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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of:

JOSEPH OH

and

HOLLY INVESTMENT, LLC,

Respondents.

Docket No. RCRA-10-2011-0164

COMPLAINANT'S INITIAL PREHEARING EXCHANGE

Pursuant to the Prehearing Order issued on December 7, 2011, and Section 22.19(a) of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties," 40 C.F.R. Part 22 ("CROP"), the U.S. Environmental Protection Agency, Region 10 ("Complainant" or "EPA") hereby submits the following Initial Prehearing Exchange.

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U.S. Environmental Protection Agency
1200 Sixth Avenue, Suite 900, ORC-158
Seattle, Washington 98101
206-553-1037

SCANNED

I. WITNESSES

Following is a list of the witnesses Complainant intends to call at hearing, with a brief narrative summary of their expected testimony:

1.1 Charlotte Boulind-Yeung will be called as a fact witness. Ms. Boulind-Yeung is an EPA inspector in the Ground Water Unit in the Office of Compliance and Enforcement at the U.S. Environmental Protection Agency, Region 10. Her address is 1200 Sixth Avenue, Suite 900, OCE-082, Seattle, Washington 98101. As part of her duties at EPA, Ms. Boulind-Yeung conducts underground storage tank (UST) inspections, issues Expedited Enforcement, Compliance Order and Settlement Agreements (also known as "field citations"), and issues UST Field Notices of Non-Compliance. Ms. Boulind-Yeung will testify that she inspected the USTs at the Totem Grocery & Gas facility (the facility) in 2003, 2006, and 2009 and is familiar with the USTs at this location. She will testify to the observations she made during her last inspection of the facility on September 14, 2009. A copy of Ms. Boulind-Yeung's 2009 inspection report is attached in Complainant's Exhibit (CX) 6. She will testify that during her September 14, 2009 inspection she spoke with the facility representative and that he informed her that the 8,000-gallon tank was currently in use, but the 10,000-gallon tank had not been used since the prior month. She will testify that the facility was using an automatic tank gauge (ATG) as its method of release detection for the tanks, but that the facility had no records of valid release detection results for either tank for the previous twelve months. She will also testify that facility records

reflected that cathodic protection (CP) testing of the tanks had not been conducted since 2006. She will also testify that facility records indicated that the last annual line tightness tests were conducted in 2006. She will also testify that she observed that anodes had been installed on the metal flex connectors on the ends of the piping under the fuel dispensers to provide CP, but facility records indicated that these anodes had not been tested since they were installed in 2003. She will testify that she issued a field citation and field notice of noncompliance to the facility representative on September 14, 2009, which listed the violations observed and the actions needed to correct the violations. These documents are attached as CX 10 and 11. She will also testify that, on September 16, 2009, she described the violations to Howard O who contacted her as a representative of Joseph Oh (See CX 12). Ms. Boulind-Yeung's resume is attached as CX 29.

1.2 Philip Nenninger will be called as a fact witness. Mr. Nenninger is an employee of the U.S. Indian Health Service who is currently working as an UST inspector for EPA under an interagency agreement. His address is 4060 Wheaton Way, Suite E, Bremerton, Washington 98310. As part of his duties, Mr. Nenninger conducts federal UST inspections in Indian Country. Mr. Nenninger will testify that he inspected the USTs at the facility on July 1, 2010. A copy of Mr. Nenninger's 2010 inspection report is attached as CX 17. Mr. Nenninger will testify that he observed that the 8,000-gallon tank was currently in use, but the 10,000-gallon tank was not in use and only contained approximately ½ inch of product. He will testify that he observed

steel piping that was in contact with the ground in the turbine sumps and beneath the dispensers, and that, although it appeared that CP had been installed on the steel piping under the dispensers, there was no evidence that CP had been installed on the steel piping in the turbine sumps. He will also testify that he reviewed facility records and found no passing release detection records for the 8,000-gallon tank for the previous 12 months. He will testify that he provided the facility representative with a summary of potential UST violations observed at the facility (see CX 19). Mr. Nenninger's resume is attached as CX 30.

