UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

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

DEFAULT ORDER AND INITIAL DECISION

This is a civil administrative proceeding initiated pursuant to Section 9006 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6991e, and the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* ("Consolidated Rules of Practice" or "Part 22 Rules"), 40 C.F.R. Part 22.

On July 24, 2018, the Director of the Land and Chemicals Division of the United States Environmental Protection Agency, Region 3 ("Complainant") commenced this proceeding with the filing of an Administrative Complaint, Compliance Order and Notice of Opportunity for a Hearing ("Complaint") against Silky Associates, LLC ("Respondent"), alleging in five (5) counts that Respondent had violated the requirements of the Underground Storage Tank ("UST") program of Subtitle I of RCRA (42 U.S.C. §§ 6991-6991m) and the federally authorized UST regulations of the Commonwealth of Virginia (9 VAC §§ 25-580-10 *et seq.*). The alleged violations occurred at Respondent's facility located at 200 E. Williamsburg Road in Sandston, Virginia. On July 23, 2020, Complainant filed a Motion for Default seeking issuance of an Order finding Respondent in default for failure to file an Answer to the Complaint and seeking assessment against Respondent of a civil monetary penalty in the amount of $186,095.00. As of the date of this Order, Respondent has not filed

with EPA Region III's Regional Hearing Clerk either an Answer to the Complaint or a response to Complainant's Motion for Default.[1]

After careful consideration of the record of this case and for the reasons set forth, *infra*, Complainant's Motion for Default is **GRANTED**. Pursuant to 40 C.F.R. § 22.17(a) and (c), Respondent is held to be in default for failure to file an Answer to the Complaint and is assessed a civil penalty in the amount of $186,095.00.

I. Analysis of Respondent's Default

A. Complaint was filed and served in accordance with the Consolidated Rules of Practice

1. Filing of Complaint

The Consolidated Rules of Practice require that the original and one copy of each document intended to be part of the record of a case shall, for regional cases, be filed with the Regional Hearing Clerk. 40 C.F.R. § 22.5(a)(1). A document is deemed to be filed when it is received by a Regional Hearing Clerk. *Id.* A certificate of service is required for each document filed or served. 40 C.F.R. § 22.5(a)(3). On July 24, 2018, the Complainant filed the Complaint by hand-delivering it to the Regional Hearing Clerk for EPA Region III. *Motion for Default - Exhibit A (Complaint with filing stamp and Certificate of Service accompanying Complaint)*. As a result, I conclude that the Complaint was filed in accordance with the Consolidated Rules of Practice, 40 C.F.R. § 22.5(a)(1).

2. Service of Complaint

The Consolidated Rules of Practice provide that, with regard to domestic corporations, service of a complaint shall be made upon an officer, partner, a managing or general agent, or any other person

[1] The Administrative Complaint filed in this proceeding also contained a Compliance Order. Due to the fact that the Respondent failed to file an Answer and request a hearing, the compliance order automatically became a final order on or about August 27, 2018 (i.e., 30 days after the Compliance Order was served on the Respondent) pursuant to 40 C.F.R. §§ 22.7 and 22.37(b).

authorized by appointment or by Federal or State law to receive service of process. 40 C.F.R. § 22.5(b)(1)(ii)(A). Service of a complaint is to be effectuated either: personally; by certified mail with return receipt requested; or by any reliable commercial delivery service that provides written verification of delivery. 40 C.F.R. § 22.5(b)(1)(i). Proof of service of a complaint is to be made by affidavit of the person making personal service, or by properly executed receipt, and is to be filed with the appropriate Regional Hearing Clerk immediately upon completion of service. 40 C.F.R. § 22.5(b)(1)(iii).

Respondent is a limited liability company incorporated in the Commonwealth of Virginia. On July 24, 2018, Complainant served the Complaint on the Respondent by mailing it certified mail, return receipt requested. The certified mailing was addressed to the attention of Mr. Lakhmir Bagga, who is the Respondent's owner and agent registered in the Commonwealth of Virginia for service of process. *Motion for Default - Exhibit B (Screenshot of Virginia State Corporation Commission Clerk's Information System).* The certified mailing was sent to 200 E. Williamsburg Road in Sandston, Virginia, the state registered business address for Respondent's Facility. *Id.* Additionally, this is the location of the Facility that was inspected by EPA Region III on July 18, 2016 and is the subject of the violations alleged in the Complaint.

According to the certified mail return receipt (i.e., "green card"), the Complaint was received on July 26, 2018. *Motion for Default -Exhibit C (signed Green Card and US Postal Service Online Tracking Report)*. As a result, I conclude that the Complaint was served upon the Respondent in accordance with the Consolidated Rules of Practice, 40 C.F.R. § 22.5(b)(1).

B. Pursuant to a ruling by the OALJ, Respondent is held not to have filed an Answer

Rule 22.15(a) of the Consolidated Rules of Practice, 40 C.F.R. § 22.15(a), provides that in order for a respondent to contest any material fact in a complaint, to contend that the proposed penalty, compliance order or permit action is inappropriate, or to contend that it is entitled to judgment as a

matter of law, Respondent must file a written answer to the complaint with the appropriate Regional Hearing Clerk within thirty (30) days after service of the complaint.[2]

After the Complaint was received by the Respondent, a representative of the Respondent contacted EPA's legal counsel by telephone. *Motion for Default - Exhibit G (Declaration of EPA Counsel entitled "Respondent's Answer to the Complaint) at ¶ 4.* On August 9, 2018, EPA's legal counsel returned the call to Respondent's representative and, during the course of the call, discussed the potential consequences that might arise if Respondent failed to file an Answer to the Complaint.

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

Id. On August 21, 2018, Respondent sent by fax and regular mail to UST Program Officer Melissa Toffel of EPA Region III's Land and Chemicals Division a package that consisted of: a four (4) page hand-written letter; a one (1) page monthly rectifier operating record; and an executed certification,. *Id.* at ¶ 5. EPA's legal counsel called Mr. Bagga on August 27, 2018 and during this telephone call Mr. Bagga indicated that the letter and its attachments were intended to be Respondent's Answer to the Complaint.

