



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

SEP 28 2010

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Article Number: 7016 1370 0001 3671 2849

Thomas Schnibbe, Owner
Bob's Service Station
611 Warburton Avenue
Hastings-On-Hudson, NY 10706

Re: Bob's Service Station
Complaint, Compliance Order and Notice of Opportunity for Hearing
Docket Number RCRA-02-2018-7503

Dear Mr. Schnibbe:

Enclosed is the Complaint, Compliance Order and Opportunity for Hearing in the above-referenced proceeding. The Complaint alleges violations of the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901 *et seq.*

You have the right to a formal hearing to contest any of the allegations in the Complaint and/or to contest the penalty proposed in the Complaint. If you wish to contest the allegations and/or the penalty proposed in the Complaint, you must file an Answer within **thirty (30)** days of your receipt of the enclosed Complaint with the Regional Hearing Clerk of the Environmental Protection Agency ("EPA"), Region 2, at the following address:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, New York 10007-1866

If you do not file an Answer within thirty (30) days of receipt of this Complaint and have not obtained a formal extension for filing an Answer from the Regional Judicial Officer of Region 2, a default order may be entered against you and the entire proposed penalty may be assessed. Whether or not you request a formal hearing, you may request an informal conference with EPA to discuss any issue relating to the alleged violations and the amount of the proposed penalty. EPA encourages all parties against whom it files a Complaint to pursue the possibility of settlement and to have an informal conference with EPA. However, a request for an informal conference **does not** substitute for a written Answer, affect what you may choose to say in an Answer, or extend the thirty (30) days by which you must file an Answer requesting a hearing.

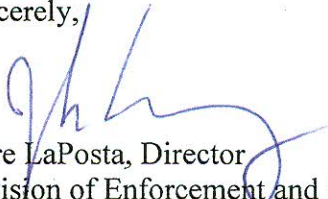
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U.S. Environmental Protection Agency
REGIONAL HEARING CLERK

You will find enclosed a copy of the "Consolidated Rules of Practice," which govern this proceeding. (A brief discussion of some of these rules appears in the later part of the Complaint.)

EPA encourages the use of Supplemental Environmental Projects, where appropriate, as part of any settlement. I am enclosing a brochure on "EPA's Supplemental Environmental Projects Policy." Please note that these are only available as part of a negotiated settlement and are not available if this case has to be resolved by a formal adjudication.

If you have any questions or wish to schedule an informal conference, please contact the attorney whose name is listed in the Complaint.

Sincerely,


Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

Enclosures

cc: Russ Brauksieck, Chief (w/Enclosure)
Facility Compliance Section
Bureau of Technical Support
Division of Environmental Remediation
New York State Department of Environmental Conservation
625 Broadway, Albany, N.Y. 12233-7020

Edward Moore
Remediation/Spills Engineer
DEC Region 3
21 South Putt Corners Road
New Paltz, New York 12561

J. Carlos Torres (w/Enclosure)
Director, Office of Environmental Health Risk Control
Westchester County Department of Health
145 Huguenot Street
New Rochelle, NY 10801

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF:

Thomas Schnibbe,
Respondent.

Proceeding Under Section 9006
of the Solid Waste Disposal Act,
as amended

COMPLAINT, COMPLIANCE ORDER
AND
NOTICE OF OPPORTUNITY FOR HEARING

DOCKET NO. RCRA-02-2018-7503

COMPLAINT

1. This is a civil administrative proceeding instituted pursuant to Section 9006 of the Solid Waste Disposal Act, as amended, 42 U.S.C. § 6901 et seq. (the "Act").
2. This proceeding seeks to assess a civil penalty against Respondent for having failed to comply with various requirements or standards promulgated by the Administrator of EPA under the authority of Section 9003 of the Act, 42 U.S.C. § 6991b, and to require compliance with said requirements or standards.
3. Complainant in this proceeding, Dore LaPosta, Director, Division of Enforcement and Compliance Assistance of the United States Environmental Protection Agency, Region 2 ("EPA"), has been duly delegated the authority to institute this action.
4. Respondent is Thomas Schnibbe (hereinafter "Respondent" or "Thomas Schnibbe").
5. Respondent is a "person" within the meaning of Section 9001(5) of the Act, 42 U.S.C. § 6991(5), and 40 C.F.R. § 280.12.
6. Respondent has been for the times relevant to the matters alleged below, and remains the "owner" and/or "operator" of three (3) "underground storage tanks" ("USTs") or "UST system," as those terms are defined in Section 9001 of the Act, 42 U.S.C. § 6991, and 40 C.F.R. § 280.12, that are located at 611 Warburton Avenue, Hastings-On-Hudson, New York 10706 (the "Facility"). Respondent has been doing business as Bob's Service Station with the corresponding New York State Department of Environmental Conservation ("NYSDEC") Petroleum Bulk Storage Program number 3-167711.

7. Pursuant to 40 C.F.R. § 280.12, EPA is the “implementing agency” responsible for enforcing the requirements of the Act and the regulations promulgated pursuant thereto which are the subject of this Complaint except as set forth below. For purposes of receiving reports of suspected releases, NYSDEC is the “implementing agency.” For tank registration, Westchester County Department of Health is the “implementing agency.” The New York State Petroleum Bulk Storage Program is administered by the Westchester County Department of Health, based on a delegation of authority by NYSDEC.
8. Pursuant to Section 9003 of the Act, 42 U.S.C. § 6991b, EPA promulgated rules setting forth requirements for owners and operators of UST systems, codified at 40 C.F.R. Part 280. These rules include but are not limited to requirements related to release detection record-keeping, investigation and reporting of suspected releases, performance testing of automatic line leak detectors, overfill equipment and corrosion protection.
9. 40 C.F.R. § 280.12 defines an underground storage tank or UST as any one or combination of tanks (including underground pipes connected thereto) that is used to contain an accumulation of regulated substances, and the volume of which (including the volume of underground pipes connected thereto) is 10 percent or more beneath the surface of the ground.
10. Pursuant to 40 C.F.R. §280.34, owners and operators of UST systems must cooperate fully with inspections by the implementing agency, as well as requests for document submission, testing, and monitoring by the owner or operator pursuant to Section 9005 of Subtitle I of the Resource Conservation and Recovery Act, as amended (“RCRA”).
11. Section 9005 of the Act, 42 U.S.C. § 6991d provides, in relevant part, that “any owner or operator of an underground storage tank (or any tank subject to study under [Section 9009] that is used for storing regulated substances) shall, upon request of any officer, employee or representative of the Environmental Protection Agency ... furnish information relating to such tanks.”
12. Pursuant to 40 C.F.R. Section 280.34(c), owners and operators of UST systems must keep the records required either: (1) at the UST site and immediately available for inspection by the implementing agency; or (2) at a readily available alternative site and be provided for inspection to the implementing agency upon request.
13. Pursuant to 40 C.F.R. § 280.45(b), owners and operators of UST systems must maintain certain records for specified time periods in accordance with 40 C.F.R. §280.34. This includes the results of any sampling, testing or monitoring which must be maintained for at least one year.
14. Pursuant to 40 C.F.R. Section 280.41(b)(1)(i) requires that the underground piping that conveys regulated substances under pressure must be equipped with automatic line leak detectors in accordance with 40 C.F.R. §280.44(a).

15. Pursuant to 40 C.F.R. Section 280.44(a), owner and operators utilizing ALLDs are required to test them annually.
16. Pursuant to 40 C.F.R. § 280.50(c), owner and operators of UST systems must report to the implementing agency within 24 hours, or another reasonable period specified by the implementing agency, and follow the procedures in §280.52 for the following conditions: Monitoring results, including investigation of an alarm, from a release detection method required under §§280.41 and 280.42 that indicate a release may have occurred unless: (1) The monitoring device is found to be defective, and is immediately repaired, recalibrated or replaced, and additional monitoring does not confirm the initial result; (2) The leak is contained in the secondary containment and: (i) Except as provided for in §280.43(g)(2)(iv), any liquid in the interstitial space not used as part of the interstitial monitoring method (for example, brine filled) is immediately removed; and (ii) Any defective system equipment or component is immediately repaired or replaced; (3) In the case of inventory control described in §280.43(a), a second month of data does not confirm the initial result or the investigation determines no release has occurred; or (4) The alarm was investigated and determined to be a non-release event (for example, from a power surge or caused by filling the tank during release detection testing).
17. Pursuant to 40 C.F.R. Section 280.93, owners or operators of petroleum USTs are required to demonstrate financial responsibility for taking corrective action and for compensating third party bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs that they own or operate.
18. Pursuant to 40 C.F.R. Section 280.111, owners or operators of USTs are required to maintain evidence of all financial assurance mechanisms used to demonstrate financial responsibility for an UST and must maintain such evidence at the UST site or the owner's or operator's place of work.
19. On August 11, 2016, the UST located at the "Facility" were inspected (hereinafter "the inspection") on behalf of the U.S. Environmental Protection Agency, Region 2 (EPA), by EPA's Contract Inspector Mr. Jeffrey Blair, to determine the Facility's compliance with UST requirements under Subtitle I of the Act (42 U.S.C. §§ 6991 *et seq.*) and its implementing regulations (40 C.F.R. Part 280).

