

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

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

**COMPLAINANT’S REBUTTAL 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 June 24, 2021, Complainant hereby submits this Rebuttal Prehearing Exchange in the above-captioned matter. Complainant respectfully reserves its right to supplement its Rebuttal Prehearing Exchange in accordance 40 C.F.R. § 22.19(f).

Section 4 of the Presiding Officer’s Prehearing Order of June 24, 2021, provides that Complainant shall submit as part of its Rebuttal Prehearing Exchange (a) a statement and/or any documents in Response to Respondent’s Prehearing Exchanges as provided therein and (b) a detailed explanation of the factors and methodology utilized calculating the amount of the proposed penalty, in accordance with the statutory factors and as referenced in the proposed civil penalty section of the Complaint.

Complainant reviewed the documents submitted by Respondent in its prehearing exchange dated September 30, 2021. Complainant has determined that the violations alleged in its Administrative Complaint and Notice of Opportunity for Hearing dated May 6, 2021 remain valid and meritorious. Respondent did not submit in its prehearing exchange any test results for the periods of noncompliance alleged in Count 1, 2, and 3. With respect to Count 4 and 5, Respondent did not provide any notice or report it provided to Maryland Department of the Environment identifying the suspected release from tank No. 3 nor any report of an investigation

conducted by Respondent of the suspected release or any corrected action undertaken by Respondent to confirm the suspected release as a false positive or otherwise. With respect to Count VI, Complainant has determined not to pursue a civil penalty for such violation because the Code of Maryland Regulations with respect to testing the cathodic protection on the tanks is more stringent than EPA's regulations found at 40 C.F.R. Part 280.

### Explanation of Proposed Penalty

In determining a penalty for violations of the federal or, as here, authorized State of Maryland UST regulations, EPA takes into account the statutory factors required by Section 9006(c) of RCRA, 42 U.S.C. § 6991e(c), by evaluating the particular facts and circumstances of each case using the methodology set forth in the U.S. EPA Penalty Guidance for Violations of UST Regulations ("Penalty Guidance"), found at <https://www.epa.gov/sites/production/files/2014-02/documents/d9610.12.pdf> and the Interim Consolidated Enforcement Penalty Policy for Underground Storage Tank (UST) Regulations and Revised Field Citation Program and ESA Policy ("Enforcement Penalty Policy"), found at <https://www.epa.gov/sites/production/files/2019-12/documents/final-interim-consolidated-ust-penalty-policy-v3.pdf> (collectively the "UST Penalty Policies, 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 found at [2020 Penalty Inflation Rule Adjustments \(epa.gov\)](#) and [2020-26997.pdf \(govinfo.gov\)](#)). An overview of the methodology, with case specific references, is set forth below.

Under the Penalty Guidance, an initial penalty figure is derived by adding the economic benefit component to the gravity-based component. This is expressed in a formula as:

$$\text{Initial Penalty} = \text{Economic Benefit} + \text{Gravity} ((\text{MV} \times \text{UOA} \pm \text{VSA})) \times \text{ESM} \times \text{DNM}$$

The economic benefit component "represents the economic advantage that a violator has gained by delaying capital and/or non-depreciable costs and by avoiding operational and maintenance costs associated with compliance." *See*, Penalty Policy at page 8. The total economic benefit component consists of avoided costs (such as operation and maintenance costs) and delayed costs (such as delay of equipment costs). *Id.* Typically, enforcement personnel use an EPA software program called BEN with various inputs, including compliance dates, to estimate the economic benefit component.

The gravity-based component is the product of the matrix value multiplied by the unit of assessment, any violator-specific adjustments to the matrix, the environmental sensitivity multiplier (ESM), and the days of noncompliance multiplier (DNM).

EPA determines the gravity component by the seriousness of the violation by assessing two criteria: 1) the extent to which the violation deviates from the UST statutory or regulatory requirement and 2) the actual or potential harm to human health or the environment and/or the actual or potential adverse effect on the regulatory program. The levels range from major, moderate and minor for each of the two criteria. The matrix values in the Penalty Guidance Appendix A were amended by Enforcement Penalty Policy matrix values. Section 1 of the Enforcement Penalty Policy sets forth the criteria factors and the commensurate matrix values

for selected violations of 40 C.F.R. Part 280 as well as the suggested unit of assessment (i.e., tank, facility or pipe). For example, a violation of the release detection requirements (40 C.F.R. 280) is characterized as a major extent of deviation and major potential for harm, with an appropriate matrix value of \$3500 per tank (unadjusted for inflation).

