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SOUTHERN DISTRICT OF NEW YORK
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

- v. -

CITY OF NEW YORK,

Defendant.

COMPLAINT

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Plaintiff UNITED STATES OF AMERICA, by its attorney
JAMES B. COMEY, United States Attorney for the Southern District
of New York, on behalf of the United States Environmental
Protection Agency ("EPA"), for its complaint against defendant
herein alleges as follows:

NATURE OF THE ACTION

1. This is a civil action brought pursuant to section
9006 of the Resource Conservation and Recovery Act, as amended,
("RCRA"), 42 U.S.C. § 6991e, for civil penalties and injunctive
relief against the defendant City of New York (the "City" or
"defendant"). This action seeks redress for the City's
violations of requirements under RCRA and the regulations
promulgated thereunder, codified at 40 C.F.R. part 280, regarding

numerous underground storage tank ("UST") systems that are or were owned and operated by New York City.

2. The City failed to meet numerous requirements mandated by RCRA and its implementing regulations, including requirements to: (1) upgrade UST systems; (2) provide methods of release detection for UST systems; (3) maintain and furnish records concerning compliance with release detection methods; (4) report, investigate, and confirm suspected releases of regulated substances; (5) comply with performance standards for new UST systems; (6) close UST systems; (7) maintain and furnish records concerning compliance with closure requirements; (8) provide notice of existence of UST systems; and (9) respond to a request for information regarding UST systems.

JURISDICTION AND VENUE

3. This court has jurisdiction over the subject matter of this action pursuant to section 9006(a)(1) of RCRA, 42 U.S.C. § 6991e(a)(1), and 28 U.S.C. §§ 1331, 1345, and 1355. Venue is proper in this district pursuant to section 9006(a) of RCRA, 42 U.S.C. § 6991e(a), and 28 U.S.C. §§ 1391 and 1395 because many of the violations occurred within this district and/or the defendant resides in this district.

DEFENDANT

4. The City is a municipal corporation organized pursuant to the laws of the State of New York.

5. The City owned and/or owns and operates at least 1600 USTs.

6. The USTs owned and operated by the City were and/or are located at at least 400 locations throughout the New York City metropolitan area including, but not limited to, the Bronx, Brooklyn, Manhattan, Queens, and Staten Island.

7. The USTs owned and operated by the City are operated by at least 16 agencies or departments of the City.

RCRA AND THE APPLICABLE REGULATIONS

8. RCRA established a comprehensive federal regulatory program for the management of hazardous wastes. See 42 U.S.C. § 6901 et seq.

9. On November 8, 1984, as part of the Hazardous and Solid Waste Amendments ("HSWA") of 1984 to RCRA, Congress created subtitle I of RCRA, Regulation of Underground Storage Tanks. This subtitle I was created in response to the growing number of groundwater contamination incidents caused by substances leaking from USTs.

10. Section 9003(a) of RCRA, 42 U.S.C. § 6991b(a), directs the EPA Administrator to:

promulgate release detection, prevention, and correction regulations applicable to all owners and operators of underground storage tanks, as may be necessary to protect human health and the environment.

11. "Owner" is defined in section 9001(3) of RCRA, 42 U.S.C. § 6991(3) as:

(A) in the case of an underground storage tank in use on November 8, 1984, or brought into use after that date, any person who owns an underground storage tank used for the storage, use, or dispensing of regulated substances, and

(B) in the case of any underground storage tank in use before November 8, 1984, but no longer in use on November 8, 1984, any person who owned such tank immediately before the discontinuation of its use.

12. "Operator" is defined in section 9001(4) of RCRA, 42 U.S.C. § 6991(4), as "any person in control of, or having responsibility for, the daily operation of the underground storage tank."

13. The definition of "Person," pursuant to section 1004(15) of RCRA, 42 U.S.C. § 6903(15), includes, but is not limited to, a municipality.

14. "Underground Storage Tank" is defined in section 9001(1) of RCRA, 42 U.S.C. § 6991(1), in part, as:

any one or combination of tanks (including underground pipes connected thereto) which is used to contain an accumulation of regulated substances.