OWNERSHIP AND OPERATION OF UST SYSTEMS AT THE FACILITY

20. Based on information collected during the inspection and information contained on the Westchester County Department of Health Petroleum Bulk Storage Registration Certificate for the tanks at the Facility, Mr. Thomas Schnibbe has been and remains the "Tank Owner and Operator" of the USTs

COUNT 1 - FAILURE TO RESPOND TO NOTICE OF VIOLATION AND INFORMATION REQUEST LETTER

21. 40 C.F.R §280.34 requires owners/operators of UST systems to cooperate fully with inspections, monitoring and testing conducted by the implementing agency, as well as requests for document submission, testing and monitoring by the owner or operator pursuant to section 9005 of subtitle I of the RCRA.
22. Pursuant to Section 9005 of the Act, 42 U.S.C. § 6991d, and 40 C.F.R. Section 280.34, EPA sent a RCRA § 9005 Notice of Violation/Information Request Letter (“NOV/IRL”), dated December 22, 2016, to Mr. Thomas Schnibbe, Owner- Bob’s Service Station, in order to determine Respondent’s compliance with the Act and 40 C.F.R. Part 280 for the USTs at the facility. The IRL asked a series of UST-related questions and requested information about the age and construction of the USTs, information regarding the monitoring of the USTs for releases and information regarding whether the Respondent had complied with financial responsibility requirements for the USTs. The NOV/IRL was received by Mr. Thomas Schnibbe on December 29, 2016 and a response was due 30 days later, or January 28, 2017.
23. When no response was received by EPA by the due date, EPA sent an Overdue Notice to Mr. Thomas Schnibbe dated February 22, 2017 asking that he reply to EPA’s NOV/IRL within fifteen (15) days of receipt of the Overdue Notice. The Overdue Notice was received on February 27, 2017 and a response was due by March 14, 2017. During the next several months, EPA made numerous attempts to contact Mr. Thomas Schnibbe regarding the NOV/IRL.
24. On August 04, 2017, Mr. Thomas Schnibbe sent an email asking for a 30-day extension to address the issues in the NOV/IRL which EPA granted on August 18, 2017.
25. On September 15, 2017, Mr. Thomas Schnibbe emailed EPA a copy of a pollution liability insurance certificate as a demonstration of financial responsibility, one of the potential violations cited in the NOV/IRL and about which EPA asked questions in the IRL, but Mr. Schnibbe failed to provide any information regarding any of the other inquiries in the NOV/IRL.
26. On November 01, 2017, EPA sent an email informing Mr. Thomas Schnibbe that he needed to fully respond to the NOV/IRL. EPA Enforcement Officer, Mr. Hiep Tran, spoke with Mr. Thomas Schnibbe on the telephone, reminding him that EPA needed a complete written response to NOV/IRL.
27. To date, Mr. Thomas Schnibbe has not provided a complete written response to the questions in EPA’s NOV/IRL.
28. Respondent’s failure to fully respond to the NOV/IRL constitutes a violation of 40 C.F.R. § 280.34 and Section 9005 of the Act, 42 U.S.C. § 6991d from at least September 15, 2017 through August 30, 2018.

COUNT 2 - FAILURE TO TEST THE AUTOMATIC LINE LEAK DETECTORS ANNUALLY

29. 40 C.F.R. §280.44(a) requires owners and/or operators of UST systems to conduct annual test of automatic line leak detectors (“ALLD”s) for all underground pressurized lines.
30. During the inspection of the Facility on August 11, 2016, the inspector noted that the two pressurized lines at the Facility had ALLDs but no documented ALLD annual test results were provided when the inspector requested them.
31. Respondent was required to have tested each of the ALLDs at least once during the twelve month period prior to the inspection.
32. Pursuant to 40 C.F.R. § 280.45(b), owners and operators of UST systems must maintain, for at least one year, the results of any sampling, testing or monitoring.
33. EPA again requested the test results for the ALLDs in both the NOV/IRL and the Overdue Notice letters but none were provided.
34. As of this date, Respondent has failed to submit to EPA any documentation that demonstrates that the ALLDs had been tested during the twelve months prior to the EPA inspection and is therefore in violation of 40 C.F.R. §280.44(a).
35. Respondent’s failure to conduct a test of the ALLDs at the Facility and to have maintained a copy of such test constitutes a violation of 40 C.F.R. §280.44(a) and § 280.45(b) for the period of August 12, 2015 through August 11, 2016.

