

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
 REGION III
 1650 Arch Street
 Philadelphia, Pennsylvania 19103-2029**

In the Matter of:)	
)	Administrative Complaint, Compliance
The Cigar Boss, LLC)	Order and Notice of Opportunity for
4260 Tilghman Street)	Hearing
Allentown, PA 18104)	
)	U.S. EPA Docket Number
Jeffrey Cramsey)	RCRA-03-2012-0188
4260 Tilghman Street)	
Allentown, PA 18104)	Proceeding Under Section 9006 of the
)	Resource Conservation and Recovery
)	Act, as amended, 42 U.S.C. Section
RESPONDENTS,)	6991e
)	
4260 Tilghman Street)	
Allentown, PA 18104)	
)	
FACILITY.)	

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**ADMINISTRATIVE COMPLAINT, COMPLIANCE ORDER
 AND NOTICE OF OPPORTUNITY FOR HEARING**

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 hereafter as “RCRA”), 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”), 40 C.F.R. Part 22.

EPA hereby notifies The Cigar Boss, LLC, a Pennsylvania limited liability company, and Jeffrey Cramsey, jointly and individually, (“Respondents”) that EPA has determined that Respondents have violated certain provisions of Subtitle I of RCRA, 42 U.S.C. §§ 6991-6991*m*, EPA’s regulations thereunder at 40 C.F.R. Part 280, and the Commonwealth of Pennsylvania’s federally authorized underground storage tank program with respect to the underground storage tanks at Respondents’ facility located at 4260 Tilghman Street, Allentown, Pennsylvania (the “Facility”). Section 9006 of RCRA, 42 U.S.C. § 6991*e*, authorizes EPA to take enforcement action, including issuing a compliance order or assessing a civil penalty, whenever it is determined 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.

Pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991*c*, and 40 C.F.R. Part 281, Subpart A, the Commonwealth of Pennsylvania was granted final authorization to administer a state underground storage tank management program (“Pennsylvania Authorized UST Management Program”) *in lieu* of the Federal underground storage tank management program established under Subtitle I of RCRA, 42 U.S.C. §§ 6991-6991*i*. This authorization was effective on September 11, 2003. *See* 68 *Fed. Reg.* 53520 (September 11, 2003) and 40 C.F.R. § 282.88. Through this final authorization, the provisions of the Pennsylvania Authorized UST Management Program became requirements of RCRA Subtitle I and are, accordingly, enforceable by EPA pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991*e*. As of the date of EPA’s authorization of Pennsylvania’s Authorized UST Management Program, these provisions were codified in Chapter 245 of Title 25 of the Pennsylvania Code, and will be cited herein as 25 PA Code §§ 245.1 *et seq.*, a copy of which is enclosed with this Complaint (Enclosure “B”).

Section 9006(d) of RCRA, 42 U.S.C. § 6991e(d), authorizes EPA to assess a civil penalty against any owner or operator of an underground storage tank who fails to comply with, *inter alia*, any requirement or standard promulgated under Section 9003 of RCRA, 42 U.S.C. § 6991b (40 C.F.R. Part 280) or any requirement or standard of a State underground storage tank program that has been approved by EPA pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c.

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

In support of this Complaint, the Complainant makes the following allegations, findings of fact and conclusions of law:

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

COUNT 1

1. Respondent, The Cigar Boss, LLC, a Commonwealth of Pennsylvania limited liability company, is a “person” as defined in Section 9001 of RCRA, 42 U.S.C. § 6991, and 25 PA Code § 245.1.
2. Respondent, Jeffrey Cramsey is an individual and a “person” as defined in Section 9001 of RCRA, 42 U.S.C. § 6991, and 25 PA Code § 245.1.
3. Respondent, The Cigar Boss, LLC is and, at all times relevant to the allegations in this Complaint, has been the “owner,” as that term is defined in Section 9001 of RCRA, 42 U.S.C. § 6991, and and 25 PA Code § 245.1., of “underground storage tanks” (“USTs”) and “UST systems,” as those terms are defined in Section 9001 of RCRA, 42 U.S.C. § 6991, and 25 PA Code § 245.1., located at the Facility.

4. Respondent, Jeffrey Cramsey is and, at all times relevant to the allegations in this Complaint, has been the “operator”, as that term is defined in Section 9001 of RCRA, 42 U.S.C. § 6991, and and 25 PA Code § 245.1., of “underground storage tanks” (“USTs”) and “UST systems,” as those terms are defined in Section 9001 of RCRA, 42 U.S.C. § 6991, and 25 PA Code § 245.1., located at the Facility.

5. Pursuant to Section 9005(a) of RCRA, 42 U.S.C. § 6991*d*(a), an owner or operator of an UST must, upon request by any duly designated representative of EPA, furnish, in relevant part, information and records with regard to such UST.

6. On March 15, 2012, EPA mailed to Respondents a Request for Information, issued pursuant to Section 9005(a) of RCRA, 42 U.S.C. § 6991*d*(a). This Request for Information required Respondents to provide certain information regarding the USTs at the Facility. The letter containing such Request was received by Respondents on March 16, 2012.

7. The March 15, 2011 Request for Information required Respondents to provide the requested information no later than fourteen (14) calendar days from the date of Respondents’ receipt of the Request. Respondents were thus required to provide the requested information by no later than April 1, 2012.