15. "Regulated Substance" is defined in section 9001(2) of RCRA, 42 U.S.C. § 6991(2), as any substance defined in section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601(14), including but not limited to, ethylene glycol, and as petroleum. Petroleum includes, but is not limited to, gasoline and used motor oil.

16. Section 9002(a)(1) of RCRA, 42 U.S.C.

§ 6991a(a)(1), requires each UST owner to notify the designated state or local agency "of the existence of such tank, specifying the age, size, type, location, and uses of such tank."

17. Section 9003(c)(1) of RCRA, 42 U.S.C.

§ 6991b(c)(1), requires the EPA Administrator to promulgate regulations applicable to owners and operators of USTs, including requirements for maintaining leak detection systems or a comparable system or method to identify releases.

18. Section 9003(c)(2) of RCRA, 42 U.S.C. §

6991b(c)(2), requires the EPA Administrator to promulgate regulations applicable to owners and operators of USTs, including requirements for maintaining records of any monitoring or leak detection systems.

19. Section 9003(c)(3) of RCRA, 42 U.S.C. §

6991b(c)(3), requires the EPA Administrator to promulgate regulations applicable to owners and operators of USTs, including requirements for reporting of releases and corrective action taken in response to releases from USTs.

20. Section 9003(c)(4) of RCRA, 42 U.S.C. §

6991b(c)(4), requires the EPA Administrator to promulgate regulations applicable to owners and operators of USTs, including requirements for taking corrective action in response to releases from USTs.

21. Section 9003(c)(5) of RCRA, 42 U.S.C. §

6991b(c) (5), requires the EPA Administrator to promulgate regulations applicable to owners and operators of USTs, including requirements for the closure of tanks to prevent future releases of regulated substances into the environment.

22. The regulations promulgated by the EPA Administrator pursuant to subtitle I of RCRA are codified at 40 C.F.R. Parts 280 and 281. Most of these regulations became effective in December 1988. New York State has not received state program approval under section 9004 of RCRA, 42 U.S.C. § 6991c. As a result, the UST federal regulations have been in effect in New York State since December 1988.

23. Pursuant to 40 C.F.R. § 280.10(a), "[t]he requirements of this part apply to all owners and operators of an UST system."

24. The terms "Underground Storage Tank," "UST System," "Regulated Substance," "Owner" and "Person" are defined in 40 C.F.R. § 280.12 in a manner consistent with the statutory definitions.

25. The term "Implementing Agency" is defined in 40 C.F.R. § 280.12 as EPA, or, in the case of a state with a program approved under section 9004 of RCRA, 42 U.S.C. § 6991c, or pursuant to a memorandum of agreement with EPA, the designated state or local agency responsible for carrying out an approved UST program.

26. Pursuant to a memorandum of agreement between EPA and New York State, EPA has designated the New York State Department of Environmental Conservation ("NYSDEC") as the implementing agency for certain aspects of the UST program. NYSDEC's responsibilities include, but are not limited to: (1) receiving reports of releases, including suspected releases of regulated substances, see 40 C.F.R. § 280.50, spills and overfills, see 40 C.F.R. § 280.53, and confirmed releases, see 40 C.F.R. § 280.61; and (2) receiving notification prior to permanent closure or change of service of a UST, see 40 C.F.R. § 280.71. EPA remains responsible for enforcing any failure to comply with the federal regulations at 40 CFR Part 280.

27. The regulations setting forth the performance standards for tanks, piping, and spill and overfill prevention equipment for new USTs are codified at 40 C.F.R. § 280.20. The regulation requires, inter alia, that UST owners and operators use spill prevention equipment that will prevent release of product to the environment when the transfer hose is detached from the fill pipe, except where EPA has determined that alternative equipment is no less protective of human health and environment or where the UST system is filled by transfers of no more than 25 gallons at one time. The regulation also requires, inter alia, that UST owners and operators use overfill prevention equipment that will either automatically shut off flow into the

tank when it is no more than 95 percent full or alert the transfer operator when the tank is no more than 90 percent full by restricting flow into the tank or triggering a high-level alarm, except where EPA has determined that alternative equipment is no less protective of human health and environment or where the UST system is filled by transfers of no more than 25 gallons at one time.