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

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[2] The Complaint include the following language: "Failure of Respondent to admit, deny or explain any material allegation in the Complaint shall constitute an admission by Respondent of such allegation. Failure to file a timely Answer may result in the filing of a Motion for Default Order and the possible issuance of a Default Order imposing the penalties proposed herein without further proceedings. 40 C.F.R. § 22.17"). *Motion for Default Exhibit A – Complaint at 19.*

Id. at ¶ 6. In accordance with Mr. Bagga's request, on August 27, 2018, EPA's legal counsel filed the letter on behalf of the Respondent with the Regional Hearing Clerk and indicated to the Regional Hearing Clerk that Respondent intended the letter to be the Answer to the Complaint. *Motion for Default – Exhibit F (OALJ Order for Respondent to File Answer) at 1.*

On August 29, 2018, the Regional Hearing Clerk forwarded the case file to the EPA Office of Administrative Law Judges ("OALJ") and Chief Administrative Law Judge Susan Biro was designated as the Presiding Officer. *Id.*

After reviewing the file, Judge Biro concluded that Respondent's August 21, 2018 four (4) page letter and its attachments did not constitute an Answer for purposes of the Consolidated Rules of Practice in that "Respondent's letter was not filed directly with the Regional Hearing Clerk, did not request a hearing upon the issues, and does not clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint." *Id.* at 1-2. As a result, Judge Biro ordered the Respondent to file by November 16, 2018 an Answer that conformed with the requirements of the Consolidated Rules of Practice and that clearly stated if Respondent requested a hearing upon the issues presented in the Complaint. *Id.* at 2.

On November 16, 2018, Silky Bagga, on behalf of Lakhmir Bagga, filed a letter with the OALJ that represented "that Respondent was not able to meet the deadlines [set in the OALJ Order] due to Mr. Bagga's health problems" and requested an "extension of 3-4 weeks to comply with any requirements." *Motion for Default - Exhibit E (December 10, 2018 OALJ Order of Remand) at 2.* No further filings with the OALJ were made by Respondent subsequent to its letter of November 16, 2018. *Id.* As a result, on December 10, 2018, Judge Biro issued an Order of Remand which provided that "because an Answer has not been filed [by Respondent], it is inappropriate for this Tribunal to retain jurisdiction of this matter or to continue to serve as Presiding Officer." *Id.* Judge Biro remanded the file to the EPA

Region III Regional Judicial and Presiding Officer "for disposition consistent with the [Consolidated] Rules of Practice." *Id.*

In accordance with OALJ's Order on Remand, as Regional Judicial and Presiding Officer for EPA Region III, on February 7, 2019, I issued an Order directing the Regional Hearing Clerk "to amend EPA's Administrative Enforcement Docket to reflect OALJ's holding that the August 21, 2018 letter submitted by Respondent does not qualify as an Answer." *Motion for Default - Exhibit D (Order to Amend EPA's Administrative Enforcement Docket).* The Regional Hearing Clerk amended the EPA Region III Administrative Enforcement Docket accordingly. As a result, the docket for this proceeding indicates that Respondent has not filed an Answer to the Complaint.

C. Respondent is Held to be in Default

Rule 22.17(a) of the Consolidated Rules of Practice, 40 C.F.R. § 22.17(a), provides that a party may be found in default upon failure to file a timely answer to a complaint and that default by a respondent constitutes, for purposes of the pending action, an admission of all facts alleged in the complaint and a waiver of a respondent's right to contest such factual allegations. When a Presiding Officer finds that a default has occurred, he or she "shall issue a default order against the defaulting party as to any or all parts of the proceeding unless the record shows good cause why a default order should not be issued." 40 C.F.R. § 22.17(c). A default order shall constitute an Initial Decision under the Consolidated Rules of Practice if it resolves all outstanding issues and claims in the proceeding. *Id.* "The relief proposed in the complaint or the motion for default shall be ordered unless the requested relief is clearly inconsistent with the record of the proceeding or the Act [particular statute authorizing the proceeding at issue.]" *Id.*

Due to the fact that the OALJ ruled that an Answer was not filed in this matter, Respondent is held to be in default. In accordance with the Consolidated Rules of Practice, default by the Respondent

constitutes, for purposes of this proceeding only, an admission by the Respondent of all of the facts alleged in the Complaint (*see* Section II, *infra*) and a waiver of Respondent's right to contest such factual allegations.

II. <u>Findings of Fact and Conclusions of Law</u>

A. Pursuant to 40 C.F.R. § 22.17(c), I make the following Findings of Fact and Conclusions of Law.:

1. Complainant is the Director of the Land and Chemicals Division of the United States Environmental Protection Agency, Region III.
2. Respondent, Silky Associates, LLC, is a Virginia limited liability company doing business in the Commonwealth of Virginia.
3. At all times relevant to this proceeding, Respondent operated a facility, the Lucky Mart, located at 200 E. Williamsburg Road, Sandston, Virginia 23150 ("Facility").
4. Section 9006 of RCRA, 42 U.S.C. § 6991e, authorizes the Administrator of EPA to take an enforcement action, including the issuance of a compliance order or assessment of a civil penalty, whenever it is determined that a person (owner or operator of an underground storage tank ("UST") is in violation of any requirement of RCRA Subtitle I, or any requirement or standard of a State program that has been approved pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c.
5. Effective October 28, 1998, the Commonwealth of Virginia was granted final authorization to administer a state UST management program in lieu of the Federal UST management program establish under RCRA Subtitle I. The provisions of the Virginia UST management program, through the final authorization, became requirements of RCRA Subtitle I and are enforceable by EPA pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e. Virginia's authorized UST

management program regulations are set forth in the Virginia Administrative Code - "Underground Storage Tanks: Technical Standards and Corrective Action Requirements" ("VA UST Regulations"), 9 VAC §§ 25-580-10 *et seq*.

