

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

In the Matter of:)	
)	Administrative Complaint and Notice of
)	Opportunity for Hearing
930 Port Street, Inc.)	
28102 Baileys Neck Road)	U.S. EPA Docket Number
Easton, MD 21601)	RCRA-03-2021-0090
RESPONDENT,)	
)	Proceeding Under Section 9006 of the
)	Resource Conservation and Recovery
)	Act, as amended, 42 U.S.C. Section
Easton Point)	6991e
930 Port Street)	
Easton, MD 21601)	
)	
FACILITY.)	
)	
)	

ADMINISTRATIVE COMPLAINT
AND NOTICE OF OPPORTUNITY FOR HEARING

I. INTRODUCTION

This Administrative Complaint and Notice of Opportunity for 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”), 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, which can be found at <https://www.epa.gov/enforcement/consolidated-rules-practice-40-cfr-part-22-administrative-assessment-civil-penalties-1>.

EPA hereby notifies 930 Port Street, Inc., a Maryland for profit corporation (“Respondent”) that EPA has determined that Respondent has violated certain provisions of Subtitle I of RCRA, 42 U.S.C. §§ 6991-6991m, EPA’s regulations thereunder at 40 C.F.R. Part 280, and the State of Maryland’s federally authorized underground storage tank program with respect to the underground storage tanks at Respondent’s facility located at 930 Port Street, Easton, Maryland (the “Facility”). Section 9006 of RCRA, 42 U.S.C. § 6991e, authorizes EPA to take enforcement action, including issuing a compliance order and/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 July 30, 1992, pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c, and 40 C.F.R. Part 281, Subpart A, the State of Maryland was granted final authorization to administer a state underground storage tank 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 Maryland underground storage tank management program which were authorized became requirements of Subtitle I of RCRA and are, accordingly, enforceable by EPA pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e. Maryland’s authorized underground storage tank program regulations are administered by the Maryland Department of the Environment (“MDE”), and are set forth in the Code of Maryland Regulations and will be cited as “COMAR” followed by the applicable section of the regulations, a copy of which is enclosed with this Complaint (Attachment A).

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 State of Maryland 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. At all times relevant to this CAFO, Respondent has been the “owner” and/or “operator,” as those terms are defined in Section 9001(3) and (4) of RCRA, 42 U.S.C. § 6991(3) and (4), and COMAR § 26.10.02.04B(37) and (39), 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 COMAR § 26.10.02.04B(64) and (66), located at a facility known as Easton Point located at 930 Port Street, Easton, Maryland (the “Facility”).
2. Respondent is a “person” as defined in Section 9001(5) of RCRA, 42 U.S.C. § 6991(5), and COMAR § 26.10.02.04B(40).
3. On June 13, 2018, EPA performed a Compliance Evaluation Inspection (“CEI”) at the Facility. At the time of the June 13, 2018 CEI, and at all times relevant to the violations alleged herein, five (5) USTs were located at the Facility as described in the following subparagraphs:
 - A. A four thousand (4,000) gallon single-walled cathodically protected steel tank that was installed in or about 1994, and that, at all times relevant hereto, routinely contained and was used to store 93 Octane (premium ethanol), a “regulated substance” as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and COMAR § 26.10.02.04B(48) (hereinafter “UST No. 1”);
 - B. A four thousand (4,000) gallon single-walled cathodically protected steel tank that was installed in or about 1994, and that, at all times relevant hereto, routinely contained and was used to store off-road diesel, a “regulated substance” as that

term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and COMAR § 26.10.02.04B(48) (hereinafter “UST No. 2”);

- C. An eight thousand (8,000) gallon single-walled cathodically protected steel tank that was installed in or about 1994, and that, at all times relevant hereto, routinely contained and was used to store on-road diesel, a “regulated substance” as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and COMAR § 26.10.02.04B(48) (hereinafter “UST No. 3”);
- D. An eight thousand (8,000) gallon single-walled cathodically protected steel tank that was installed in or about 1994, and that, at all times relevant hereto, routinely contained and was used to store 91 Octane (premium non-ethanol), a “regulated substance” as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and COMAR § 26.10.02.04B(48) (hereinafter “UST No. 4”), and
- E. An eight thousand (8,000) gallon single-walled cathodically protected steel tank that was installed in or about 1995, and that, at all times relevant hereto, routinely contained and was used to store 87 Octane gasoline, a “regulated substance” as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and COMAR § 26.10.02.04B(48) (hereinafter “UST No. 5”).