The matrix value is then multiplied by the unit of assessment. Section 1 of the Enforcement Penalty Policy sets forth the appropriate unit of assessment per violation. The Enforcement Penalty Policy suggests that the type of violation is the basis for determining whether to assess the matrix value per tank, per facility, or per piping run. If the specific violation or requirement is clearly associated with one or more tanks, the matrix value is assessed per tank. If, on the other hand, the requirement addresses the entire facility (e.g., financial responsibility,) the penalty is assessed on a per-facility basis. Where the violation involves piping, the unit of assessment will depend on whether the piping is associated with one or more tanks.

The matrix value is then adjusted upward or downward for any applicable violator-specific factors, for example, cooperation or lack thereof, degree of willfulness or negligence, history of noncompliance, or other unique factors. *See*, Penalty Policy at page 17. In assessing the civil penalty proposed in this case, history of noncompliance adjustments was applied for Respondent's history of noncompliance with the Maryland Department of the Environment UST authorized program for the violations alleged in the Complaint.

The *environmental sensitivity multiplier* (ESM) is a factor unique to each facility achieved by evaluating the sensitivity of the local environmental receptors surrounding the facility and the potential harm to public health and the environment in the event of a potential or actual release from the tanks and piping located at the facility (as opposed to the potential for harm factor which takes into account the probability that a release would occur because of the violation). *See*, Penalty Guidance at § 3.3.

In order to determine the appropriate environmental sensitivity multiplier in this case, Mr. Joel Hennessy, a hydrologist with EPA, evaluated the hydrogeology of the facility site and the potential risk to public health and the environment from a potential or actual petroleum release from the USTs at the facility. *See*, CX 45. In addition, Ms. Keteles, a toxicologist with EPA, determined the actual or potential harm to human health and to such environmental sensitive receptors surrounding the facility identified by Mr. Hennessy in the event petroleum products were released from such USTs at the facility. *See*, CX 46.

After reviewing the evaluations of Mr. Hennessy and Ms. Keteles, EPA took into account the size and number of tanks at the facility to determine an ESM of **moderate to high** value. This value is consistent with the Penalty Guidance which states that a "moderate sensitivity value may be given if: several tanks were in violation; the geology of the site would allow for some movement of a plume of released substance; and several drinking water wells could have been affected." The Guidance also states that "[a] high sensitivity value may be given if: a number of tanks (or very large tanks) were involved; there were several potential receptors of the released substance through drinking water wells or contact with contaminated surface water; and the contamination would be difficult to remediate." Penalty Guidance at § 3.3. For this case, EPA determined a ESM value of 1.6875.

The *days of noncompliance multiplier* (DNM) accounts for the duration of the violation. For example, a violation of 90 days or less has a DNM of 1; 180 days or less a DNM of 1.5; 270 days or less 2.0; and 365 days or less 2.5. For each 6 months (or fraction thereof) of duration thereafter an additional 0.5 is added to the DNM. Penalty Policy at § 3.4.

The total proposed civil penalty of \$276,910 is tabulated as follows:

Count I	\$112,696
Count II	\$75,862
Count III	\$75,130
Count IV	\$6,611
Count V	\$6,611
Count VI	\$0

In the following narrative explanation, like violations are grouped together (e.g., release detection, line leak detector testing, etc.).

**Failure to Provide Release Detection for Tanks (Count I)**

Consistent with the UST Penalty Policy, this violation constitutes a “major” extent of deviation from the requirements and “major” potential for harm, which is a matrix value of \$3,500. Respondents’ failure to ensure that each UST at the Facility was monitored at least every thirty days for releases using one of the methods required pursuant to the federally authorized UST regulations for Maryland constitutes a major potential for harm, because without release detection monitoring, a release may go unnoticed with serious detrimental consequences. It is a fundamental goal of the UST regulations to ensure that an UST does not release substances that may harm human health or the environment. Further, the mechanism established by EPA to ensure releases are prevented and minimized is the release detection program. Thus, failure to comply with the release detection requirements also presents a major harm to the RCRA program. This violation is also a substantial deviation from the requirements of the federally-authorized Maryland UST regulatory program. A History of Noncompliance adjustment factor was applied to increase the matrix value by 25% (the penalty policy allows for **only an increase** to the matrix value, by up to 50%). After consideration of past tank release detection violations cited by MDE in May 2015 and February 2018, the region chose to apply a 25% increase to the matrix value for this count. This provides for an adjusted matrix value of \$4,375. The ESM has been determined to be 1.6875. The economic benefit was deemed incidental due to the presence of automatic tank gauging equipment (ATG) and accordingly not included in the penalty calculation for this count. For this count, as there was an independent obligation to monitor each tank for releases at the facility, the penalty for each violation is assessed on a per-tank basis. Finally, the current Inflationary Factor of 1.01764 was applied.

Count I - \$112,696

As the five tanks at Easton Point had different periods of noncompliance they are calculated separately.

#### Tank 1

The first noncompliance period was 354 days (10/6/16 through 9/24/17). The second noncompliance period was 87 days (1/5/18 through 4/1/18). The total number of days of noncompliance is 441, which equates to a DNM of 3.0.

The resulting calculation is an adjusted matrix value of \$4,375 multiplied by 1 UST, multiplied by the ESM of 1.6875, multiplied by 3.0 DNM, multiplied by the 1.01764 inflationary factor yielding a subtotal of \$22,539.

#### Tank 2

The first noncompliance period was 53 days (10/6/16 through 11/27/16). The second noncompliance period was 35 days (3/6/17 through 4/9/17). The third noncompliance period was 53 days (8/31/17 through 10/22/17). The fourth noncompliance period was 138 days (12/6/17 through 4/22/18). The total number of days of noncompliance is 279, which equates to a DNM of 2.5.

The resulting calculation is an adjusted matrix value of \$4,375 multiplied by 1 UST, multiplied by the ESM of 1.6875, multiplied by 2.5 DNM, multiplied by the 1.01764 inflationary factor yielding a subtotal of \$18,783.

#### Tank 3

The first noncompliance period was 53 days (10/6/16 through 11/27/16). The second noncompliance period was 254 days (3/27/17 through 12/5/17). The third noncompliance period was 67 days (2/15/18 through 4/22/18). The fourth noncompliance period was 144 days (9/27/18 through 2/17/19). The fifth noncompliance period was 109 days (1/5/20 through 4/22/20). The total number of days of noncompliance is 627, which equates to a DNM of 3.5.

The resulting calculation is an adjusted matrix value of \$4,375 multiplied by 1 UST, multiplied by the ESM of 1.6875, multiplied by 3.5 DNM, multiplied by the 1.01764 inflationary factor yielding a subtotal of \$26,296.

#### Tank 4

The first noncompliance period was 256 days (10/6/16 through 6/18/17). The second noncompliance period was 75 days (9/21/17 through 12/4/17). The third noncompliance period was 86 days (1/6/18 through 4/1/18). The fourth noncompliance period was 39 days (2/21/19 through 3/31/19). The fifth noncompliance period was 46 days (2/2/20 through 3/18/20). The total number of days of noncompliance is 502, which equates to a DNM of 3.0.

The resulting calculation is an adjusted matrix value of \$4,375 multiplied by 1 UST, multiplied by the ESM of 1.6875, multiplied by 3.0 DNM, multiplied by the 1.01764 inflationary factor yielding a subtotal of \$22,539.

#### Tank 5

The first noncompliance period was 53 days (10/6/16 through 11/27/16). The second noncompliance period was 81 days (1/19/17 through 4/9/17). The third noncompliance period was 124 days (8/3/17 through 12/4/17). The fourth noncompliance period was 107 days (1/6/18 through 4/22/18). The fifth noncompliance period was 33 days (12/21/19 through 1/22/20). The total number of days of noncompliance is 398, which equates to a DNM of 3.0.