6. On July 24, 2018, pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e and in accordance with the Consolidated Rules of Practice, 40 C.F.R. § 22.5, Complainant filed with the EPA Region III Regional Hearing Clerk a five (5) count Administrative Complaint, Compliance Order and Notice of Opportunity for a Hearing against Respondent which alleged violations by the Respondent of the requirements of the federally authorized VA UST regulations. Pursuant to 40 C.F.R. § 22.14(a)(4)(ii), Complainant did not propose in the Complaint a specific civil monetary penalty to be assessed against Respondent.
7. EPA gave the Virginia Department of Environmental Quality ('VADEQ") notice of the filing of the Complaint in accordance with RCRA Section 9006(a)(2), 42 U.S.C. § 6991e(a)(2).
8. As of the date of this Order, Respondent has not filed an Answer to the Complaint.
9. As part of its July 23, 2020 Motion for Default, Complainant proposed that Respondent be assessed a civil monetary penalty in the amount of $186,095.00. Complainant represented that the penalty was calculated in accordance with the statutory factors set forth at Section 9006(c) and (e) of RCRA, 42 U.S.C. § 6991e(c) and (e), 2615(a)(2)(B), the *November 1990 U.S. EPA Penalty Guidance for Violations of the UST Regulations* ("UST Penalty Policy"), the *January 11, 2018 Amendments to the EPA's Civil Penalty Policies to account for Inflation (effective January 15, 2018) and Transmittal of the 2018 Civil Monetary Inflation Adjustment Rule*, and the *December 6, 2013 Amendments to the U.S. Environmental Protection Agency's Civil Penalty Policies to Account for Inflation (effective December 6, 2013).*

10. At all times relevant to this matter, Respondent has been a "person" as defined by Section 9001(5) of RCRA, 42 U.S.C. § 6991(5), and 9 VAC § 25-580-10.
11. At all times relevant to this matter, Respondent has been the owner" and/or "operator" as those terms are defined by Section 9001(3) and (4) of RCRA, 42 U.S.C. §§ 6991(3) and (4), and 9 VAC 25-580-10, of underground storage tanks ("USTs") and "UST Systems" as those terms are defined in Section 9001(10) of RCRA, 42 U.S.C. § 6991(10), and 9 VAC § 25-580-10, at the Facility.
12. On July 18, 2016, an EPA representative conducted a Compliance Evaluation Inspection ("CEI") of the Facility.
13. At the time of the July 18, 2016 CEI, and at all times relevant to this matter:
    a. Five (5) USTs were located at the Facility;
        i. A ten thousand (10,000) gallon steel tank that was installed in or about May 1973 and that routinely contained gasoline (premium), a "regulated substance" as defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and 9 VAC § 25-580-10 ("UST-001");
        ii. A ten thousand (10,000) gallon steel tank that was installed in or about May 1973 and that routinely contained gasoline (regular), a "regulated substance" as defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and 9 VAC § 25-580-10 ("UST-002");
        iii. A ten thousand (10,000) gallon steel tank that was installed in or about May 1978 and that routinely contained gasoline ("regular"), a "regulated substance" as defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and 9 VAC § 25-580-10 ("UST-003");

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

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

UST-002 and UST-003 were siphoned manifolded. UST-001, UST-002, UST-003, UST-004 and UST-005 each were connected to galvanized steel underground piping that routinely contained regulated substances conveyed under pressure. UST-001, UST-002, UST-003, UST-004 and UST-005 and all associated underground piping were equipped with a cathodic protection system to protect against corrosion.

14. At all times relevant to this matter, UST-001, UST-002, UST-003, UST-004 and UST-005 and their respective connected underground piping, each qualified as a "petroleum UST system" and "existing UST system" as those terms are defined in 9 VAC § 25-580-10.

15. At all times relevant to this matter, none of the UST systems at the Facility were "empty" within the meaning of 9 VAC § 25-580-310(1).

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

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

18. Pursuant to Section 9012 of RCRA, 42 U.S.C. § 6991k, on February 21, 2018, EPA issued an amended Notice of Intent to Prohibit Delivery letter to Respondent concerning the petroleum UST systems at the Facility.
19. Pursuant to Section 9012 of RCRA, 42 U.S.C. § 6991k, from April 3, 2018 until April 10, 2018, EPA prohibited the delivery of regulated substances to UST-002, UST-003 and UST-004.
20. Pursuant to Section 9012 of RCRA, 42 U.S.C. § 6991k, from April 3, 2018 until April 11, 2018, EPA prohibited the delivery of regulated substances to UST-005.
21. Pursuant to Section 9012 of RCRA, 42 U.S.C. § 6991k, beginning April 3, 2018 until at least the date of the filing of the Complaint, EPA prohibited the delivery of regulated substances to UST-001.

Count I – Failure to Perform Tank Release Detection

22. The preceding paragraphs are incorporated by reference as though fully set forth herein.
23. Pursuant to 9 VAC § 25-580-140(1), with exceptions provided at 9 VAC § 25-580-140(1)(a)-(c) not applicable to any of the USTs at the Facility, owners and operators of petroleum UST systems are required to monitor tanks at least every 30 days for releases using one of the methods listed in 9 VAC § 25-580-160(4)-(8).
24. At all times relevant to the violations alleged herein, Respondent selected automatic tank gauging ("ATG") under 9 VAC § 25-580-160(4) as its method of release detection for all USTs at the Facility.
25. During the July 18, 2016 CEI, Respondent provided records of ATG testing conducted on July 4, 2016 for UST-001; July 18, 2016 for UST-002 and UST-003, July 17, 2016 for UST-004 and June 4, 2016 for UST-005.

26. In response to EPA's March 7, 2017 information request letter, Respondent provided records of ATG testing conducted on April 1, 2017 for UST-001, UST-002, UST-003 and UST-004.
27. Following receipt of EPA's November 30, 2017 Notice of Intent to Prohibit Delivery letter, Respondent provided records of ATG testing conducted on January 1, 2018 for UST-005.
28. From August 2016 through March 2017, Respondent did not monitor UST-001, UST-002, UST-003 and UST-004 at least every 30 days for releases by automatic tank gauging.
29. From July 2016 through December 2017, Respondent did not monitor UST-005 at least every 30 days for releases by automatic tank gauging.
30. During the periods of time indicated in the preceding paragraphs, Respondent did not monitor UST-001, UST-002, UST-003, UST-004 or UST-005 at least every 30 days for releases by any of the other release detection monitoring methods specified in 9 VAC § 25-580-160(4)-(8).
31. Respondent's acts and/or omissions as described, above, constitute violations by Respondent of 9 VAC § 25-580-140(1).

