



Act (“RCRA”), 42 U.S.C. § 6991e(a), and 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, 40 C.F.R. Part 22.

Respondents Devendra Malik (“Malik”), Mahadev, Inc., Priyana, Inc., and TM Investment Co. are hereby notified that the United States Environmental Protection Agency (“EPA”) alleges that Respondents violated Section 9005 of RCRA, 42 U.S.C. § 6991d, by failing to respond to an Information Request issued by EPA. This Order also provides notice of compliance measures that must be undertaken by Respondents to address this violation as well as Respondents’ opportunity to request a hearing.

## **II. NATURE OF ACTION**

2. This is an action commenced pursuant to Section 9006(a) of RCRA, 42 U.S.C. § 6991e(a), ordering Respondents to come into compliance with Section 9005 of RCRA, 42 U.S.C. §§ 6991d.

3. Notice of commencement of this action has been given to the State of Washington (“Washington”) pursuant to Section 9006(a)(2) of RCRA, 42 U.S.C. § 6991e(a)(2).

## **III. STATUTORY AND REGULATORY FRAMEWORK**

4. In 1976, Congress enacted RCRA to regulate hazardous waste management. As part of the Hazardous Waste and Solid Waste Amendments of 1984 (HSWA), Congress added the authority under RCRA to regulate underground storage tanks (“USTs”). Subtitle I of RCRA, RCRA Section 9001 *et seq.*, 42 U.S.C. § 6991 *et seq.*, authorizes EPA to promulgate

standards for construction of USTs, detection and prevention of releases from USTs, recordkeeping related to USTs, and corrective actions to remedy releases from USTs. EPA has promulgated regulations to implement RCRA Subtitle I, which are set forth at 40 C.F.R. Parts 280 – 282.

5. Section 9006(a) of RCRA, 42 U.S.C. § 6991d(a), authorizes the EPA Administrator to issue orders requiring compliance immediately or within a specified time for violation of any requirement of Subtitle I of RCRA, RCRA Section 9001 *et seq.*, 42 U.S.C. § 6991 *et seq.*

6. The Administrator has delegated the authority to issue compliance orders in Section 9006(a) of RCRA, 42 U.S.C. § 6991e(a), to the Director of the Office of Compliance and Enforcement, EPA Region 10.

7. Pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c, and 40 C.F.R. Part 281, EPA may authorize a state to administer its UST program in lieu of the federal program when EPA deems the state program to be no less stringent than the federal program.

8. Washington received final authorization on September 8, 1993, effective October 8, 1993 (58 FR 47217), to implement the State's UST program. The State's authorized UST program is set forth in the Revised Code of Washington ("RCW") Chapter 90.76 and its implementing regulations are set forth in the Washington Administrative Code (WAC), Chapter 173-360.

9. Pursuant to Section 9006(a) of RCRA, 42 U.S.C. § 6991e(a), if EPA determines that a person has violated any requirement of Subtitle I of RCRA, EPA's regulations there-

under, or any regulation of a state UST program that has been authorized by EPA, then EPA may issue an order to require compliance immediately or within a specified time.

#### **IV. GENERAL AND FACTUAL ALLEGATIONS**

10. Respondent Malik is the President of Mahadev, Inc., Priyana, Inc., and TM Investments Co.

11. Respondent Malik also represents himself as and conducts business under the name of "David Malik."

12. Respondent Mahadev, Inc. is a Washington corporation which owns and/or operates the Kent Shell located at 1208 N Central in Kent, Washington.

13. The Kent Shell has two USTs: one UST with a single compartment and one UST with two compartments.

14. Priyana, Inc. is a Washington corporation which owns and/or operates the Renton 76 located at 300 Rainier Avenue S in Renton, Washington. The Renton 76 also conducts business under the name "Renton BP."

15. The Renton 76 has two USTs: one UST with a single compartment and one UST with two compartments.

16. Respondent TM Investment Company is a Washington corporation which owns and/or operates the Kangly Chevron located at 26220 116<sup>th</sup> Avenue SE in Kent, Washington.

17. The Kangly Chevron has two USTs: one UST with a single compartment and one UST with two compartments.

18. Each Respondent is a “person” as that term is defined in Section 9001(6) of RCRA, 42 U.S.C. § 6991(6), 40 C.F.R. § 280.12, and WAC 173-360-120.

19. Respondents are each the “owner” and/or “operator” of “underground storage tank(s)” as these terms are defined under Section 9001 of RCRA, 42 U.S.C. § 6991, 40 C.F.R. § 280.12, and WAC 173-360-120.

20. These USTs are used to store “regulated substance(s),” as defined in Section 9001(2), 42 U.S.C. § 6991(2), 40 C.F.R. § 280.12, and WAC 173-360-120.

## **V. VIOLATION**

### **Failure to Respond to an Information Request**

21. Section 9005(a) of RCRA, 42 U.S.C. § 6991d(a), and 40 C.F.R. § 280.34, require an owner or operator of an UST, upon request by any duly designated representative of EPA, to furnish information with regard to such UST. RCW 90.76.060 and WAC 173-360-210 contain similar provisions requiring an UST owner or operator to submit relevant information or documents requested by an authorized representative of the State.

22. On September 11, 2009, EPA mailed to Respondent Malik, individually, and as president of Mahadev, Inc., Priyana, Inc., and TM Investments Co., an Information Request issued pursuant to Section 9005(a) of RCRA, 42 U.S.C. § 6991d(a). A copy of the Information Request is attached to this Order as Exhibit A.

