

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

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PHILADELPHIA, PA

In the Matter of: :  
: :  
Tanay, LLC. :  
1243 Norview Avenue : Administrative Complaint,  
Norfolk, VA 23513 : and Notice of Right to  
: Request Hearing  
Swami, LLC. :  
407 Lorton Court :  
Chesapeake, VA 23323 :  
: :  
RESPONDENTS :  
: :  
CITGO Norview Gas Station : U.S. EPA Docket No. RCRA-03-2016-0225  
1243 Norview Avenue :  
Norfolk, VA 23513 :  
: :  
FACILITY. : Proceeding under Section 9006 of the  
: Resource Conservation and Recovery Act,  
: as amended, 42 U.S.C. Section 6991e  
:

**INTRODUCTION**

This Administrative Complaint and Notice of Right to Request Hearing ("Complaint") is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") by 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, "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*, 40 C.F.R. Part 22 ("*Consolidated Rules of Practice*"), a copy of which is enclosed with this Complaint.

The Director of the Land and Chemicals Division, EPA, Region III ("Complainant"), hereby notifies Tanay, LLC., and Swami, LLC. (collectively, "Respondents"), that EPA has reason to believe that Respondents have violated Subtitle I of RCRA, 42 U.S.C. §§ 6991-6991m, and the Commonwealth of Virginia's federally authorized underground storage tank ("UST") program with respect to the USTs located at certain facilities in Virginia.

Effective October 28, 1998, pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c, and 40 C.F.R. Part 281, Subpart A, the Commonwealth of Virginia was granted final authorization to administer a state UST management program *in lieu* of the Federal UST management program established under Subtitle I of RCRA, 42 U.S.C. §§ 6991-6991m. The provisions of the Virginia UST management program, through this final authorization, have become requirements of Subtitle I of RCRA and are, accordingly, 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 as "Underground Storage Tanks: Technical Standards and Corrective Action Requirements" ("VA UST Regulations"), 9 VAC § 25-580-10 *et seq.*, a copy of which is enclosed with this Complaint.

Section 9006 of RCRA, 42 U.S.C. § 6991e, 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 UST program which has been authorized by EPA.

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 UST program that has been approved by EPA pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c.

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

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. EPA and EPA's Office of Administrative Law Judges have jurisdiction over this matter pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e, 40 C.F.R. Part 280 and 40 C.F.R. § 22.1(a)(4) and .4(c).
2. EPA has given the Commonwealth of Virginia Department of Environmental Quality ("VADEQ") notice of the issuance of this Complaint in accordance with Section 9006(a)(2) of RCRA, 42 U.S.C. § 6991e(a)(2).

3. At all times relevant to this Complaint, Respondents Tanay, LLC. (“Tanay”), and Swami, LLC. (“Swami”) have each been organized as a Virginia limited liability company doing business in the Commonwealth of Virginia and, as such, each is a “person[s]” as defined by 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, Ashokkumar Patel (“Patel”) has been the registered agent for Respondents Tanay and Swami and is a “person” as defined by Section 9001(5) of RCRA, 42 U.S.C. § 6991(5), and 9 VAC § 25-580-10.
5. At all times relevant to this Complaint, Patel has been the managing member of Respondents Tanay and Swami.
6. At all times relevant to this Complaint, Respondent Swami, has been the “owner” as the term is defined by Section 9001(4) of RCRA, 42 U.S.C. § 6991(4), and 9 VAC 25-580-10, of the 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, that are located at the CITGO Norview Gas Station, 1243 Norview Avenue, Norfolk, Virginia (the “ Facility”).
7. At all times relevant to this Complaint, Respondent Tanay, have been the “operator” as this term is defined by Section 9001(3) of RCRA, 42 U.S.C. § 6991(3), and 9 VAC § 25-580-10, of the “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, that are located at the Facility.
8. On August 20, 2014, pursuant to Section 9005 of RCRA, 42 U.S.C. § 6991d, representatives of EPA conducted a compliance evaluation inspection (“CEI”) of the Facility.
9. On August 20, 2014, and at all times relevant to the applicable violations alleged herein, the USTs described in the following subparagraphs were located at the Facility:
  - a. Two 10,000-gallon fiberglass tanks that were each installed on or about May 1982, and that, at all times relevant hereto, routinely contained gasoline, 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 (“UST P1” and “UST P2”); and
  - b. One 10,000-gallon fiberglass tank that was installed on or about May 1982, and that, at all times relevant hereto, routinely contained diesel, 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 (“UST P3”).
10. Each UST at the Facility was “upgraded” within the meaning of subsection 2 of 9 VAC § 25-580-60.