1.3 Katherine Griffith will be called as a fact witness. Ms. Griffith is the case developer in the Ground Water Unit in the Office of Compliance and Enforcement at the U.S. Environmental Protection Agency, Region 10 assigned to this case. Ms. Griffith will testify that she reviewed the enforcement file for the facility including the 2009 and 2010 inspection reports, and EPA's correspondence with facility representatives and Respondent Joseph Oh. She will testify that she discussed the violations with Mr. Oh and his representatives and sent correspondence to Mr. Oh informing him of the actions he needed to take to correct the violations observed at the facility. She will also testify that she spoke with contractors who had conducted work on the USTs or had inspected the USTs at the facility. She will also testify that she drafted a summary of the violations alleged and calculated the penalty proposed which are described in Attachment 1 to the Complaint. She will testify that she calculated the proposed penalty in accordance with the November 1990 "U.S. EPA Penalty Guidance for Violations of

UST Requirements” (UST Penalty Guidance) and she will explain the factors she considered in calculating the proposed penalty amount. Ms. Griffith will also testify that the USTs at the facility currently remain out of compliance and she will describe the actions Mr. Oh must take to bring the USTs back into compliance. Her resume is attached as CX 31.

III. DOCUMENTS AND EXHIBITS

Copies of documents Complainant intends to introduce into evidence are numbered and attached hereto as follows:

- CX 1: Snohomish County Property Account Summary
105 Marine Drive NE, Marysville Washington
- CX 2: Washington State Business License for Holly Investment, LLC
- CX 3: Washington Secretary of State Corporation Division Registration for Holly Investment, LLC
- CX 4: 1990 Underground Storage Tank (UST) Notification Form
- CX 5: 2002 Amended UST Notification Form
- CX 6: EPA UST Inspection Report September 14, 2009, and Publications Form
(Charlotte Boulind-Yeung, Lead Inspector)
EPA UST Inspection Report September 14, 2009 (Carlo Bertani, Trainee)
- CX 7: Cover Memo and Photos taken during EPA September 14, 2009 inspection
- CX 8: Automatic Tank Gauge (ATG) printouts obtained during September 14, 2009 inspection
- CX 9: Cathodic Protection (CP) Compliance Test Report dated September 14, 2006, provided during September 14, 2009 inspection
- CX 10: Field Notice of Noncompliance (FNNC) # 727 dated September 14, 2009

- CX 11: Expedited Enforcement Compliance Order and Settlement and Agreement (Field Citation) #456 and addendum issued by EPA on September 14, 2009
- CX 12: Email correspondence between EPA (Charlotte Boulind-Yeung) and Howard O (representing Joseph Oh) on September 16, 2009
- CX 13: Email correspondence between EPA (Carlo Bertani) and John Kim at Totem Grocery on September 30, 2009.
- CX 14: EPA Phone log (Carlo Bertani) of calls made to Joseph Oh from September 30, 2009 to April 14, 2010.
- CX 15: Fax from Totem Grocery to EPA (Carlo Bertani) on December 14, 2009, attaching SME Test results from November 2009
- CX 16: Letter dated March 23, 2010, from EPA (Carlo Bertani) to Joseph Oh listing violations
- CX 17: EPA UST Inspection Report July 1, 2010 (Philip Nenninger)
- CX 18: ATG printout slips obtained during July 1, 2010 inspection
- CX 19: Inspection closeout summary provided to Totem Grocery (Helen Ho) at conclusion of July 1, 2010 inspection
- CX 20: Insurance policy for Totem Grocery and Gas USTs for Nov. 2009 – 2010
- CX 21: Copy of CP test results of tests conducted in October 2010
- CX 22: Letter from EPA (Katherine Griffith) dated October 4, 2010 to Joseph Oh summarizing violations and documents required to close out field citation
- CX 23: USPS Track and Confirm sheet with handwritten notes by Katherine Griffith of conversation with Joseph Oh asking him to pick up October 4, 2010 certified letter from EPA
- CX 24: Copy of EPA envelope containing October 4, 2010 certified letter to Joseph Oh stamped by USPS as unclaimed and returned to EPA

- CX 25: Insurance policy for Totem Grocery and Gas USTs for Nov. 2010-2011
- CX 26: Email correspondence between Hyung Kim (environmental consultant for Saehan Bank) and EPA (Katherine Griffith) on August 16, 2011, attaching Northwest Tank & Environmental Services test results dated August 8, 2011
- CX 27 Incon TS-1000 ATG Third Party Evaluation (excerpts)
- CX 28 Invoice from Northwest Tank & Environmental Services dated October 18, 2011, for CP testing work performed
- CX 29: Resume of Charlotte Boulind-Yeung
- CX 30: Resume of Philip Nenninger
- CX 31: Resume of Katherine Griffith

III. LOCATION OF HEARING AND ESTIMATED TIME TO PRESENT DIRECT CASE

3.1 Respondent Joseph Oh's facility where the violations occurred is located in Marysville, Washington, and he lives in University Place which is near Tacoma, Washington. EPA's offices are located in Seattle, Washington which is between these two locations. In accordance with Section 22.21(d) of the CROP, Complainant proposes that the hearing take place in Seattle, Washington.

