

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

In the Matter of:	)	Administrative Complaint, Compliance
	)	Order, and Notice of Right to Request
Shabbir Shaikh	)	Hearing
1313 North Quaker Lane	)	
Alexandria, VA 22302	)	U.S. EPA Docket Number
	)	RCRA-03-2007-0279
Alishan, Inc. t/a Royal Service Center	)	
1313 North Quaker Lane	)	Proceeding under Section 9006 of the
Alexandria, VA 22302	)	Resource Conservation and Recovery
	)	Act, <i>as amended</i> , 42 U.S.C. § 6991e
RESPONDENTS	)	
	)	
Royal Service Center	)	
1313 North Quaker Lane	)	
Alexandria, Virginia 22302	)	
	)	
FACILITY	)	
	)	

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**ADMINISTRATIVE COMPLAINT, COMPLIANCE ORDER,  
 AND NOTICE OF RIGHT TO REQUEST HEARING**

**I. INTRODUCTION**

This Administrative Complaint, Compliance Order, and Notice of Right to Request 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"), 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"), 40 C.F.R. Part 22, a copy of which is enclosed with this Complaint.

Complainant hereby notifies Shabbir Shaikh ("Respondent Shaikh") and Alishan, Inc., t/a Royal Service Center ("Respondent Alishan") (together "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 Virginia Underground Storage Tank ("UST") Program, as authorized by EPA pursuant to Section 9004 of RCRA, 42 U.S.C. §6991*c*, Virginia Administrative Code, Title 9, Agency 25, Chapter 580 Sections 10 *et seq.*, cited hereinafter as 9 VAC 25-580-10, *et seq.* Section 9006(a)-(e) of RCRA, 42 U.S.C. § 6991*e*(a)-(e), authorizes EPA to take an enforcement action 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 UST program which has been authorized by EPA. Under Section 9006(d) of RCRA, 42 U.S.C. § 6991*e*(d), EPA may assess a civil penalty against any person who, among other things, violates any requirement of the Federal or authorized State UST program.

The Commonwealth of Virginia was granted final authorization to administer a state UST management program, effective October 28, 1998. 63 Fed. Reg. 51528 (Sept. 28, 1998). EPA has given the Commonwealth of Virginia prior notice of the issuance of this Complaint in accordance with Section 9006(a)(2) of RCRA, 42 U.S.C. § 6991*e*(a)(2).

## II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. EPA's Office of Administrative Law Judges has jurisdiction over this matter pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e, and Sections 22.1(a)(4) and 22.4(c) of the Consolidated Rules of Practice.
2. Respondent Shaikh is a "person" as defined in Section 9001(5) of RCRA, 42 U.S.C. § 6991(5), and 9 VAC 25-580-10.
3. Respondent Alishan is a "person" as defined in Section 9001(5) of RCRA, 42 U.S.C. § 6991(5), and 9 VAC 25-580-10.
4. At all times relevant to this Complaint, Respondent Shaikh and Respondent Alishan have been "owners" and/or "operators", as those terms are defined in Section 9001(3) and (4) of RCRA, 42 U.S.C. § 6991(3) and (4), and 9 VAC 25-580-10, of four "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, located at Royal Service Center, 1313 North Quaker Lane, Alexandria, VA 22302 ("the Facility"), with UST Identification Number 3009095.
5. The first UST ("Tank 1") has a 10,000-gallon capacity and was installed in 1985. At all times relevant to the violations alleged herein, Tank 1 was used to store diesel fuel. Diesel fuel is a petroleum product and is a "regulated substance" as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and 9 VAC 25-580-10.
6. The second, third, and fourth USTs ("Tank 2", "Tank 3", and "Tank 4") each have a 10,000-gallon capacity and were each installed in 1985. At all times relevant to the violations alleged herein, Tank 2, Tank 3, and Tank 4 were each used to store gasoline.

Gasoline is a petroleum product and is a “regulated substance” as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and 9 VAC 25-580-10.

7. Tanks 1, 2, 3, and 4, and their associated piping, are and were, at all times relevant to the violations alleged in this Complaint, “existing tank systems” and “petroleum UST systems” as those terms are defined at 9 VAC 25-580-10.
8. On April 12, 2006, EPA conducted a compliance evaluation inspection of the Facility (“EPA Inspection”), pursuant to Section 9005(a) of RCRA, 42 U.S.C. § 6991d(a).

### COUNT I

9. The allegations of Paragraphs 1 through 8 are incorporated herein by reference.
10. Pursuant to 9 VAC 25-580-60.4, to prevent spilling and overfilling associated with product transfer to the UST system, all existing UST systems must comply with the new UST spill and overfill prevention equipment requirements specified in 9 VAC 25-280-50.
11. Pursuant to 9 VAC 25-580-50.3.a(2), with exceptions not relevant to this matter, owners and operators of new UST systems must use overfill prevention equipment as described in those sections.
12. Respondents did not have installed overfill prevention equipment for Tank 1 from at least five years prior to the date of filing this Complaint until February 2007.
13. By failing to install overfill protection equipment for Tank 1, Respondents violated 9 VAC 25-580-50.3.a(2) and -60.4.

**COUNT II**

14. The allegations of Paragraphs 1 through 13 are incorporated herein by reference.
15. Pursuant to 9 VAC 25-580-130, owners and operators of new and existing petroleum UST systems must provide a method, or combination of methods, of release detection monitoring that meets the requirements described in those sections, including the requirement that such UST systems meet the performance requirements set forth in 9 VAC 25-580-160 (tanks) or -170 (piping).
16. Pursuant to 9 VAC 25-580-140, owners and operators of petroleum UST systems must monitor the tanks associated with such systems at least once every 30 days for releases using one of the methods listed in 9 VAC 25-580-160.4 - .8, with exceptions not relevant to this matter.
17. Respondents failed to provide any method of release detection for Tanks 1, 2, 3, and 4 as allowable under 9 VAC 25-580-140 and -160, or that met the performance requirements of 9 VAC 25-580-160, from at least five years prior to the date of this Complaint until the present.
18. By failing to provide any method of release detection for Tanks 1, 2, 3 and 4, allowable under 9 VAC 25-580-140 and -160, or that met the performance standards of 9 VAC-25-580-160, Respondents violated 9 VAC 25-580-130, -140, and -160.

**COUNT III**

19. The allegations of Paragraphs 1 through 18 are incorporated herein by reference.

20. Pursuant to 9 VAC 25-580-140.2.a(2), underground piping which is part of a petroleum UST system, routinely contains regulated substances, and conveys regulated substances under pressure must have an annual line tightness test conducted by the owner and operator in accordance with 9 VAC 25-580-170, or have monthly monitoring conducted in accordance with 9 VAC 25-580-170.3, which, in turn, allows use of the monthly monitoring methods set forth in 9 VAC 25-580-160.5 through .8.
21. From July 1, 2002, until the present, the underground piping associated with Tanks 1, 2, 3, and 4 at the Facility has routinely contained regulated substances and conveyed regulated substances under pressure.
22. Respondents did not perform an annual tightness test or provide any other monthly method of release detection allowed under, or that met the performance standards of, 9 VAC 25-580-170, on the underground piping associated with Tanks 1, 2, 3, and 4 from at least July 1, 2002, until August 2, 2005, from August 4, 2005, until October 10, 2005, and from October 11, 2005, until the date of filing this Complaint.
23. By failing to conduct line tightness testing or provide monthly method of release detection allowed under, or that met the performance standards of, 9 VAC 25-580-170, on the underground piping associated with Tanks 1, 2, 3, and 4 at the Facility, Respondents violated 9 VAC 25-580-130, -140.2.a(2), and -170.

