

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

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**IN RE:** : **Administrative Complaint,  
 Compliance Order and Notice of  
 Right to Request Hearing**

**Reynolds Oil Company, Incorporated** :  
**741 North Jefferson Street** :  
**Lewisburg, West Virginia 24901** :

**Respondent,** : **Docket No. RCRA-03-2012-0103**

**Handy Place** :  
**US Route 60** :  
**Rupert, WV 25984** :

**K & S Mini Mart** : **Proceeding Under Section 9006 of the  
 Resource Conservation and Recovery  
 Act, as amended, 42 U.S.C. Section  
 6991e**

**908 Main Street** :  
**Rainelle, WV 25962** :

**Facilities.** :

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**I. INTRODUCTION**

This Administrative Complaint, Compliance Order and Notice of Opportunity for Hearing (“Complaint”) is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency (“EPA” or the “Agency”) by 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 “RCRA”), 42 U.S.C. § 6991e, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22 (“Consolidated Rules of Practice”), a copy of which is enclosed with this Complaint (Enclosure “A”).

The Director of the Land and Chemicals Division of U.S. EPA Region III (“Complainant”), hereby notifies Reynolds Oil Company, Incorporated (“Respondent”) that EPA has reason to believe that Respondent has violated Subtitle I of RCRA, 42 U.S.C. §§ 6991-6991m, and the State of West Virginia’s federally authorized underground storage tank program with respect to the underground storage tanks at two of Respondent’s facilities located at US Route 60, Rupert, Greenbrier County, West Virginia (hereinafter “Handy Place”) and 908 Main Street, Rainelle, Greenbrier County, West Virginia (hereinafter “K & S Mini Mart”) (collectively the

“Facilities”). Section 9006 of RCRA, 42 U.S.C. § 6991e, authorizes EPA to take enforcement action, including issuing a compliance order or assessing a civil penalty, whenever it is determined that a person is in violation of any requirement of RCRA Subtitle I, EPA’s regulations thereunder, or any regulation of a state underground storage tank program which has been authorized by EPA.

Effective February 10, 1998, pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c, and 40 C.F.R. Part 281, Subpart A, the State of West Virginia was granted final authorization to administer its 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. §§ 6991-6991m. The provisions of West Virginia’s authorized Underground Storage Tank Rule, Title 33, Series 30, set forth in West Virginia’s Underground Storage Tank Regulations Sections §§ 33-30-1, *et seq.* (“WVUSTR”), which incorporates by reference the federal underground storage tank program regulations set forth at 40 C.F.R. Part 280 (1995 ed.), with some modifications, are enforceable by EPA pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e. The provisions of WVUSTR are cited as the legal basis for the violations alleged herein with the incorporated provisions of the federal regulations cited immediately thereafter.

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

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

## **II. COMPLAINT**

### **Findings of Facts and Conclusions of Law**

1. The United States Environmental Protection Agency - Region III (“EPA” or the “Region”) and EPA’s Office of Administrative Law Judges have jurisdiction over this matter pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e, 40 C.F.R. Part 280 and 40 C.F.R. § 22.1(a)(4) and .4(c).
2. At all times relevant to this Complaint, Reynolds Oil Company, Incorporated (“Respondent”) was established under the corporation laws of the State of West Virginia and is doing business in the State of West Virginia.
3. Respondent is a “person” as defined by WVUSTR § 33-30-2.1, which incorporates by reference 40 C.F.R. § 280.12, and Section 9001(5) of RCRA, 42 U.S.C. § 6991(5).

