

Commonwealth of Virginia's Underground Storage Tank Program with respect to the underground storage tanks at Respondents' facility located at 1243 Norview Avenue, Norfolk, Virginia 23513 (the "Facility"). 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 underground storage tank program which has been authorized by EPA.

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 underground storage tank management program established under Subtitle I of RCRA, 42 U.S.C. §§ 6991-6991i. The provisions of the Virginia UST management program, through these final authorizations, 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 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.*

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

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

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

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Each Respondent, is a Virginia limited liability company, and therefore is a “person” as defined in Section 9001 of RCRA, 42 U.S.C. § 6991, and 9 VAC § 25-580-10.
2. Respondent Tanay, LLC has a business address listed as 1243 Norview Avenue, Norfolk, Virginia 23513 which is the same address as the Facility.
3. Respondent Swami, LLC is identified in the Virginia Department of Environmental Quality’s (“VADEQ”) records as the UST – Operator for the Facility. Further, during an August 20, 2014 inspection of the Facility, Mr. Rudy Patel, Petroleum Tanks Compliance Owner Contact for Swami, LLC, identified Swami, LLC, whose office is located at 407 Lorton Court, Chesapeake, Virginia 23323, as the owner/operator of the Facility.
4. Based upon information and belief, each Respondent is or has been, and at all times relevant to the allegations in this Complaint, either individually or jointly an “owner” and/or “operator” as such terms are defined in Section 9001 of RCRA, 42 U.S.C. § 6991, and 9 VAC § 25-580-10 of “underground storage tanks” (“USTs”) and “UST systems,” as such terms are defined in Section 9001 of RCRA, 42 U.S.C. § 6991, and 9 VAC § 25-580-10, located at the Facility.
5. Pursuant to Section 9005(a) of RCRA, 42 U.S.C. § 6991*d*(a), an owner or operator of an UST must, upon request by any duly designated representative of EPA, furnish, in relevant part, information and records with regard to such USTs.
6. On March 19, 2015, EPA contacted Mr. Rudy Patel, via telephone, at (757) 553-8797 to inform him that a Request for Information letter would be sent to each Respondent for a response.
7. On March 27, 2015, EPA mailed each Respondent a Request for Information letter (I15-022), issued pursuant to Section 9005(a) of RCRA, 42 U.S.C. § 6991*d*(a). This Request for Information letter required each Respondent to provide certain information regarding the USTs

at the Facility. The Request for Information letter was received by each Respondent on March 30, 2015 and signed for by "Patel".

8. The Request for Information required each Respondent to provide the requested information no later than fourteen (14) calendar days from the date of each Respondent's receipt of the Request. Each Respondent was thus required to provide the requested information by no later than April 13, 2015.

9. Having received no response, EPA placed a telephone call to Mr. Patel on April 30, 2015. The call was unanswered so EPA left a voice message for Mr. Patel regarding the unanswered Request for Information Letter.

10. Having received no response to the April 30, 2015 voice message, EPA placed a second call to Mr. Patel on May 5, 2015, and again left a voice message regarding the unanswered Request for Information Letter and requesting that he return the call.

11. Having received no response to the May 5, 2015 voice message, EPA placed a third call to Mr. Patel on May 7, 2015, and left a final message regarding the unanswered Request for Information Letter and stating that if he did not respond the matter would be referred for formal enforcement action.

12. Finally, on May 15, 2015, after still receiving no response to the Request for Information Letter or three (3) telephone messages, EPA issued a Last Chance Letter to each Respondent. Both letters were delivered via United Parcel Service and signed for by a person identified as "TJOROGE" on May 18, 2015.

13. As of the date of this Complaint, neither Respondent has sent to EPA the information requested in the Request for Information Letter.

14. From at least April 13, 2015 to the date of this Complaint, Respondents have violated Section 9005(a) of RCRA, 42 U.S.C. § 6991d(a), by failing to provide a response to EPA's Request for Information letter.

III. COMPLIANCE ORDER

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

B. Each Respondent must submit its response in the following manner:

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

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

and

Donzetta W. Thomas
Senior Assistant Regional Counsel
Mail Code 3RC50
United States Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103-2029

- (b) One copy to the Commonwealth of Virginia Department of Environmental Quality, by regular mail, to:

Russell P. Ellison
UST Program Coordinator
Office of Spill Response & Remediation
Division of Land Protection & Revitalization
Virginia Department of Environmental Quality
629 East Main Street
Richmond, VA 23219

C. Each Respondent is hereby notified that failure to comply with any of the terms of this Compliance Order may subject it to the imposition of a civil penalty of up to \$37,500 for each day of continued noncompliance, pursuant to Section 9006(a)(3) of RCRA, 42 U.S.C. § 6991e(a)(3), the Debt Collection Improvement Act of 1996

