

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY**

**BEFORE THE ADMINISTRATOR**

**In the Matter of:** )

**Sukhjinder S. Virk, Owner** )  
**Virks Gas and Grocery** )

**Respondent** )

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**Docket No. RCRA-05-2010-0017**

2011 MAR 30 PM 4: 21

DEFERRED  
REGIONAL HEARING CLERK  
U.S. EPA REGION 5

**COMPLAINANT'S INITIAL PREHEARING EXCHANGE**

Pursuant to Rule 22.19(a) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. § 22.19(a), and the Presiding Officer's Order of February 10, 2011, Complainant submits this Initial Prehearing Exchange in the above-captioned matter.

Complainant filed a Second Joint Motion to Extend the Period For the Prehearing Exchanges with the Region Hearing Clerk in Region 5 on Monday, March 28, 2011 (Second Joint Motion). The Second Joint Motion was also served on the Presiding Officer by UPS Next Day Air on March 28, 2011, and is now pending before the Presiding Officer. The Second Joint Motion states that the parties have prepared a written Consent Agreement and Final Order (CAFO) in settlement of the claims in this matter, that the Respondent has executed the CAFO, and that a brief additional time is necessary to permit EPA to complete its review and execution of the CAFO. This Initial Prehearing Exchange has been prepared and filed in the event that the

Second Joint Motion is not granted effective March 30, 2011. In the event that the CAFO is not fully executed and filed, Complainant respectfully intends to substantially supplement this Initial Prehearing Exchange when Complainant files Complainant's Rebuttal Prehearing Exchange on or before May 13, 2011.

**I. WITNESSES**

Complainant may call any and/or all of the following witnesses at a hearing of the above-captioned matter. In addition, should Respondents' Initial Prehearing Exchanges or Reply Prehearing Exchanges, or other investigation and discovery, reveal the need for further witnesses, Complainant respectfully reserves the right to supplement this list of witnesses upon adequate notice to this tribunal and Respondents, and to call such witnesses at the hearing of this matter.

**A. Sandra Siler, EPA, Region 5**

Ms. Siler is an Enforcement Officer in Region 5's Underground Storage Tank program, may be called as a witness as to the facts of Respondent's violations. Ms. Siler conducted inspections of the Respondent's facility, Virks Gas and Grocery, 702 IN Highway 212, Michigan City, IN (Facility) on October 24, 2009, and December 9, 2008. Ms. Siler will testify, if necessary, regarding her findings and observations during these inspections, and subsequent follow-up activities including, but not limited to information provided by the Respondent and others.

Ms. Siler may also testify as to how the penalty proposed in this matter was calculated applying the statutory penalty factors set forth by the statute, as explained by “U.S. EPA Penalty Guidance for Violations of UST Regulations” (OSWER Directive 9610.12, dated November 14, 1990), as amended (UST Penalty Policy). She may also offer her assessment as to the appropriateness of the penalty proposed in the Complaint, considering the statutory penalty factors and any additional factors described in the penalty policy.

**B. Robert Strimbu**

Mr. Strimbu is an inspector with the Indiana Department of Environmental Management. Mr. Strimbu conducted an inspection of the Respondent’s Facility on July 9, 2008, and may be called upon to testify regarding his observations during that inspection.

Complainant respectfully reserves its right to amend, supplement, and modify its witness list and to call additional witnesses on its behalf. In addition, Complainant respectfully reserves the right to expand, or otherwise modify the scope, extent, and areas of testimony of any of these witnesses where appropriate.

Should Complainant make any of the modifications described in the preceding paragraph, Complainant shall, by filing an Amendment to this Prehearing Exchange, provide the Presiding Officer and the Respondent a reasonable opportunity to review the new or revised witness list. Such changes may be occasioned by the discovery of new evidence or witnesses, the unavailability of one or more witnesses, prehearing stipulations of fact between the parties, rulings on motions, or for any other legitimate purpose.