COUNT 3 - FAILURE TO REPORT A SUSPECTED RELEASE WITHIN 24 HOURS TO THE IMPLEMENTING AGENCY AND FOLLOW REQUIRED PROCEDURES

36. Pursuant to 40 C.F.R. §280.50, owners and operators of petroleum UST systems must report to the implementing agency (NYSDEC) with 24 hours or another reasonable time period specified by the implementing agency, and follow the procedures in §280.52 for the discovery of released regulated substances at the UST site or in the surrounding area or for monitoring results from a release detection method required under §280.41 and §280.42 that indicate a release may have occurred.
37. During the inspection of the Facility on August 11, 2016, the inspector noted that the EIM sensor “L6” was displaying a “Fuel Alarm” indicating a potential release into the interstitial space of one of the USTs at the Facility. The inspector noted during the inspection that printouts from the tank monitor indicated that the situation has been going

on since at least August 17, 2015.

38. A review by EPA of the NYSDEC Spill Incidents Database website indicates that no potential release was reported to NYSDEC during the period of this alarm.
39. EPA's NOV/IRL and Overdue Notice required Respondent to provide documentation that the suspected release noted during the August 11, 2016 UST inspection was: a) reported within 24 hours of detection, b) investigated, and c) any report of a confirmed release was submitted to the NYSDEC.
40. As of this date, Mr. Thomas Schnibbe has failed to provide the required responses to the EPA's NOV/IRL or provide any documentation to show that he had reported to the NYSDEC and investigated a potential release in a timely manner.
41. Respondent's failure to report to the NYSDEC a potential release at the Facility and to investigate in manner set out in 40 C.F.R. §280.52 constitutes a violation of 40 C.F.R. §280.50 and §280.52 from at least August 17, 2015 through August 11, 2016.

COUNT 4 - FAILURE TO COMPLY WITH FINANCIAL RESPONSIBILITY REQUIREMENT FOR UST OWNERS AND OPERATORS

42. 40 C.F.R. §280.93 requires owners or operators of petroleum USTs to demonstrate financial responsibility for taking corrective action and for compensating third party bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs that they own or operate in the per occurrence amounts specified in the regulation.
43. During the inspection of the Facility on August 11, 2016, a facility representative was not able to provide documentation of the appropriate financial responsibility when requested by the EPA inspector.
44. Following the inspection, the NOV/IRL sent by EPA to Respondent in Question 18 of the IRL states "[p]rovide documentation of compliance with federal regulatory financial responsibility (insurance) requirements (40 C.F.R. Section 280 Subpart H) in case of a release from an UST, including coverage for third party bodily injury."
45. On August 4, 2017, Mr. Thomas Schnibbe requested a 30-day extension and states: "Thank you for your continued patience. As of Today, I have two insurance quotes to review, and one more coming in. The insurance companies require a leak test, American Petroleum Contractors will do the tests next week. Not knowing how long the insurance companies take to review applications I would greatly appreciate if your office could grant 30-day extension while we address these issues."
46. On September 15, 2017, Mr. Thomas Schnibbe emailed EPA a copy of a pollution liability insurance certificate as a demonstration of financial responsibility coverage for

the period from August 25, 2017 to August 25, 2018.

47. As of the date of the September 15, 2017 response by Mr. Thomas Schnibbe to EPA's NOV and IRL, Mr. Schnibbe had not demonstrated compliance prior to August 25, 2017 with federal regulatory financial responsibility requirements (40 C.F.R. Part 280 Subpart H) for the UST systems at the facility by any of the methods set forth in 40 C.F.R. Sections 280.95 through 280.103.
48. Mr. Thomas Schnibbe obtained insurance on August 25, 2017 for third party bodily injury for the 3 USTs.
49. Mr. Thomas Schnibbe, in his August 4, 2017 email, acknowledged that as of August 4, 2017, he did not have insurance coverage for third party bodily injury for the 3 USTs at the Facility.
50. Respondent's failure, between at least August 11, 2016 and August 25, 2017, to comply with federal regulatory of financial responsibility requirements, including coverage for third party bodily injury, constitutes a violation of 40 C.F.R. § 280.93(a).

PROPOSED CIVIL PENALTY

The proposed civil penalty has been determined in accordance with Section 9006(d)(2)(A) of the Act, 42 U.S.C. § 6991e (d)(2)(A). For purposes of determining the amount of any penalty assessed, Section 9006(c) requires EPA “. . . taking into account the seriousness of the violation and any good faith efforts to comply with the applicable requirements.” Additionally, Section 9006(e)(1)&(2) states that EPA may take into effect “the compliance history of an owner or operator. . .” and “[a]ny other factor that the Administrator considers appropriate.” To develop the proposed penalty in this complaint, the Complainant has taken into account the particular facts and circumstances of this case and used US EPA Penalty Guidance for Violations of UST Requirements (EPA's UST Penalty Policy, dated November 14, 1990), which is available upon request or at this Internet address: <http://www.epa.gov/swerust1/directiv/od961012.htm>. EPA's UST Penalty Policy provides a rational, consistent, and equitable calculation methodology for applying the statutory penalty factors to particular cases.