28. The regulation setting forth the requirements governing upgrading of existing USTs is codified at 40 C.F.R. § 280.21. Pursuant to 40 C.F.R. § 280.21(a), by no later than December 22, 1998, all existing UST systems had to comply with either: (1) the performance standards for new USTs described in 40 C.F.R. § 280.20; (2) upgrade requirements described in 40 C.F.R. §§ 280.21(b)-(d); or (3) closure requirements described in 40 C.F.R. Part 280, subparts F and G.

29. The regulation setting forth the requirements for notification to designated state or local agencies of information regarding USTs is codified at 40 C.F.R. § 280.22.

30. The regulation setting forth the general operating requirements for UST spill and overfill control is codified at 40 C.F.R. § 280.30. The regulation requires, inter alia, that owners and operators ensure that releases due to spilling or overfilling do not occur, and that the transfer of product to USTs is monitored constantly to prevent overfilling and spilling

31. The regulations setting forth the requirements for UST release detection are codified at 40 C.F.R. §§ 280.40 through 280.45. Pursuant to 40 C.F.R. § 280.40(c), UST owners and operators had to comply with regulatory release detection requirements beginning December 22, 1989, but by no later than December 22, 1993, based on date of installation or presence of pressurized piping.

32. The regulations setting forth the requirements for reporting, investigating, and confirming suspected releases of regulated substances and spills and overfills are codified at 40 C.F.R. §§ 280.34 and 280.50 through 280.53. The regulations require, inter alia, that UST owners and operators report all suspected releases and spills and overfills to the implementing agency within 24 hours. The regulations also require, inter alia, that UST owners and operators investigate and confirm suspected releases within seven days.

33. The regulations setting forth the requirements for temporary and permanent closure of USTs are codified at 40 C.F.R. §§ 280.70 through 280.74. The regulations require, inter alia, that when a UST is temporarily closed, owners and operators must continue operation and maintenance of corrosion protection and release detection methods, except that continued release detection is not required if the UST is empty. The regulations also require, inter alia, that when a UST is temporarily closed

for three months or more, owners and operators must also leave vent lines open and functioning, and cap and secure all other lines, pumps, manways, and ancillary equipment. The regulations further require, inter alia, that when a UST is temporarily closed for more than 12 months, owners and operators must permanently close the UST. Permanent closure includes notifying the implementing agency of intent to permanently close a UST, emptying the tank and cleaning it, removing the tank from the ground or filling it with an inert solid material, and assessing the UST site for the presence of releases.

34. The regulations setting forth the general record keeping requirements and the specific record keeping requirements relating to release detection and UST closure are codified at 40 C.F.R. §§ 280.34, 280.45 and 280.74.

35. Section 9005(a) of RCRA, 42 U.S.C. § 6991d(a), requires any UST owner or operator to furnish to EPA information relating to such tanks, their associated equipment and their contents.

36. Section 9006(a) of RCRA, 42 U.S.C. § 6991e(a), authorizes the EPA Administrator to commence a civil action for appropriate relief, including a permanent or temporary injunction, when a person has violated or is in violation of subtitle I of RCRA or its implementing regulations.

37. Pursuant to Section 9006(d) of RCRA, 42 U.S.C. §

6991e(d):

(1) Any owner who knowingly fails to notify or submits false information pursuant to section 6991a(a) of this title shall be subject to a civil penalty not to exceed \$10,000 for each tank for which notification is not given or false information is submitted.

(2) Any owner or operator of an underground storage tank who fails to comply with (A) any requirement or standard promulgated by the Administrator under section 6991b . . . shall be subject to a civil penalty not to exceed \$10,000 for each tank for each day of violation.