The resulting calculation is an adjusted matrix value of \$4,375 multiplied by 1 UST, multiplied by the ESM of 1.6875, multiplied by 3.0 DNM, multiplied by the 1.01764 inflationary factor yielding a subtotal of \$22,539.

Adding Tank 1 (\$22,539) and Tank 2 (\$18,783) and Tank 3 (\$26,296) and Tank 4 (\$22,539) and Tank 5 (\$22,539) yields a total for Count 1 of \$112,696.

#### **Failure to perform line leak detector testing annually (Count II)**

Consistent with the Penalty Policies, this violation constitutes a “major” extent of deviation from the requirement and a “major” potential for harm, which is a base penalty value of \$3,500. Respondents’ failure to ensure that each line leak detector was tested annually constitutes a major potential for harm, because without annual testing, a release may go undetected due to a faulty line leak detector with serious detrimental consequences. It is a fundamental goal of the UST regulations to ensure that an UST does not release substances that may harm human health or the environment. Further, the mechanism established by EPA to ensure faulty line leak detectors are identified and releases are prevented and minimized is the release detection program. Thus, failure to comply with the release detection requirements also presents a major harm to the RCRA program. This violation is also a substantial deviation from the requirements of the federally-authorized Maryland UST regulatory program. A History of Noncompliance adjustment factor was applied to increase the matrix value by 25% (the penalty policy allows for **only an increase** to the matrix value, by up to 50%). After consideration of past line leak detector testing violations cited by MDE in May 2015 and February 2018, the region chose to apply a 25% increase to the matrix value for this count. This provides for an adjusted matrix value of \$4,375. The ESM has been determined to be 1.6875. An economic benefit component was calculated for this count, utilizing an estimate of \$200 per line for both line leak detector and line tightness testing (Count III) combined for each tank, which resulted in an amount of \$732. Lastly, the current Inflationary Factor of 1.01764 was applied.

Count II - \$75,862

As the five tanks at Easton Point had different periods of noncompliance they are calculated separately. Tanks 1 and 3 had the same periods of noncompliance, and Tanks 2, 4, and 5 had the same periods of noncompliance.

### Tanks 1 and 3

The non-compliant period was 203 days (9/1/17 through 3/22/18), for a DNM of 2.0. The resulting calculation is an adjusted base penalty value of \$4,375 multiplied by two (2) line leak detectors, multiplied by the ESM of 1.6875, multiplied by 2.0 DNM, multiplied by the 1.01764 inflationary factor yielding a subtotal of \$30,052.

### Tanks 2, 4, and 5

The non-compliant period was 240 days (7/26/17 through 3/22/18), for a DNM of 2.0. The resulting calculation is an adjusted base penalty value of \$4,375 multiplied by three (3) line leak detectors, multiplied by the ESM of 1.6875, multiplied by 2.0 DNM, multiplied by the 1.01764 inflationary factor yielding a subtotal of \$45,078.

Adding Tanks 1 and 3 (\$30,052) and Tanks 2, 4, and 5 (\$45,078) and the Economic Benefit (\$732) yields a total for Count II of \$75,862.

### **Failure to perform annual line tightness testing (Count III)**

Consistent with the UST Penalty Policy and the Interim Consolidated Enforcement Policy for Underground Storage Tank (UST) Regulations and Revised Field Citation Program and ESA Policy, this violation constitutes a “major” extent of deviation from the requirement and a “major” potential for harm, which is a base penalty value of \$3,500. 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 underground piping (or lines) that routinely conveys regulated product to and from the USTs. The importance of monitoring piping should not be underestimated as releases from underground piping, particularly pressurized piping, can be as problematic, if not more so, than releases from tanks. 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 and/or the environment and was a substantial deviation from the requirements of the federally-authorized Maryland UST regulatory program. The unit of assessment for this violation will be per tank associated with the piping. A History of Noncompliance adjustment factor was applied to increase the matrix value by 25% (the penalty policy allows for **only an increase** to the matrix value, by up to 50%). After consideration of past piping release detection violations cited by MDE in May 2015 and February 2018, the region chose to apply a 25% increase to the matrix value for this count. This provides for an adjusted matrix value of \$4,375. The ESM has been determined to be 1.6875. The economic benefit was included in the penalty calculation for Count II since the costs for line leak detector and line tightness testing are usually bundled as one cost by a contractor. Lastly, the current Inflationary Factor of 1.01764 was applied.

