

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

Docket No. RCRA-08-2008-0005

2008 AUG 14 PM 4:37

FILED
EPA REGION VIII
HEARING CLERK

IN THE MATTER OF:)

James K. Laducer and Debra Werner)

**COMPLAINANT'S MOTION IN
OPPOSITION TO RESPONDENT'S
RESPONSE TO COMPLAINANT'S
MOTION TO AMEND COMPLAINT**

United C-Store)

BIA 7 South)

Belcourt, ND 58316)

EPA ID Number 3050006)

Respondents.)

COMES NOW the Complainant, United States Environmental Protection Agency Region 8 ("EPA"), by and through its attorney, Dana J. Stotsky, who moves the Presiding Officer to grant the Complainant's **MOTION IN OPPOSITION TO RESPONDENT'S RESPONSE TO COMPLAINANT'S MOTION TO AMEND COMPLAINT.**

As grounds therefore, the Complainant asserts the following:

GROUND FOR MOTION

This motion is made pursuant to 40 C.F.R. section 22.7(b) and 40 C.F.R. section 22.16 of the Consolidated Rules of Procedure ("CROP"), 40 C.F.R. part 22. Under CROP, a motion must be in writing, state the grounds for the motion with particularity, set forth the relief or order sought, and be accompanied by any evidence or legal memorandum relied upon.

ARGUMENT

This action is brought under the Subtitle I of the Resource Recovery and Conservation Act ("RCRA,") RCRA §§ 9001 - 9010, 42 U.S.C. §§ 6991 - 6991i, which authorizes EPA to

regulate the installation and use of “underground storage tanks” (“USTs” or “tanks”) which contain “regulated substances.” RCRA provides:

§6991. Definitions and exemptions

In this subchapter: ...

(3) The term "operator" means any person in control of, or having responsibility for, the daily operation of the underground storage tank.

(4) The term "owner" means -

(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.

(5) The term "person" has the same meaning as provided in section 6903(15) of this title, except that such term includes a consortium, a joint venture, and a commercial entity, and the United States Government. 42 U.S.C. section 6991(3)-(5).

Respondent has asserted in its July 2, 2008 pleading that “I am not against you removing James Laducer from all legal issues. I would also request that you remove Michael Werner also as he is not a legal owner of United C-Store or United Oil and Gas, Inc.”

Given that Mr. Michael Werner is at least a principal employee of United C-Store and the person whom entered into the lease to let the premises that are now occupied by the United C-Store (either on behalf of United Oil and Gas, Inc. or Debra Werner and with James Laducer), Mr. Werner’s conduct fits the statutory definition of [a] person in control of, or having responsibility for the daily operation of the underground storage tank. This is also true for Debra Werner individually and as the sole officer with United Oil and Gas, Inc. of Bottineau, North Dakota.

Indeed, in Ms. Werner’s August 2, 2008 pleading, she concludes by stating “If you have any questions, please don’t hesitate to call myself or Mike at 701-228-3000.” This too is a clear signal that Mr. Michael Werner is a person responsible for daily operations of the underground storage tanks at the United C-Store location.

Complainant respectfully requests that it be granted authority to amend the complaint to include as Respondents thereto: Ms. Debra Werner, Mr. Michael Werner, and United Oil and Gas, Inc.

United States Environmental Protection
Agency, Region 8



Date: August 14, 2008

By: _____

Dana J. Stotsky, Senior Enforcement Attorney
Legal Enforcement Program
U.S. EPA Region 8
1595 Wynkoop Street
Mail Code: 8ENF-L
Denver, Colorado 80202-1146
Colorado Bar # 14717
Phone: (303)-312-6905
FAX: (303) 312-6953
stotsky.dana@epa.gov

CERTIFICATE OF SERVICE

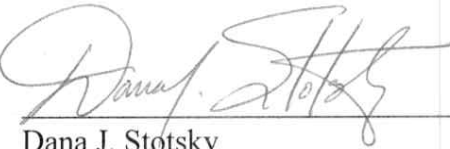
The undersigned hereby certifies that the original and one copy of **COMPLAINANT'S MOTION IN OPPOSITION TO RESPONDENT'S RESPONSE TO COMPLAINANT'S MOTION TO AMEND COMPLAINT** were hand-carried to the Regional Hearing Clerk, EPA, Region 8, 1595 Wynkoop Street, Denver, Colorado, and that a true copy of the same was mailed by certified mail to:

Mr. Mike Werner and/or Ms. Debra Werner
United Oil and Gas of Bottineau
P.O. Box 386
Bottineau, ND 58318

and

James K. Laducer
Laducer & Associates, Inc.
201 Missouri Drive
Mandan, ND 58554

Date: August 14, 2008 By:



Dana J. Stotsky