- 4. At all times relevant to the violations alleged herein, USTs Nos. 1 through 5 have been “petroleum UST systems” and “new tank systems” as these terms are defined in COMAR § 26.10.02.04B(43) and (31), respectively.
- 5. USTs Nos. 1 through 5 are and were, at all times relevant to applicable violations alleged in this CAFO, used to store “regulated substance(s)” at Respondent’s Facility, as defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and COMAR § 26.10.02.04B(48), and have not been “empty” as that term is defined at COMAR § 26.10.10.01A.

COUNT 1

(Failure to perform release detection on USTs)

6. The allegations of Paragraphs 1 through 5 of this Complaint are incorporated herein by reference.
7. Pursuant to COMAR § 26.10.05.01A and C, owners and operators of new and existing UST systems must provide a method or combination of methods of release detection monitoring that meets the requirements described therein.
8. COMAR § 26.10.05.02B provides, in pertinent part, that USTs shall be monitored at least every 30 days for releases using one of the methods listed in COMAR § 26.10.05.04E-I, except that:
 - (1) UST systems that meet the performance standards in COMAR " 26.10.03.01 (Performance Standards for New UST Systems) and .02 (Upgrading of Existing UST Systems), and the monthly inventory control requirements in COMAR § 26.10.05.04B or C (Inventory Control or Manual Tank Gauging) shall use tank tightness testing, conducted in accordance with COMAR § 26.10.05.04D (Tank Tightness Test), at least every 5 years until December 22, 1998, or until 10 years after the UST is installed or upgraded under COMAR § 26.10.03.02B (Tank Upgrading Requirements); and
 - (2) UST systems that do not meet the performance standards in COMAR § 26.10.03.01 (Performance Standards for New UST Systems) and .02 (Upgrading of Existing UST Systems), may use monthly inventory controls, conducted in accordance with COMAR § 26.10.05.04B or C (Inventory Control or Manual Tank Gauging) and annual tank tightness testing, conducted in accordance with COMAR § 26.10.05.04D (Tank Tightness Test) until December 22, 1998, when the tank must be upgraded under COMAR § 26.10.03.02 (Tank

Upgrading Requirements) or permanently closed under COMAR § 26.10.10.02;
and

(3) Tanks with a capacity of 550 gallons or less and not metered may use weekly tank gauging, conducted in accordance with COMAR § 26.10.05.04C.

9. At all times relevant to the violation alleged herein, the method of release detection selected by Respondent for the UST No. 1 through 5 was automatic tank gauging in accordance with COMAR § 26.10.05.04E.
10. From October 6, 2016 until September 25, 2017, and from January 5, 2018 until April 2, 2018, Respondent failed to perform automatic tank gauging for the UST No. 1 in accordance with COMAR § 26.10.05.04E.
11. From October 6, 2016 until November 28, 2016, from March 6, 2017 until April 10, 2017, from August 31, 2017 until October 23, 2017, and from December 6, 2017 through April 22, 2018, Respondent failed to perform automatic tank gauging for the UST No. 2 in accordance with COMAR § 26.10.05.04E.
12. From October 6, 2016 until February 20, 2017, from March 27, 2017 until December 6, 2017, from February 15, 2018 until April 23, 2018, from September 27, 2018 until February 18, 2019, and from January 5, 2020 through April 22, 2020 Respondent failed to perform automatic tank gauging for the UST No. 3 in accordance with COMAR § 26.10.05.04E.
13. From October 6, 2016 until June 19, 2017, from September 21, 2017 until December 5, 2017, from January 6, 2018 until April 2, 2018, from February 21, 2019 until April 1, 2019, and from February 2, 2020 through March 18, 2020 Respondent failed to perform automatic tank gauging for the UST No. 4 in accordance with COMAR § 26.10.05.04E.
14. From October 6, 2016 until November 28, 2016, from January 19, 2017 until April 10, 2017, from August 3, 2017 until December 5, 2017, from January 6, 2018 until April 23, 2018, and

from December 21, 2019 through January 22, 2020 Respondent failed to perform automatic tank gauging for the UST No. 5 in accordance with COMAR § 26.10.05.04E.