#### COUNT IV

24. The allegations of Paragraphs 1 through 23 are included herein by reference.

25. Pursuant to 9 VAC 25-580-140.2(a)(1), underground piping that routinely contains regulated substances and conveys such substances under pressure must be equipped with an automatic line leak detector conducted in accordance with 9 VAC 25-580-170.1.
26. Pursuant to 9 VAC 25-580-170.1, the owner and operator of a petroleum UST system must perform an annual test of the line leak detector for any underground piping referred to in 9 VAC 25-580-140.2(a).
27. Respondents did not perform any line leak detection testing on the underground piping associated with Tanks 1, 2, 3, and 4 from at least July 1, 2002, until August 2, 2005, from August 4, 2005, until October 10, 2005, and from October 11, 2005, until the date of filing this Complaint.
28. By failing to perform annual testing of the line leak detectors on the underground piping associated with Tanks 1, 2, 3, and 4, Respondents violated 9 VAC 25-580-130, -140.2(a)(1), and -170.1.

### III. COMPLIANCE ORDER

29. Pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e, Respondents are hereby ordered to perform the following Compliance Tasks:
  - A. Within 30 calendar days of the effective date of this Compliance Order, Respondents shall ensure that each of the four UST systems identified above is in full compliance with the release detection requirements of 9 VAC 25-580-130, -140, -160, and -170.  
Alternatively, within 30 calendar days after the effective date of this Compliance Order, Respondents shall remove all materials from each such UST system so that each such

UST system is “empty” as defined in 9 VAC 25-580-310.1, and thereafter comply with the requirements of 9 VAC 25-580-310 regarding temporary closure until each such UST system is capable of, and is being, operated in full compliance with the release detection requirements of 9 VAC 25-580-130, -140, -160, and -170, or such UST system is permanently closed as required by 9 VAC 25-580-310.3, -320, -330, and -350.

B. Within 30 calendar days after the effective date of this Compliance Order, Respondents shall ensure that each of the four UST systems identified above is in full compliance with the overfill requirements of 9 VAC 25-580-50.3.a(2) and -60.4. Alternatively, within 30 calendar days after the effective date of this Compliance Order, Respondents shall remove all materials from each such UST system so that each such UST system is “empty” as defined in 9 VAC 25-580-310.1, and thereafter comply with the requirements of 9 VAC 25-580-310 regarding temporary closure until each such UST system is capable of, and is being, operated in full compliance with the overfill requirements of 9 VAC 25-580-50.3.a(2) and -60.4, or such UST system is permanently closed as required by 9 VAC 25-580-310.3, -320, -330, and -350.

C. Within 30 calendar days after the effective date of this Compliance Order, Respondents shall ensure that each of the four UST systems identified above is in full compliance with the line tightness testing requirements of 9 VAC 25-580-130, -140.2.a(2), and -170.2. Alternatively, within 30 calendar days after the effective date of this Compliance Order, Respondents shall remove all materials from each such UST system so that each such UST system is “empty” as defined in 9 VAC 25-580-310.1, and thereafter comply with the requirements of 9 VAC 25-580-310 regarding temporary closure until each such UST



system is capable of, and is being, operated in full compliance with the line tightness testing requirements of 9 VAC 25-580-130, -140.2.a(2), and 170.2, or such UST system is permanently closed as required by 9 VAC 25-580-310.3, -320, -330, and -350.

- D. Within 30 calendar days after the effective date of this Compliance Order, Respondents shall ensure that each of the four UST systems identified above is in full compliance with the annual line leak detector test requirements of 9 VAC 25-580-130, -140.2(a)(1), and -170.1. Alternatively, within 30 calendar days after the effective date of this Compliance Order, Respondents shall remove all materials from each such UST system so that each such UST system is “empty” as defined in 9 VAC 25-580-310.1, and thereafter comply with the requirements of 9 VAC 25-580-310 regarding temporary closure until each such UST system is capable of, and is being, operated in full compliance with the annual line leak detector test requirements of 9 VAC 25-580-130, -140.2(a)(1), and -170.1, or such UST system is permanently closed as required by 9 VAC 25-580-310.3, -320, -330, and -350.
- E. Within 60 calendar days after the effective date of this Compliance Order, Respondents shall submit to EPA a Report describing all measures taken to comply with Paragraphs A through D of this Compliance Order and shall provide written documentation that Respondents have corrected all of the violations set forth in the Complaint. Where the applicable regulations allow for more than one option for compliance, such Report shall clearly indicate which option or combination of options is being utilized and provide documentation that such option is being utilized.