**II. EXHIBITS**

1. Inspection Compliance Summary for IDEM inspection of Respondent's Facility on July 9, 2008.
2. Inspection Report and checklists for EPA inspections on October 14, 2008, and December 9, 2008.
3. Notice of Violation and Compliance Order/Settlement Agreement (Field Citation), October 14, 2008.
4. Field Citation Withdrawal Notice, February 5, 2009
5. Notification for Underground Storage Tanks, April 25, 1986
6. Notification for Underground Storage Tanks, March 1, 1997
7. Notes of Sandra Siler for EPA inspections of Respondent's Facility on October June 12, 2008
8. Pre-Filing Notice and Opportunity to Confer, June 26, 2009
9. Conversation Record, Sandra Siler, July 30, 2009
10. U.S. EPA Penalty Guidance for Violations of UST Regulations, November 1990, as amended
11. Modifications to EPA's Penalty Policies to Implement the Civil Monetary Penalty Inflation Adjustment Rule (pursuant to the Debt Collection Improvement Act of 1996 (effective October 1, 2004)), dated September 21, 2004

Complainant will file and serve copies of these exhibits with Complainant's Rebuttal Prehearing Exchange.

### **III. PROPOSED PENALTY**

The Complaint proposed a penalty for the claims in this matter of \$20,312. Sandra Siler made the penalty calculations in accordance with the UST Penalty Policy, as amended. A description of Ms. Siler's penalty calculation is included below, which may be supplemented in Complainant's Rebuttal Prehearing Exchange.

Ms. Siler assigned a "major/major" matrix value for the gravity based component of the penalty, yielding a matrix value of \$1,930 per tank and a total of \$5,790 for 3 tanks. Ms. Siler made violator-specific adjustments, increasing the matrix value to \$6,765. Ms. Siler assigned a "moderate" level for the Environmental Sensitivity Multiplier (ESM) yielding a multiplier of 1.5 and assigned a Days of Noncompliance Multiplier (DNM) of 2.0. Multiplying the adjusted matrix value by the ESM and the DNM yields a gravity based component of \$20,295. Ms. Siler calculated an Economic Benefit of \$17, which when added to the gravity based component of the penalty yields a penalty of \$20,312.

### **IV. PAPERWORK REDUCTION ACT**

Complainant does not believe that the provisions of Section 3512 of the Paperwork Reduction Act ("PRA") apply to this case. To the extent that these provisions may be applicable to this proceeding, however, Complainant believes that there was a valid display of the relevant Office of Management and Budget (OMB) control numbers during the relevant time period. Complainant will provide a more detailed analysis in its Rebuttal Prehearing Exchange.

V. LOCATION OF HEARING

Complainant, Respondents and Respondents' Counsel are all based in or near Chicago, Illinois, and therefore a hearing in Chicago would be convenient for all parties.

Respectfully submitted,

3/30/11  
Date

Terence Branigan  
TERENCE BRANIGAN  
Associate Regional Counsel  
Counsel for Complainant

**CERTIFICATE OF SERVICE**

I hereby certify that on the date below, I sent copies of the attached Complainant's Initial Prehearing Exchange in the following manner to the addressees listed below:

Original and One Copy by  
Hand Delivery to:

La Dawn Whitehead  
Regional Hearing Clerk  
U.S. EPA/Region 5  
77 W. Jackson Boulevard, E-19J  
Chicago, IL 60604-3590

Copy by UPS to:

Honorable Barbara A. Gunning  
Administrative Law Judge  
U.S. Environmental Protection Agency  
Office of Administrative Law Judges  
1099 14<sup>th</sup> Street, N.W.  
Washington, D.C. 20460

Paul B. Poracky  
Koransky, Bouwer & Poracky, PC  
425 Joliet Street, Suite 425  
Dyer, Indiana 46311

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U.S. EPA REGION 5  
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Elizabeth Rosado  
Administrative Assistant  
U.S. EPA/Region 5  
77 W. Jackson Boulevard, C-14J  
Chicago, IL 60604

Dated: March 30, 2011