Section 9006(d)(2)(A) of the Act, 42 U.S. C. Section 6991e(d)(2)(A) authorizes the assessment of a civil penalty up to \$10,000 for each tank for each day of violation of any requirement or standard promulgated by the Administrator. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended through 2015 (“Inflation Adjustment Act”), 28 U.S.C. Section 245, required EPA to adjust its penalties for inflation on a periodic basis. Consistent with this, the penalty amounts in the November 1990 UST Penalty Policy have been amended to reflect adjustments for inflation. The adjustments were made pursuant to the December 6, 2013 document entitled “Amendments to the U.S. Environmental Protection Agency's Civil Penalties Policies to Account for Inflation” (applicable to violations that occurred between December 7, 2013 and November 2, 2015); and the January 11, 2018 document entitled “Amendments to the U.S. Environmental Protection Agency's Civil Penalty Policies to Account for Inflation (this is

applicable to violations that occurred after November 2, 2015 where penalties have not been assessed yet).”

Pursuant to the Inflation Adjustment Act, the maximum statutory civil penalty under Section 9006(d)(2) of RCRA, 42 U.S.C. Section 6991e(d)(2), is \$16,000 per tank for each day of violation occurring on or after January 13, 2009, through November 2, 2015 and \$23,426 per tank for each day of violation occurring after November 2, 2015 where penalties are assessed on or after January 15, 2018. 42 U.S.C. § 6991e(d); 40 C.F.R. § 19.4; Civil Monetary Penalty Inflation Adjustment Rule, 83 Fed. Reg. 1190, 1193 (January 10, 2018)

A penalty calculation worksheet to support the penalty figure for each violation cited in this Complaint are included in Attachment 1, below.

The Complainant proposes, subject to the receipt and evaluation of further relevant information, that the Respondent be assessed the following civil penalty for the violations alleged in the Complaint. See chart below:

Total Proposed Penalty: \$27,285.50

Facility/Violation Number	UST(s) at issue	40 CFR Part 280 requirement violated	Violation summary failure to:	Proposed penalty for count
Bob’s Service Station (PBS #:3-167711) Count 1	Facility	280.34, Section 9005	Failure to respond to the NOV/IRL	\$6,934.00
Bob’s Service Station (PBS #:3-167711) Count 2	2 USTs	280.44(a), 280.45(b)	Failure to conduct performance test on ALLD	\$8,157.28
Bob’s Service Station (PBS #:3-167711) Count 3	1 UST	280.50, 280.52	Failure to report/investigate suspected release and follow procedures	\$6,666.22
Bob’s Service Station (PBS #:3-167711) Count 4	facility	280.93(a)	Financial Responsibility	\$5,528.00
Total Penalty				\$27,285.50

COMPLIANCE ORDER

Based on the foregoing, and pursuant to the authority of Section 9006 of the Act, 42 U.S.C. § 6991e, Complainant issues the following Compliance Order to the Respondent, which shall take effect with respect to the Respondent thirty (30) days after service of this Order (i.e., the effective date), unless by that date, the Respondent has requested a hearing pursuant to 40 C.F.R.

§ 22.15. See 42 U.S.C. § 6991(e)(b) and 40 C.F.R. §§ 22.37(b) and 22.7(c):

Respondent will certify compliance with all applicable requirements of 40 C.F.R. Part 280 for each federally regulated UST system that Respondent owns and/or operates at its Facility and undertake to the extent feasible the tasks specified below concerning the Facility. Specifically, Respondent shall:

- a.) Ensure that all USTs at the Facility have ALLDs tested annually in accordance with 40 C.F.R. § 280.44(a);
- b.) Provide to EPA within thirty (30) days after service of this Order, a full investigation of the August 17, 2015 through August 11, 2016 "L6" fuel alarms noted for the USTs at the Facility to the extent Respondent can still access these records to document this and report any confirmed releases to the NYSDEC immediately in accordance with 40 C.F.R. § 280.50(c). If records of an investigation are inaccessible, Respondent shall provide the EPA contact information for the entity that currently has access to such records;
- c.) Provide a complete response to EPA's December 2016 NOV/IRL within thirty (30) days after service of this Order in accordance with 40 C.F.R. § 280.34 and Section 9005 of the Act, 42 U.S.C. § 6991d or identify why certain questions cannot be responded to at this time (a copy of the NOV/IRL is enclosed); and
- d.) Continue to maintain appropriate financial responsibility for taking corrective action and for compensating third party bodily injury and property damage caused by accidental releases arising from the operation of USTs that you own or operate.

