under pressure, the owners and operators must ensure that the piping has an annual line tightness test conducted in accordance with 40 CFR §280.44(b) or have monthly monitoring conducted in accordance with 40 CFR §280.44(c). All UST system owners and operators are required by 40 CFR §280.45 to maintain records demonstrating compliance with all applicable requirements of 40 CFR Part 280 Subpart D, including the results of any release detection testing, sampling or monitoring.
2. This violation presents a "major" potential for harm to the environment and the regulatory program and is a "major" deviation from the regulatory requirement. The UST Penalty Policy dictates that a violation of 40 CFR §280.45(b), (the failure to retain results of tightness testing until the next test is conducted), be assessed as a violation posing a major potential for harm and a major deviation from

the regulatory requirement. *See* UST Penalty Policy, Appendix A, Subpart D.

- i. A major potential for harm to the environment and the regulatory program means that 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. In this case, the failure to maintain records suggests the failure to actually perform the required annual line tightness test. The failure to undertake an annual line tightness test could result in substantial risks to human health and the environment where an undetected leak in the line occurs. An undiscovered release of product from the lines could easily remain unaddressed for a significant time. The longer a release is unaddressed, for example, because no one detected the leak, the greater the risk to human health and the environment.
- ii. A major deviation from the regulatory requirement means that the violator deviated from the requirements of the regulation or statute to such an extent that there is substantial noncompliance. In this case, there are no records indicating a line tightness test was performed on the tanks at the Facility

from at least May of 2008 until approximately August 25, 2009, amounting to substantial noncompliance.

3. During both the May 21, 2008 and the June 23, 2009 inspections, the Respondents were unable to produce any records demonstrating that the piping had had an annual line tightness test within the year previous to each such inspection or was being monitored monthly during that time period. Thus, the violation was detected on two separate occasions. For the violation occurring on or about May 21, 2008, the gravity based component of the penalty amounts to \$1,930. For the violation occurring on or about June 23, 2009, the gravity based component of the penalty amounts to \$2,130. *See Thomas Declaration Attachment B, OECA Penalty Memo, at Exhibits 4.A. and 4.B.*
4. EPA is not recommending other adjustments be made to the gravity based component for these penalties.
5. An environmental sensitivity multiplier of 1 was applied because the Facility is located in an urban area where drinking water is supplied by municipal systems, and where little wildlife is expected to be affected by any releases.

6. Thus the appropriate total penalty to be assessed for this violation (posing a major potential for harm and a major extent of deviation from the requirement) would amount to \$4,060.

B. Count II - Failure to Maintain Records Demonstrating Performance of Annual Maintenance of Leak Detection for Piping

1. 40 CFR §280.44(a) requires, among other things, that each method of release detection for piping used to meet the requirements of 40 CFR §280.41 be conducted so that an annual test of the operation of the leak detector is performed in accordance with the manufacturer's requirements. In addition, 40 CFR §280.45 requires that all UST system owners and operators maintain records in accordance with 40 CFR §280.34 demonstrating compliance with all applicable requirements of 40 CFR Part 280 Subpart D, including, among other things, written documentation of all calibration, maintenance and repair of release detection equipment permanently located on-site for at least a year after the servicing work is completed or another reasonable time frame determined by the implementing agency.
2. This violation presents a "major" potential for harm to the environment and the regulatory program and is a "major" deviation from the regulatory requirement. The UST Penalty Policy dictates that a violation of 40 CFR §280.45(c), (the failure to document any calibration, maintenance and repair of release detection), be assessed

as a violation posing a major potential for harm and a major deviation from the regulatory requirement. *See* UST Penalty Policy, Appendix A, Subpart D.