8. Having received no response to the March 15, 2012 Request for Information, EPA sent Respondents a follow-up notice letter dated April 13, 2012 regarding the outstanding Request for Information dated March 15, 2012. The follow-up notice letter dated April 13, 2012 was received by Respondents on April 16, 2012.

9. As of the date of this Complaint, Respondents have not sent to EPA the information requested in the March 15, 2012 Request for Information.

10. From at least April 1, 2012 to the date of this Complaint, Respondents have violated Section 9005(a) of RCRA, 42 U.S.C. § 6991d(a), by failing to provide a response to EPA's March 15, 2012 Request for Information.

III. COMPLIANCE ORDER

A. Within fifteen (15) calendar days after the Compliance Order becomes a Final Order, Respondents must provide a full response to the March 15, 2012 Request for Information, certified in the manner described in the Request.

B. Respondents must submit their response in the following manner:

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

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

and

Louis F. Ramalho
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 Commonwealth of Pennsylvania, Department of Environmental Protection, by regular mail, to:

Kris A. Shiffer, Env'tl. Group Mgr.
Pennsylvania Department of Environmental Protection
Division of Storage Tanks
Rachel Carson State Office Building
400 Market Street
Harrisburg, PA 17101

C. Respondents are hereby notified that failure to comply with any of the terms of this Compliance Order may subject Respondents 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.

IV. OPPORTUNITY TO REQUEST A HEARING

Respondents have the right to request a hearing to contest any matter of law or material fact set forth in this Complaint and Compliance Order or the terms of the Compliance Order. **To request a hearing, Respondents must file a written Answer to the Complaint with the Regional Hearing Clerk, Mail Code 3RC00, U.S. EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029, within thirty (30) days of receipt of this Complaint.**

The Answer must clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint of which Respondents have any knowledge. Where Respondents have no knowledge of a particular factual allegation, the Answer should so state. The Answer should contain: (1) the circumstances or arguments which are alleged to constitute the grounds of any defense; (2) the facts which Respondent disputes; (3) the basis for opposing any proposed relief; and (4) a statement as to whether a hearing is requested. All material facts not admitted, explained or denied in the Answer will be considered as admitted.

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 Respondents will be conducted in accordance with the provisions of the Consolidated Rules of Practice. A copy of these rules is enclosed with this Complaint. A copy of Respondents' Answer and all other documents that Respondents file in this action should be sent to the attorney assigned to represent EPA in this matter, as follows:

Louis F. Ramalho
Senior Assistant Regional Counsel
Mail Code 3RC50
U.S. EPA - Region III
1650 Arch Street
Philadelphia, PA 19103-2029

V. SETTLEMENT CONFERENCE

Complainant 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, Respondents may request a settlement conference with the Complainant to discuss the allegations of the Complaint. A request for a settlement conference does not relieve Respondents of their 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 seeks a compliance order. *See* 40 C.F.R. § 22.18(a). In the event settlement is reached, the 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 or his designee. The execution of such a Consent Agreement shall constitute a waiver of Respondents' right to contest the allegations of the Complaint and its right to appeal the proposed Final Order accompanying the Consent Agreement.

If you wish to arrange a settlement conference, please contact Louis F. Ramalho, Senior Assistant Regional Counsel, at (215) 814-2681. Please note that a request for a settlement

conference does not relieve Respondents of their responsibility to file an Answer within thirty (30) days following its receipt of this Complaint.

VI. SEPARATION OF FUNCTIONS AND EX PARTE COMMUNICATIONS

The following Agency offices and officers, and their staffs, are designated as the trial staff to represent the Agency as a party in this case: U.S. EPA, Region III, Office of Regional Counsel; U.S. EPA, Region III, Land and Chemicals Management Division; and the EPA Assistant Administrator for Enforcement and Compliance Assurance. Commencing from the date of the issuance of this Complaint until issuance of a final agency decision in this case, neither the Administrator, members of the Environmental Appeals Board, Presiding Officer, Regional Administrator, nor the Regional Judicial Officer, may have an *ex parte* communication with the trial staff or any representative of the Respondent on the merits of any issue involved in this proceeding. Please be advised that the Consolidated Rules of Practice prohibit any unilateral discussion or *ex parte* communication of the merits of a case with the Administrator, members of the Environmental Appeals Board, Presiding Officer, Regional Administrator, or the Regional Judicial Officer after issuance of a Complaint.

Date: 6/26/12


Abraham Ferdas, Director
Land and Chemicals Division

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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CERTIFICATE OF SERVICE

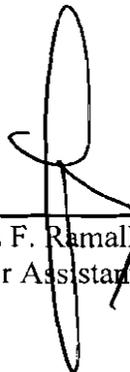
I, the undersigned, hereby certify that on the date provided below, I hand-delivered and filed the original of the above captioned United States Environmental Protection Agency's Administrative Complaint, Compliance Order and Notice of Opportunity for Hearing, with the Regional Hearing Clerk, EPA Region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

The Cigar Boss, LLC
 4260 Tilghman Street
 Allentown, PA 18104

Jeffrey Cramsey
 4260 Tilghman Street
 Allentown, PA 18104

27 2012

 Date



 Louis F. Ramallo
 Senior Assistant Regional Counsel