F. The information submitted by each Respondent pursuant to Paragraphs A through E of this Compliance Order shall be certified by each Respondent. The certification required above shall be in the following form:

I certify that the information contained in or accompanying this submission is true, accurate, and complete. As to [the/those] identified portions of this submission for which I cannot personally verify [its/their] accuracy, I certify under penalty of law that this submission and all attachments were prepared in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

G. The information to be submitted by Respondents pursuant to this Compliance Order shall be sent as follows:

1. Documents to be submitted to EPA shall be sent by certified mail, return receipt requested, or by overnight delivery with signature verification, to:

Ms. Marie Owens  
RCRA Compliance and Enforcement Branch (3WC31)  
U.S. Environmental Protection Agency -- Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

and

Louis Ramalho

Jeffrey Nast  
Asst. Regional Counsel  
Office of Regional Counsel (3RC30)  
U.S. Environmental Protection Agency - Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

2. One copy of all documents to be submitted to EPA shall also be sent by first-class

U.S. mail to:

Mr. Russ Ellison  
Virginia Department of Environmental Quality  
Office of Spill Response & Remediation  
629 E. Main Street  
PO Box 10009  
Richmond, VA 23240-0009

- H. The term “days” as used herein shall mean calendar days unless specified otherwise.
- I. Respondents are hereby notified that failure to comply with any of the terms of this Compliance Order may subject Respondents to the imposition of an additional civil penalty of up to \$32,500.00 for each day of continued noncompliance, pursuant to Section 9006(a)(3) of RCRA, 42 U.S.C. § 6691e(a)(3), the Debt Collection Improvement Act of 1996 (“DCIA”), and the Civil Monetary Penalty Inflation Adjustment Rules, codified at 40 C.F.R. Part 19 (“Penalty Inflation Rule”).

#### IV. CIVIL PENALTY

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 promulgated under Section 9003 of RCRA, 42 U.S.C. § 6991b, or any requirement or standard of a State program authorized pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c, shall be liable

the DCIA, Penalty Inflation Rule, and the Modifications to EPA Penalty Policies to Implement the Civil Monetary Penalty Inflation Adjustment Rule (Pursuant to the Debt Collection Improvement Act of 1996, Effective October 1, 2004 (September 21, 2004)) (“Penalty Policy Modifications Memo”), civil penalties for violations which occur subsequent to January 30, 1997, and on or before March 15, 2004, are subject to a 10% increase for inflation, and all violations occurring after March 15, 2004, are subject to an additional 17.23% increase for inflation, not to exceed \$11,000.00 per violation per day.

Pursuant to 40 C.F.R. § 22.14(a)(4)(ii), Complainant is not proposing a specific penalty at this time, but will do so at a later date after an exchange of information has occurred.

For purposes of determining the amount of any civil penalty to be assessed, Section 9006(c) of RCRA, 42 U.S.C. § 6991e(c), requires EPA to take into account the seriousness of the violation and any good faith efforts to comply with the applicable requirements. In developing the proposed penalty, Complainant will take into account the particular facts and circumstances of this case with specific reference to EPA’s November 1990 U.S. EPA Penalty Guidance for Violations of UST Regulations (“UST Penalty Guidance”), and the Penalty Policy Modifications Memo, copies of which are enclosed with this Complaint. These policies provide a rational, consistent, and equitable methodology for applying the statutory penalty factors enumerated above to particular cases.