<u>Count II – Failure to Perform Automatic Line Leak Detector Testing</u>

32. The preceding paragraphs are incorporated by reference as though fully set forth herein.
33. Pursuant to 9 VAC § 25-580-140(2)(a)(1), owners and operators of petroleum UST systems are required to equip underground piping that routinely contains regulated substances conveyed under pressure with an automatic line leak detector conducted in accordance with 9 VAC § 25-580-170(1).
34. Pursuant to 9 VAC § 25-580-170(1), in pertinent part, a test of the operation of the automatic line leak detector must be conducted in accordance with the manufacturer's requirements annually.

35. During the July 18, 2016 CEI, Respondent provided records of automatic line leak detector testing conducted on November 6, 2013 for piping associated with UST-002/UST-003 (manifolded), UST-004 and UST-005.
36. In response to EPA's March 7, 2017 information request letter requesting documentation of all automatic line leak detector testing from 2012 to the date of letter, Respondent did not provide any records of testing for any of the automatic line leak detectors at the Facility.
37. Following receipt of EPA's November 30, 2017 Notice of Intent to Prohibit Delivery letter, Respondent provided records of automatic line leak detector testing conducted on September 20, 2017 for UST-001, UST-002/UST-003 (manifolded), UST-004 and UST-005.
38. From at least August 1, 2013 through September 19, 2017, Respondent failed to perform an annual test of the automatic line leak detector on the underground piping associated with UST-001.
39. From at least August 1, 2013 through November 5, 2013, and from November 6, 2014 through September 19, 2017, Respondent failed to perform annual tests of the automatic line leak detectors on the underground piping associated with UST-002 and UST-003 (manifolded), UST-004, and UST-005.
40. Respondent's acts and/or omissions as described, above, constitute violations by Respondent of 9 VAC §§ 25-250-140(2)(a)(1) and 170(1).

Count III – Failure to Perform Piping Release Detection

41. The preceding paragraphs are incorporated by reference as though fully set forth herein.
42. Pursuant to 9 VAC § 25-580-140(2)(a)(2), owners and operators of petroleum UST systems with underground piping that routinely contains regulated substances conveyed under pressure must

have an annual line tightness test conducted in accordance with 9 VAC § 25-580-170(2) or have monthly monitoring conducted in accordance with 9 VAC § 25-580-170(3).

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

44. During the July 18, 2016 CEI, Respondent provided records of line tightness tests conducted on January 30, 2012 for the piping associated with UST-001 and UST-002/UST-003 (manifolded), on November 6, 2013 for piping associated with UST-002/UST003 (manifolded), UST-004 and UST-005.

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

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

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

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

49. Respondent's acts and/or omissions as described, above, constitute violations by Respondent of 9 VAC § 25-580-140(2)(a)(2).

Count IV – Failure to Have Overfill Prevention Equipment

50. The preceding paragraphs are incorporated by reference as though fully set forth herein.
51. Pursuant to 9 VAC § 25-580-60(4) and 9 VAC § 25-580-50(3)(a)(2), with exceptions provided at 9 VAC § 25-580-60(1)(c) and 9 VAC § 25-580-50(3)(b) not applicable to any of the USTs at the Facility, owners or operators of existing UST systems are required to use overfill prevention equipment that will automatically shut off flow into the tank when the tank is more than 95 percent full, or alert the transfer operator when the tank is no more than 90 percent full by restricting the flow in to the tank or triggering a high level alarm.
52. During the July 18, 2016 CEI, EPA's inspector did not observe overfill prevention equipment and was unable to verify the presence of ball floats for the UST-001, UST-002, UST-003, UST-004 and UST-005 UST systems.
53. In response to EPA's March 7, 2017 information request letter and following EPA's November 30, 2017 and February 21, 2018 Notice of Intent to Prohibit Delivery letters, Respondent did not provide any overfill verification documentation for any of the UST systems at the Facility.
54. On April 3, 2018, EPA prohibited the delivery of regulated substances to all of the UST systems at the Facility.
55. Respondent provided documentation of installation of overfill prevention equipment on April 10, 2018 for UST-002, UST-003 and UST-004 UST systems, and on April 11, 2018 for the UST-005 UST system.
56. As of the date of the Complaint, EPA's prohibition on the delivery of regulated substances to the UST-001 UST system was still in effect.

57. From at least August 1, 2013 through at least April 9, 2018, Respondent failed to use overfill prevention equipment that automatically shuts off flow into the tank when the tank is more than 95 percent full or alerted the transfer operator when the tank is no more than 90 percent full by restricting the flow into the tank or triggering a high level alarm for the UST-001, UST-002, UST-003, UST-004 and UST-005 UST systems.
58. Respondent's acts and/or omissions as described, above, constitute violations by Respondent of 9 VAC § 25-580-60(4) and 9 VAC § 25-580-50(3)(a)(2).

Count V – Failure to Test Cathodic Protection System

59. The preceding paragraphs are incorporated by reference as if fully set forth herein.
60. Pursuant to 9 VAC § 25-580-90(2)(a), owners and operators of steel UST systems equipped with cathodic protection systems are required to test for proper operation within 6 months of installation and at least 3 years thereafter by a qualified cathodic protection tester.
61. During the July 18, 2016 CEI, Respondent provided documentation of cathodic protection testing on April 17, 2012.
62. In response to EPA's March 7, 2017 information request letter requesting documentation of its most recent two (2) cathodic protection tests, Respondent did not provide any records of cathodic protection testing.
63. Following receipt of EPA's November 30, 2017 Notice of Intent to Prohibit Delivery letter, Respondent provided a report of cathodic protection testing conducted on December 6, 2017.
64. From April 17, 2015 through December 5, 2017, Respondent failed to conduct three (3) year tests of the cathodic protection systems for the UST systems at the Facility.
65. Respondent's acts and/or omissions as described, above, constitute violations by Respondent of 9 VAC §25-580-90(2)(a).

66. Respondent's violations of RCRA Subtitle I and the federally authorized VA UST requirements render Respondent liable for the assessment of a civil monetary penalty pursuant to RCRA Section 9006 of RCRA, 42 U.S.C. § 6991e.