38. Pursuant to the Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321 (Apr. 26, 1996), in 1997, EPA adjusted the civil penalties recoverable under 42 U.S.C. § 6991e(d) to up to \$11,000 per tank per day of violation, for any violation occurring after January 30, 1997. See 62 Fed. Reg. 35038, 35039, 1997 WL 350894 (June 27, 1997); 40 C.F.R. §§ 19.1, 19.2, 19.4.

THE DEFENDANT'S STATUS UNDER RCRA

39. The City has been and is an "owner" of USTs within the meaning of section 9001(3) of RCRA, 42 U.S.C. § 6991(3) and 40 C.F.R. § 280.12.

40. The City has been and is an "operator" of USTs within the meaning of section 9001(4) of RCRA, 42 U.S.C. § 6991(4) and 40 C.F.R. § 280.12.

41. The City is a "person" within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15) and 40 C.F.R. § 280.12.

42. Pursuant to sections 9006e(a) and (d) of RCRA, 42 U.S.C. §§ 6991e(a) and (d), the City is subject to injunctive relief and is liable for civil penalties based upon the claims for relief identified below.

FIRST CLAIM

Failure to Timely Upgrade UST Svstems

43. Paragraphs 1 through 42 are realleged and incorporated herein by reference.

44. Pursuant to 40 C.F.R. § 280.21(a), not later than December 22, 1998, all existing UST systems were required to comply with either: (1) the performance standards for new USTs described in 40 C.F.R. § 280.20; (2) upgrade requirements described in 40 C.F.R. §§ 280.21(b)-(d); or (3) closure requirements described in 40 C.F.R. Part 280, subparts F and G.

45. On or about December 21, 1998, the City telephoned EPA to inform EPA that the City would not be in compliance with the requirements of 40 C.F.R. § 280.21 with respect to some of its USTs.

46. Between approximately 1999 and June 2001, the City disclosed that hundreds of its USTs were not in compliance with the requirements of 40 C.F.R. Part 280, and would not be in compliance until specified dates in 2000, 2001, or 2002.

47. Upon information and belief, with respect to the USTs that the City disclosed to EPA, the City failed to comply

with the requirements of 40 C.F.R. § 280.21 by December 22, 1998.

48. Upon information and belief, with respect to at least 171 of the USTs disclosed to EPA, the City failed to comply with the requirements of 40 C.F.R. § 280.21 during 1999.

49. Upon information and belief, with respect to some of the USTs disclosed to EPA, the City failed to comply with the requirements of 40 C.F.R. § 280.21 during 2000.

50. Upon information and belief, with respect to some of the USTs disclosed to EPA, the City failed to comply with the requirements of 40 C.F.R. § 280.21 during 2001.

51. Upon information and belief, with respect to some of the USTs disclosed to EPA, the City failed to comply with the requirements of 40 C.F.R. § 280.21 during 2002.

52. Upon information and belief, the City owned and operated and/or owns and operates additional USTs that it failed, between December 1998 and 2001, to disclose to the EPA as USTs that did not comply with the requirements of 40 C.F.R. § 280.21.

53. Upon information and belief, with respect to some of the USTs that the City failed to disclose to EPA between December 1998 and June 2001, the City failed to comply with the requirements of 40 C.F.R. § 280.21 by December 22, 1998.

54. Upon information and belief, with respect to some of the USTs that the City failed to disclose to EPA between December 1998 and June 2001, the City failed to comply with the

requirements of 40 C.F.R. § 280.21 during 1999.

55. Upon information and belief, with respect to some of the USTs that the City failed to disclose to EPA between December 1998 and June 2001, the City failed to comply with the requirements of 40 C.F.R. § 280.21 during 2000.

56. Upon information and belief, with respect to some of the USTs that the City failed to disclose to EPA between December 1998 and June 2001, the City failed to comply with the requirements of 40 C.F.R. § 280.21 during 2001.

57. Upon information and belief, with respect to some of the USTs that the City failed to disclose to EPA between December 1998 and June 2001, the City failed to comply with the requirements of 40 C.F.R. § 280.21 during 2002.