11. On March 27, 2015, pursuant to Section 9005(a) of RCRA, 42 U.S.C. § 6991d(a), representatives of EPA mailed each Respondent a Request for Information Letter.
12. On November 12, 2015, the Complainant issued Respondents Tanay and Swami an Administrative Complaint, Compliance Order and Notice of Opportunity for Hearing pursuant to the authority under Section 9006 of RCRA, 42 U.S.C. § 6991e, to compel Respondents Tanay and Swami to respond to the March 27, 2015 Request for Information Letter issued to Respondents pursuant to Section 9005(a) of RCRA, 42 U.S.C. § 6991d(a).
13. On December 8, 2015, Patel submitted a response to EPA's March 27, 2015 Request for Information Letter on behalf of Respondents Tanay and Swami.
14. At all times relevant to the applicable violations alleged herein, each UST at the Facility has been a "petroleum UST system" and an "existing tank system" as these terms are defined in 9 VAC § 25-580-10.
15. At all times relevant to the applicable violations alleged herein, none of the USTs at the Facility was "empty" within the meaning of 9 VAC § 25-580-310.1.

**COUNT I**  
**(Failure to Conduct Annual Line Tightness Testing  
or Monthly Monitoring at the Facility)**

16. The preceding Paragraphs are incorporated by reference as though fully set forth herein.
17. 9 VAC § 25-580-140.2 states that underground piping that routinely contains regulated substances must be monitored for releases in a manner that meets the requirements of either 9 VAC § 25-140.2.a. (for pressurized piping) or 9 VAC § 25-580-140.2.b. (for suction piping).
18. 9 VAC § 25-580-140.2.a(2) requires that underground piping that conveys regulated substances under pressure must have an annual line tightness test conducted in accordance with subdivision 2 of 9 VAC § 25-580-170 or have monthly monitoring conducted in accordance with subdivision 3 of 9 VAC § 25-580-170.
19. The underground piping at the Facility is, and has been at all times relevant to the violation alleged herein, piping that routinely conveys regulated substances under pressure.
20. From October 22, 2013, through November 23, 2015, Respondents failed to have an annual line tightness test for the underground piping connected to USTs P1, P2, and P3, as required by subdivision 2 of 9 VAC § 25-580-140 or have alternative monthly monitoring of such piping conducted in accordance with subdivision 3 of 9 VAC § 25-580-170.
21. The acts and/or omissions as alleged in Paragraph 20, above, constitute violations by Respondents of 9 VAC § 25-580-140.2.

**COUNT II**  
**(Failure to Conduct Annual Test of Line Leak Detectors at the Facility)**

22. The preceding Paragraphs are incorporated by reference as though fully set forth herein.
23. 9 VAC § 25-580-140.2.a(1) requires that underground piping that routinely contains regulated substances under pressure be equipped with an automatic line leak detector conducted [sic] in accordance with subdivision 1 of 9 VAC § 25-580-170.
24. 9 VAC § 25-580-170.1. requires that an annual test of the operation of the automatic line leak detector must be conducted in accordance with the manufacturer's requirements.
25. The pressurized underground piping at the Facility is, and has been at all times relevant to this violation, equipped with automatic line leak detectors.
26. From October 22, 2013, through November 23, 2015, Respondents failed to conduct an annual test of the operation of the automatic line leak detectors for the piping connected to the USTs at the Facility in accordance with subdivision 1 of 9 VAC § 25-580-170.
27. The acts and/or omissions as alleged in Paragraph 26, above, constitute violations by Respondents of 9 VAC § 25-580-140.2.