III. Determination of Civil Penalty Amount to be Assessed

When a Respondent is held to be in default in a proceeding, the Presiding Officer shall issue a default order in accordance with the 40 C.F.R. § 22.17(c). A default order constitutes an Initial Decision under the Consolidated Rules of Practice if it resolves all outstanding issues and claims in the proceeding. *Id.* "The relief proposed in the complaint or the motion for default shall be ordered unless the requested relief is clearly inconsistent with the record of the proceeding or the Act [particular statute authorizing the proceeding at issue.]" *Id.*

Section 9006(d)(2) of RCRA, 42 U.S.C. § 6991e(d)(2), provides, in relevant part, that any owner or operator of an underground storage tank who fails to comply with any requirement or standard of a State program approved pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c, shall be liable for a civil penalty not to exceed $10,000 for each tank for each day of violation. This amount has been adjusted pursuant to the Federal Civil Penalties Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, and, most recently, by the Federal Civil Inflation Adjustment Act Improvement Act of 2015 by implementing the Civil Monetary Penalty Inflation Adjustment Act Rules codified at 40 C.F.R. Part 19. As a result, at the time the Complaint was filed in this matter, a violation of RCRA Section 9006(d)(2), 42 U.S.C. § 6991e(d)(2), that occurred on or before November 2, 2015 was subject to a civil penalty not to exceed $16,000 per day per violation, and a violation that occurred after November 2, 2015 was subject to a civil penalty not to exceed $23,426 per day per violation. *See* 78 Fed. Reg. 66643, 66648 (November 6, 2013) and 83 Fed. Reg. 1190, 1193 (January 10, 2018).

For purposes of determining the amount of any penalty to be assessed, Section 9006(c) of RCRA, 42 U.S.C. § 6991e(c), requires EPA to take into account the seriousness of a violation and any good faith efforts by a Respondent to comply with applicable requirements ("statutory factors"). In addition, the EPA has issued a penalty policy to be used to calculated penalties for UST violations. *November 1990 U.S. EPA Penalty Guidance for Violations of UST Regulations* ("1990 UST Penalty Policy" or "Penalty Policy"). The 1990 UST Penalty Policy has been revised to take into account inflation. *See* January 11, 2018 *Amendments to the EPA's Civil Penalty Policies to Account for Inflation (effective January 15, 2018) and Transmittal of the 2018 Civil Monetary Penalty Inflation adjustment Rule*; and December 6, 2013 *Amendments to the U.S. Environmental Protection Agency's Civil Penalty Policies to Account for Inflation (effective December 6, 2013).*

The Environmental Appeals Board has held that, "as the proponent of an order seeking civil penalties in administrative proceedings", the EPA bears the burden of proof as to the "appropriateness" of a civil penalty. *In re: Spitzer Great Lakes Ltd.*, 9 E.A.D. 302, 320 (EAB 2000). The "appropriateness" of a civil penalty is to be determined in light of the applicable statutory factors. *Id.* (*citing*, *In re: New Waterbury, Ltd.*, 5 E.A.D. 529, 538 (EAB 1994)). However, although the EPA bears the burden of proof on the appropriateness of a civil penalty, "it does not bear a separate burden with regard to each of the statutory factors." *Spitzer Great Lakes*, 9 E.A.D. at 320. Rather, in order to meet its burden and establish a *prima facie* case, the EPA "must show that it considered each of the statutory factors and that the recommended penalty is supported by its analysis of those factors." *Id.* Having established its *prima facie* case, the burden then shifts to the Respondent to rebut the EPA's case by showing that the proposed penalty is not appropriate either because the EPA "failed to consider a statutory factor or because the evidence shows that the recommended calculation is not supported." *Id.* (*citing*, *New Waterbury*, 5 E.A.D. at 538-39, and *In re: Chempace Corp.*, 9 E.A.D. 119 (EAB, 2000)).

A. Complainant's Penalty Calculation

In its Motion for Default, the Complainant proposed a civil penalty in the amount of $186,095.00 and provided the Declaration of Melissa Toffel, an Environmental Protection Specialist, credentialed Inspector and Case Development Officer with the Enforcement and Compliance Assurance Division of U.S. EPA Region III. *Toffel Declaration* at ¶ 2. In her role as the Case Development Officer for this matter, Ms. Toffel calculated the penalty proposed in the Motion for Default. *Id.* According to her declaration, she took into account the RCRA statutory factors, 1990 UST Penalty Policy and applicable inflation adjustment policies and rules in calculating the penalty. *Toffel Declaration* at ¶ 5.

I have reviewed Complainant's proposed penalty calculation and the supporting materials provided as part of the Motion for Default and I have determined that, for the reasons set forth below, the proposed penalty was calculated by Complainant in consideration of the RCRA statutory factors, was calculated in accordance with the 1990 RCRA UST policy and applicable inflation-adjustment policies, and is consistent with the record of this matter.

1. 1990 RCRA UST Penalty Policy Calculation

In the matter at bar, EPA Case Development Officer Melissa Toffel indicated in her declaration that she calculated the proposed penalty for this matter as follows:

> Pursuant to the 1990 UST Penalty Policy, I calculated the Initial Penalty Amount for each count by adding an "Economic Benefit" component – which takes into consideration both 'avoided costs' and 'delayed costs' – to a "Gravity-Based" component, which takes into consideration: the extent to which the violation deviates from the statutory or regulatory requirement, and the actual or potential harm to human health, the environment and/or adverse effect on the regulatory program ("Matrix value"); the violator's cooperation or noncooperation, willfulness or negligence, history of noncompliance, and other factors ("Violator-specific adjustment"); the number of tank/piping systems or facilities in violation ("#T/P/F"); the number of days of noncompliance ("DNC"); and the sensitivity of the local environment and public health to potential or actual leaks or releases from the tanks and piping at each facility ("ESM"), adjusted for inflation.

