UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

SEP 25 2013

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL #7009 1680 0000 7666 0891
RETURN RECEIPT REQUESTED

Mr. Paul Meleen
Meleen Corporation
Meleen's Sports Center
Post Office Box 332
Onamia, Minnesota 56359

Re: In the Matter of: Meleen Corporation, Docket No. **RCRA-05-2013-0013**

Dear Mr. Meleen:

Please find the enclosed Administrative Complaint and Compliance Order (Complaint) filed by the United States Environmental Protection Agency naming Meleen Corporation as Respondent, under Section 9006 of the Solid Waste Disposal Act, as amended, 42 U.S.C. § 6991e.

As provided in the Complaint, if you would like to request a hearing, you must do so in your answer to the Complaint. Please note that if you do not file an answer with the Regional Hearing Clerk (E-19J), U.S. EPA, Region 5, 77 West Jackson Blvd., Chicago, IL 60604 within thirty (30) days of your receipt of this Complaint, a default order may be issued and the proposed civil penalty will become due thirty (30) days later.

In addition, whether or not you request a hearing, you may request an informal settlement conference. If you wish to request a conference, please contact Erin Galbraith, Enforcement Officer, at (312) 886-6879. If you have any other questions about this matter, please contact Kevin Chow, Associate Regional Counsel, at (312) 353-6181.

Sincerely,

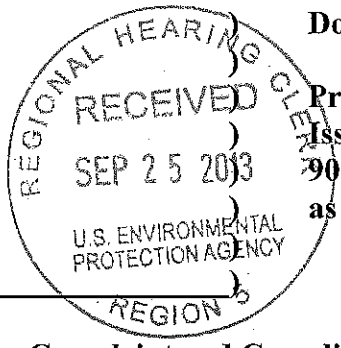
Gary J. Victorine, Chief
RCRA Branch

Enclosures

cc: Scott Hansen, Department of Natural Resources, Mille Lacs Band of Ojibwe Indians

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:	**Docket No. RCRA-05-2013-0013**
Meleen Corporation 38666 Highway 169 Onamia, Minnesota 56359	**Proceeding to Assess a Civil Penalty and Issue a Compliance Order Under Section 9006 of the Solid Waste Disposal Act, as amended, 42 U.S.C. § 6991e**
Respondent.	



Complaint and Compliance Order

1. This is an administrative action to assess a civil penalty under Section 9006(d) of the Solid Waste Disposal Act, as amended (SWDA), 42 U.S.C. § 6991e(d), and to issue a compliance order under SWDA Section 9006(a), 42 U.S.C. § 6991e(a).

2. Complainant is, by lawful delegation, the Director, Land and Chemicals Division, United States Environmental Protection Agency, Region 5.

3. Respondent is Meleen Corporation, a Minnesota corporation.

Statutory and Regulatory Background

4. Subchapter IX of SWDA, 42 U.S.C. § 6991 et seq., regulates the installation and use of underground storage tanks (USTs), which are defined in Section 9001(10) of SWDA, 42 U.S.C. § 6991(10), and 40 C.F.R. § 280.12.

5. Section 9003 of SWDA, 42 U.S.C. § 6991b, requires the Administrator of the EPA (the Administrator) to promulgate release detection, prevention and correction regulations applicable to all owners and operators of USTs. These regulations are codified in 40 C.F.R. Part 280.

General Allegations

At all times relevant to this Complaint, unless otherwise indicated:

6. Respondent, Meleen Corporation, is a "person" as defined in Section 9001(5) of SWDA, 42 U.S.C. § 6991(5), and 40 C.F.R. § 280.12, and is therefore subject to regulation under the SWDA.

7. Respondent owns and operates a facility located at 38666 Highway 169, Onamia, Mille Lacs County, Minnesota, known as "Meleen's Sports Center", where four petroleum underground storage tanks are located.

8. Each of the four USTs is a 12,000-gallon underground tank for holding petroleum products and is constructed of coated steel with wrapped steel piping.

9. The four 12,000-gallon tanks are "underground storage tanks," as defined in Section 9001(10) of SWDA, 42 U.S.C. § 6991(10), and 40 C.F.R. § 280.12.

10. The four 12,000-gallon tanks, along with their connected underground piping, underground ancillary equipment, and containment systems (if any) constitute UST systems, as defined in 40 C.F.R. § 280.12.

11. Respondent is the "operator", as defined in Section 9001(3) of SWDA, 42 U.S.C. § 6991(3), and 40 C.F.R. § 280.12, of the four underground storage tanks, their connected underground piping, underground ancillary equipment, and containment systems (if any) at the Meleen's Sports Center facility.

12. Respondent is the "owner", as defined in Section 9001(4) of SWDA, 42 U.S.C. § 6991(4), and 40 C.F.R. § 280.12, of the four underground storage tanks, their connected underground piping, underground ancillary equipment, and containment systems (if any) at the Meleen's Sports Center facility.

13. The petroleum products held by the four USTs are "regulated substances" as the term is defined under Section 9001(7)(B) of SWDA, 42 U.S.C. § 6991(7)(B), and 40 C.F.R. § 280.12.

14. The EPA conducted compliance inspections of the four USTs on April 26, 2010 and April 25, 2013.

15. Pursuant to Section 9006 of SWDA, 42 U.S.C. § 6991e, and based on the information alleged in this Complaint, the Respondent has violated Subchapter IX of the SWDA, Section 9003, 42 U.S.C. § 6991b, and regulations promulgated thereunder.

Count 1

At all times relevant to this Complaint, unless otherwise indicated:

16. Paragraphs 1 through 15 of this Complaint are realleged and incorporated herein by reference.

17. 40 C.F.R. § 280.31(a) requires owners and operators of steel UST systems with corrosion protection to operate and maintain corrosion protection systems to provide continuous corrosion protection to the metal components of that portion of the tank and piping that routinely contain regulated substances and are in contact with the ground. 40 C.F.R. § 280.31(b)(1) requires cathodic protection systems to be tested every three years. 40 C.F.R. § 280.33 states that owners and operators of UST systems must ensure that repairs will prevent releases due to

structural failure or corrosion as long as the UST system is used to store regulated substances. 40 C.F.R. § 280.33(f) requires UST system owners and operators to maintain records of each repair for the remaining operating life of the UST system that demonstrate compliance with repair requirements.

18. All four of the tanks and associated piping at the Meleen's Sports Center facility are of steel construction and equipped with sacrificial anodes.

19. At the time of the EPA inspection on April 26, 2010, Respondent did not have records available to demonstrate that Respondent had conducted a test of the cathodic protection system within the previous three years. During the closing conference of the inspection, the EPA requested the facility manager to submit certain documents to the EPA within two weeks in order for the EPA to complete the inspection.

20. On August 30, 2010, the EPA issued a Notice of Violation for Respondent's failure to provide required records regarding corrosion protection. The Notice of Violation requested Respondent to submit to the EPA the results of the last two Cathodic Protection Tests and the results of a Line Tightness Test, among other things.

21. On October 7, 2010, Respondent provided the EPA with a copy of a test of the corrosion protection system, conducted on September 29, 2010 by a company hired by Respondent to conduct testing, for all four tanks and associated piping. The test showed the structure-to-soil potential associated with the piping for all four systems failed to meet requirements. The test result stated the cathodic protection was not adequate and that repair was necessary within 60 days.

22. On October 31, 2011, EPA issued a second Notice of Violation for the Respondent's failure to show that the corrosion protection system for all four tanks had been repaired.

23. On October 19, 2012, the Minnesota Pollution Control Agency provided the EPA with records demonstrating repair of the corrosion protection system for all four tanks, conducted on October 4, 2012.

24. Respondent did not conduct any repair of the corrosion protection system for approximately two years (specifically, 736 days) after receiving test results showing that the system failed to meet requirements.

25. Between September 29, 2010 and October 4, 2012, Respondent has therefore failed to operate and maintain its corrosion protection system to continuously provide corrosion protection to the metal components of that portion of each tank and piping that routinely contain regulated substances and are in contact with the ground, in violation of 40 C.F.R. § 280.31(a). Respondent is subject to the assessment of civil penalties and issuance of compliance orders as provided in Section 9006 of SWDA, 42 U.S.C. § 6991e.

Count 2

At all times relevant to this Complaint, unless otherwise indicated:

26. Paragraphs 1 through 15 of this Complaint are realleged and incorporated herein by reference.

27. 40 C.F.R. § 280.33(e) requires owners and operators of any cathodically protected UST system, to test the system within six months of repair to the system in accordance

with § 280.31 (b) and (c) to ensure that it is operating properly. The cathodic protection system at the Meleen's Sports Center facility was repaired on October 4, 2012.

28. At the time of the EPA inspection on April 25, 2013, Respondent did not have records available to demonstrate that Respondent had conducted a test of the cathodic protection system within six months of the October 4, 2012, repair. During a phone conversation subsequent to the inspection, the EPA requested the facility manager submit certain documents to the EPA within two weeks in order for the EPA to complete the inspection. The EPA did not receive any documents in response.

29. On June 5, 2013, the EPA issued a Section 9005 Information Request to the Respondent requesting documentation that the facility had conducted a cathodic protection system test between October 6, 2012 and April 6, 2013. Respondent did not reply to the Information Request.

30. Respondent has therefore failed to retest its corrosion protection system within six months following repair, in violation of 40 C.F.R. § 280.33(e). Respondent is subject to the assessment of civil penalties and issuance of compliance orders as provided in Section 9006 of SWDA, 42 U.S.C. § 6991e.

Count 3

At all times relevant to this Complaint, unless otherwise indicated:

31. Paragraphs 1 through 15 of this Complaint are realleged and incorporated herein by reference.

32. 40 C.F.R. § 280.45 requires all UST system owners and operators to maintain records pertaining to release detection and release detection equipment.

33. 40 C.F.R. § 280.41 (a) provides that tanks must be monitored at least every 30 days for releases, using one of the methods specified in 40 C.F.R. § 280.43(d) through (h).

34. All four of the tanks at the Meleen's Sports Center facility were connected to an automatic tank gauging system for the purpose of detecting releases from the underground storage tanks. At no time relevant to this Complaint has there been any other method for detecting releases from the tanks in use at the Meleen's Sports Center facility for the purpose of meeting the requirements of 40 C.F.R. § 280.41.

35. At the time of the EPA inspection on April 26, 2010, Respondent did not have records available to demonstrate it had an acceptable method for detecting releases from the tanks. During the closing conference of the inspection, the EPA requested the facility manager to submit certain documents to the EPA within two weeks in order for the EPA to complete the inspection.

36. On August 30, 2010, the EPA issued Respondent a Notice of Violation for failing to provide required records regarding release detection. The Notice of Violation requested Respondent to submit to the EPA one full year of monthly piping and tank release detection records, and documentation of a function test of the Automatic Line Leak Detector conducted within the past year, among other things.

37. On October 7, 2010, the company retained by Respondent to perform compliance tests provided the EPA with an automatic tank gauge certification indicating that three tanks were not passing leak tests regularly. On October 18, 2010, Respondent provided the EPA with a copy of a release detection history report for all four tanks. During a phone conversation on October 25, 2010, the EPA informed the facility manager that the tank leak detection was out of

compliance with regulations and requested the automatic tank gauge be reprogrammed to collect tests properly.

38. On February 17, 2012, Respondent provided the EPA with a copy of a release detection history report for three of the tanks, identified as Tank 2 (Premium), Tank 3 (Unleaded+), and Tank 4 (Regular Unleaded).

39. The release detection history report indicates that Respondent failed to monitor its petroleum tanks at least every 30 days for releases.

40. On April 22, 2013, the EPA received electronic mail correspondence from a repair technician hired by Respondent stating that the automatic tank gauge had been upgraded on April 15, 2013 to continuously monitor each tank for a release.

41. On June 5, 2013, the EPA issued a Section 9005 Information Request to the Respondent requesting documentation that the facility's automatic tank gauge is collecting passing release detection tests. No documentation has been received by the EPA.

42. Respondent's failure to monitor its petroleum tanks at least every 30 days for releases is a violation of 40 C.F.R. § 280.41(a), and is subject to the assessment of civil penalties and issuance of compliance orders as provided in Section 9006 of SWDA, 42 U.S.C. § 6991e.

Count 4

At all times relevant to this Complaint, unless otherwise indicated:

43. Paragraphs 1 through 15 of this Complaint are realleged and incorporated herein by reference.

44. 40 C.F.R. § 280.41(b)(1)(i) requires owners and operators to provide release detection for underground piping that routinely contains a regulated substance conveyed under

pressure, by equipping it with an automatic line leak detector conducted in accordance with 40 C.F.R. § 280.44(a), which requires an annual test of the operation of the leak detector conducted in accordance with the manufacturer's requirements. 40 C.F.R. § 280.41(b)(1)(ii) requires such owners and operators to also conduct an annual line tightness test.

45. At the time of the EPA inspection on April 25, 2013, Respondent did not have records available to demonstrate that Respondent had conducted a tightness test of the piping or a function test of the automatic line leak detectors within the past year. During a phone conversation subsequent to the inspection, the EPA requested the facility manager submit certain documents to the EPA within two weeks in order for the EPA to complete the inspection.