As a basis for calculating a specific penalty pursuant to 40 C.F.R. § 22.19(a)(4), Complainant will consider, among other factors, facts or circumstances unknown to Complainant at the time of issuance of the Complaint that become known after the Complaint is issued. In

particular, EPA will consider, if raised, Respondents' ability to pay as a factor in adjusting the civil penalty. The burden of raising the issue of inability to pay rests with Respondents.

Pursuant to Section 9006(d)(2), 42 U.S.C. §6991e(d)(2), EPA proposes the assessment of a civil penalty of up to \$11,000.00 per day against the Respondents for each of the violations alleged in this Complaint. This does not constitute a "demand" as that term is defined in the Equal Access to Justice Act, 28 U.S.C. § 2412. Pursuant to 40 C.F.R. § 22.14(a)(4)(ii), an explanation of the number and severity of violations is given below.

## **VIOLATIONS**

### **Count I: Failure to Provide Overfill Protection**

Overfill prevention is an important safeguard in preventing releases of regulated substances into the environment. Under the UST Penalty Guidance, installation of inadequate overfill prevention equipment is a major deviation from the regulatory requirements, with a moderate potential for harm to the environment and the regulatory program.

At this time, there does not appear to be any reason to deviate from the civil penalty recommended in the UST Penalty Guidance. Additional upward and/or downward penalty adjustments based on Respondents' level of cooperation or non-cooperation, Respondents' relative culpability, and Respondents' history of non-compliance with federal environmental laws may be considered after further information is exchanged by the parties. Respondents have already had at least two releases at the Facility since 2000. Respondents should not only be aware of the UST requirements, but should also have direct knowledge of the impact a release may have on the environment.

In addition, Complainant expects to adjust the base penalty by a multiplier to account for the relative sensitivity of the environment affected by the violation. Complainant has not yet assessed the specific sensitivity of the environment at the Facility's location, but past experience with UST sites in Virginia suggests a strong likelihood of an upward adjustment of the penalty for this factor.

The base penalty may also be adjusted to take into account the number of days of non-compliance.

Furthermore, a penalty component will be added to reflect the economic benefit gained by Respondents by failing to comply with overfill protection requirements.

### **Count II: Failure to Provide Release Detection**

Tank release detection is one of the most important elements of the UST regulations because it ensures that regulated substances are not released into the environment in large quantities. Under the UST Penalty Guidance, the failure to conduct tank release detection in a proper manner is generally considered a major deviation from the statutory and regulatory program with a major potential for harm to the environment and/or the regulatory program. At this time, there does not appear to be any reason to deviate from the civil penalty recommended in the UST Penalty Guidance.

Additional upward and/or downward penalty adjustments based on Respondents' level of cooperation or non-cooperation, Respondents' relative culpability, and Respondents' history of non-compliance with federal environmental laws may be considered after further information is exchanged by the parties. Respondents have already had at least two releases at the Facility since

2000. Respondents should not only be aware of the UST requirements, but should also have direct knowledge of the impact a release may have on the environment.

In addition, Complainant expects to adjust the base penalty by a multiplier to account for the relative sensitivity of the environment affected by the violation. Complainant has not yet assessed the specific sensitivity of the environment at the Facility's location, but past experience with UST sites in Virginia suggests a strong likelihood of an upward adjustment of the penalty for this factor.

The base penalty may also be adjusted to take into account the number of days of non-compliance.

Furthermore, a penalty component will be added to reflect the economic benefit gained by Respondents by failing to comply with the tank release detection requirements.

### **Count III: Failure to Perform Tightness Testing on Product Line**

The requirement for annual line tightness testing on underground piping to assess the integrity of such piping is an essential requirement that ensures that the lines are not leaking actively or in danger of leaking, which could lead to extensive releases of the pressurized substances in the underground piping. Under the UST Penalty Guidance, the failure to conduct line tightness testing is generally considered a major deviation from the statutory and regulatory program with a major potential for harm to the environment and/or the regulatory program. At this time, there does not appear to be any reason to deviate from the civil penalty recommended in the UST Penalty Guidance.