- i. A major potential for harm to the environment and the regulatory program means that 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. In this case, Respondents were unable to produce any records demonstrating that the Facility undertook, within each of the years previous to the inspections, any annual test of the operation of the release detection for the piping at the Facility in accordance with the manufacturer's requirements. The failure to maintain the records demonstrating the test took place suggests that no test was performed. The failure to undertake an annual test of the operation of the release detection for the piping at the Facility could result in substantial risks to human health and the environment where an undetected leak in the piping occurs. An undiscovered release of product from the piping or piping connections could easily remain unaddressed for a significant time. The

longer a release is unaddressed, for example, because piping release detection was not properly operating, the greater the risk to human health and the environment.

ii. A major deviation from the regulatory requirement means that the violator deviated from the requirements of the regulation or statute to such an extent that there is substantial noncompliance. In this case, no records of any annual test of the operation of the release detection for the piping at the Facility during each of the years prior to the inspection were maintained at all.

3. Therefore, on or about May 21, 2008 and on or about June 23, 2009, Respondents failed to maintain for at least a year records demonstrating compliance with the requirements relating to the required annual test of the operation of the release detection for the piping at the Facility in accordance with the manufacturer's requirements pursuant to 40 CFR 280.44(a). Thus, the violation was detected on two separate occasions. For the violation occurring on or about May 21, 2008, the gravity based component of the penalty amounts to \$1,930. For the violation occurring on or about June 23, 2009, the gravity based component of the penalty amounts to \$2,130.

See Thomas Declaration Attachment B, OECA Penalty Memo, at Exhibits 4.A and 4.B.

4. EPA is not recommending other adjustments be made to the gravity based component for these penalties.
5. An environmental sensitivity multiplier of 1 was applied because the Facility is located in an urban area where drinking water is supplied by municipal systems, and where little wildlife is expected to be affected by any releases.
6. Thus the appropriate total penalty to be assessed for this violation (posing a major potential for harm and a major extent of deviation from the requirement) would amount to \$4,060.

C. Count III - Failure to Maintain Records Regarding Performance of Calibration for or Maintenance of Automatic Tank Gauge

1. Owners and operators of new and existing UST systems are required to provide a method or combination of methods of release detection that, among other things, is installed, calibrated, operated, and maintained in accordance with the manufacturer's instructions, including routine maintenance and service checks for operability or running condition pursuant to 40 CFR §280.40(a)(2). In addition, 40 CFR §280.45 requires that all UST system owners and operators maintain records, including, among other things, written documentation of all calibration, maintenance and repair of release detection equipment permanently located on-site for

at least a year after the servicing work is completed.

- i. This violation presents a “major” potential for harm to the environment and the regulatory program and is a “major” deviation from the regulatory requirement. The UST Penalty Policy dictates that a violation of 40 CFR §280.45(c), (the failure to document any calibration, maintenance and repair of release detection), be assessed as a violation posing a major potential for harm and a major deviation from the regulatory requirement. *See* UST Penalty Policy, Appendix A, Subpart D.
- ii. A major potential for harm to the environment and the regulatory program means that 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. In this case, the Respondents failed to produce records demonstrating that they calibrated or maintained the automatic tank gauge release detection system in accordance with the manufacturer’s instructions. The failure to maintain records demonstrating that the automatic tank gauge release detection system was being properly calibrated and maintained suggests a failure to perform the required calibration and maintenance. Failure to

calibrate or maintain the automatic tank gauge release detection system in accordance with the manufacturer's instructions could result in substantial risks to human health and the environment where an undetected leak in the tank occurs. An undiscovered release of product from the tank could easily remain unaddressed for a significant time. The longer a release is unaddressed, for example, because no one detected the release because the automatic tank gauge release detection system was not properly maintained or calibrated, the greater the risk to human health and the environment.

- iii. A major deviation from the regulatory requirement means that the violator deviated from the requirements of the regulation or statute to such an extent that there is substantial noncompliance. In this case, no records demonstrating compliance with the requirements relating to calibration or maintenance of the automatic tank gauge release detection system in accordance with the manufacturer's instructions were maintained in accordance with 40 CFR §280.40(a)(2) and there was no evidence that the automatic tank gauge release detection system was being properly operated.