15. During the periods of time indicated in Paragraphs 10 through 14, above, Respondent did not use any of the other release detection methods specified in COMAR § 26.10.05.02B(1)-(3) and/or COMAR § 26.10.05.04A on USTs Nos. 1 through 5 located at the Facilities.
16. Respondent's acts and/or omissions as alleged in Paragraphs 10 through 15, above, constitute violations by Respondent of COMAR § 26.10.05.01A and .02B.

COUNT II

(Failure to perform automatic line leak detector testing annually on USTs)

17. The allegations of Paragraphs 1 through 16 of the Complaint are incorporated herein by reference.
18. COMAR § 26.10.05.02C(2) provides, in pertinent part, that underground piping that conveys regulated substances under pressure shall:
 - A. Be equipped with an automatic line leak detector conducted in accordance with COMAR § 26.10.05.05B; and
 - B. Have an annual line tightness test conducted in accordance with COMAR § 26.10.05.05C or have monthly monitoring conducted in accordance with COMAR § 26.10.05.05D.
19. COMAR § 26.10.05.05B provides, in pertinent part, that an annual test of the operation of the leak detector shall be conducted in accordance with the manufacturer's requirements.
20. Respondent tested the automatic line leak detectors on July 26, 2016 for USTs Nos. 2, 4, and 5.
21. Respondent tested the automatic line leak detectors on September 1, 2016 for USTs Nos. 1 and 3.
22. Respondent tested the automatic line leak detectors on March 23, 2018 for USTs Nos. 1 through 5.

23. Respondent failed to test annually the automatic line leak detectors from July 26, 2017 until March 23, 2018 for USTs Nos. 2, 4, and 5.
24. Respondent failed to test annually the automatic line leak detectors from September 1, 2017 until March 23, 2018 for USTs Nos. 1 and 3.
25. From July 26, 2017 until March 23, 2018, the piping for USTs Nos. 2, 4, and 5 was underground and routinely conveyed regulated substances under pressure.
26. From September 1, 2017 until March 23, 2018, the piping for USTs Nos. 1 and 3 was underground and routinely conveyed regulated substances under pressure.
27. Respondent's acts and/or omissions as alleged in Paragraphs 23 through 26, above, constitute violations by Respondent of COMAR § 26.10.05.02C(2)(a) and COMAR § 26.10.05.05B.

COUNT III

(Failure to perform line tightness testing or monthly monitoring
on piping for USTs)

28. The allegations of Paragraphs 1 through 27 of this Complaint are incorporated herein by reference.
29. Pursuant to COMAR § 26.10.05.01A and C, owners and operators of new and existing UST systems must provide a method or combination of methods of release detection monitoring that meets the requirements described therein.
30. COMAR § 26.10.05.02C(2) provides, in pertinent part, that underground piping that conveys regulated substances under pressure shall:
 - a. Be equipped with an automatic line leak detector conducted in accordance with COMAR § 26.10.05.05B; and
 - b. Have an annual line tightness test conducted in accordance with COMAR § 26.10.05.05C or have monthly monitoring conducted in accordance with COMAR § 26.10.05.05D.

31. Respondent performed an annual line tightness test on June 27, 2016 for the underground piping for USTs Nos. 2, 4, and 5.
32. Respondent performed an annual line tightness test on September 1, 2016 for the underground piping for USTs Nos. 1 and 3.
33. Respondent performed an annual line tightness test on March 23, 2018 for USTs Nos. 1 through 5.
34. Respondent failed to perform an annual line tightness testing in accordance with COMAR § 26.10.05.05C or have monthly monitoring conducted in accordance with COMAR § 26.10.05.05D for the underground piping associated with USTs Nos. 1 and 3 from September 1, 2017 until March 23, 2018.
35. Respondent failed to perform an annual line tightness testing in accordance with COMAR § 26.10.05.05C or have monthly monitoring conducted in accordance with COMAR § 26.10.05.05D for the underground piping associated with USTs Nos. 2, 4 and 5 from June 27, 2017 until March 23, 2018.
36. From September 1, 2017 until March 23, 2018, the piping for USTs Nos. 1 and 3 was underground and routinely conveyed regulated substances under pressure.
37. From June 27, 2017 until March 23, 2018, the piping for USTs Nos. 2, 4, and 5 was underground and routinely conveyed regulated substances under pressure.
38. Respondent's acts and/or omissions as alleged in Paragraphs 34 through 37, above, constitute violations by Respondent of COMAR § 26.10.05.02C(2)(b).