Additional upward and/or downward penalty adjustments based on Respondents' level of cooperation or non-cooperation, Respondents' relative culpability, and Respondents' history of non-compliance with federal environmental laws may be considered after further information is exchanged by the parties. Respondents have already had at least two releases at the Facility since 2000. Respondents should not only be aware of the UST requirements, but should also have direct knowledge of the impact a release may have on the environment.

In addition, Complainant expects to adjust the base penalty by a multiplier to account for the relative sensitivity of the environment affected by the violation. Complainant has not yet assessed the specific sensitivity of the environment at the Facility's location, but past experience with UST sites in Virginia suggests a strong likelihood of an upward adjustment of the penalty for this factor.

The base penalty may also be adjusted to take into account the number of days of non-compliance.

Furthermore, a penalty component will be added to reflect the economic benefit gained by Respondents by failing to comply with the product line tightness testing requirements.

#### **Count IV: Failure to Conduct Line Leak Detector Testing**

Line release detection is one of the most important elements of the UST regulations, particularly where, as here, regulated substances are conveyed in underground piping under pressure. The requirement for annual operational tests on continuous line leak detectors (which continuously operate to detect high rate or "catastrophic" leaks) is an essential requirement that ensures that the line leak detectors are capable of performing their critical function of preventing



massive short-term releases of the pressurized substances in the underground piping. Under the UST Penalty Guidance, the failure to conduct line release detection is generally considered a major deviation from the statutory and regulatory program with a major potential for harm to the environment and/or the regulatory program. At this time, there does not appear to be any reason to deviate from the civil penalty recommended in the UST Penalty Guidance.

Additional upward and/or downward penalty adjustments based on Respondents' level of cooperation or non-cooperation, Respondents' relative culpability, and Respondents' history of non-compliance with federal environmental laws may be considered after further information is exchanged by the parties. Respondents have already had at least two releases at the Facility since 2000. Respondents should not only be aware of the UST requirements, but should also have direct knowledge of the impact a release may have on the environment.

In addition, Complainant expects to adjust the base penalty by a multiplier to account for the relative sensitivity of the environment affected by the violation. Complainant has not yet assessed the specific sensitivity of the environment at the Facility's location, but past experience with UST sites in Virginia suggests a strong likelihood of an upward adjustment of the penalty for this factor.

The base penalty may also be adjusted to take into account the number of days of non-compliance.

Furthermore, a penalty component will be added to reflect the economic benefit gained by Respondents by failing to comply with the line leak detector testing requirements.

## V. ANSWER AND NOTICE OF OPPORTUNITY FOR HEARING

Respondents may request a hearing before an Administrative Law Judge and at such hearing may contest any material fact upon which the Complaint is based, contest the appropriateness of any compliance order or proposed penalty amount, and/or assert that Respondents are entitled to judgment as a matter of law. If Respondents wish to request a hearing, Respondents must file a written Answer within 30 days after service of this Complaint with the Regional Hearing Clerk (3RC00), EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029. A copy of the Answer should be sent to the attorney assigned to this case, Louis Ramalho (3RC30), EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029. The Answer should clearly and directly admit, deny or explain each of the factual allegations contained in this Complaint of which Respondents have any knowledge. Where Respondents have no knowledge of a particular factual allegation and so state, such statement is deemed to be a denial of the allegation. The Answer should contain: (1) the circumstances or arguments which are alleged to constitute the grounds of any defense; (2) the facts which Respondents dispute; (3) the basis for opposing any proposed relief; and (4) a statement of whether a hearing is requested.