**PROPOSED 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 UST who fails to comply with any requirement or standard promulgated by EPA under Section 9003 of RCRA, 42 U.S.C. § 6991b, or part of an authorized state underground storage tank program shall be liable for a civil penalty not to exceed \$10,000 for each tank for each day of violation. The statutory maximum penalty has been adjusted to account for inflation in accordance with the DCIA to \$11,000 for violations occurring after January 30, 1997, through January 12, 2009, and to \$16,000 for violations occurring after January 12, 2009. 40 C.F.R. § 19.4.

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 in accordance with 40 C.F.R. § 22.19(a)(4).

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 the violation and any good faith efforts to comply with the applicable requirements. In developing the proposed penalty for the violations alleged in this Complaint, Complainant will take into account the particular facts and circumstances of this case with specific reference to the November 1990 "U.S. EPA Penalty Guidance for Violations of UST Regulations" ("UST Penalty Policy"), a copy of which is enclosed.

This policy provides a rational, consistent and equitable methodology for applying the statutory penalty factors enumerated above to particular cases.

Complainant may adjust each gravity-based penalty upward or downward based upon the violator-specific and environmental sensitivity adjustment factors described in the UST Penalty Policy. In addition, Complainant may add a component to reflect any economic benefit gained by Respondents for failing to comply with the regulatory requirement. Complainant will also consider, if raised, Respondents' ability to pay a civil penalty. The burden of raising and demonstrating an inability to pay rests with Respondents.

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 and circumstances unknown to Complainant at the time of issuance of the Complaint that become known after the Complaint is issued.

Pursuant to Section 9006(d)(2) of RCRA, 42 U.S.C. § 6991e(d)(2), Complainant proposes the assessment of a civil penalty of up to \$16,000 per day against each Respondent for each of the applicable 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. Section 22.14(a)(4)(ii), an explanation of the severity of each violation is given below. Complainant intends to seek penalties for each day of violation alleged in each Count, except as to any day of violation that occurred more than five years before the date of filing of this Complaint.

### **Count I - Failure to Perform Annual Line Tightness Testing or Monthly Monitoring**

Consistent with the UST Penalty Policy, this violation constitutes a "major" potential for harm and "major" extent of deviation. As noted above, preventing releases is the foundation of the UST regulatory program. Thus, it is critically important that UST owners and operators utilize effective methods of detecting releases from USTs as well as from the associated underground piping that routinely conveys regulated product to and from such USTs. Respondents' failure to perform an annual line tightness test or monthly monitoring of underground piping at the Facility posed a substantial risk to human health or the environment and was a substantial deviation from the requirements of the authorized Virginia UST regulatory program. The unit of assessment for each of these violations will be per tank associated with the piping.

### **Count II - Failure to Conduct Annual Test of Line Leak Detectors**

Consistent with the UST Penalty Policy, this violation constitutes a "major" potential for harm and "major" extent of deviation. For the reasons set forth above, Respondents' failure to perform annual functionality tests of the automatic line leak detectors of the piping at the Facility posed a substantial risk to human health or the environment from a leak going undetected and constitutes a substantial deviation from the requirements of the federally authorized Virginia UST regulatory program. The unit of assessment for each of these violations will be per tank associated with the piping.

## NOTICE OF RIGHT TO REQUEST A HEARING

Each Respondent may request a hearing before an EPA 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, and/or assert that the Respondent is entitled to judgment as a matter of law. To request a hearing, each Respondent must file a written answer ("Answer") within thirty (30) days after service of this Complaint as set forth in 40 C.F.R. § 22.15(a). The Answer should clearly and directly admit, deny or explain each of the factual allegations contained in this Complaint of which the Respondent has any knowledge. Where a Respondent has no knowledge of a particular factual allegation and so states, such a 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 the Respondent disputes; (3) the basis for opposing any proposed relief; and (4) a statement of whether a hearing is requested. All material facts not denied in the Answer will be considered to be admitted.