4. On November 25, 2008, an EPA representative conducted a Compliance Evaluation Inspection (“CEI”) of the Facilities pursuant to Section 9005 of RCRA, 42 U.S.C. § 6991d.
5. At the time of the November 25, 2008 inspection, and at all times relevant hereto, four (4) USTs, as described in the following subparagraphs, were located at the Handy Place, as follows:
  - a) a six thousand (6,000) gallon cathodically-protected steel (“Sti-P3”) UST that was installed in December 1990, and that, at all times relevant hereto, routinely contained gasoline, a “regulated substance” as that term is defined in WVUSTR § 33-30-2.1 (40 C.F.R. § 280.12);
  - b) a second six thousand (6,000) gallon Sti-P3 UST that was installed in December 1990, and that, at all times relevant hereto, routinely contained gasoline, a “regulated substance” as that term is defined in WVUSTR § 33-30-2.1 (40 C.F.R. § 280.12);
  - c) a four thousand (4,000) gallon Sti-P3 UST that was installed in December 1990, and that, at all times relevant hereto, routinely contained gasoline, a “regulated substance” as that term is defined in WVUSTR § 33-30-2.1 (40 C.F.R. § 280.12); and
  - d) an eight thousand (8,000) gallon composite UST that was installed in October 1986, and that, at all times relevant hereto, routinely contained diesel fuel, a “regulated substance” as that term is defined in WVUSTR § 33-30-2.1 (40 C.F.R. § 280.12).
6. At the time of the November 25, 2008 inspection, and at all times relevant hereto, three (3) USTs, as described in the following subparagraphs, were located at the K & S Mini Mart:
  - a) an eight thousand (8,000) gallon Sti-P3 UST that was installed in 1985, and that, at all times relevant hereto, routinely contained gasoline, a “regulated substance” as that term is defined in WVUSTR § 33-30-2.1 (40 C.F.R. § 280.12); and
  - b) a second eight thousand (8,000) gallon Sti-P3 UST that was installed in 1985, and that, at all times relevant hereto, routinely contained gasoline, a “regulated substance” as that term is defined in WVUSTR § 33-30-2.1 (40 C.F.R. § 280.12); and

- c) a three thousand (3,000) gallon Sti-P3 UST that was installed in 1985, and that, at all times relevant hereto, routinely contained gasoline, a "regulated substance" as that term is defined in WVUSTR § 33-30-2.1 (40 C.F.R. § 280.12).
7. Respondent is, and at the time of the violations alleged in this Complaint, was the "owner" and/or the "operator" of "underground storage tanks" ("USTs"), as these terms are defined in Section 9001 of RCRA, 42 U.S.C. § 6991, and WVUSTR Section 33-30-2.1 (40 C.F.R. § 280.12) located at the Facilities.
8. The USTs described in Paragraphs 5 and 6, above, are "petroleum UST systems", the USTs described in Paragraph 5(a) through (c), above, are "new tank systems", and the USTs described in Paragraphs 5(d) and 6(a) through (c), above, are "existing tank systems" as defined in WVUSTR § 33-30-2.1, which incorporates by reference 40 C.F.R. § 280.12.
9. Respondent's USTs at its Facilities which are described in Paragraphs 5 and 6, above, were at all times relevant hereto used to store "regulated substances" as defined in WVUSTR § 33-30-2.1, which incorporates by reference 40 C.F.R. § 280.12, and Section 9001(2) of RCRA, 42 U.S.C. § 6991(2), and were not "empty" as defined in WVUSTR § 33-30-2.1, which incorporates by reference 40 C.F.R. § 280.70(a).
10. Pursuant to RCRA Section 9005, 42 U.S.C. § 6991d, on March 30, 2009 and July 12, 2010, EPA issued an Information Request to Respondent concerning its petroleum UST systems at the Facilities.

**K & S Mini Mart**

**COUNT I  
(Failure to Conduct Cathodic Protection System Testing for the  
Three USTs at the K & S Mini Mart)**

11. The allegations of Paragraphs 1 through 10, above, are incorporated by reference as though fully set forth herein.
12. WVUSTR § 33-30-2.1, which incorporates by reference 40 C.F.R. § 280.31(b)(1), requires that all steel UST systems equipped with cathodic protection systems must be inspected for proper operation by a qualified cathodic protection tester in accordance with the following requirements for as long as the UST system is used to store regulated substances: (1) *Frequency*. All cathodic protection systems must be tested within 6 months of installation and at least every 3 years thereafter or according to another reasonable time frame established by the implementing agency.