COUNT IV

(Failure to report a suspected release from UST No.3)

39. The allegations of Paragraphs 1 through 38 of this Complaint are incorporated herein by reference.

40. COMAR § 26.10.08.01A provides that if a storage system fails a test for tightness or is otherwise determined to be leaking, the person conducting the test, the owner, and the person-in-charge of the storage system shall notify the Maryland Department of Environment (“MDE”) within two (2) hours.
41. COMAR § 26.10.08.01B(3) provides, in pertinent part, that owners or operators of UST systems shall report to the MDE pursuant to COMAR § 26.10.08.01A if the monitoring results from a release detection method required under COMAR § 26.10.05.02 (Requirements for Petroleum UST Systems) indicate a release may have occurred, unless the monitoring device is found to be defective, and is immediately repaired, recalibrated, or replaced, and additional monitoring does not confirm the initial result.
42. On February 20, 2017, the automatic tank gauging system provided a fail test result indicating that a release may have occurred from UST No. 3.
43. On February 27, 2017, the automatic tank gauging system provided a fail test result indicating that a release may have occurred from UST No. 3.
44. Respondent did not find the monitoring devices for UST No. 3 to be defective.
45. Respondent did not report within 2 hours to MDE the suspected releases as described in Paragraphs 42 and 43, above.
46. Respondent’s acts and/or omissions as alleged in Paragraphs 42 through 45, above, constitute a violation by Respondent of COMAR § 26.10.08.01.

COUNT V

(Failure to investigate a suspected release from UST No.3)

47. The allegations of Paragraphs 1 through 46 of this Complaint are incorporated herein by reference.
48. COMAR § 26.10.08.01B(3) provides, in pertinent part, that owners or operators of UST systems shall report to the MDE and follow the procedures in COMAR § 26.10.08.03 (Release

Investigation and Confirmation Steps) if monitoring results from a release detection method required under COMAR § 26.10.05.02 (Requirements for Petroleum UST Systems) indicate a release may have occurred, unless the monitoring device is found to be defective, and is immediately repaired, recalibrated, or replaced, and additional monitoring does not confirm the initial result.

49. COMAR § 26.10.08.03 provides, in pertinent part, that owners and operators shall immediately investigate and confirm all suspected releases of regulated substances requiring reporting under COMAR § 26.10.08.01 within 72 hours or another reasonable time period specified by MDE, unless corrective action is initiated by the owner and/or operator in accordance with COMAR § 26.10.09.
50. On February 20, 2017, the automatic tank gauging system provided a fail test result indicating that a release may have occurred from UST No. 3.
51. On February 27, 2017, the automatic tank gauging system provided a fail test result indicating that a release may have occurred from UST No. 3.
52. The incidents described in Paragraphs 50 and 51, above, constitute two separate notices of a suspected release which was required to be reported to MDE under COMAR § 26.10.08.01 and immediately investigated by Respondent under COMAR § 26.10.08.03.
53. Respondent failed to undertake an immediate investigation and confirm the suspected releases of regulated substances from UST No. 3 within the time and manner prescribed by COMAR § 26.10.08.03 or take any corrective action in accordance with COMAR § 26.10.09.
54. Respondent's acts and/or omissions as alleged in Paragraphs 50 through 53, above, constitute a violation by Respondent of COMAR § 26.10.08.01 and 03.

COUNT VI

(Failure to test cathodic protection system on USTs)

55. The allegations of Paragraphs 1 through 54 of this Complaint are incorporated herein by reference.
56. COMAR § 26.10.04.02D(1) provides that all UST systems equipped with cathodic protection system must be inspected for proper operation within 6 months of installation and at least every year thereafter by a qualified cathodic protection tester.
57. USTs Nos. 1 through 5 are and were, at the time of the violations alleged herein, “steel UST systems with corrosion protection” and were used to store regulated substances within the meaning of COMAR § 26.10.04.02D.
58. Respondent performed a test of the cathodic protection system for USTs Nos. 1 through 5 on June 17, 2016.
59. Respondent performed a test of the cathodic protection system for USTs Nos. 1 through 5 on February 1, 2018.
60. Respondent was approximately 7 months overdue in testing the cathodic protection system as required by COMAR § 26.10.04.02D(1) for USTs Nos. 1 through 5 at the Facility from June 17, 2017 until February 1, 2018.
61. Respondent’s act and/or omission as alleged in Paragraphs 55 through 57, above, constitute violations by Respondent of COMAR § 26.10.04.02D(1).

III. PROPOSED CIVIL PENALTY

Section 9006(d)(2) of RCRA, 42 U.S.C. § 6991e(d)(2), and 40 C.F.R. Part 19, provide, in relevant part, that any owner or operator of an underground storage tank who fails to comply with any requirement or standard promulgated by EPA under Section 9003 of RCRA, 42 U.S.C. § 6991c, or that is 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. In accordance with the Adjustment of Civil Monetary Penalties for Inflation, promulgated pursuant to the Debt Collection Improvement Act of 1996 and codified at 40 C.F.R. Part 19, all violations of RCRA Section 9006(d)(2), 42 U.S.C. § 6991e(d)(2),

occurring after November 2, 2015 where penalties are assessed on or after December 23, 2020 shall be liable for a civil penalty not to exceed \$24,730 for each tank for each day of violation. *See*, Vol. 85 No. 247 *Federal Register* Pages 83818-83821 (December 23, 2020). 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.

Pursuant to 40 C.F.R. § 22.14(a)(4)(ii) of the Consolidated Rules of Practice (“Consolidate Rules”), 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. *See* 40 C.F.R. § 22.19(a)(4).

To develop a proposed penalty for the violations alleged in this Complaint, EPA will take into account the particular facts and circumstances of this case with specific reference to the methodology set forth in the UST Penalty Policy, found at <https://www.epa.gov/sites/production/files/2014-02/documents/d9610.12.pdf> and the Interim Consolidated Enforcement Policy for Underground Storage Tank (UST) Regulations and Revised Field Citation Program and ESA Policy found at <https://www.epa.gov/sites/production/files/2019-12/documents/final-interim-consolidated-ust-penalty-policy-v3.pdf>, which reflects the statutory penalty criteria and factors set forth Section 9006(c) of RCRA. 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 also consider, among other factors, each Respondent’s ability to pay a civil penalty. The burden of raising and demonstrating an inability to pay rests with the Respondent. In addition, to the extent that facts and circumstances unknown to Complainant at the time of issuance of this Complaint become known after the Complaint is issued, such facts and circumstances may also be considered as a basis for adjusting a civil penalty.

This Complaint 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 the violations alleged in this Complaint is set forth below.

Failure to provide release detection for USTs

The “potential for harm” for this violation is “major.” Given that USTs are, by definition, underground, it is critically important that facility owners and operators utilize effective methods of detecting releases from such tanks. The prevention and detection of leaks are the cornerstones of the UST regulatory program.

The “extent of deviation” for this violation is “major.” Failure to monitor an UST for releases at least every 30 days using an allowable method of release detection typically constitutes a substantial deviation from the requirements of the RCRA regulatory program.

Failure to perform automatic line leak detection annually.

The “potential for harm” for this violation is “major”. It is critically important that facility owners and operators utilize effective methods of detecting releases from USTs and their associated piping. The prevention and detection of leaks are the cornerstones of the UST regulatory program. Respondent’s failure to perform an annual line leak detector test for the underground piping associated with USTs at the Facility presented a substantial risk to human health or the environment from a leak going undetected.

The “extent of deviation” for this violation is also “major” because it presents a substantial deviation from the requirements of the RCRA regulatory program.

Failure to perform annual line tightness testing or monthly monitoring.

The “potential for harm” for this violation is “major.” It is critically important that facility owners and operators utilize effective methods of detecting releases from USTs and their associated piping. The prevention and detection of leaks are the cornerstones of the UST regulatory program. Respondent’s failure to perform an annual line tightness test or monthly monitoring of underground

piping associated with USTs at the Facility presented a substantial risk to human health or the environment from a leak going undetected.

The “extent of deviation” for this violation is also “major” because it presents a substantial deviation from the requirements of the RCRA regulatory program.

Failure to report to the implementing agency of a suspected release.