Failure by Respondents to admit, deny, or explain any material factual allegation contained in the Complaint constitutes an admission of the allegation. Failure by Respondents to file an Answer may result in the filing of a Motion for Default Order and the issuance of a Default Order imposing the penalties proposed herein without further proceedings. Failure by Respondents to request a hearing no later than 30 days after the Complaint is served will result in the Compliance Order portion of the Complaint becoming a Final Order, constituting final

agency action in this proceeding as described in 40 C.F.R. § 22.31. Failure to comply with such Final Order may subject Respondents to civil penalties as set forth in Section 9006(a)(3) of RCRA, 42 U.S.C. § 6991e(a)(3).

If a hearing is requested by Respondents, such hearing will be held at a location to be determined at a later date pursuant to 40 C.F.R. § 22.21(d). The hearing will be conducted in accordance with the provisions of the Consolidated Rules of Practice. A copy of the Consolidated Rules of Practice is attached.

## **VI. SETTLEMENT CONFERENCE**

EPA encourages settlement of the proceedings at any time after issuance of the Complaint if such settlement is consistent with the provisions and objectives of RCRA. Whether or not a hearing is requested, Respondents may request a settlement conference with the Complainant to discuss the allegations of the Complaint. **HOWEVER, A REQUEST FOR A SETTLEMENT CONFERENCE DOES NOT RELIEVE 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, its terms shall be expressed in a written Consent Agreement prepared by Complainant, signed by the parties, and incorporated into a Final Order signed by the Regional Judicial Officer or Regional Administrator. The execution of such a Consent Agreement by Respondents 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.

The staff attorney assigned to this case is Jeffrey S. Nast. If you have any questions or wish to arrange an informal settlement conference, please contact him at (215) 814-2681 prior to the expiration of the 30 day period following service of the Complaint. Once again, such a request for an informal conference does not relieve Respondents of their responsibility to file an Answer within 30 days following service of the Complaint.


#### **VII. SEPARATION OF FUNCTIONS; EX PARTE COMMUNICATIONS**

The following Agency officers, and the staffs thereof, are designated as the trial staff to represent the Agency as a party in this case: The EPA Region III Office of Regional Counsel, the Director of the EPA Region III Waste and Chemicals Management Division, the EPA Assistant Administrator for Enforcement and Compliance Assurance, and the EPA Assistant Administrator for Solid Waste and Emergency Response. Commencing from the date of 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 any *ex parte* communication with the trial staff on the merits of any issue involved in this proceeding.

Please be advised that 40 C.F.R. § 22.8 prohibits any *ex parte* discussion of the merits of a case with, among others, the Administrator, the members of the Environmental Appeals Board, Regional Administrator, Regional Judicial Officer, or Presiding Officer, or any other person who

is likely to advise these officials in the decision of the case, after the Complaint has been issued, until the issuance of a final Agency decision in this case.

Date: 8/29/07

  
\_\_\_\_\_  
Abraham Ferdas, Director  
Waste & Chemicals Management Division

Attachments: Consolidated Rules of Practice  
UST Penalty Guidance  
Penalty Policy Modifications Memo

CERTIFICATE OF SERVICE

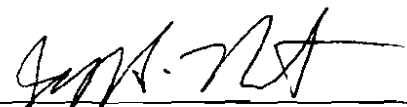
I hereby certify that on the date noted below I caused the original Administrative Complaint, Compliance Order, and Notice of Right to Request Hearing *In the Matter of: Shabbir Shaikh, Royal Service Center*, Docket No. RCRA-03-2007-0279, and its specified attachments, to the Regional Judicial Officer to be hand-delivered to the Regional Hearing Clerk, EPA Region III, and true and correct copies to be sent in the manner specified below to the following individual:

Via FedEx to:

Shabbir Shaikh  
Royal Service Center  
1313 North Quaker Lane  
Alexandria, VA 22302

SEP 04 2007

Date

  
\_\_\_\_\_  
Jeffrey S. Nast  
Asst. Regional Counsel  
EPA Region III (3RC00)  
1650 Arch St.  
Philadelphia, PA 19103-2029  
215-814-2652