Count III - \$75,130

### Tanks 1 and 3

The non-compliant period was 203 days (9/1/17 through 3/22/18), for a DNM of 2.0. The resulting calculation is an adjusted base penalty value of \$4,375 multiplied by two (2) line leak detectors, multiplied by the ESM of 1.6875, multiplied by 2.0 DNM, multiplied by the 1.01764 inflationary factor yielding a subtotal of \$30,052.

### Tanks 2, 4, and 5

The non-compliant period was 240 days (7/26/17 through 3/22/18), for a DNM of 2.0. The resulting calculation is an adjusted base penalty value of \$4,375 multiplied by three (3) line leak detectors, multiplied by the ESM of 1.6875, multiplied by 2.0 DNM, multiplied by the 1.01764 inflationary factor yielding a subtotal of \$45,078.

Adding Tanks 1 and 3 (\$30,052) and Tanks 2, 4, and 5 (\$45,078) yields a total for Count III of \$75,130.

### **Failure to report a suspected release (Count IV)**

Consistent with the UST Penalty Policy and the Interim Consolidated Enforcement Policy for Underground Storage Tank (UST) Regulations and Revised Field Citation Program and ESA Policy, this violation constitutes a “major” extent of deviation from the requirement and a “major” potential for harm, which is a base penalty value of \$3,500. As noted above, preventing releases is the foundation of the UST regulatory program. However, releases from tanks/piping still occur and thus it is very important for facilities to report suspected releases to their state agency, in this case the Maryland Department of the Environment (“MDE”). Respondents’ failure to report a suspected release to MDE posed a substantial risk to human health and/or the environment and was a substantial deviation from the requirements of the federally-authorized Maryland UST regulatory program. The unit of assessment for this violation is per facility, however, we have two separate incidents of violation. A History of Noncompliance adjustment factor was applied to increase the matrix value by 10% (the penalty policy allows for **only an increase** to the matrix value, by up to 50%). After consideration of past violations cited by MDE, the region chose to apply a 10% increase to the matrix value for this count. This provides for an adjusted matrix value of \$3,850. The ESM has been determined to be 1.6875. An economic benefit was not calculated for this violation. Lastly, the current Inflationary Factor of 1.01764 was applied.

Count IV - \$6,611

### Tank 3

The instances of violation occurred on 2/20/17 and 2/27/17, when the Veeder-Root Automatic Tank Gauging System produced “Fail” results for Tank 3. The DNM for this violation is 1.0. The resulting calculation is an adjusted base penalty value of \$3,850 multiplied by one (1)

facility, multiplied by the ESM of 1.6875, multiplied by 1.0 DNM, multiplied by the inflationary factor by 1.01764 yielding a total of \$6,611.

**Failure to investigate a suspected release (Count V)**

Consistent with the UST Penalty Policy and the Interim Consolidated Enforcement Policy for Underground Storage Tank (UST) Regulations and Revised Field Citation Program and ESA Policy, this violation constitutes a “major” extent of deviation from the requirement and a “major” potential for harm, which is a base penalty value of \$3,500. As noted above, preventing releases is the foundation of the UST regulatory program. However, releases from tanks/piping still occur and thus it is very important for facilities to investigate suspected releases. Respondents’ failure to investigate a suspected release, within 72 hours of the notice of potential release, posed a substantial risk to human health and/or the environment and was a substantial deviation from the requirements of the federally-authorized Maryland UST regulatory program. The unit of assessment for this violation is per facility, however, we have two separate incidents of violation. A History of Noncompliance adjustment factor was applied to increase the matrix value by 10% (the penalty policy allows for **only an increase** to the matrix value, by up to 50%). After consideration of past violations cited by MDE, the region chose to apply a 10% increase to the matrix value for this count. This provides for an adjusted matrix value of \$3,850. The ESM has been determined to be 1.6875. An economic benefit was not calculated for this count. Lastly, the current Inflationary Factor of 1.01764 was applied.