3.2 Complainant estimates that it will require approximately one day to present its direct case. Complainant does not need translation services to present the testimony of the three witnesses listed in Section I above.

IV. ADDITIONAL INFORMATION REQUESTED BY PRESIDING OFFICER

4.1. Complainant responds to the request for additional information by the Presiding Officer as follows:

A. In his Answer, Respondent Joseph Oh specifically denied the allegations contained in paragraph 2.1 of the Complaint which states “Since at least October 13, 2006, Joseph Oh and his company, Holly Investment, LLC have owned and/or operated Totem Grocery & Gas (“the facility”).” According to the property records in CX 1, on October 13, 2006, ownership of the facility was transferred to Joseph Oh and Esther Oh. Complainant bases its allegation that Joseph Oh and his company Holly Investment, LLC have owned and/or operated Totem Grocery & Gas on the Secretary of State records in CX 3 which indicate that Joseph Oh is the sole governing member of Holly Investment, LLC and therefore Holly Investment, LLC is his company; and statements made to the EPA inspectors by facility employees during the 2009 inspection indicating that Joseph Oh is the owner of the facility and that it was being operated by Holly Investment, LLC doing business as Totem Grocery and Gas (see CX. 6). This is consistent with the information contained in the insurance policies provided to EPA by Joseph Oh which lists the name and address of the insured as “Holly Investment LLC DBA: Totem Grocery and Gas, 105 Marine Drive NE, Marysville WA 98271” (see CX. 20 and 25).

As for the remaining allegations contained in paragraphs 2.2 through 2.12 of the Complaint, Respondent Joseph Oh states in his Answer that he “lacks sufficient knowledge or

information to form a belief as to the truth of the statements and therefore denies the same.” The factual bases for the allegations in paragraphs 2.2, 2.5, 2.7, 2.8, 2.9, 2.10, 2.11, and 2.12 are found in the EPA inspection reports in CX 6 and 17. The factual basis for the allegations contained in paragraphs 2.3 and 2.4 are found in the Secretary of State records in CX 3. The factual bases for the allegations contained in paragraph 2.6 are found in the UST Notifications Forms in CX 4 and 5. The factual bases for the allegations contained in paragraphs 3.2 through 3.11 of the Complaint are found in the EPA inspection reports in CX 6 and 17.

B. The reports, notes, and other pertinent documentation produced as a result of the inspections referred to in paragraph 3.1 of the Complaint are contained in the following exhibits: CX 6, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, and 19.

C. The UST Penalty Guidance used to calculate the proposed penalty may be found in the Office of Solid Waste and Emergency Response (OSWER) Directive 9610.12 at the following internet address: <http://www.epa.gov/oust/directive/od961012.htm>.

Respectfully submitted this 26th day of January, 2012.



Deborah E. Hilsman
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 10

CERTIFICATE OF SERVICE

In the Matter of Joseph Oh and Holly Investment, LLC, No. RCRA-10-2011-0164, I hereby certify that a copy of COMPLAINANT'S INITIAL PREHEARING EXCHANGE, with copies of exhibits, was sent to the following persons in the manner specified on the date below:

Original and true and correct copy of each document, by hand delivery:

Carol Kennedy, Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, Suite 900
Office of Regional Counsel
1200 Sixth Avenue, Mail Stop ORC-158
Seattle, Washington 98101

A true and correct copy of each document, by Pouch Mail to:

The Honorable Susan L. Biro, Chief Administrative Law Judge
Office of Administrative Law Judges
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W., Mail Code 1900L
Washington, DC 20460

A true and correct copy of each document, by U.S. Mail, certified/return receipt:

Joseph Oh
4905 70th Avenue West
University Place, Washington 98467

DATED: 26 Jan 12


Signature
Print Name:
Title: