

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III**

In the Matter of:)	U.S. EPA Docket Number
930 Port Street, Inc.)	RCRA-03-2021-0090
)	
RESPONDENT,)	
)	
Easton Point)	
930 Port Street)	
Easton, MD 21601)	
)	
FACILITY.)	

**930 PORT STREET, INC.’S ANSWER TO ADMINISTRATIVE COMPLAINT AND
REQUEST FOR HEARING**

Respondent, 930 Port Street, Inc. (“930 Port Street” or “Respondent”), by and through its undersigned counsel, Charles R. Schaller, Esquire, Ashley P. Cullinan, Esquire, and Baker, Donelson, Bearman, Caldwell and Berkowitz PC, hereby Answers the Administrative Complaint (“Complaint”) filed against it by the United States Environmental Protection Agency (“U.S. EPA” or “Complainant”). Respondent also submits its request for a hearing.

I. INTRODUCTION

Section I of the Complaint is comprised of introductory statements and/or conclusions of law made by Complainant about statutory and regulatory authorities it deems is applicable which does not require a response. To the extent a response is required, the Respondent denies the statements set forth in Section I of the Complaint.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent admits that at all times relevant to this Complaint, Respondent was an owner or operator of the Easton Point facility located at 930 Port Street, Easton, MD 21601.

To the extent Complainant's allegations in Paragraph 1 of the Complaint involve an interpretation of a definition set forth in United States and Maryland statutory law, such statements are conclusions of law for which no answer is required. To the extent an answer is required, Respondent denies the allegations in Paragraph 1 of the Complaint.

2. Complainant's allegations in Paragraph 2 of the Complaint involve a restatement of United States and Maryland statutory law. Such statements are conclusions of law for which no answer is required. To the extent an answer is required, Respondent admits the allegations in Paragraph 2 of the Complaint.

3. Respondent admits that there are five underground storage tanks (USTs) located at its Easton Point facility site. To the extent the Complainant's allegations in Paragraph 3 of the Complaint involve a restatement of United States statutory law, such statements are conclusions of law for which no answer is required. To the extent an answer is required, Respondent denies the allegations in Paragraph 3 of the Complaint. All other allegations in Paragraph 3 of the Complaint and all of its subparts A-E are denied.

4. Complainant's allegations in Paragraph 4 of the Complaint involve an interpretation of a definition set forth in Maryland statutory law. Such statements are conclusions of law for which no answer is required. To the extent an answer is required, Respondent denies the allegations in Paragraph 4 of the Complaint.

5. Complainant's allegations in Paragraph 5 of the Complaint involve an interpretation of a definition set forth in United States and Maryland statutory law. Such statements are conclusions of law for which no answer is required. To the extent an answer is required, Respondent denies the allegations in Paragraph 5 of the Complaint.

COUNT I

6. Respondent hereby incorporates its responses to Paragraphs 1-5 as if set forth fully herein.

7. Complainant's allegations in Paragraph 7 of the Complaint involve a restatement of Maryland statutory law. Such statements are conclusions of law for which no answer is required. To the extent an answer is required, Respondent denies the allegations in Paragraph 7 of the Complaint.

8. Complainant's allegations in Paragraph 8 of the Complaint, and all of its subparts (1-3), involve a restatement of Maryland statutory law. Such statements are conclusions of law for which no answer is required. To the extent an answer is required, Respondent denies the allegations in Paragraph 8 of the Complaint.

9. Denied.

10. Denied.

11. Denied.

12. Denied.

13. Denied.

14. Denied.

15. Denied.

16. Denied.

COUNT II

17. Respondent hereby incorporates its responses to Paragraphs 1-16 as if set forth fully herein.

18. Complainant's allegations in Paragraph 18 of the Complaint, and all of its subparts (A-B), involve a restatement of Maryland statutory law. Such statements are conclusions of law for which no answer is required. To the extent an answer is required, Respondent denies the allegations in Paragraph 18 of the Complaint.