Within forty-five (45) days of the effective date of this Compliance Order, if the Respondent is in noncompliance with the provisions of this Compliance Order, the Respondent shall submit to EPA written notice stating the reasons for noncompliance and shall provide a schedule for achieving expeditious compliance with the requirement. Such written notice shall contain the following certification:

I certify that the information contained in this written notice and any accompanying supporting documentation is true, accurate and complete to the best of my knowledge and belief. As to the identified portions of this response for which I am unable personally to verify their truthfulness, accuracy and/or completeness, I certify that this response and all accompanying supporting documentation were prepared in accordance with a system designed to assure that qualified personnel gather and evaluate the information submitted. I am aware that there are significant penalties for submitting false, misleading and/or incomplete information, and such penalties might include criminal fines and imprisonment for knowing violations.

Signature: _____

Name: _____

Title: _____

Respondent shall submit the notice required to be submitted pursuant to this paragraph to:

**Claudia Gutierrez, Team Leader
UST Team, RCRA Compliance Branch
Division of Enforcement and Compliance Assistance
RCRA Compliance Branch
290 Broadway, 20th Floor
New York, NY 10007
Attn: Hiep Tran**

NOTICE OF LIABILITY FOR ADDITIONAL CIVIL PENALTIES

Pursuant to Section 9006(a)(3) of the Act, 42 U.S.C. § 6991e(a)(3), and the Inflation Adjustment Act, a violator failing to take corrective action within the time specified in the Compliance Order that has taken effect is liable for a civil penalty of up to \$58,562. *See* 83 Fed. Reg. 1190 (January 10, 2018) (codified at 40 C.F.R Part 19).

PROCEDURES GOVERNING THIS ADMINISTRATIVE LITIGATION

The rules of procedure governing this civil administrative litigation were originally set forth in 64 *Fed. Reg.* 40138 (July 23, 1999), entitled CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENTS OF CIVIL PENALTIES, ISSUANCE OF COMPLIANCE OR CORRECTIVE ACTION COMPLIANCE ORDERS, AND THE REVOCATION, TERMINATION OR SUSPENSION OF PERMITS (“Consolidated Rules of Practice”), and which are codified at 40 C.F.R. Part 22. These rules have been amended to simplify the administrative processing of cases by expanding the availability of electronic filing and service procedures and eliminating inconsistencies. 82 Fed. Reg. 2230, January 9, 2017. A copy of the current Consolidated Rules of Practice, incorporating these amendments, accompanies this “Complaint, Compliance Order, and Notice of Opportunity for Hearing” (hereinafter the “Complaint”).

Upon receipt of a compliance order issued under Section 9006(a) of the Act, 42 U.S.C. § 6991e(a) Respondent may seek administrative review in accordance with 40 C.F.R. §§ 22.15 and 22.37(b). The Respondent may seek judicial review of the compliance order pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701 -706, once it is final and reviewable pursuant to RCRA Section 9006(b), 42 U.S.C. § 6991e(b), and 40 C.F.R. §§ 22.31 and 22.37(b).

A. Answering the Complaint

Where Respondent intends to contest any material fact upon which the Complaint is based, to contend that the proposed penalty and/or the compliance order is inappropriate or to contend that Respondent is entitled to judgment as a matter of law, Respondent must file with the Regional Hearing Clerk of EPA, Region 2, both an original and one copy of a written answer to the Complaint, and such Answer must be filed within 30 days after service of the Complaint. 40 C.F.R. §§ 22.15(a) and 22.7(c). The address of the Regional Hearing Clerk of EPA, Region 2, is:

**Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, New York 10007-1866**

(NOTE: Any documents that are filed after the Answer has been filed should be filed as specified in "D" below)

Respondent shall also then serve one copy of the Answer to the Complaint upon Complainant and any other party to the action. 40 C.F.R. § 22.15(a).

Respondent's Answer to the Complaint must clearly and directly admit, deny, or explain each of the factual allegations that are contained in the Complaint and with regard to which Respondents have any knowledge. 40 C.F.R. § 22.15(b). Where Respondent lacks knowledge of a particular factual allegation and so state in their Answer, the allegation is deemed denied. 40 C.F.R. § 22.15(b). The Answer shall also set forth: (1) the circumstances or arguments that are alleged to constitute the grounds of defense; (2) the facts that Respondent disputes (and thus intends to place at issue in the proceeding); and (3) whether Respondent requests a hearing. 40 C.F.R. § 22.15(b).

