



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

1595 Wynkoop Street
DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

JUL 02 2008

Ref: ENF - L

SENT VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Mykel Stockton, Registered Agent for
Stockton Oil Company, Inc.
1607 4th Avenue North
Billings, MT 59101-0000

Re: In the Matter of Stockton Oil Company, Inc.,
Battlefield Express Center Facility
Docket No. RCRA-08-2008-0007
Complaint and Notice of Opportunity for Hearing

Dear Mr. Stockton:

The U.S. Environmental Protection Agency Region 8 (EPA) is issuing Stockton Oil Company, Inc., the enclosed Complaint and Notice of Opportunity for Hearing (Complaint) for alleged underground storage tank (UST) violations at the Battlefield Express Center facility (facility) in Crow Agency, Montana. The Complaint is issued pursuant to section 9006 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6991e.

EPA alleges in the Complaint that Stockton Oil Company, Inc. (Stockton Oil), failed to comply with the federal UST regulations codified at 40 C.F.R. Part 280 for three USTs located at the facility in violation of RCRA § 9003, 42 U.S.C. § 6991b. Specifically, the Complaint alleges failure to have an annual line tightness test or perform monthly monitoring on pressurized piping as required by 40 C.F.R. § 280.41(b)(1)(i). At the time of the UST inspection conducted by EPA on September 13, 2007, the sump sensors were raised so as to avoid contact with the liquid in the sumps, disabling the sump sensors from monitoring leak detection on the piping as required by regulation. EPA proposes a total penalty of \$41,511 for the violation alleged.

Stockton Oil has the right to a hearing to contest the factual allegations in the Complaint. If it admits the allegations, or the allegations are found to be true after it has had an opportunity for a hearing, Stockton Oil has the right to contest the penalty proposed in the Complaint. A copy of EPA's administrative procedures is enclosed for the Company's review. Please note the requirements for an Answer set forth in 40 C.F.R. §§ 22.15 and 22.38. If Stockton Oil wishes to contest the allegations in the Complaint or the penalty proposed in the Complaint, it must file a written Answer within thirty (30) days of receipt of the enclosed Complaint with the EPA Regional Hearing Clerk at the following address:

Ms. Tina Artemis, Regional Hearing Clerk
U.S. EPA, Region 8 (8RC)
1595 Wynkoop Street
Denver, CO 80202-1129

If Stockton Oil does not file an Answer by the applicable deadline, it will have defaulted and each allegation in the Complaint may be deemed to be admitted as true. The Company will have waived its right to appear in this action for any purpose and will also have waived its right to be notified of any Agency proceedings that occur before a civil penalty may be imposed. Provided that the Complaint is legally sufficient, the presiding officer may then find Stockton Oil liable and assess against it a civil penalty of up to \$11,000 for each tank for each day of violation.

Whether or not Stockton Oil requests a hearing, it may confer informally with EPA concerning the alleged violations or the amount of the proposed penalty. The Company has the right to be represented by an attorney at any stage of the proceedings, including any informal discussions with EPA, but it is not required. A request for an informal conference does not extend the thirty (30) day period for filing an Answer and/or requesting a hearing.

If Stockton Oil has any questions, the most knowledgeable people on my staff regarding this matter are Jean Belille and Chris Guzzetti. Ms. Belille is in our Legal Enforcement Program and can be reached at (303) 312-6556. Mr. Guzzetti is in our Underground Storage Tank Program and can be reached at (303) 312-6453.

We urge your prompt attention to this matter.

Sincerely,


John F. Wardell, Director
Montana Office

Enclosures:

Consolidated Rules of Civil Practice, 40 C.F.R. Part 22
Complaint and Notice of Opportunity for Hearing, with Exhibits 1 and 2

cc w/ all enclosures:

Carl Venne, Chairman, Crow Tribe
Roberta Fitch Harjo, Environmental Director, Crow Tribe

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2008 JUL 15 PM 1:23

IN THE MATTER OF:)
)
Stockton Oil Company, Inc.,)
)
Bartlefield Express Center Facility)
Junction Hwy 212 and I-90)
Crow Agency, MT 59022)
EPA ID Number 2020002)
)
Respondent.)