IV. OPPORTUNITY TO REQUEST A HEARING

Each Respondent has the right to request a hearing to contest any matter of law or material fact set forth in this Complaint and Compliance Order or the terms of the Compliance Order. **To request a hearing, each Respondent must file a written Answer to the Complaint with the Regional Hearing Clerk, Mail Code 3RC00, U.S. EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029, within thirty (30) days of receipt of this Complaint.** The Answer must clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint of which Respondents have any knowledge. Where Respondents have no knowledge of a particular factual allegation, the Answer should so state. The Answer should contain: (1) the circumstances or arguments which are alleged to constitute the grounds of any defense; (2) the facts which Respondent disputes; (3) the basis for opposing any proposed relief; and (4) a statement as to whether a hearing is requested. All material facts not admitted, explained or denied in the Answer will be considered as admitted.

Pursuant to 40 C.F.R. § 22.37(b), the Compliance Order in this Complaint automatically becomes a Final Order if a written Answer requesting a hearing is not filed within 30 days after receipt of this Complaint.

Any hearing requested by either Respondent will be conducted in accordance with the provisions of the Consolidated Rules of Practice. A copy of Respondents' Answer and all other documents that Respondents file in this action should be sent to the attorney assigned to represent EPA in this matter, as follows:

Donzetta W. Thomas
Senior Assistant Regional Counsel
Mail Code 3RC50
U.S. EPA - Region III

V. SETTLEMENT CONFERENCE

Complainant encourages settlement of the proceedings at any time after issuance of the Complaint if such settlement is consistent with the provisions and objectives of RCRA. Whether or not a hearing is requested, Respondents may request a settlement conference with the Complainant to discuss the allegations of the Complaint. A request for a settlement conference does not relieve either Respondent of its responsibility to file a timely Answer.

The procedures in the Consolidated Rules of Practice for quick resolution of a proceeding do not apply in this case because the Complaint seeks a compliance order. *See* 40 C.F.R. § 22.18(a). In the event settlement is reached, the terms shall be expressed in a written Consent Agreement prepared by Complainant, signed by the parties, and incorporated into a Final Order signed by the Regional Administrator or his designee. The execution of such a Consent Agreement shall constitute a waiver of Respondents' right to contest the allegations of the Complaint and its right to appeal the proposed Final Order accompanying the Consent Agreement.

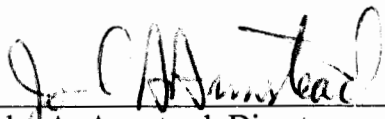
If you wish to arrange a settlement conference, please contact Donzetta W. Thomas, Senior Assistant Regional Counsel, at (215) 814-2474. Please note that a request for a settlement conference does not relieve Respondent of its responsibility to file an Answer within thirty (30) days following its receipt of this Complaint.

VI. SEPARATION OF FUNCTIONS AND EX PARTE COMMUNICATIONS

The following Agency offices and officers, and their staffs, are designated as the trial staff to represent the Agency as a party in this case: U.S. EPA, Region III, Office of Regional Counsel; U.S. EPA, Region III, Land and Chemicals Management Division; and the EPA Assistant Administrator for Enforcement and Compliance Assurance. Commencing from the

date of the issuance of this Complaint until issuance of a final agency decision in this case, neither the Administrator, members of the Environmental Appeals Board, Presiding Officer, Regional Administrator, nor the Regional Judicial Officer, may have an *ex parte* communication with the trial staff or any representative of the Respondents on the merits of any issue involved in this proceeding. Please be advised that the Consolidated Rules of Practice prohibit any unilateral discussion or *ex parte* communication of the merits of a case with the Administrator, members of the Environmental Appeals Board, Presiding Officer, Regional Administrator, or the Regional Judicial Officer after issuance of a Complaint.

Date: 11.9.15



John A. Armstead, Director
Land and Chemicals Division

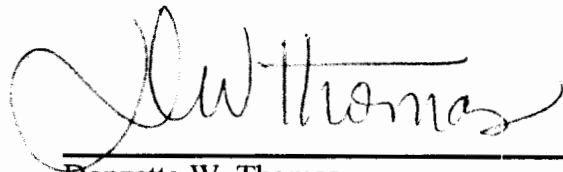
CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the date provided below, I hand-delivered and filed the original of the above captioned United States Environmental Protection Agency's Administrative Complaint, Compliance Order and Notice of Opportunity for Hearing, EPA **Docket Number RCRA-03-2016-0010**, with the Regional Hearing Clerk, EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029, and that a true and correct copy of the Administrative Complaint, Compliance Order and Notice of Opportunity for Hearing, was sent by UPS Overnight mail, to:

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

Tanay, LLC
Ashokkumar Patel, registered agent
1243 Norview Avenue
Norfolk, VA 23513

7/12/15
Date



Donzetta W. Thomas
Senior Assistant Regional Counsel
(215) 814-2474