13. The three USTs at the K & S Mini Mart, each of which is and was a steel UST equipped with a cathodic protection system, had not been tested by a qualified cathodic protection tester for more than three years prior to April 17, 2009 and were not subject to a "reasonable time frame established by the implementing agency" for testing in lieu of the requirement for testing "at least every 3 years."
14. Respondent failed to have a test of the cathodic protection system for the three UST systems at the K & S Mini Mart for more than three years prior to April 17, 2009, as required by WVUSTR § 33-30-2.1, which incorporates by reference 40 C.F.R. § 280.31(b)(1).
15. Respondent violated WVUSTR § 33-30-2.1, which incorporates by reference 40 C.F.R. § 280.31(b)(1), by failing to have the three USTs at the K & S Mini Mart tested by a qualified corrosion protection tester for more than three years prior to April 17, 2009.

**COUNT II**  
**(Failure to Operate All Corrosion Protection Systems for the**  
**Three USTs at the K & S Mini Mart)**

16. The allegations of Paragraphs 1 through 15, above, are incorporated by reference as though fully set forth herein.
17. WVUSTR § 33-30-2.1, which incorporates by reference 40 C.F.R. § 280.31(a), requires that all corrosion protection systems must be operated and maintained to continuously provide corrosion protection to steel UST systems in contact with the ground.
18. The three USTs at the K & S Mini Mart were equipped with a cathodic protection system to provide corrosion protection and were in contact with the ground.
19. Respondent failed to operate the cathodic protection system for the three UST systems at the K & S Mini Mart from November 17, 2008 to April 17, 2009, as required by WVUSTR § 33-30-2.1, which incorporates by reference 40 C.F.R. § 280.31(a).
20. Respondent violated WVUSTR § 33-30-2.1, which incorporates by reference 40 C.F.R. § 280.31(a), by failing to operate all corrosion protection systems for the three USTs at the K & S Mini Mart from November 17, 2008 to April 17, 2009.

**COUNT III**  
**(Failure to Inspect Impressed Current Cathodic Protection System**  
**Every Sixty Days at the K & S Mini Mart)**

21. The allegations in Paragraphs 1 through 20, above, are incorporated by reference as though fully set forth herein.
22. WVUSTR § 33-30-2.1, which incorporates by reference 40 C.F.R. § 280.31(c), requires that UST systems with impressed current cathodic protection systems must be inspected every 60 days to ensure that the equipment is running properly.
23. Respondent's UST systems at the K & S Mini Mart, described more fully at Paragraph 10(c), above, had an impressed current cathodic protection system.
24. From at least June 1, 2006 until April 16, 2009, Respondent failed to inspect the impressed current cathodic protection system for Respondent's UST systems at the K & S Mini Mart, every sixty days, as required by WVUSTR § 33-30-2.1, which incorporates by reference 40 C.F.R. § 280.31(c).
25. Respondent violated WVUSTR § 33-30-2.1, which incorporates by reference 40 C.F.R. § 280.31(c), by failing to inspect the impressed current cathodic protection system for Respondent's UST systems at the K & S Mini Mart from at least April 1, 2007 until April 16, 2009.

**COUNT IV**  
**(Failure to Notify the Implementing Agency of a Suspected Release**  
**at K & S Mini Mart)**

26. The allegations in Paragraphs 1 through 25, above, are incorporated by reference as though fully set forth herein.
27. WVUSTR § 33-30-2.1, which incorporates by reference 40 C.F.R. § 280.50, requires, in pertinent part, that owners and operators of UST systems must report to the implementing agency, within 24 hours, monitoring results from a release detection method that indicate a release may have occurred, with exceptions not here relevant.
28. At all times relevant to the violations alleged in this Count, Respondent used Statistical Inventory Reconciliation as the method of leak detection for its three UST systems at the K & S Mini Mart.
29. In March and April of 2008, the results of Respondent's release detection testing for one of its 8,000 gallon USTs, described more fully in Paragraph 6(a), at the K & S Mini Mart indicated a "FAIL," which indicates that a release may have occurred, but

Respondent did not, at any time, submit a notification to the implementing agency as required by WVUSTR § 33-30-2.1, which incorporates by reference 40 C.F.R. § 280.50.

30. Respondent violated WVUSTR § 33-30-2.1, which incorporates by reference 40 C.F.R. § 280.50 by failing to notify the implementing agency of the failed monitoring results for one of its 8,000 gallon USTs indicating that a release may have occurred as described in Paragraph 29, above.