Docket No. RCRA-08-2008-0007

COMPLAINT AND NOTICE OF
OPPORTUNITY FOR HEARING

AUTHORITY

This is a civil administrative action issued under the authority vested in the Administrator of the Environmental Protection Agency (EPA) by section 9006 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6991e. The Administrator has properly delegated this authority to the undersigned EPA officials. This proceeding is governed by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules) set forth at 40 C.F.R. Part 22, a copy of which is enclosed.

GENERAL ALLEGATIONS

1. Subtitle I of RCRA, RCRA §§ 9001 - 9010, 42 U.S.C. §§ 6991 - 6991i, authorizes EPA to regulate the installation and use of "underground storage tanks" ("USTs" or "tanks") which contain "regulated substances."
2. EPA has jurisdiction over this matter pursuant to RCRA § 9006, 42 U.S.C. § 6991e.

3. Section 9003(c)(1) of RCRA, 42 U.S.C. § 6991b(c)(1), authorizes EPA to promulgate regulations setting forth requirements for maintaining a leak detection system, an inventory control system together with tank testing, or a comparable system or method designed to identify releases in a manner consistent with the protection of human health and the environment. EPA has promulgated such regulations at 40 C.F.R. Part 280, subpart D.

4. Petroleum, and any fraction thereof, is a regulated substance as defined at RCRA § 9001(2), 42 U.S.C. § 6991(2).

5. EPA is the “implementing agency” as that term is used at 40 C.F.R. § 280.12.

6. Respondent Stockton Oil Company (Respondent) owns and operates three 10,000 gallon fiberglass reinforced plastic double-walled tanks at the Battlefield Express Center facility (facility), located at the junction of Highway 212 and I-90 in Crow Agency, Montana, within the exterior boundaries of the Crow Indian Reservation. Two of the tanks are compartmentalized. One compartmentalized tank contains 6,000 gallons of plus and 4,000 gallons of premium gasoline. The other compartmentalized tank contains 6,000 gallons of diesel #2 and 4,000 gallons of dyed diesel. The single 10,000 gallon tank contains unleaded gasoline. All three tanks were installed in February 2000.

7. The Respondent owns and/or operates the facility, including the tanks, as a for-profit gas station and convenience store. The Respondent is a “person” as defined by section 9001(5) of RCRA, 42 U.S.C. § 6991(5).

8. Respondent is an "operator" within the respective meanings of RCRA § 9001(3), 42 U.S.C. § 6991(3), and 40 C.F.R. § 280.12, of an "underground storage tank system" (UST system) as defined by RCRA § 9001(10), 42 U.S.C. § 6991(10), and 40 C.F.R. § 280.12.

9. Respondent's UST systems meet the performance standards for new USTs described in 40 C.F.R. § 280.20.

10. Respondent was provided advance notice of a planned UST inspection at the facility by an EPA representative on August 27, 2007. Chris Guzzetti of EPA phoned the facility operator, Marla Jeffers, and informed her that an inspection would be taking place on September 12, 2007. The facility operator was informed of a list of documents that needed to be available on site for the inspection, including but not limited to the last 12-months of leak detection records.

11. On September 12, 2007, EPA inspector Patricia Pfeiffer (the inspector) and John Padden of EPA, arrived at the facility to conduct an inspection to determine compliance with RCRA Subtitle I and the EPA regulations relating to USTs.

12. EPA rescheduled the inspection for the following day after being informed by the facility operator that she was not prepared for the inspection.

13. On September 13, 2007, the inspector and Mr. Padden, accompanied by Crow Tribe Environmental Program Director Roberta Harjo, Carolyn Morrison and Theodore Round Face also of the Crow Tribe, conducted an UST inspection at the facility with the consent of the facility operator.

14. At the time of the inspection, the facility operator confirmed that the

Enviroflex piping is pressurized and double-walled.

15. The facility operator stated that an automatic tank gauge (ATG) was used for monthly leak detection on the tanks.

16. Leak detection records indicating one passing test per month for October 2006 through September 2007 were provided by the facility operator for all of the tanks at the time of inspection.

17. The piping leak detection is monitored continuously by sump sensors connected to the ATG.

18. At the time of the inspection, the sump sensor probes on the unleaded, premium and plus sumps were raised to avoid contact with liquids.

19. None of the three raised pump sump sensors set off the ATG alarm when inverted by another facility representative to perform a function test at the time of the inspection.

20. At the conclusion of the inspection, the inspector informed the facility operator that the facility was out of compliance and explained the violation. The inspector completed a "Notice of Inspection" form which was signed by and left with the facility operator.

21. Section 9006(d)(2) of RCRA, 42 U.S.C. § 6991e(d)(2), states in pertinent part that any owner or operator of an UST who fails to comply with any requirement or standard promulgated by the Administrator under section 6991b of this title shall be subject to a civil penalty not to exceed \$11,000 for each tank for each day of violation.

22. As alleged herein and pursuant to section 9006(d)(2) of RCRA, 42 U.S.C. § 6991e(d)(2), and 40 C.F.R. § 19.4, Respondents are liable for civil penalties up to \$11,000 per day per tank for the period during which the violation continues.

23. Paragraphs 1 through 22 are incorporated by reference in the count listed below.

COUNT 1
Failure to have an annual line tightness test or perform
monthly monitoring on pressurized piping

24. In accordance with 40 C.F.R. § 280.41(b)(1)(i), underground piping that conveys regulated substances under pressure must be equipped with an automatic line leak detector conducted in accordance with 40 C.F.R. § 280.44(a) and have an annual line tightness test conducted in accordance with 40 C.F.R. § 280.44(b) or have monthly monitoring conducted in accordance with 40 C.F.R. § 280.44(c).

25. Respondent has not performed an annual line tightness test on the pressurized piping since July 8, 2004.

25. At the time of inspection, the raised sump sensors for the unleaded, premium and plus sumps were not performing leak detection on the piping.

26. Respondent's failure to perform monthly monitoring or have an annual line tightness test on the pressurized piping for tanks 1, 2, and 3 since July 8, 2004, constitutes a violation of 40 C.F.R. § 280.41(b)(1)(ii) and section 9003(c) of RCRA, 42 U.S.C. § 6991b(c), for the period July 8, 2005, through September 13, 2007.

PROPOSED CIVIL PENALTY

RCRA § 9006(d)(2)(C), 42 U.S.C. § 6991e(d)(2)(C), authorizes the assessment of a civil penalty of up to \$11,000 for each UST for each day of violation. Based upon the facts alleged in this Complaint and taking into account the factors prescribed by statute, i.e., the seriousness of the violations and any good faith efforts by Respondents to comply with the applicable requirements, Complainant proposes to assess a civil penalty of **\$41,511** as follows:

COUNT	VIOLATION	PROPOSED PENALTY
Count 1	Failure to conduct an annual line tightness test or perform monthly monitoring on pressurized piping for tanks 1, 2, and 3, 40 C.F.R. § 280.41(b)(1)(ii)	\$41,511

The proposed civil administrative penalty above has been calculated in accordance with the U.S. EPA Penalty Guidance for Violations of UST Regulations (November 1990) (Exhibit 1). This policy is used by EPA to provide a rational and consistent application of the statutory factors to the facts and circumstances of a specific case. The Penalty Calculation Worksheets for the alleged RCRA UST violation in support of the assessment of civil penalties proposed in this Complaint are attached hereto (Exhibit 2).

TERMS OF PAYMENT

If the Respondent does not contest the findings and penalty proposal set forth above, this action may be resolved by paying the proposed penalty in full. If such payment is made within thirty (30) calendar days of receipt of this Complaint, then no

Answer need be filed. For more time for payment, within thirty (30) days of receipt of the Complaint the Respondent may file a statement agreeing to pay the penalty, and then pay the money within sixty (60) days of such receipt. Payment is to be made by sending a certified or cashier's check payable to "Treasurer, United States of America," to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

A copy of the check must be mailed simultaneously to:

Jean Belille, Attorney
Legal Enforcement Program
U.S. EPA Region 8 (8ENF-L)
1595 Wynkoop Street
Denver, Colorado 80202-1129

Payment of the penalty in this manner shall constitute consent by the Respondent to the assessment of the proposed penalty and a waiver of Respondent's right to a hearing on this matter.

OPPORTUNITY TO REQUEST A HEARING

As provided in RCRA § 9006(b), 42 U.S.C. § 6991e(b), a respondent has the right to request a public hearing within thirty (30) calendar days after the Complaint is served. If you (1) contest the factual claims made in this Complaint; (2) wish to contest the appropriateness of the proposed penalty; or (3) assert that you are entitled to judgment as a matter of law, you must file a written Answer in accordance with 40 C.F.R. §§ 22.15 and 22.37 within thirty (30) calendar days after this Complaint is received. Your Answer

must (1) clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint; (2) state all facts and circumstances, if any, which constitute grounds for defense; (3) state the facts intended to be placed at issue; and (4) specifically request an administrative hearing, if desired. The denial of any material fact or the raising of any affirmative defense in your Answer shall be construed as a request for a hearing. Failure to deny any of the factual allegations in this Complaint constitutes an admission of the undenied allegations.

The Answer and one copy must be sent to the EPA Region 8 Regional Hearing Clerk (8RC), 1595 Wynkoop Street, Denver, Colorado 80202-1129, and a copy must be sent to the attorney named above in the "Terms of Payment" section.

IF YOU FAIL TO REQUEST A HEARING, YOU MAY WAIVE YOUR RIGHT TO FORMALLY CONTEST ANY OF THE ALLEGATIONS SET FORTH IN THE COMPLAINT.

IF YOU FAIL TO FILE A WRITTEN ANSWER WITHIN THE 30 CALENDAR DAY TIME LIMIT, A DEFAULT JUDGMENT MAY BE ENTERED PURSUANT TO 40 C.F.R. § 22.17. THIS JUDGMENT MAY IMPOSE THE PENALTY PROPOSED IN THE COMPLAINT.

SETTLEMENT CONFERENCE

EPA encourages the exploration of settlement possibilities through an informal settlement conference. Please note that a request for, scheduling of, or participation in a settlement conference does not extend the period for filing an Answer and request for hearing as set forth above. The settlement process, however, may be pursued simultaneously with the administrative litigation procedures found in 40 C.F.R. Part 22. If a settlement can be reached, its terms shall be expressed in a written consent

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IN THE MATTER OF:) Docket No. RCRA-08-2008-0007
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Stockton Oil Company, Inc.,) COMPLAINT AND NOTICE OF
) OPPORTUNITY FOR HEARING
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Junction Hwy 212 and I-90)
Crow Agency, MT 59022)
EPA ID Number 2020002)
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Respondent.)

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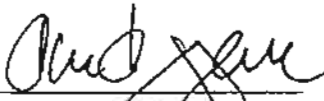
SETTLEMENT CONFERENCE

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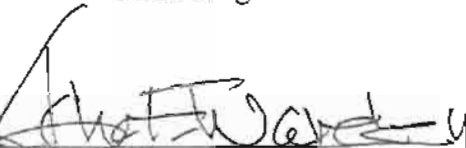
agreement, signed by the parties and incorporated into a final order signed by the regional judicial officer. A request for a settlement conference or any questions that you may have regarding this Complaint should be directed to the attorney listed below.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8,
Complainant.

Date: 7/11/08

By: 
David J. Janik, Director
Legal Enforcement Program

Date: 7/2/08

By: 
John F. Wardell, Director
Montana Office

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and one copy of the COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING with Exhibits 1 and 2 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. Mykel Stockton, Registered Agent for
Stockton Oil Company, Inc.
1607 4th Avenue North
Billings, MT 59101-0000

Date: July 17, 2008

By: Judith M. McTernan