46. On June 5, 2013, the EPA issued a Section 9005 Information Request to the Respondent requesting documentation that the facility had conducted a line tightness test and an automatic line leak detector function test between April 25, 2012 and April 25, 2013. Respondent did not reply to the Information Request.

47. Respondent has therefore failed to provide release detection testing for its underground piping system, in violation of 40 C.F.R. § 280.41(b). Respondent is subject to the assessment of civil penalties and issuance of compliance orders as provided in Section 9006 of SWDA, 42 U.S.C. § 6991e.

Compliance Order

Based on the foregoing allegations in this Complaint, and based on authority in Section 9006(a) of SWDA, 42 U.S.C. § 6991e(a), within thirty (30) days of its receipt of this Complaint, Respondent is hereby ordered to comply with the following requirements:

1) Demonstrate that the corrosion protection associated with the piping for all four UST systems has been tested and is operational in accordance with 40 C.F.R. § 208.33(e).

2) Demonstrate that the automatic tank gauge is conducting 30-day release detection in accordance with 40 C.F.R. § 280.41(a).

3) Demonstrate that the automatic line leak detector for each UST system has undergone and passed a functionality test in accordance with 40 C.F.R. § 280.44(a).

4) Demonstrate that the piping for each UST system has undergone and passed a line tightness test in accordance with 40 C.F.R. § 280.44(b).

5) Submit documentation required to demonstrate compliance with paragraphs 1 through 4 of this section within thirty (30) days of the receipt of this Complaint to:

U.S. EPA Region 5 (LR-8J)
Underground Storage Tank Section
Attention: Enforcement Officer, Erin Galbraith
77 West Jackson Blvd.
Chicago, Illinois 60604-3590

Respondent must achieve and maintain compliance with all requirements and prohibitions governing the storage of regulated substances in underground storage tank systems applicable to owners and/or operators of petroleum UST systems as codified at 40 C.F.R. Part 280.

Civil Penalty

Section 9006(d)(2) of SWDA, 42 U.S.C. § 6991e(d)(2), authorizes the Administrator of the EPA to assess a civil penalty of up to $10,000 per tank per day for each violation of any requirement or standard approved pursuant to Section 9003 of SWDA, 42 U.S.C. § 6991b. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and its implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to $11,000 per tank per day of

violation that occurred after January 31, 1997, and to $16,000 per tank per day of violation that occurred after January 12, 2009. In determining the amount of the proposed penalty, Section 9006(c) of SWDA, 42 U.S.C. § 6991e(c), requires the EPA to take into account the seriousness of the violations and any good faith efforts to comply with the applicable requirements. The EPA determined the proposed penalty by evaluating the facts and circumstances of this case with specific reference to the "U.S. EPA Penalty Guidance for Violations of UST Regulations" (OSWER Directive 9610.12, dated November 14, 1990), a copy of which is enclosed with this Complaint. This guidance provides a rational, consistent, and equitable calculation methodology for applying the statutory penalty factors enumerated above to particular cases.

Based on an evaluation of the facts alleged in this Complaint, the statutory factors enumerated above, and the guidelines referenced above, Complainant proposes that the Administrator assess the following penalties against Respondent for the violations alleged in the Complaint:

Count 1: 40 C.F.R. § 280.31(a).....$ 38,495
Count 2: 40 C.F.R. § 280.33(e) .....$ 6,372
Count 3: 40 C.F.R. § 280.41(a) $35,731
Count 4: 40 C.F.R. § 280.41(b) ....$ 22,527

TOTAL: .....$ 103,125

Notice of Potential Liability for Additional Civil Penalties

Under Section 9006(a)(3) of SWDA, 42 U.S.C. § 6991e(a)(3), a Respondent that fails to comply with a Compliance Order within the time specified in the Order shall be liable for an additional penalty of up to $32,500 for each day of continued noncompliance. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and its implementing regulations at

40 C.F.R. Part 19, increased these statutory maximum penalties to $37,500 for each day of continued noncompliance after January 12, 2009. Such continued noncompliance may also result in the institution of a civil judicial action.

Rules Governing This Proceeding

The "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits" (Consolidated Rules) at 40 C.F.R. Part 22 govern this civil administrative penalty proceeding. Enclosed with the complaint is a copy of the Consolidated Rules.