Toffel Declaration at ¶ 6. More specifically, Officer Toffel provided the following calculation of the proposed penalty using the Penalty Policy:

<u>Count I – Failure to Perform Release Detection</u>
Economic Benefit of Non-Compliance - $0.00 (equipment in place and operation/maintenance of equipment deemed minimal)
Major Potential for Harm/Major Extent of Deviation
Gravity-Based Penalty
Tanks 1-4: $1,500 per UST x 4 USTs x 2.0 DNC x 1.84767 = $22,172.00
Tank 5: $1,500 per UST x 1 UST x 3.0 DNC x 1.8476 = $ 8,315.00
Total Penalty Count I - $30,487.00

<u>Count II – Failure to Perform Automatic Line Leak Detector Testing</u>
Tank 1:
Economic Benefit of Non-Compliance: $678.00 (actual cost of testing)
Major Potential for Harm/Major Extent of Deviation
Gravity-Based Penalty: $1,500.00 x 1 UST x 6.0 DNC [(.09)(1.4163) + (.46)(1.4853) + (.45)(1.84767)] = $14,779.00)
Tanks 2, 4 and 5:
Economic Benefit of Non-Compliance: $1,502.00 (actual cost of testing)
Major Potential for Harm/Major Extent of Deviation
Gravity-Based Penalty: $1,500 x 3 UST x 5.0 DNC [(.08)(1.4163) + (.32)(1.4853) + (.60)(1.84767)] = $38,187.00
Total Penalty Count II - $55,146.00

<u>Count III – Failure to Perform Piping Release Detection</u>
Tank 1:
Economic Benefit of Non-Compliance: $0.00 (included in Count II)
Major Potential for Harm/Major Extent of Deviation
Gravity-Based Penalty: $1,500.00 x 1 UST x 6.0 DNC [(.09)(1.4163) + (.46)(1.4853) + (.45)(1.84767)] = $14,779.00)
Tanks 2, 4 and 5:
Economic Benefit of Non-Compliance: $0.00 (included in Count II)
Major Potential for Harm/Major Extent of Deviation
Gravity-Based Penalty: $1,500 x 3 UST x 5.0 DNC [(.08)(1.4163) + (.32)(1.4853) + (.60)(1.84767)] = <u>$38,188.00</u>
Total Penalty Count III - $52,967.00

<u>Count IV – Failure to Have Overfill Prevention Equipment</u>
Tanks 1, 2, 3, 4 and 5
Economic Benefit of Non-Compliance: $809.00
Moderate Potential For Harm/Major Extent of Deviation
Gravity-Based Penalty: $750.00 x 5 UST x 6.5 DNC [(.07)(1.4163) + (.41)(1.4853) + (.52)(1.84767)] = $40,680.00
Total Penalty Count IV - $41,489.00

<u>Count V – Failure to Test Cathodic Protection System</u>
Economic Benefit of Non-Compliance: $27.00
Moderate Potential for Harm/Major Extent of Deviation
Gravity-Based Penalty: $750.00 x 1 Facility x 4.5 DNC [(.21)(1.4853) + (.79)(1.84767)
= $5,979.00
Total Penalty Count V - $6,006.00

Total Penalty Counts I – V: $186,095.00. *Toffel Declaration* at ¶¶ 5 - 12. Having reviewed this calculation in light of the specific facts of this case, I conclude that Complainant's penalty calculation under the Penalty Policy is accurate.

Additionally, I find that, for the reasons set forth in the *Toffel Declaration,* Complainant's decision not to make Violator Specific Adjustments ("VSA") or Environmental Sensitivity Multiplier ("ESM") adjustments to the penalty calculation is consistent with the record of this matter. More specifically, Complainant concluded that a downward adjustment for cooperative behavior was not warranted because "[r]espondent has not demonstrated cooperative behavior in response to this enforcement action by going beyond what was minimally required to comply." *Toffel Declaration* at ¶ 7. Similarly, Complainant determined that Respondent did not exhibit any "extraordinary conduct to warrant an adjustment based on its degree of willfulness or negligence." *Id.* Additionally, despite Respondent's "long history of noncompliance", Complainant did not seek an upward adjustment of the proposed penalty. *Id.* Finally, Complainant concluded that the "environmental sensitivity" of Respondent's violations did not warrant an adjustment. *Id.*

2. <u>RCRA Statutory Factor Analysis</u>

Although I find that the 1990 RCRA UST Penalty Policy provides a rational, consistent and equitable methodology for applying the RCRA statutory factors to the facts and circumstances of a specific case, I have also reviewed Complainant's proposed penalty specifically with regard to the two statutory factors set forth in Section 9006(c) of RCRA, 42 U.S.C. § 6991e(c): seriousness of a violation

and any good faith efforts by a Respondent to comply. For the reasons set forth, *infra*, I conclude that the Complainant adequately considered the RCRA statutory factors as part of its penalty calculation, the proposed penalty is consistent with the RCRA statutory factors and the proposed penalty is reasonable in light of the record of this case.

a. <u>Counts I to III – Failure to Perform Release Detection</u>

The record of this case indicates that Respondent's failure to perform release detection on its USTs and their associated piping and lines posed a major potential for harm to the environment and was a major deviation from the requirements of the RCRA UST program. As noted by the Complainant, "[i]t is a fundamental goal of the UST regulations to ensure that an UST does not release substances that may harm human health or the environment." *Toffel Declaration* at ¶¶ 8, 9 and 10. The RCRA statute seeks to achieve this goal by requiring UST owners and operators to install and comply with release detection monitoring requirements. *Id. ¶¶* at 8 and 9. "[W]ithout release detection monitoring a release may go unnoticed with serious detrimental consequences." *Id.* at ¶ 7.

Although Respondent had installed release detection equipment on its USTs, it failed to consistently operate the equipment for extended periods of time. *Id.* Complainant determined that Respondent's non-compliance with RCRA's release detection requirements continued for a significant period of time. Complainant calculated that Respondent failed to perform release detection on its various tanks for time periods ranging from 226 days of non-compliance for USTs-001, UST-002, UST-003 and UST-004 to 546 days of non-compliance for UST-005. *Id.* Similarly, with regard to the tanks' associated piping and lines, Complainant calculated that Respondent failed to perform release detection for time periods ranging from 1,511 days of non-compliance for UST-001 to 1,146 days of non-compliance for USTs-002, UST-004, and UST-005. *Id.* at ¶¶ 9 and 10. These are significant time periods of non-compliance representing a major deviation from the requirements of the UST regulations.

Failure to perform release detection for such extended periods of time creates serious risks that any releases of a regulated substance into the environment may go undiscovered and may be able to migrate and potentially cause significant harm to the environment and human health. The RCRA UST program relies upon UST system owners and operators to perform release detection on a consistent basis to prevent or minimize such potential harm. Respondent significantly failed to comply with its legal obligations and, thereby, undermine the integrity of the RCAR regulatory system.