Count V - \$6,611

**Tank 3**

The instances of violation occurred on 2/20/17 and 2/27/17, when the Veeder-Root Automatic Tank Gauging System produced “Fail” results for Tank 3. The DNM for this violation is 1.0. The resulting calculation is an adjusted base penalty value of \$3,850 multiplied by one (1) facility, multiplied by the ESM of 1.6875, multiplied by 1.0 DNM, multiplied by the inflationary factor by 1.01764 yielding a total of \$6,611.

**Easton Point, FIN 1656**

**Penalty Calculation**

**VIOLATION I**

Failure to conduct tank release detection on an UST as required by COMAR § 26.10.05.02(B) (40 C.F.R. § 280.41(a))

Potential for Harm/Extent of Deviation	Major/Major
Matrix Value:	\$3,500
Matrix Value: assessed per tank (Five USTs)	
Violator Specific Adjustments	
- History of Noncompliance (+25%)	+\$875

Adjusted Matrix Value \$4,375

Environmental Sensitivity Multiplier: 1.6875

Dates of noncompliance: see attached table

Days of noncompliance: see below

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## Tank 2

Noncompliance days: 279

DNC Multiplier = 2.5

Adjusted Matrix Value x # of USTs x ESM x DNC x Inflation

\$4,375 x 1 UST x 1.6875 ESM x 2.5 DNC x 1.01764: \$18,783

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## Tanks 1, 4, and 5

Noncompliance days: T1 = 441, T4 = 502, T5 = 398

DNC Multiplier = 3.0 for each tank

Adjusted Matrix Value x # of USTs x ESM x DNC x Inflation

\$4,375 x 3 USTs x 1.6875 ESM x 3.0 DNC x 1.01764: \$67,617

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## Tank 3

Noncompliance days = 711

DNC Multiplier = 3.5

Adjusted Matrix Value x # of USTs x ESM x DNC x Inflation

\$4,375 x 1 UST x 1.6875 ESM x 3.5 DNC x 1.01764: \$26,296

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Economic Benefit: N/A, Veeder-Root in place for all tanks

**Total: \$112,696.00**

**Easton Point, FIN 1656**  
Penalty Calculation

**VIOLATION II**

Failure to test LLDs annually as required by COMAR § 26.10.05.02(C)(2)(a) / COMAR § 26.10.05.05(B) (40 C.F.R. § 280.41(b)(1)(i)) / (40 C.F.R. § 280.44(a))

Potential for Harm/Extent of Deviation	Major/Major
Matrix Value:	\$3,500
Matrix Value: assessed per piping run (five USTs)	

Violator Specific Adjustments	
- History of Noncompliance (+25%)	+\$875

Adjusted Matrix Value	\$4,375
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Environmental Sensitivity Multiplier:	1.6875
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Dates of Noncompliance: see below

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**Tanks 1 and 3**

Dates of Noncompliance (DNC): 9/1/17 (test due) – 3/23/18 (tested) = 203 days  
DNC Multiplier = 2.0

Adjusted Matrix Value x # of USTs x ESM x DNC x Inflation

$\$4,375 \times 2 \text{ lines} \times 1.6875 \text{ ESM} \times 2.0 \text{ DNC} \times 1.01764:$	\$30,052
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**Tanks 2, 4, and 5**

Dates of Noncompliance (DNC): 7/26/17 (test due) – 3/23/18 (tested) = 240 days  
DNC Multiplier = 2.0

Adjusted Matrix Value x # of USTs x ESM x DNC x Inflation

$\$4,375 \times 3 \text{ lines} \times 1.6875 \text{ ESM} \times 2.0 \text{ DNC} \times 1.01764:$	\$45,078
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Economic Benefit: Used the BEN Model Calculator

Estimate \$200 per line/LLD (includes LLD & LTT)	
Tanks 1 and 3 = \$441	
Tanks 2, 4, and 5 = \$291	
Total =	\$732
<b>Total:</b>	<b>\$75,862</b>

**Easton Point, FIN 1656**  
Penalty Calculation

**VIOLATION III**

Failure to have a secondary method of piping release detection as required by COMAR § 26.10.05.02(C)(2)(b) / COMAR § 26.10.05.05(C) (40 C.F.R. § 280.41(b)(1)(ii)) / (40 C.F.R. § 280.44(b) or (c))