Respondent's failure to affirmatively raise in the Answer facts that constitute or that might constitute the grounds of its defense may preclude Respondent, at a subsequent stage in this proceeding, from raising such facts and/or from having such facts admitted into evidence at a hearing.

B. Opportunity to Request a Hearing

If requested by Respondent in the Answer, a hearing upon the issues raised by the Complaint and Answer may be held. 40 C.F.R. § 22.15(c). If, however, Respondent does not request a hearing, the Presiding Officer (as defined in 40 C.F.R. § 22.3) may hold a hearing if the Answer raises issues appropriate for adjudication. 40 C.F.R. § 22.15(c). With regard to the Compliance Order in the Complaint, unless Respondent requests a hearing pursuant to 40 C.F.R. § 22.15 within 30 days after such Order is served, such Order shall automatically become final. 40 C.F.R. § 22.37.

Any hearing in this proceeding will be held at a location determined in accordance with 40 C.F.R. § 22.21(d). A hearing of this matter will be conducted in accordance with the provisions

of the Administrative Procedure Act, 5 U.S.C. §§ 551-59, and the procedures set forth in Subpart D of 40 C.F.R. Part 22.

C. Failure to Answer

If Respondent fails in the Answer to admit, deny, or explain any material factual allegation contained in the Complaint, such failure constitutes an admission of the allegation. 40 C.F.R. § 22.15(d). If Respondent fails to file a timely [i.e. in accordance with the 30-day period set forth in 40 C.F.R. § 22.15(a)] Answer to the Complaint, Respondent may be found in default upon motion. 40 C.F.R. § 22.17(a). Default by Respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations. 40 C.F.R. § 22.17(a). Following a default by Respondent for a failure to timely file an Answer to the Complaint, any order issued therefore shall be issued pursuant to 40 C.F.R. § 22.17(c).

Any penalty assessed in the default order shall become due and payable by the Respondent without further proceedings 30 days after the default order becomes final pursuant to 40 C.F.R. § 22.27(c). 40 C.F.R. § 22.17(d). If necessary, EPA may then seek to enforce such final order of default against the Respondent, and to collect the assessed penalty amount. Any default order requiring compliance action shall be effective and enforceable against Respondent without further proceedings on the date the default order becomes final under 40 C.F.R. § 22.27(c). 40 C.F.R. § 22.17(d).

D. Filing of Documents Filed After the Answer

Unless otherwise ordered by the Presiding Officer for this proceeding, all documents filed after Respondent has filed an Answer should be filed with the Headquarters Hearing Clerk acting on behalf of the Regional Hearing Clerk, addressed as follows:

If filing by the United States Postal Service:

Headquarters Hearing Clerk
Office of the Administrative Law Judges
U.S. Environmental Protection Agency
Mail Code 1900R
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

If filing by UPS, FedEx, DHL or other courier or personal delivery, address to:

Headquarters Hearing Clerk
Office of the Administrative Law Judges
Ronald Reagan Building, Room M1200
U.S. Environmental Protection Agency
1300 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

E. Exhaustion of Administrative Remedies

Where Respondent fails to appeal an adverse initial decision to the Environmental Appeals Board pursuant to 40 C.F.R. § 22.30, and that initial decision thereby becomes a final order pursuant to the terms of 40 C.F.R. § 22.27(c), Respondents waive their right to judicial review. 40 C.F.R. § 22.27(d).

In order to appeal an initial decision to the Agency's Environmental Appeals Board [EAB; see 40 C.F.R. § 1.25(e)], Respondent must do so "within thirty (30) days after the initial decision is served" upon the parties. 40 C.F.R. § 22.30(a). Pursuant to 40 C.F.R. § 22.7(c), where service is effected by mail, "...5 days shall be added to the time allowed by these Consolidated Rules of Practice for the filing of a responsive document". Note that the 45-day period provided for in 40 C.F.R. § 22.27(c) [discussing when an initial decision becomes a final order] does not pertain to or extend the time period prescribed in 40 C.F.R. § 22.30(a) for a party to file an appeal to the EAB of an adverse initial decision.