Additionally, Respondent's non-compliance posed a major potential for harm to the environment given the size/capacity of the USTs at the Facility. At the time of EPA's July 18, 2016 inspection of the Facility, the following five USTs were in operation: UST-001, UST-002 and UST-003 each had 10,000 gallon capacities and were used to store gasoline; UST-004 had a 4,000 gallon capacity and was used to store kerosene; and UST-005 had a 4,000 gallon capacity and was used to store diesel fuel. As a result, any release from the USTs at the Facility potentially could have resulted in a significant release of regulated substances into the environment. Such a release potentially could have gone undetected for a substantial period of time, causing extensive harm to the environment and/or human health.

Indeed, the Complainant determined that the conditions at the Facility posed such a significant threat to the environment and human health, that they warranted the EPA issuing Notices prohibiting the delivery of petroleum products to Respondent's USTs.

As a result, Respondent's violations of the UST release detection requirements were extensive and serious in nature (i.e., major) warranting appropriately significant penalties. The penalty that Complainant has proposed takes into account both the seriousness and extent of deviation of Respondent's violations and is reasonable in light of the nature of Respondent's violations and the RCRA statutory factors.

b. Count IV – Failure to Have Overfill Prevention Equipment

Respondent's failure to have overfill prevention equipment in place at its Facility similarly presented a significant potential for harm to the environment and a major deviation from the requirements of the RCRA UST program.[3] Overfill equipment is intended to prevent releases of regulated substances to the environment from occuring when such substances are being transferred into UST systems. *Id.* In addition to not having this equipment in place, Respondent's deviation from this important requirement is all the more serious in nature given the extended time period of Respondent's non-compliance. Complainant calculated that Respondent was not in compliance with this regulatory requirement for a period of at least 1,713 days for UST-001, UST-002, UST-003, UST-004, and UST-005. *Id.* In other words, for approximately a 5 year period of time, transfers of product were being made to Respondent's USTs without equipment being in place to capture any spills and overfills that may have occurred. As a result, the facts of this case indicate that Respondent's failure to provide overfill protection was a serious violation warranting the penalty proposed by the Complainant. The penalty proposed by Complainant for Count IV takes into account both the seriousness and extent of deviation of Respondent's violation and is reasonable in light of the RCRA statutory factors.

c. Count V – Failure to Test Cathodic Protection Systems

Respondent's failure to test the cathodic protection systems of its USTs similarly constituted a significant violation and was a major deviation from the requirements of the RCRA UST program.[4] Cathodic protection is used to prevent steel USTs from corroding which can cause holes in the tanks and release of the tanks' contents into the environment. As a result, the RCRA requirements provide that cathodic protection must be installed and "[c]athodic protection systems must be tested for proper

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[3] For purposes of its penalty calculation under the Penalty Policy, the Complainant characterized this violation as posing a "moderate" potential for harm. *Id.* ¶ at 11.

[4] Complainant characterized Respondent's cathodic protection violation as "moderate" for purposes of its Penalty Policy calculation. *Id.* at ¶ 12.

operation in order to prevent releases from steel USTs that have corroded." *Id.* With regard to the USTs located at Respondent's facility, Complainant determined that the need for such testing was especially important due to the advanced age of the Respondent's steel USTs. *Id.* At the time of EPA's July 18, 2016 inspection, Respondent's facility had the following five USTs in operation: UST-001 and UST-002 were steel tanks installed in or about May 1973 (approximately 45 years old); UST-003 was a steel tank installed in or about May 1978 (approximately 40 years old); UST-004 was a steel tank installed in or about May 1983 (approximately 35 years old); and UST-005 was a steel tank installed in or about May 1985. The potential for corrosion and the loss of structural integrity of tanks of such age can be high if the tanks are not properly monitored and maintained. However, despite the advanced age of its USTs, Respondent failed to perform cathodic protection testing on these tanks for an extended period of time. More specifically, Complainant determined that Respondent was not in compliance with this important testing requirement for at least 964 days. *Id.* at ¶ 12. As a result, the facts of this case indicate that Respondent's failure to perform cathodic protection testing was a serious violation. The penalty proposed by Complainant for Count V takes into account both the seriousness and extent of deviation of Respondent's violation and is reasonable in light of the RCRA statutory factors.

d. Respondent's Efforts to Comply

In her Declaration, Officer Toffel represented that "[r]espondent has not demonstrated cooperative behavior in response to this enforcement action by going beyond what was minimally required to comply." (*Toffel Declaration* at ¶ 7). The record of this matter contains no other information as to any good faith efforts made by the Respondent to comply with its legal obligations. As a result, I conclude that Complainant's decision not to make an adjustment to the proposed penalty with regard to the statutory factor of "good faith efforts to comply" is supported by the record of this case.

e. <u>Respondent's Ability-to-Pay the Proposed Penalty</u>

Although a respondent's ability-to-pay the proposed penalty is not a statutory factor required by Section 9006(c) of RCRA, 42 U.S.C. § 6991e(c), Complainant did attempt to perform an analysis of Respondent's financial situation. As an attachment to its Motion for Default, Complainant provided the Declaration of Harry R. Steinmetz, an investigator and financial analyst with EPA Region III's Superfund Emergency Management Division. *Steinmetz Declaration* at ¶ 1. Prior to working for EPA, Mr. Steinmetz served as a Tax Examiner and Revenue Officer with the U.S. Internal Revenue Service. *Id.* at ¶ 4. Mr. Steinmetz has estimated that, over the course of his career with the federal government, he has "made hundreds of assessments of individuals' and business' ability to satisfy tax debts [and debts owed to the treasury for violations of environmental requirements] by analyzing their financial condition and conduction investigations." *Id.*

For purposes of this matter, Mr. Steinmetz performed an analysis of Respondent's ability to pay the proposed penalty utilizing certain limited financial information that was made available to him by the Respondent. Based upon this analysis, Mr. Steinmetz was "not able to conclude that Respondent is unable to pay the proposed penalty of $186,095." *Id.* at ¶ 5. More specifically, Mr. Steinmetz indicated in his Declaration,

> The information provided to me by Respondent consisted of U.S. Individual Income Tax Returns (Form 1040) for years 2015, 2016 and 2017, a (partially completed) Collection Information Statement for Wage Earners and Self-Employed Individuals ("CIS"), and representations made during a March 22, 2019 telephone conversation. After considering the (incomplete) information provided by Respondent together with the (sometime contradictory) publicly available information, I am not able to conclude that Respondent is unable to pay the proposed penalty of $186,095.