Filing and Service of Documents

Respondent must file with the Regional Hearing Clerk the original and one copy of each document Respondent intends to include as part of the record in this proceeding. The Regional Hearing Clerk's address is:

Regional Hearing Clerk (E-19J)
U.S. EPA Region 5
77 West Jackson Boulevard
Chicago, IL 60604

Respondent must serve a copy of each document filed in this proceeding on each party pursuant to Section 22.5 of the Consolidated Rules. Complainant has authorized Kevin Chow to receive any answer and subsequent legal documents that Respondent serves in this proceeding. You may telephone Mr. Chow at (312) 353-6181. His address is:

Kevin Chow (C-14J)
Associate Regional Counsel
U.S. EPA Region 5
77 West Jackson Boulevard
Chicago, IL 60604

Answer and Opportunity to Request a Hearing

If Respondent contests any material fact upon which the Complaint is based or the appropriateness of any penalty amount, or contends that it is entitled to judgment as a matter of law, Respondent may request a hearing before an Administrative Law Judge. To request a hearing, Respondent must file a written Answer within thirty (30) days of receiving this Complaint and must include in that written Answer a request for a hearing. Any hearing will be conducted in accordance with the Consolidated Rules.

In counting the 30-day period, the date of receipt is not counted, but Saturdays, Sundays, and federal legal holidays are counted. If the 30-day time period expires on a Saturday, Sunday, or federal legal holiday, the time period extends to the next business day.

To file an Answer, Respondent must file the original written Answer and one copy with the Regional Hearing Clerk at the address specified above.

Respondent's written Answer must clearly and directly admit, deny, or explain each of the factual allegations in the Complaint; or must state clearly that Respondent has no knowledge of a particular factual allegation. Where Respondent states that it has no knowledge of a particular factual allegation, the allegation is deemed denied. Respondent's failure to admit, deny, or explain any material factual allegation in the Complaint constitutes an admission of the allegation.

Respondent's answer must also state:

a. the circumstances or arguments which Respondent alleges constitute grounds of defense;
b. the facts that Respondent disputes;
c. the basis for opposing the proposed penalty; and
d. whether Respondent requests a hearing.

If Respondent does not file a written Answer within thirty (30) calendar days after receiving this Complaint, the Presiding Officer may issue a default order, after motion, under Section 22.17 of the Consolidated Rules. Default by Respondent constitutes an admission of all factual allegations in the Complaint and a waiver of the right to contest the factual allegations. Respondent must pay any penalty assessed in a default order, without further proceedings, thirty (30) days after the order becomes the final order of the Administrator of the EPA under Section 22.27(c) of the Consolidated Rules.

Settlement Conference

To request an informal settlement conference, Respondent may contact Ms. Erin Galbraith at (312) 886-6879.

Respondent's request for an informal settlement conference will not extend the 30-day period for filing a written Answer to this Complaint. Respondent may simultaneously pursue both an informal settlement conference and the adjudicatory hearing process. Complainant encourages all parties against whom it proposes to assess a civil penalty to pursue settlement through an informal conference. However, Complainant will not reduce the penalty simply because the parties hold an informal settlement conference.

Continuing Obligation to Comply

Neither the assessment nor payment of a civil penalty will affect Respondent's continuing obligation to comply with the UST regulations and any other applicable federal, state, or local law.

Consent Agreement and Final Order

If the EPA and Respondent agree to settle the claims in this Complaint, the terms of the settlement would be embodied in a Consent Agreement and Final Order. A Consent Agreement signed by both parties is effective when the Regional Administrator signs the Consent Order and it is filed with the Regional Hearing Clerk.

Sept. 24, 2013
Date

Margaret M. Guerriero, Director
Land and Chemicals Division

CASE NAME: Meleen Corporation
DOCKET NO: **RCRA-05-2013-0013**

CERTIFICATE OF SERVICE

I hereby certify that I have caused a copy of the foregoing **Complaint and Compliance Order** to be served upon the persons designated below, on the date below, by causing true and correct copies to be deposited in the U.S. Mail, First Class and certified-return receipt requested, postage prepaid, at Chicago, Illinois, in envelopes addressed to the following:

Mr. Paul Meleen
Meleen Corporation
Meleen's Sports Center
Post Office Box 332
Onamia, Minnesota 56359

I hereby further certify that I filed the original and one copy of this **Complaint and Compliance Order** and this **Certificate of Service** with the Regional Hearing Clerk (E-19J), U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590, on the date below.

9/25/13
Date

Erin F. Galbraith, Enforcement Officer
Land and Chemicals Division
U.S. EPA Region 5