The “potential for harm” for this violation is “major.” Given that the USTs are, by definition, underground, it is critically important that facility owners and operators utilize effective methods of detecting releases from such tanks. The prevention and detection of leaks are the cornerstones of the UST regulatory program. Further, it is essential to the success of the UST program that the regulating agency, in this case, MDE, is made aware of suspected releases to ensure proper investigation and remediation of contamination where appropriate. Respondent’s failure to notify the implementing agency of suspected releases substantially limited the agency’s ability to protect human health and/or the environment.

The “extent of deviation” for this violation is “major”. Respondent’s violation presented a substantial deviation from the requirements of the RCRA regulatory program. The Respondent’s monitoring results from a release detection method indicated a suspected release which was not reported to MDE.

Failure to investigate a suspected release.

The “potential for harm” for this violation is “major.” Given that the USTs are, by definition, underground, it is critically important that facility owners and operators utilize effective methods of detecting releases from such tanks. The prevention and detection of leaks are the cornerstones of the UST regulatory program. Further, it is essential to the protection of human health and the environment that all suspected releases be investigated. Respondent’s failure to investigate a suspected release posed a substantial risk to the protection of human health and/or the environment.

The “extent of deviation” for this violation is “major.” Respondent’s failure to investigate a suspect release presented a substantial deviation from the requirements of the RCRA regulatory program.

Failure to test cathodic protection system.

The “potential for harm” for this violation is “major.” The purpose of cathodic protection testing is to ensure that releases due to corrosion are prevented for as long as the steel UST system is used to store regulated substances. Respondent failed to perform the annual test of the cathodic protection system to ensure integrity of all the metal part of the UST systems at the Facility. Respondent’s inaction posed a substantial actual or potential harm to human health and the environment in the event of a release into the environment.

The “extent of deviation” for this violation is “major.” Failure to perform cathodic protection testing since the installation of the UST systems at the Facility presents a substantial act of noncompliance with the goals of the UST program.

V. NOTICE OF RIGHT TO REQUEST A HEARING

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 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. The Answer should clearly and directly admit, deny or explain each of the factual allegations contained in this Complaint of which 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 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 either Respondent to admit, deny or explain any material allegation in the Complaint shall constitute an admission by such Respondent of such allegation. Failure to 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.

Following the Regional Judicial Officer's Standing Orders, dated May 7, 2020 and May 22, 2020, a copy of which is attached as Attachment B, Respondent's Answer may be sent to the Regional Hearing Clerk at the mailing OR email address below:

Regional Hearing Clerk (3RC00)
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029
R3_hearing_clerk@epa.gov

In addition, please send a copy of any Answer and/or request for a hearing via email to the attention of:

Louis F. Ramalho
Sr. Assistant Regional Counsel
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029
Ramalho.Louis@epa.gov

Any hearing requested by Respondent will be held at a location to be determined at a later date pursuant to 40 C.F.R. § 22.21(d) of the Consolidated Rules. The hearing will be conducted in accordance with the provisions of the Consolidated Rules. Pursuant to 40 C.F.R. § 22.5(b)(2) of the Consolidated Rules, Complainant has filed with this Complaint a consent to receive service of all filings by Respondent via email with the documents being filed in a Portable Document Format ("PDF"). *See* Attachment C. Pursuant to 40 C.F.R. § 22.5(b)(2) of the Consolidated Rules, a copy of Respondent's Answer and all other documents that the Respondent files in this action should be served on the attorney assigned to represent Complainant in this case, at the email address listed above.

VI. 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, Respondent may 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 THE RESPONDENT OF THEIR 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 her designee. The execution of such a Consent Agreement shall constitute a waiver of 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 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 Respondent of their responsibility to file Answer(s) within thirty (30) days following service of this Complaint.

VII. SEPARATION OF FUNCTIONS AND EX PARTE COMMUNICATIONS

The following Agency officers, and the staffs thereof, are designated as the trial staff to represent the Agency as the party in this case: the Region III Office of Regional Counsel, the Region III Enforcement and Compliance Assurance 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 Regional Judicial Officer,

may have an *ex parte* communication with the trial staff or 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: _____

Karen Melvin, Director
Enforcement and Compliance Assurance Division
U.S. EPA Region III

Attachments:

- A. Code of Maryland Regulations
- B. Regional Judicial Officer's Standing Orders, dated May 7, 2020 and May 22, 2020
- C. Complainant's Consent to Electronic Service