58. Accordingly, the City failed to comply with the requirements of 40 C.F.R. § 280.21, and it still fails to comply with the regulation with respect to some of its USTs.

59. Pursuant to section 9006(a) and (d) of RCRA, 42 U.S.C. § 6991e(a) and (d), the City is subject to injunctive relief and is liable for civil penalties, for any violations on or after December 4, 1997, based upon the first claim for relief.

SECOND CLAIM

Failure to Provide a Method of Release Detection For UST Systems

60. Paragraphs 1 through 59 are realleged and incorporated herein by reference.

61. Pursuant to 40 C.F.R. § 280.40, the City, as owner and operator of UST systems, was required to provide a method, or combination of methods, of release detection for its UST systems by no later than December 22, 1993.

62. A method of release detection must meet the general requirements and performance standards set forth in 40 C.F.R. §§ 280.40, 280.41, 280.42, 280.43 and 280.44. In addition, a method of release detection must be installed, calibrated, operated, and maintained in accordance with the manufacturer's instructions, including routine maintenance and service checks for operability and running condition.

63. Upon information and belief, the City failed to provide a method, or combination of methods, of release detection as required by 40 C.F.R. §§ 280.40, 280.41, 280.42, 280.43 and 280.44 for many of its UST systems by December 22, 1993.

64. Upon information and belief, the City failed to provide a method, or combination of methods, of release detection as required by 40 C.F.R. §§ 280.40, 280.41, 280.42, 280.43 and 280.44 for many of its UST systems during 1994.

65. Upon information and belief, the City failed to provide a method, or combination of methods, of release detection as required by 40 C.F.R. §§ 280.40, 280.41, 280.42, 280.43 and 280.44 for many of its UST systems during 1995.

66. Upon information and belief, the City failed to

provide a method, or combination of methods, of release detection as required by 40 C.F.R. §§ 280.40, 280.41, 280.42, 280.43 and 280.44 for many of its UST systems during 1996.

67. Upon information and belief, the City failed to provide a method, or combination of methods, of release detection as required by 40 C.F.R. §§ 280.40, 280.41, 280.42, 280.43 and 280.44 for many of its UST systems during 1997.

68. Upon information and belief, the City failed to provide a method, or combination of methods, of release detection as required by 40 C.F.R. §§ 280.40, 280.41, 280.42, 280.43 and 280.44 for many of its UST systems during 1998.

69. Upon information and belief, the City failed to provide a method, or combination of methods, of release detection as required by 40 C.F.R. §§ 280.40, 280.41, 280.42, 280.43 and 280.44 for many of its UST systems during 1999.

70. Upon information and belief, the City failed to provide a method, or combination of methods, of release detection as required by 40 C.F.R. §§ 280.40, 280.41, 280.42, 280.43 and 280.44 for many of its UST systems during 2000.

71. Upon information and belief, the City failed to provide a method, or combination of methods, of release detection as required by 40 C.F.R. §§ 280.40, 280.41, 280.42, 280.43 and 280.44 for many of its UST systems during 2001.

72. Upon information and belief, the City failed to

provide a method, or combination of methods, of release detection as required by 40 C.F.R. §§ 280.40, 280.41, 280.42, 280.43 and 280.44 for many of its UST systems during 2002.

73. Upon information and belief, the City continued after December 22, 1993 to use many of its USTs throughout the New York City metropolitan area without utilizing required methods of release detection.

74. Upon information and belief, the City continued during 1994 to use many of its USTs throughout the New York City metropolitan area without utilizing required methods of release detection.

75. Upon information and belief, the City continued during 1995 to use many of its USTs throughout the New York City metropolitan area without utilizing required methods of release detection.

76. Upon information and belief, the City continued during 1996 to use many of its USTs throughout the New York City metropolitan area without utilizing required methods of release detection.

77. Upon information and belief, the City continued during 1997 to use many of its USTs throughout the New York City metropolitan area without utilizing required methods of release detection.

78. Upon information and belief, the City continued

during 1998 to use many of its USTs throughout the New York City metropolitan area without utilizing required methods of release detection.