19. Complainant's allegations in Paragraph 19 of the Complaint involve a restatement of Maryland statutory law. Such statements are conclusions of law for which no answer is required. To the extent an answer is required, Respondent denies the allegations in Paragraph 19 of the Complaint.

20. Admitted.

21. Admitted.

22. Admitted.

23. Denied.

24. Denied.

25. Denied.

26. Denied.

27. Denied.

COUNT III

28. Respondent hereby incorporates its responses to Paragraphs 1-27 as if set forth fully herein.

29. Complainant's allegations in Paragraph 29 of the Complaint involve a restatement of Maryland statutory law. Such statements are conclusions of law for which no answer is required. To the extent an answer is required, Respondent denies the allegations in Paragraph 29 of the Complaint.

30. Complainant's allegations in Paragraph 30 of the Complaint, and all of its subparts (A-B), involve a restatement of Maryland statutory law. Such statements are conclusions of law for which no answer is required. To the extent an answer is required, Respondent denies the allegations in Paragraph 30 of the Complaint.

31. Admitted.

32. Admitted.

33. Admitted.

34. Denied.

35. Denied.

36. Denied.

37. Denied.

38. Denied.

COUNT IV

39. Respondent hereby incorporates its responses to Paragraphs 1-38 as if set forth fully herein.

40. Complainant's allegations in Paragraph 40 of the Complaint involve a restatement of Maryland statutory law. Such statements are conclusions of law for which no answer is required. To the extent an answer is required, Respondent denies the allegations in Paragraph 40 of the Complaint.

41. Complainant's allegations in Paragraph 41 of the Complaint involve a restatement of Maryland statutory law. Such statements are conclusions of law for which no answer is required. To the extent an answer is required, Respondent denies the allegations in Paragraph 41 of the Complaint.

42. Denied.

43. Denied.

44. Denied.

45. Denied.

46. Denied.

COUNT V

47. Respondent hereby incorporates its responses to Paragraphs 1-46 as if set forth fully herein.

48. Complainant's allegations in Paragraph 48 of the Complaint involve a restatement of Maryland statutory law. Such statements are conclusions of law for which no answer is required. To the extent an answer is required, Respondent denies the allegations in Paragraph 48 of the Complaint.

49. Complainant's allegations in Paragraph 49 of the Complaint involve a restatement of Maryland statutory law. Such statements are conclusions of law for which no answer is required. To the extent an answer is required, Respondent denies the allegations in Paragraph 49 of the Complaint.

50. Denied.

51. Denied.

52. Denied.

53. Denied.

54. Denied.

COUNT VI

55. Respondent hereby incorporates its responses to Paragraphs 1-54 as if set forth fully herein.

56. Complainant's allegations in Paragraph 56 of the Complaint involve a restatement of Maryland statutory law. Such statements are conclusions of law for which no answer is required. To the extent an answer is required, Respondent denies the allegations in Paragraph 56 of the Complaint.

57. Complainant's allegations in Paragraph 57 of the Complaint involve a restatement of Maryland statutory law. Such statements are conclusions of law for which no answer is required. To the extent an answer is required, Respondent denies the allegations in Paragraph 57 of the Complaint.

58. Admitted.

59. Admitted.

60. Denied.

61. Denied.

III. PROPOSED CIVIL PENALTY

Section III of the Complaint entitled "Proposed Civil Penalty" is comprised of statements about statutory and regulatory authorities the U.S. EPA deems is applicable and/or conclusions of law made by the U.S. EPA, and thus, does not require a response from Respondent. To the extent a response is required, Respondent denies the statements set forth in Section III of the Complaint.

IV. (Complainant Omitted Roman Numeral IV in the Complaint)

V. NOTICE OF RIGHT TO REQUEST A HEARING

Respondent acknowledges its opportunity to request a hearing pursuant to 40 C.F.R. Part 22 of the Administrative Procedures Act, and requests a hearing as set forth below. Respondent acknowledges that the statements in Section V of the Complaint are not allegations and do not require any response.