2. Therefore, on or about May 21, 2008 and on or about June 23, 2009, Respondents failed to maintain for at least a year records demonstrating compliance with the requirements relating to calibration or maintenance of the automatic tank gauge release detection system in accordance with the manufacturer's instructions pursuant to 40 CFR 280.40(a)(2). Thus, the violation was detected on two separate occasions. For the violation occurring on or about May 21, 2008, the gravity based component of the penalty amounts to \$1,930. For the violation occurring on or about June 23, 2009, the gravity based component of the penalty amounts to \$2,130. See Thomas Declaration Attachment B, OECA Penalty Memo, at Exhibits 4.A and 4.B.
3. EPA is not recommending other adjustments be made to the gravity based component for these penalties.
4. An environmental sensitivity multiplier of 1 was applied because the Facility is located in an urban area where drinking water is supplied by municipal systems, and where little wildlife is expected to be affected by any releases.
5. Thus the appropriate total penalty to be assessed for this violation (posing a major potential for harm and a major extent of deviation from the requirement) would amount to \$4,060.

D. Count IV - Failure to Provide a Spill or Overfill Prevention System for a New Tank System

1. 40 CFR §280.20(c) requires, among other things, that owners and operators of new tank systems (*i.e.*, those tank systems installed after December 22, 1988 per 40 CFR §280.12) use spill prevention equipment that will prevent a release of product to the environment when the transfer hose is detached from the fill pipe.
2. This violation presents a “major” potential for harm to the environment and the regulatory program and is a “major” deviation from the regulatory requirement. The UST Penalty Policy dictates that a violation of 40 CFR §280.20(c)(1)(i), (the installation of inadequate spill prevention equipment in a new tank), be assessed as a violation posing a major potential for harm and a major deviation from the regulatory requirement. *See* UST Penalty Policy, Appendix A, Subpart B.
 - i. A major potential for harm to the environment and the regulatory program means that 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. In this case, during the June 23, 2009 inspection, the inspectors observed that the spill bucket for part of the compartmentalized tank was damaged and needed to be repaired or replaced. To date, no evidence that the violation has been corrected has been received by EPA. A spill bucket ensures that releases are contained when product is transferred or delivered to an UST. A non-functioning spill bucket could allow for repeated spills. The failure to repair the spill bucket for an extended time could

allow repeated spills to go undetected and unaddressed. A release from a non-functional spill bucket would have a direct impact on the environment.

- ii. A major deviation from the regulatory requirement means that the violator deviated from the requirements of the regulation or statute to such an extent that there is substantial noncompliance. In this case, the damage to the spill bucket – a crack in the bucket -- rendered it nearly completely ineffective in preventing a release of product directly to the environment whenever the transfer hose was detached from the fill pipe.
3. Therefore, on or about June 23, 2009 and continuing to the present, Respondents failed to use spill prevention equipment that will prevent a release of product to the environment when the transfer hose is detached from the fill pipe. Pursuant to the UST Penalty Policy, the “days of non-compliance multiplier” for a violation that continues over an approximately 19 month time period amounts to 3.5. Multiplying 3.5 times the gravity based penalty amount of \$2130 (for the first day of violation occurring on or about June 23, 2009), yields a penalty amount of \$7455. See Thomas Declaration Attachment B, OECA Penalty Memo, at Exhibit 4.B.

4. EPA is not recommending other adjustments be made to the gravity based component for this penalty.
5. An environmental sensitivity multiplier of 1 was applied because the Facility is located in an urban area where drinking water is supplied by municipal systems, and where little wildlife is expected to be affected by any releases.
6. Thus the appropriate total penalty to be assessed for this violation (posing a major potential for harm and a major extent of deviation from the requirement) would amount to \$7455.