79. Upon information and belief, the City continued during 1999 to use many of its USTs throughout the New York City metropolitan area without utilizing required methods of release detection.

80. Upon information and belief, the City continued during 2000 to use many of its USTs throughout the New York City metropolitan area without utilizing required methods of release detection.

81. Upon information and belief, the City continued during 2001 to use many of its USTs throughout the New York City metropolitan area without utilizing required methods of release detection.

82. Upon information and belief, the City continued and continues in 2002 to use many of its USTs throughout the New York City metropolitan area without utilizing required methods of release detection.

83. Upon information and belief, the City failed after December 22, 1993 to properly provide, operate, maintain, and/or monitor release detection methods (including ensuring operability and running condition) that meet prescribed general requirements and performance standards for many of its USTs.

84. Upon information and belief, the City failed during 1994 to properly provide, operate, maintain, and/or monitor release detection methods (including ensuring operability and running condition) that meet prescribed general requirements and performance standards for many of its USTs.

85. Upon information and belief, the City failed during 1995 to properly provide, operate, maintain, and/or monitor release detection methods (including ensuring operability and running condition) that meet prescribed general requirements and performance standards for many of its USTs.

86. Upon information and belief, the City failed during 1996 to properly provide, operate, maintain, and/or monitor release detection methods (including ensuring operability and running condition) that meet prescribed general requirements and performance standards for many of its USTs.

87. Upon information and belief, the City failed during 1997 to properly provide, operate, maintain, and/or monitor release detection methods (including ensuring operability and running condition) that meet prescribed general requirements and performance standards for many of its USTs.

88. Upon information and belief, the City failed during 1998 to properly provide, operate, maintain, and/or monitor release detection methods (including ensuring operability and running condition) that meet prescribed general requirements

and performance standards for many of its USTs.

89. Upon information and belief, the City failed during 1999 to properly provide, operate, maintain, and/or monitor release detection methods (including ensuring operability and running condition) that meet prescribed general requirements and performance standards for many of its USTs.

90. Upon information and belief, the City failed during 2000 to properly provide, operate, maintain, and/or monitor release detection methods (including ensuring operability and running condition) that meet prescribed general requirements and performance standards for many of its USTs.

91. Upon information and belief, the City failed during 2001 to properly provide, operate, maintain, and/or monitor release detection methods (including ensuring operability and running condition) that meet prescribed general requirements and performance standards for many of its USTs.

92. Upon information and belief, the City failed and continues to fail in 2002 to properly provide, operate, maintain, and/or monitor release detection methods (including ensuring operability and running condition) that meet prescribed general requirements and performance standards for many of its USTs.

93. Pursuant to section 9006(a) and (d) of RCRA, 42 U.S.C. § 6991e(a) and (d), the City is subject to injunctive relief and is liable for civil penalties, for any violations on

or after December 4, 1997, based upon the second claim for relief.

THIRD CLAIM

Failure to Maintain and Furnish Release Detection Records

94. Paragraphs 1 through 93 are realleged and incorporated herein by reference.

95. Pursuant to 40 C.F.R. §§ 280.34 and 280.45, owners and operators are required to maintain and keep available for inspection records of compliance with release detection requirements including, inter alia, all written performance claims pertaining to any release detection system used, and the manner in which the claims have been justified or tested (retention for 5 years from date of installation); results of any sampling, testing, or monitoring (retention for at least 1 year), except for results of tank tightness testing (retention of the most recent testing); written documentation of all calibration, maintenance, and repair of release detection equipment permanently located on site (retention for 1 year after servicing work is completed); and schedules of required calibration and maintenance provided by release detection manufacturer (retention for 5 years from date of installation). In addition, pursuant to section 9005(a) of RCRA and 40 C.F.R. § 280.34, UST owners and operators must furnish to EPA information relating to USTs, and cooperate fully with requests for document submission.