**Handy Place**

**COUNT V**

**(Failure to Provide Release Detection for Four USTs at the Handy Place)**

31. The allegations of Paragraphs 1 through 30, above, are incorporated by reference as though fully set forth herein.
32. WVUSTR § 33-30-2.1, which incorporates by reference 40 C.F.R. § 280.41(a), provides that petroleum UST systems must be monitored at least every 30 days for releases using one of the methods listed in 40 C.F.R. § 280.43(d) through (h), with exceptions not here relevant.
33. Respondent failed to monitor the following USTs at the Handy Place every 30 days during the following the time periods:

<u>UST</u>	<u>Dates of Noncompliance</u>
a) 6,000 gal. UST No.2 described more fully in Para. 10(b)(ii), above,	March 6, 2008-April 30, 2008 January 30, 2009-May 10, 2009 October 21, 2009-November 22, 2009 January 20, 2010-July 21, 2010
b) 4,000 gal. UST No. 3 described more fully in Para. 10(b)(iii), above.	September 27, 2007-July 31, 2010
d) 8,000 gal. UST No. 4 described more fully in Para. 10(b)(iv), above.	April 9, 2008-May 11, 2008 November 30, 2008-December 21, 2008 January 21, 2009-February 1, 2009 April 22, 2009-June 7, 2009 July 8, 2009-August 2, 2009 November 24, 2009-December 31, 2009 February 1, 2010 – July 31, 2010

34. Respondent violated WVUSTR § 33-30-2.1, which incorporates by reference 40 C.F.R. § 280.41(a), by failing to provide release detection for four USTs at the Handy Place, described more fully in Paragraph 5, above, by failing to conduct monthly monitoring every 30 days as described more fully in Paragraph 33, above.

**COUNT VI**  
**(Failure to Maintain Release Detection Records for the Handy Place)**

35. The allegations in Paragraphs 1 through 34, above, are incorporated by reference as though fully set forth herein.

36. WVUSTR § 33-30-2.1, which incorporates by reference 40 C.F.R. § 280.45, requires that the results of monitoring petroleum UST systems for a release must be maintained for at least 1 year.

37. On November 28, 2008, Respondent failed to maintain the release detection results for the following USTs at Handy Place for the following time periods:

<u>UST</u>	<u>Dates of Noncompliance</u>
a) 6,000 gal. UST No. 1 described more fully in Para. 10(b)(i), above,	March 6, 2008-April 13, 2008 May 14, 2008-July 6, 2008 September 17, 2008-October 19, 2008
b) 6,000 gal. UST No. 2 described more fully in Para. 10(b)(ii), above,	November 29, 2007-January 6, 2008 May 1, 2008-October 19, 2008
c) 8,000 gal. UST No. 4 described more fully in Para. 10(b)(iv), above.	December 5, 2007-January 6, 2008 June 11, 2008-July 6, 2008 August 6, 2008-October 31, 2008

38. Respondent violated WVUSTR § 33-30-2.1, which incorporates by reference 40 C.F.R. § 280.45, by failing to maintain release detection results for three USTs at the Handy Place, described more fully in Paragraph 6(b), above, as described more fully in Paragraph 37, above.



## COMPLIANCE ORDER

Pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e, Respondent is hereby ordered to:

39. Within forty-five (45) days of the effective date of this Compliance Order, comply with the release detection requirements of WVUSTR Section 33-30-2.2.1, which incorporates by reference 40 C.F.R. § 280.40(a) and (c), for all UST systems located at the Handy Place Facility subject to this Complaint or close such UST systems in accordance with WVUSTR Section 33-30-2.2.1, which incorporates by reference 40 C.F.R. § 280.71.
40. Within forty-five (45) days of the effective date of this Compliance Order, complete measures to ensure that the corrosion protection systems for the USTs at the K&S Mini Mart Facility are operated and maintained in accordance with WVUSTR Section 33-30-2.2.1, which incorporates by reference 40 C.F.R. § 280.31(a), or close such UST systems in accordance with WVUSTR Section 33-30-2.2.1, which incorporates by reference 40 C.F.R. § 280.71.
41. Within forty-five (45) days of the effective date of this Compliance Order, complete measures to ensure that the corrosion protection systems for the USTs at the K&S Mini Mart Facility are tested and inspected for proper operation by a qualified cathodic protection tester in accordance with WVUSTR Section 33-30-2.2.1, which incorporates by reference 40 C.F.R. § 280.31(b)(1), or upgrade the cathodic protection system for such USTs in accordance with WVUSTR Section 33-30-2.2.1 which incorporates by reference 40 C.F.R. § 280.21(b)(2) or close such UST systems in accordance with WVUSTR Section 33-30-2.2.1, which incorporates by reference 40 C.F.R. § 280.71.
42. If Respondent elects to close any or all of the USTs subject to this Compliance Order, Respondent must submit to EPA, within fifteen (15) calendar days after the effective date of this Compliance Order, a notice of intent to permanently close, identifying which UST(s) Respondent intends to close. Such notice shall be sent to Clark Conover at the address set forth below. A copy of such notice shall also be sent to West Virginia Department of Environmental Quality at the address set forth below.
43. Within sixty (60) days of the effective date of this Compliance Order, submit to EPA a report which documents and certifies Respondent's compliance with the terms of this Compliance Order.
44. Any notice, report, certification, data presentation, or other document submitted by Respondent pursuant to this Compliance Order which discusses, describes, demonstrates, supports any finding or makes any representation concerning Respondent's compliance or noncompliance with any requirement of this Compliance Order shall be certified by Respondent.

The certification required above shall be in the following form:

I certify that the information contained in or accompanying this [type of submission] is true, accurate, and complete. As to [the/those] identified portions of this [type of submission] for which I cannot personally verify [its/their] accuracy, I certify under penalty of law that this [type of submission] and all attachments were prepared in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

Signature: \_\_\_\_\_

Name

Title:

45. All documents and reports to be submitted pursuant to this Compliance Order shall be sent to the following persons:

Clark Conover  
RCRA Compliance and Enforcement Branch (3LC70)  
U.S. Environmental Protection Agency - Region III  
1060 Chapline Street., Suite 303  
Wheeling, West Virginia 26003-2995

and

Louis F. Ramalho  
Sr. Assistant Regional Counsel (3RC30)  
U.S. Environmental Protection Agency - Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

46. One copy of all documents submitted to EPA shall also be sent by regular mail to the attention of:

Ruth M. Porter  
UST Program Manager  
WV Department of Environmental Protection  
601 57th Street SE

Charleston, WV 25304  
Telephone; 304-926-0499 ext. 1007  
Fax: 304-926-0457  
Ruth.M.Porter@wv.gov

47. If activities undertaken by the Respondent in connection with this Compliance Order or otherwise indicate that a release of a regulated substance from any UST at the Facility may have occurred, Respondent may be required to undertake corrective action pursuant to applicable regulations in WVUSTR Section 33-30-2.2.1 which incorporates by reference 40 C.F.R. § 280.71.
48. Respondent is hereby notified that failure to comply with any of the terms of this Compliance Order after its effective date may subject it to imposition of a civil penalty of up to \$37,500 for each day of continued noncompliance, pursuant to Section 9006(a)(3) of RCRA, 42 U.S.C. § 6991e(a)(3), the Debt Collection Improvement Act of 1996 ("DCIA"), and the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19. (Enclosures "D" and "E").
49. The term "days" as used herein shall mean calendar days unless specified otherwise.

#### **IV. PROPOSED CIVIL PENALTY**

Section 9006(d)(2) of RCRA, 42 U.S.C. § 6991e(d)(2), provides, 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, 40 C.F.R. Part 19, all such violations occurring after March 15, 2004 and before January 12, 2009 are subject to a maximum civil penalty of \$11,000 per violation per day, and those violations occurring after January 12, 2009 are subject to a maximum civil penalty of \$16,000 per violation per day. 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), 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 EPA's November 1990 U.S. EPA Penalty Guidance for Violations of UST Regulations ("UST Penalty Guidance") (Enclosure C), the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. Part 19 (Enclosure D), and the Amendments to EPA's Civil Penalty Policies to Implement the 2008

Civil Monetary Penalty Inflation Adjustment Rule (December 29, 2008) (Enclosure E). 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, 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 test cathodic protection systems.**

The "potential for harm" for this violation is "moderate." 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 performed a test of the cathodic protection system to ensure integrity of all the metal part of the UST systems at the the K&S Mini Mart Facility. Respondent's inaction posed a significant risk of 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 of the UST systems at the K&S Mini Mart Facility presents a substantial act of noncompliance with the goals of the UST program.