*Failure of any Respondent to admit, deny or explain any material allegation in the Complaint shall constitute an admission by that Respondent of such allegation. Failure to 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.*

Any hearing requested and granted will be conducted in accordance with the *Consolidated Rules* (Enclosure A). Respondents must send any Answer to:

Regional Hearing Clerk (3RC00)  
U.S. EPA, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

In addition, please send a copy of any Answer to:

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

## SETTLEMENT CONFERENCE

Complainant encourages settlement of this proceeding 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 each request a settlement conference with the Complainant to discuss the allegations of the Complaint, and the amount of the proposed civil penalty. **HOWEVER, A REQUEST FOR A SETTLEMENT CONFERENCE DOES NOT RELIEVE ANY RESPONDENT OF ITS RESPONSIBILITY TO FILE A TIMELY ANSWER.**

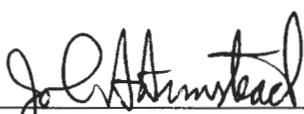
In the event settlement is reached, its terms shall be expressed in a written Consent Agreement prepared by Complainant, signed by the parties, and incorporated into a Final Order signed by the Regional Administrator or his designee. The execution of such a Consent Agreement shall constitute a waiver of the settling Respondent's 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 have your counsel contact Louis F. Ramalho, Senior Assistant Regional Counsel, at (215) 814-2681, prior to the expiration of the thirty (30) day period following service of this Complaint. Once again, however, such a request for a settlement conference does not relieve any Respondent of its responsibility to file an Answer within thirty (30) days following service of this Complaint. Please note that the Quick Resolution settlement procedures set forth in 40 C.F.R. § 22.18 do not apply to this proceeding as the Complaint does not contain a specific proposed penalty. 40 C.F.R. § 22.18(a)(1).

### **SEPARATION OF FUNCTIONS AND *EX PARTE* COMMUNICATIONS**

The following EPA offices, and the staffs thereof, are designated as the trial staff to represent Complainant as the party in this case: the Region III Office of Regional Counsel; the Region III Land & Chemicals Division; and the Office of the EPA Assistant Administrator for Enforcement and Compliance Assurance. 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 an *ex parte* communication with the trial staff on the merits of any issue involved in this proceeding. Please be advised that the *Consolidated Rules* prohibit any *ex parte* discussion of the merits of a case with, among others, the Administrator, members of the Environmental Appeals Board, Presiding Officer, Judicial Officer, Regional Administrator, Regional Judicial Officer, or any other person who is likely to advise these officials on any decision in this proceeding after issuance of this Complaint.

Dated: 9.22.16

  
\_\_\_\_\_  
John A. Armstead  
Director, Land and Chemicals Division  
U.S. EPA, Region III

**CERTIFICATE OF SERVICE**

I hereby certify that on the date set forth below, I hand-delivered to the Regional Hearing Clerk of the U.S. Environmental Protection Agency, Region III, the original and one copy of the foregoing Administrative Complaint, Compliance Order and Notice of Right to Request Hearing, Docket No. RCRA-03-2016-0225 ("Complaint"), and further, that I caused true and correct copies of the foregoing Complaint to be transmitted via United Parcel Service overnight delivery and Certified Mail - Return Receipt Requested, to the following addressees:

Tanay, LLC.  
1243 Norview Avenue  
Norfolk, VA 23513

Swami, LLC.  
407 Lorton Court  
Chesapeake, VA 23323

Ashokkumar Patel, registered agent  
407 Lorton Court  
Chesapeake, VA 23323

9-26-16  
Date

  
\_\_\_\_\_  
Louis F. Ramalho  
Senior Assistant Regional Counsel  
U.S. EPA, Region III  
Office of Regional Counsel (3RC50)  
1650 Arch Street  
Philadelphia, PA 19103-2029

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