96. Upon information and belief, the City failed and continues to fail to maintain records pertaining to release detection for many of its USTs, and the City failed and continues to fail to furnish records pertaining to release detection for many of its USTs, as required by RCRA section 9005(a) and 40 C.F.R. §§ 280.34 and 280.45.

97. Pursuant to section 9006(a) and (d) of RCRA, 42 U.S.C. § 6991e(a) and (d), the City is subject to injunctive relief and is liable for civil penalties, for any violations on or after December 4, 1997, based upon the third claim for relief.

FOURTH CLAIM

Failure to Report, Investigate and Confirm Suspected Releases

98. Paragraphs 1 through 97 are realleged and incorporated herein by reference.

99. Pursuant to 40 C.F.R. §§ 280.34, 280.50, and 280.53, UST owners and operators must report to the implementing agency all suspected releases of regulated substances, spills and overfills, and confirmed releases.

100. Pursuant to 40 C.F.R. § 280.52, UST owners and operators must investigate and confirm all suspected releases of regulated substances.

101. Upon information and belief, on several occasions and at several locations, the City failed to report, investigate and confirm suspected releases where UST system alarms indicated

potential releases, in violation of 40 C.F.R. §§ 280.34, 280.50, 280.52, and 280.53.

102. Pursuant to section 9006(a) and (d) of RCRA, 42 U.S.C. § 6991e(a) and (d), the City is subject to injunctive relief and is liable for civil penalties, for any violations on or after December 4, 1997, based upon the fourth claim for relief.

FIFTH CLAIM

Failure to Comply With Performance Standards for New UST Svstems

103. Paragraphs 1 through 102 are realleged and incorporated herein by reference.

104. Pursuant to 40 C.F.R. § 280.20, all owners and operators of new UST systems must meet certain performance standards for tanks, piping, and spill and overflow prevention equipment. In addition, pursuant to 40 C.F.R. § 280.30, owners and operators must ensure that releases due to spilling or overflowing do not occur, and that the transfer of product to USTs is monitored constantly to prevent overflowing and spilling.

105. Upon information and belief, the City has failed to provide and/or maintain an operational method of overflow prevention for various UST systems that it owns and operates.

106. Upon information and belief, the design of the spill prevention equipment for various UST systems owned and operated by the City fails to meet the performance standards and

requirements in 40 C.F.R. § 280.20.

107. Pursuant to section 9006(a) and (d) of RCRA, 42 U.S.C. § 6991e(a) and (d), the City is subject to injunctive relief and is liable for civil penalties, for any violations on or after December 4, 1997, based upon the fifth claim for relief.

SIXTH CLAIM

Failure to Comply With Closure
Requirements for UST Svstems

108. Paragraphs 1 through 107 are realleged and incorporated herein by reference.

109. Pursuant to 40 C.F.R. § 280.70(c), when a UST system is temporarily closed for more than 12 months, the owners and operators of that system are required to permanently close it. The owners and operators must then report these activities to the implementing agency, and follow procedures described in 40 C.F.R. §§ 280.71 through 280.74. These procedures include, inter alia, completing a site assessment to measure for the presence of a release where contamination is most likely to be present at the UST site. See 40 C.F.R. § 280.72.

110. Upon information and belief, the City failed to permanently close numerous tanks in violation of 40 C.F.R. § 280.70(c).

111. Upon information and belief, the City failed to complete site assessments as required by 40 C.F.R. § 280.72 for several UST systems.

112. Upon information and belief, the City failed to comply with permanent closure requirements for numerous UST systems, in violation of 40 C.F.R. § 280.71.

113. Pursuant to section 9006(a) and (d) of RCRA, 42 U.S.C. § 6991e(a) and (d), the City is subject to injunctive relief and is liable for civil penalties, for any violations on or after December 4, 1997, based upon the sixth claim for relief.