**Failure to operate all corrosion protection systems.**

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 operate the corrosion protection system to ensure integrity of all the metal part of the UST systems at the K&S Mini Mart 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 of the UST systems at the the K&S Mini Mart Facility presents a substantial act of noncompliance with the goals of the UST program.

**Failure to inspect impressed current cathodic protection systems.**

The "potential for harm" for this violation is "moderate." 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 inspect the impressed current cathodic protection system every 60 days to ensure integrity of the corrosion protection

system for all the metal part of the UST systems at the K&S Mini Mart Facility. Respondent's inaction posed a significant risk of 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 test the impressed current cathodic protection system at the the K&S Mini Mart Facility presents a substantial act of noncompliance with the goals of the UST 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, WVDEP, 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 WVDEP.

**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. Respondent's failure to use an acceptable method of release detection created the possibility of a leak going undetected and harming human health or the environment.

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 "major" deviation from the requirements of the RCRA regulatory program.

**Failure to maintain release detection records at the Facility.**

The "potential for harm" for this violation is "minor." 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 maintain release detection records demonstrating compliance with the release detection requirements for the USTs systems at the Facility presented an adverse affect on the RCRA regulatory program.

The "extent of deviation" for this violation is "moderate" because it presents a significant adverse affect to the RCRA regulatory 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, 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 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 the Respondent to admit, deny or explain any material allegation in the Complaint shall constitute an admission by 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.

Any hearing requested and granted will be conducted in accordance with the Consolidated Rules, a copy of which has been enclosed with this Complaint (Enclosure "A"). Respondent must send any Answer and request for a hearing to the attention of:

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

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

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

#### **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 ITS 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 his 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.

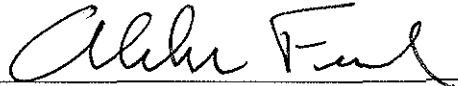
If you wish to arrange a settlement conference, please contact Louis F. Ramalho, Senior Assistant Regional Counsel, at (215) 814-2681 prior to the expiration of the thirty (30) day period following service of this Complaint. Once again, however, such a request for a settlement conference does not relieve Respondent of its responsibility to file Answer(s) within thirty (30) days following service of this Complaint.

Please note that the Quick Resolution settlement procedures set forth in 40 C.F.R. § 22.18 do not apply to this proceeding because the Complaint seeks a compliance order. See 40 C.F.R. § 22.18(a)(1).

#### **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 Land and Chemicals 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: 5/9/12

  
Abraham Ferdas, Director  
Land and Chemicals Division  
U.S. EPA Region III

Enclosures: A. Consolidated Rules of Practice, 40 C.F.R. Part 22  
B. WVUSTR, Parts 33-30-1 through 33-30-4.6, and  
40 C.F.R. Part 280 (1995 ed.)

C. UST Penalty Guidance

D. Civil Monetary Penalty Inflation Adjustment Rule; 40 C.F.R. Part 19

E. Amendments to EPA's Civil Penalty Policies to Implement the 2008 Civil Monetary Penalty Inflation Adjustment Rule (December 29, 2008)



**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that on the date listed below, the original of the foregoing Administrative Complaint, Compliance Order and Notice of Opportunity for Hearing, Docket No. **RCRA-03-2012-0163**, was filed with the Regional Hearing Clerk, U.S. EPA - Region III, 1650 Arch Street, Philadelphia, Pennsylvania, 19103-2029, and that a true and correct copy was sent to the following parties:

*Respondent:*


Mr. William T. Reynolds  
President  
Reynolds Oil Company, Incorporated  
741 North Jefferson Street  
Lewisburg, West Virginia 24901

Mr. Thomas P. Reynolds  
Vice-President  
Reynolds Oil Company, Incorporated  
712 North Jefferson Street  
Lewisburg, West Virginia 24901

*Respondent's Legal Representative:*

J. Steven Hunter, Esquire  
Steve Hunter Associates. L.C.  
Attorneys at Law  
209 North Court Street  
Lewisburg, West Virginia 24901

Date **MAY 14 2012**

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

REGIONAL HEARING CLERK  
EPA REGION III, PHILA. PA

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