E. Count V - Failure to Provide Cathodic Protection for Metal Piping

1. 40 CFR §280.20(b)(2) requires that, for new tank systems, the piping that routinely contains regulated substances and is in contact with the ground 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.
2. This violation presents a “moderate” potential for harm to the environment and the regulatory program and is a “major” deviation from the regulatory requirement. The UST Penalty Policy dictates that a violation of 40 CFR §280.20(b)(2), (the improper operation and maintenance of a cathodic protection system for piping), be assessed as a violation posing a moderate potential for harm and a major deviation from the regulatory requirement. See UST Penalty Policy, Appendix A, Subpart B.

- i. A moderate potential for harm to the environment and the regulatory program means that 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. In this case, during the June 23, 2009 inspection, the inspectors observed that the turbine sump for part of the compartmentalized UST system contained 21 inches of standing water. The inspectors also observed that the metal connector piping in the sump had had corrosion. Isolation of metal connectors from the surrounding soil to avoid corrosion is accomplished through the installation of the turbine sump. However, allowing water to accumulate in the turbine sump nullifies the utility of the turbine sump with respect to preventing corrosion in the metal connector piping. Corrosion of the metal components could lead to a release and thus could result in a significant risk to human health and the environment.
- ii. A major deviation from the regulatory requirement means that the violator deviated from the requirements of the regulation or statute to such an extent that there is substantial noncompliance. In this case, the turbine sump was sitting in approximately 21 inches of water and the metal connector piping had had corrosion. This

represents a significant amount of water and the existing corrosion indicates that the wet conditions of the turbine sump had continued over some significant period of time.

3. Therefore, on or about June 23, 2009 and continuing until approximately October 1, 2009, Respondents failed to ensure that the piping that routinely contains regulated substances and is in contact with the ground was properly designed, constructed and protected from corrosion in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory. Pursuant to the UST Penalty Policy, the “days of non-compliance multiplier” for a violation that continues for more than 91 days but less than 180 days amounts to 1.5. Multiplying 1.5 times the gravity based penalty amount of \$1060, yields a penalty amount of \$1590. *See* Thomas Declaration Attachment B, OECA Penalty Memo, at Exhibit 4.B.
4. EPA is not recommending other adjustments be made to the gravity based component for this penalty.
5. An environmental sensitivity multiplier of 1 was applied because the Facility is located in an urban area where drinking water is supplied by municipal systems, and where little wildlife is expected to be affected by any releases.

6. Thus the appropriate total penalty to be assessed for this violation (posing a moderate potential for harm and a major extent of deviation from the requirement) would amount to \$1590.

IV. The Respondents Should be Ordered to Comply with RCRA

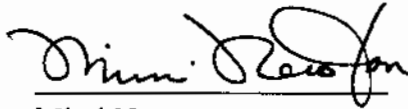
Respondents should be ordered to comply with RCRA's underground storage tank requirements. Any Final Order issued in this matter should compel the Respondents to submit evidence to EPA within 30 days of the effective date of the Order demonstrating that the Facility is equipped with UST spill prevention equipment that will prevent a release of product to the environment when the transfer hose is detached from the fill pipe. Within 45 days of the effective date of the Order, Respondents should also be compelled to submit documentation to EPA demonstrating that they have corrected the violations alleged and completed all compliance tasks, and that Respondents are now in compliance with the applicable requirements of Section 9001 of RCRA, *et seq.* 42 U.S.C. §6991b, *et seq.* and the regulations adopted pursuant thereto.

V. Conclusion

Respondents should be found in default for failing to file an Answer to the Complaint in a timely manner. Accordingly, the Complainant requests that the Regional Judicial Officer issue an order finding that the Respondents violated Section 9003 of RCRA, 42 U.S.C. §6991b, and the regulations adopted pursuant thereto at 40 CFR §§280.20(b)(2), 280.20(c), and 280.45. Finally, a demonstration of compliance with applicable UST regulations at the Facility – including

ensuring that the Facility is equipped with UST spill prevention equipment -- should be required of the Respondents, and an appropriate penalty should be assessed in the amount of \$21,225.