Potential for Harm/Extent of Deviation	Major/Major
Matrix Value:	\$3,500
Matrix Value: assessed per piping run (five USTs)	
Violator Specific Adjustments	
- History of Noncompliance (+25%)	+\$875
Adjusted Matrix Value	\$4,375
Environmental Sensitivity Multiplier:	1.6875
Dates of Noncompliance: see below	

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**Tanks 1 and 3**

Dates of Noncompliance (DNC): 9/1/17 (test due) – 3/23/18 (tested) = 203 days  
DNC Multiplier = 2.0

Adjusted Matrix Value x # of USTs x ESM x DNC x Inflation

\$4,375 x 2 lines 1.6875 ESM x 2.0 DNC x 1.01764:  
\$30,052

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## Tanks 2, 4, and 5

Dates of Noncompliance (DNC): 6/27/17 (test due) – 3/23/18 (tested) = 269 days  
DNC Multiplier = 2.0

Adjusted Matrix Value x # of USTs x ESM x DNC x Inflation

\$4,375 x 3 lines x 1.6875 ESM x 2.0 DNC x 1.01764: \$45,078

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Economic Benefit: Included as part of LLD est testing costs ---

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**Total:** **\$75,130**

### Easton Point, FIN 1656

#### Penalty Calculation

#### VIOLATION IV

Failure to report a suspected release as required by COMAR §26.10.08.01(B)(3) (40 C.F.R. § 280.50(c))

Potential for Harm/Extent of Deviation Major/Major  
Matrix Value: \$3,500  
Matrix Value: (T/F) assessed per facility

Violator Specific Adjustments  
- History of Noncompliance (+10%) +\$350

Adjusted Matrix Value \$3,850

Environmental Sensitivity Multiplier: 1.6875

Dates of Noncompliance: see below

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### Tank 3

Dates of Noncompliance (DNC): 2/20/17 and 2/27/17 (Veeder-Root gave Fail results)

DNC Multiplier = 1.0

Adjusted Matrix Value x # of USTs x ESM x DNC x Inflation

\$3,850 x 1 Facility x 1.6875 ESM x 1.0 DNC x 1.01764: \$6,611

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Economic Benefit: not calculated

**Total:** **\$6,611**

**Easton Point, FIN 1656**  
Penalty Calculation

**VIOLATION V**

Failure to investigate a suspected release as required by COMAR §26.10.08.03 (40 C.F.R. § 280.52)

Potential for Harm/Extent of Deviation Major/Major  
Matrix Value: \$3,500  
Matrix Value: (T/F) assessed per facility

Violator Specific Adjustments +\$350  
- History of Noncompliance (+10%)

Adjusted Matrix Value \$3,850

Environmental Sensitivity Multiplier: 1.6875

Dates of Noncompliance: see below

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**Tank 3**

Dates of Noncompliance (DNC): 2/20/17 and 2/27/17 (Veeder-Root gave Fail results)  
DNC Multiplier = 1.0

Adjusted Matrix Value x # of USTs x ESM x DNC x Inflation

\$3,850 x 1 Facility x 1.6875 ESM x 1.0 DNC x 1.01764: \$6,611

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Economic Benefit: not calculated

**Total:** **\$6,611**

Documents and Exhibits

CX 51 – Amendments to the EPA’s Civil Penalty Policies to Account for Inflation (effective January 15, 2020) and Transmittal of the 2020 Civil Monetary Penalty Inflation Adjustment Rule dated January 15, 2020.

CX 52 – BEN Economic Benefit Analysis

Complainant’s counsel, Louis F. Ramalho, Senior Assistant Regional Counsel may be contacted by email, [Ramalho.Louis@epa.gov](mailto:Ramalho.Louis@epa.gov), or by telephone at (215) 814-2681.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that on the date listed below, the foregoing Complainant's Rebuttal Prehearing Exchange, *In the Matter of 930 Port Street, Inc.*, Docket No. RCRA-03-2021-0090 was sent to the following parties in the manner indicated below:

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\_\_\_\_\_  
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\_\_\_\_\_  
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