VI. SETTLEMENT CONFERENCE

Respondent acknowledges that the statements in Section IV of the Complaint are not allegations and do not require any response. Respondent advises the hearing officer that on May 29, 2021, counsel for Respondent contacted Louis Ramalho via electronic mail and first-class mail and requested a settlement conference in this matter.

VII. SEPARATION OF FUNCTIONS AND *EX PARTE* COMMUNICATIONS

Respondent acknowledges that commencing from the date of the 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 *ex parte* communication with the trial staff or the merits of any issue involved in this proceeding. Respondent acknowledges that the statements in Section VII of the Complaint are not allegations and do not require any response.

AFFIRMATIVE DEFENSES

FIRST DEFENSE

The Complaint fails to state a claim upon which relief can be granted against Respondent.

SECOND DEFENSE

Complainant's allegations are barred by laches and/or waiver.

THIRD DEFENSE

Complainant's allegations are barred by the applicable statute of limitations.

FOURTH DEFENSE

Complainant's allegations are not supported by substantial evidence.

FIFTH DEFENSE

Complainant's undefined civil penalty assessment constitutes an abuse of discretion.

SIXTH DEFENSE

Complainant failed to provide all responsive documents under Respondent's Freedom of Information Act (FOIA) Request (EPA-R3-2020-003627) which precludes Respondent's ability to form a full defense in this case.

SEVENTH DEFENSE

Complainant, by filing this Complaint against Respondent and not against other facilities similarly situated, illustrates bias and harassment towards Respondent, thereby violating Respondent's Due Process rights.

EIGHTH DEFENSE

Complainant's claims are barred on the grounds that they were brought for improper motive, arise out of malice or ill will, and amount to an abuse of Complainant's discretion.

NINTH DEFENSE

Complainant's claims are barred by estoppel because they are arbitrary, capricious and inconsistent with other actions and inactions of the U.S. EPA that involve the same underground storage tank equipment that is the subject of the administrative proceeding.

TENTH DEFENSE

Complainant's claims are barred by the doctrine of selective enforcement.

ELEVENTH DEFENSE

During and after the timeframe in which Complainant alleges a failure relating to UST No. 3, Respondent performed tightness testing to re-evaluate UST No. 3, upon which no leak or release was found. If there was in fact a release from UST No. 3, the leak would have been present when Respondent re-evaluated the tank, but since it was not, Respondent asserts there was never any release in UST No. 3, and any alleged release is due to the misreading of equipment or inactivity in UST No. 3 falsely reporting as a release/leak.

TWELFTH DEFENSE

Complainant's claims are barred by a violation of Respondent's right to due process.

RESERVATION OF RIGHT TO AMEND ANSWER AND ADD AFFIRMATIVE DEFENSES

Respondent reserves the right to amend this answer and to add further affirmative defenses, including those which may become apparent through discovery and development of this case.

REQUEST FOR A HEARING

Pursuant to Section V of the Complaint, Respondent hereby requests a hearing to dispute the allegations of the Complaint, as well as the proposed civil penalty assessment.

Respectfully submitted,

**BAKER, DONELSON, BEARMAN,
CALDWELL, AND BERKOWITZ, PC**

DocuSigned by:

Ashley Cullinan

6/7/2021 | 1:28 PM CDT

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Attorneys for 930 Port Street, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 7th day of June, 2021, a copy of the foregoing Answer to Administrative Complaint and Notice Of Opportunity for Hearing was served via electronic mail and/or first-class mail on the following:

Regional Haring Clerk (3RC00)
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103
r3_hearing_clerk@epa.gov

Louis F. Ramalho
Sr. Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103
Ramalho.Louis@epa.gov

DocuSigned by:
Ashley Cullinan 6/7/2021 | 1:28 PM CDT
CEBC9EE54F7E49A
Ashley P. Cullinan