Respectfully submitted,



Mimi Newton
Assistant Regional Counsel

3.23.11
Date

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**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY**

REGION IX

In the Matter of:)
)
Sunrise Valero Market aka Sunrise) Docket No. RCRA-09-2010-0009
Oil, Inc. and Samuel)
Rodriguez-Ibarra)
)
Respondent.)
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DECLARATION OF LADONNA THOMAS IN SUPPORT OF MOTION FOR DEFAULT

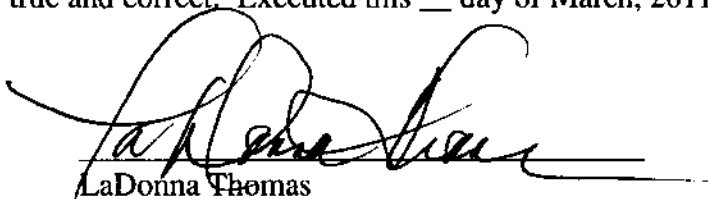
I, LaDonna Thomas, do hereby declare as follows:

1. I am an Environmental Specialist for the U.S. Environmental Protection Agency (“US EPA”) Region IX, working in the Underground Storage Tanks Program Office (“USTPO”) since 1988.
2. Since approximately August of 2008, I have been assigned by USTPO management to work with counsel and the USTPO inspectors on the follow up to inspections of the gasoline service station located at 4811 East Sunrise Drive, Tucson, AZ (the “Facility”).
3. The Facility was inspected by USTPO on or about May 21, 2008 and June 23, 2009.
4. Based on the results of the May 21, 2008 and June 23, 2009 inspections and information gathered since the inspections, US EPA Region IX filed an administrative complaint against the Facility’s owner/operator, Sunrise Valero Market, aka Sunrise Oil, Inc. (“Sunrise”) and another Facility operator, Samuel Rodriguez-Ibarra (“Rodriguez-Ibarra”).

5. One of my responsibilities for this action was to prepare recommended penalty calculations for each of the alleged violations identified in the Complaint. Attached hereto as Attachment A is a true and correct copy of Appendix A to the UST Penalty Policy, which provides specific recommendations for various violations of UST regulatory provisions.
6. The recommended amounts specified in the UST Penalty Policy must be adjusted for inflation in accordance with the Adjusted Penalty Policy Matrices Package issued by EPA's Office of Enforcement and Compliance Assurance on November 16, 2009, and the revisions to that memorandum dated April 6, 2010. A true and correct copy of the inflation adjustment memorandum revisions is attached hereto as Attachment B. These revisions include exhibits that reflect matrix values for penalties for violations occurring after March 15, 2004 through January 12, 2009 (Exh. 4.A) and after January 12, 2009 (Exh. 4.B), respectively.
7. After not having received proof of delivery of the Complaint after it was filed, on or about July 28, 2010, I transmitted a copy of the Determination of Violation, Complaint, Order and Notice of Right to Request a Hearing; Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (40 CFR Part 22); and the US EPA Penalty Guidance for Violations of UST Regulations to the Respondents, addressed to Mr. Rodriguez-Ibarra, via overnight delivery service. I later received proof that this delivery was made on or about July 29, 2010.

8. On or about March 23, 2011, I printed a copy of the Arizona Corporation Commission's website indicating that Sunrise Oil, Inc. is a corporation in "Good Standing" in the State of Arizona. Attached hereto as Attachment C is a true and correct copy of that print out.
9. On or about March 23, 2011, I printed a copy of Sunrise Oil, Inc.'s Annual Report filed with the State of Arizona Corporation Commission on or about June 4, 2010 from the Arizona Corporation Commission website. Attached hereto as Attachment D is a true and correct copy of the Sunrise Oil, Inc. Annual Report dated June 4, 2010.

I hereby declare, under penalty of perjury pursuant to the laws of the State of California, that the foregoing is true and correct. Executed this __ day of March, 2011, at San Francisco, California.


LaDonna Thomas