SEVENTH CLAIM

Failure to Maintain and Furnish Closure Records

114. Paragraphs 1 through 113 are realleged and incorporated herein by reference.

115. Pursuant to 40 C.F.R. §§ 280.34 and 280.74, UST owners and operators must maintain records capable of demonstrating compliance with closure requirements, including the results of site assessments required under 40 C.F.R. § 280.72 (retention for at least 3 years after permanent closure). In addition, pursuant to section 9005(a) of RCRA and 40 C.F.R. § 280.34, UST owners and operators must furnish to EPA information relating to USTs, and cooperate fully with requests for document submission.

116. Upon information and belief, the City failed and continues to fail to maintain records concerning closure requirements for many of its UST systems, and the City failed and continues to fail to furnish records concerning closure

requirements for many of its UST systems, as required by RCRA section 9005(a) and 40 C.F.R. §§ 280.34 and 280.74.

117. Pursuant to section 9006(a) and (d) of RCRA, 42 U.S.C. § 6991e(a) and (d), the City is subject to injunctive relief and is liable for civil penalties, for any violations on or after December 4, 1997, based upon the seventh claim for relief.

EIGHTH CLAIM

Failure to Provide Notice of Existence For UST Svstems

118. Paragraphs 1 through 117 are realleged and incorporated herein by reference.

119. Pursuant to section 9002(a)(1) of RCRA, 42 U.S.C. § 6991a(a)(1), each owner of a UST must notify the designated state or local agency "of the existence of [its] tank, specifying the age, size, type, location, and uses of [its] tank."

120. Pursuant to 40 C.F.R. § 280.22, for each and every UST system that the City brought into use after May 8, 1986, the City was required, within 30 days of bringing the tank into use, to submit to the appropriate state or local agency a notice of existence for the UST system, and to provide all information required by the regulation. 40 C.F.R. part 280, Appendix II identifies NYSDEC as the state agency designated to receive the notices of existence.

121. Upon information and belief, the City failed to

properly register at least two UST systems that it owns and operates, in violation of section 9002(a)(1) of RCRA, 42 U.S.C. § 6991a(a)(1) and 40 C.F.R. § 280.22.

122. Pursuant to section 9006(a) and (d) of RCRA, 42 U.S.C. § 6991e(a) and (d), the City is subject to injunctive relief and is liable for civil penalties, for any violations on or after December 4, 1997, based upon the eighth claim for relief.

NINTH CLAIM

Failure to Provide Information

123. Paragraphs 1 through 122 are realleged and incorporated herein by reference.

124. On June 6, 2002, pursuant to Section 9005 of Subtitle I of RCRA, 42 U.S.C. § 6991d, and 40 C.F.R. § 280.34, EPA sent a Request for Information letter regarding the City's USTs to the City's Deputy Mayor for Operations.

125. EPA's June 6, 2002 letter advised the City that failure to answer truthfully and accurately may subject the City to sanctions authorized by federal law.

126. The City submitted certain information in response to the Request for Information.

127. The City failed to furnish certain other information in response to the Request for Information.

128. The City's response to several questions in the

Request for Information is, to date, incomplete and inadequate.

129. Accordingly, the City's incomplete and untimely response to the Request for Information letter was in violation of section 9005 of RCRA, 42 U.S.C. § 6991d and 40 C.F.R. § 280.34.

130. Pursuant to section 9006(a) and (d) of RCRA, 42 U.S.C. § 6991e(a) and (d), the City is subject to injunctive relief and is liable for civil penalties based upon the ninth claim for relief.

PRAYER FOR RELIEF

WHEREFORE, plaintiff, the United States of America, respectfully prays that this Court grant the following relief:

1. Enjoin the City to comply with all applicable requirements for subtitle I of RCRA, 42 U.S.C. § 6991 et seq., and its implementing regulations.
2. Enjoin the City to provide complete responses to EPA's June 6, 2002 Request for Information.
3. With respect to each day of each violation of RCRA and its implementing regulations at each facility owned and operated by the City, as set forth under claims one through nine in this Complaint, order the City to pay a civil penalty in an amount up to \$11,000 per tank for each day of violation after and including December 4, 1997.
4. Award plaintiff the costs of this action, and such

further relief as this Court may deem appropriate.

Dated: New York, New York
December 5, 2002

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