Id. at ¶ 6.

As previously noted, a Respondent's financial ability to pay a penalty is not a statutory factor under RCRA for purposes of calculating a monetary penalty. However, even in those cases where ability to pay is a statutory penalty factor, the EAB has recognized the difficult situation the Agency

sometimes confronts in terms of obtaining sufficient financial information for purposes of making informed and accurate ability-to-pay determinations. The EAB has noted that EPA's ability to gather financial information about a respondent is limited at the outset of a case, and a respondent is in the best position to provide relevant financial records about its own financial condition. *Spitzer Great Lakes,* 9 E.A.D. at 321; and *New Waterbury*, 5 E.A.D. at 541. As a result, the EAB has held that a Complainant may presume that a Respondent has an ability to pay the penalty until Respondent puts its ability to pay at issue. *New Waterbury*, 5 E.A.D. at 541; *Spitzer Great Lakes*, 9 E.A.D. at 321*; In re: CDT Landfill Corp.*, 11 E.A.D. 88, 122 (EAB 2003); and *In re: Donald Cutler*, 11 E.A.D. 622, 632 (EAB 2004).

In the case at bar, EPA's financial expert concluded that the limited information supplied by the Respondent did not provide a basis for him to conclude that Respondent was unable to pay the proposed penalty. As a result, I conclude that EPA's determination not to adjust the proposed penalty for ability-to-pay reasons is reasonable in light of the record of the case.

f. <u>Conclusion</u>

The Consolidated Rules of Practice require that the relief requested in a complaint or motion for default (e.g., a civil monetary penalty) "shall be ordered" unless it is "clearly inconsistent with the record of the proceeding or the Act [particular statute authorizing the proceeding at issue.]" 40 C.F.R. § 22.17(c). In the matter at bar, for the reasons set forth, *supra*, I conclude that the civil monetary penalty that has been proposed by the Complainant is consistent with the record of this proceeding and with the requirements of the RCRA statute. Therefore, the Respondent is assessed a civil monetary penalty in the amount of $186,095.00 for its violations.

ORDER

Pursuant to the Consolidated Rules of Practice, including 40 C.F.R. § 22.17, Complainant's Motion for Default is **GRANTED** and Respondent is **ORDERED** as follows:

1. Respondent, Silky Associates, LLC is assessed a civil penalty in the amount of $186,095.00 and ordered to pay the civil penalty as directed in this Order.
2. Respondent shall pay the civil penalty to the "United States Treasury" within thirty (30) days after this Default Order has become final. Payment by Respondent shall reference Respondent's name and address and the EPA Docket Number of this matter. Respondent may use any of the following means for purposes of paying the penalty:
    a. All payments made by check and sent by regular U.S. Postal Service Mail shall be addressed and mailed to:

        United States Environmental Protection Agency
        Fines and Penalties
        Cincinnati Finance Center
        P.O. Box 979077
        St. Louis, MO 63197-9000

        Contact: Customer Service (513-487-2091)

    b. All payments made by check and sent by private commercial overnight delivery service shall be addressed and mailed to:

        United States Environmental Protection Agency
        Cincinnati Finance Center
        Government Lockbox 979077
        1005 Convention Plaza
        Mail Station SL-MO-C2-GL
        St. Louis, MO 63101

        Contact: 314-418-1818

    c. All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

United States Environmental Protection Agency
Cincinnati Finance Center
MS-NWD
26 W. M.L. King Drive
Cincinnati, OH 45268-0001

d. All payments made by electronic wire transfer shall be directed to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

e. All electronic payments made through the Automated Clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

U.S. Treasury REX/Cashlink ACH Receiver
ABA = 051036706
Account No.: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – Checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737

Contact: 866-234-5681

f. On-Line Payment Option: WWW.PAY.GOV/paygov/

Enter "sfo 1.1" in the search field. Open and complete the form.

g. Additional payment guidance is available at:

https://www2.epa.gov/financial/makepayment

3. At the same time that payment is made, Respondent shall email copies of any corresponding check, or written notification confirming any electronic fund transfer or online payment, as applicable to:

    Regional Hearing Clerk
    U.S. Environmental Protection Agency
    Region III (Mail Code 3RC00)
    1650 Arch Street
    Philadelphia, PA 19103-2029
    R3_Hearing_Clerk@epa.gov

    and

    Jennifer M. Abramson
    Senior Assistant Regional Counsel
    U.S. Environmental Protection Agency
    Region III (Mail Code 3RC50)
    1650 Arch Street
    Philadelphia, PA 19103-2029
    Abramson.jennifer@epa.gov

4. In the event that Respondent fails to pay the civil penalty as directed above, this matter may be referred to a United States Attorney for recovery by action in the appropriate United States District Court.

5. Pursuant to the Debt Collection Act, 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim.

6. This Default Order constitutes an Initial Decision, as provided in 40 C.F.R. §§ 22.17(c) and 22.27(a). This Initial Decision shall become a Final Order forty-five (45) days after it is served upon the Complainant and Respondent and without further proceedings unless: (1) a party moves to reopen a hearing; (2) a party appeals this Initial Decision to the EPA Environmental Appeals Board within thirty (30) days of service of the Initial Decision, in accordance with 40 C.F.R.

§ 22.30; (3) a party moves to set aside the Default Order that constitutes this Initial Decision, or; (4) the Environmental Appeals Board elects to review the Initial Decision on its own initiative. See 40 C.F.R. § 22.27(c).

7. Under 40 C.F.R. § 22.30, any party may appeal this Order by filing an original and one copy of a notice of appeal and an accompanying appellate brief with the Environmental Appeals Board within thirty (30) days after this Initial Decision is served upon the parties.

IT IS SO ORDERED.

_________________ Date

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Joseph J. Lisa
Regional Judicial Officer/Presiding Officer
U.S. EPA Region III