INFORMAL SETTLEMENT CONFERENCE

Whether or not Respondent requests a formal hearing, EPA encourages settlement of this proceeding consistent with the provisions of the Act and its applicable regulations. 40 C.F.R. § 22.18(b). At an informal conference with a representative(s) of Complainant, Respondent may comment on the charges made in this Complaint, and Respondent may also provide whatever additional information that it believes is relevant to the disposition of this matter, including: (1) actions Respondent has taken to correct any or all of the violations herein alleged; (2) any information relevant to Complainant's calculation of the proposed penalty; (3) the effect the proposed penalty would have on Respondent's ability to continue in business; and/or (4) any other special facts or circumstances Respondent wishes to raise.

Complainant has the authority to modify the amount of the proposed penalty, where appropriate, to reflect any settlement agreement reached with Respondent, to reflect any relevant information previously not known to Complainant, or to dismiss any or all of the charges, if Respondent can demonstrate that the relevant allegations are without merit and that no cause of action as herein alleged exists. Respondent is referred to 40 C.F.R. § 22.18.

Any request for an informal conference or any questions that Respondent may have regarding this Complaint should be directed to:

Stuart Keith
Assistant Regional Counsel
Waste and Toxic Substances Branch
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, New York 10007-1866
(212) 637- 3217
keith.stuart@epa.gov

The parties may engage in settlement discussions irrespective of whether Respondent has requested a hearing. 40 C.F.R. § 22.18(b)(1). Respondent's requesting a formal hearing does not prevent him from also requesting an informal settlement conference; the informal conference procedure may be pursued simultaneously with the formal adjudicatory hearing procedure. A request for an informal settlement conference constitutes neither an admission nor a denial of any of the matters alleged in the Complaint. Complainant does not deem a request for an informal settlement conference as a request for a hearing as specified in 40 C.F.R. § 22.15(c).

A request for an informal settlement conference does not affect Respondent's obligation to file a timely Answer to the Complaint pursuant to 40 C.F.R. § 22.15. No penalty reduction, however, will be made simply because an informal settlement conference is held.

Any settlement that may be reached as a result of an informal settlement conference shall be embodied in a written consent agreement. 40 C.F.R. § 22.18(b)(2). In accepting the consent agreement, Respondents waive their right to contest the allegations in the Complaint and waive their right to appeal the final order that is to accompany the consent agreement. 40 C.F.R. § 22.18(b)(2). In order to conclude the proceeding, a final order ratifying the parties' agreement to settle will be executed. 40 C.F.R. § 22.18(b)(3).

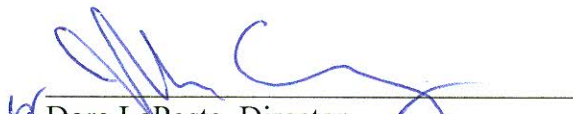
Respondent's entering into a settlement through the signing of such Consent Agreement and complying with the terms and conditions set forth in the such Consent Agreement terminates this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint. Respondent's entering into a settlement does not extinguish, waive, satisfy or otherwise affect his obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

RESOLUTION OF THIS PROCEEDING WITHOUT HEARING OR CONFERENCE

If, instead of filing an Answer, Respondent wishes not to contest the Compliance Order in the Complaint and want to pay the total amount of the proposed penalty within thirty (30) days after receipt of the Complaint, Respondent should promptly contact the Assistant Regional Counsel identified above.

Dated: _____

9/26/18



Dore LaPosta, Director
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency -Region 2
290 Broadway
New York, NY 10007-1866

To: Thomas Schnibbe
Bob's Service Station
611 Warburton Avenue
Hastings-On-Hudson, NY 10706

cc: Russ Brauksieck, Chief
Facility Compliance Section
Bureau of Technical Support
Division of Environmental Remediation
New York State Department of Environmental Conservation
625 Broadway, Albany, N.Y. 12233-7020

Edward Moore
Remediation/Spills Engineer
DEC Region 3
21 South Putt Corners Road
New Paltz, New York 12561

J. Carlos Torres (w/Enclosure)
Director, Office of Environmental Health Risk Control
Westerchester County Department of Health
145 Huguenot Street
New Rochelle, NY 10801


CERTIFICATE OF SERVICE

This is to certify that I have this day caused to be mailed a copy of the foregoing Complaint, Compliance Order, and Notice of Opportunity for Hearing, bearing docket number RCRA-02-2018-7503, and a copy of the Consolidated Rules of Practice, 40 C.F.R. Part 22, by certified mail, return receipt requested, to:

Thomas Schnibbe
Bob's Service Station
611 Warburton Avenue
Hastings-On-Hudson, NY 10706

I hand-carried the original and a copy of the foregoing Complaint to the Office of Regional Hearing Clerk, United States Environmental Protection Agency, Region 2.

Dated: Oct. 2, 2018
New York, New York


Yolanda Majette
WTS Branch Secretary