23. The Information Request was mailed by certified mail-return receipt requested to Respondent Malik at his business address: 26220 116<sup>th</sup> Ave SE, Suite 201, Kent,

Washington 98030. A person at that address accepted delivery of the Information Request on September 12, 2009.

24. To date, Respondents have not responded to the September 11, 2009 Information Request.

25. Respondents' failure to respond to the September 11, 2009 Information Request is a violation of Section 9005(a) of RCRA, 42 U.S.C. § 6991d(a).

#### **VI. COMPLIANCE ORDER**

26. Based on the foregoing findings, Respondents are hereby ordered to comply with the following requirements pursuant to Section 9006(a) of RCRA, 42 U.S.C. § 6991e(a):

a. Within fourteen (14) days of the effective date of a Final Order, Respondents must submit to EPA a full response to the September 11, 2009 Information Request.

b. Respondents must complete the Statement of Certification attached to the September 11, 2009 Information Request as Enclosure 1 and include it with their response.

27. Respondent shall submit any information, reports, and/or notices required by this Order to:

Katherine Griffith, Compliance Officer  
U.S. Environmental Protection Agency Region 10  
Office of Compliance and Enforcement  
1200 Sixth Avenue, Suite 900, OCE-082  
Seattle, Washington 98101

28. If Respondents fail to comply with the requirements of this Order within the time specified, Section 9006(a)(3) of RCRA, 42 U.S.C. § 6991e(a)(3), provides for further enforcement action in which EPA may seek the imposition of penalties of up to \$37,500 for each day of continued noncompliance, in addition to any other penalties that may be assessed for past or ongoing violations.

29. **In accordance with Section 9006(b), 42 U.S.C. § 6991e(b), and 40 C.F.R. § 22.37(b), this Order shall automatically become a Final Order unless, no later than thirty (30) days after this Complaint and Compliance Order is served, Respondent requests a hearing pursuant to 40 C.F.R. § 22.15.**

#### **VII. ASSESSMENT OF PENALTIES**

30. EPA reserves its right to assess penalties and/or seek additional appropriate injunctive relief for violation of the requirements cited in Section V of this Order, as provided by Section 9006 of RCRA, 42 U.S.C. § 6991e.

#### **VIII. OPPORTUNITY TO REQUEST A HEARING AND FILE ANSWER**

31. Under Section 9006(b) of RCRA, 42 U.S.C. § 6991e(b), and 40 C.F.R. § 22.15, Respondents have a right to request a hearing on the issues raised in this Order. Any such hearing would be conducted in accordance with 40 C.F.R. Part 22. **A request for a hearing must be incorporated in a written answer filed with the Hearing Clerk within thirty (30) days of service of this Order. In their answer(s), Respondents may contest any material fact contained in this Order.** The answer(s) shall directly admit, deny, or explain each of the factual allegations contained in this Order and shall state: (1) the circumstances or arguments

alleged to constitute the grounds of defense; (2) the facts that Respondents intend to place at issue; and (3) whether a hearing is requested. Where Respondents have no knowledge as to a particular factual allegation and so state, the allegation is deemed denied. Respondents' failure to admit, deny, or explain any material fact contained in this Order will constitute an admission of that allegation. **Respondents' failure to request a hearing in their answer(s) will result in this Order automatically becoming a Final Order pursuant to 40 C.F.R. § 22.37.**

Respondents' answer(s) should be sent to:

Carol Kennedy, Regional Hearing Clerk  
U.S. EPA Region 10  
1200 Sixth Ave., Suite 900, ORC-158  
Seattle, Washington 98101  
Tel: 206-553-0242

32. Any hearing requested by Respondents will be conducted in accordance with the provisions of the Consolidated Rules of Practice. A copy of these rules is enclosed with this Order.

33. A copy of Respondents' answer(s) and all other documents that Respondents file in this matter must be sent to the following attorney assigned to represent EPA in this matter:

Deborah Hilsman  
Assistant Regional Counsel  
U.S. EPA Region 10  
1200 Sixth Avenue, Suite 900, ORC-158  
Seattle, Washington 98101

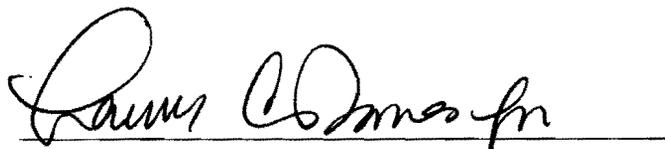
#### **IX. INFORMAL SETTLEMENT CONFERENCE**

34. Respondents may request an informal settlement conference to discuss the facts of this case and the possibility of settling this matter. To request such a settlement conference, Respondents should contact Ms. Hilsman at 206-553-1810 or [hilsman.deborah@epa.gov](mailto:hilsman.deborah@epa.gov). Note that a request for an

informal settlement conference does not extend the thirty (30) day period for filing a written Answer to this Order, nor does it waive Respondent's right or requirement to request a hearing.

35. Respondents are advised that, after the Complaint and Compliance Order is issued, the Consolidated Rules of Practice prohibit any *ex parte* (unilateral) discussion of the merits of any action with the EPA Regional Administrator, Environmental Appeals Board Member, Administrative Law Judge, or any person likely to advise these officials in the decision of this case.

FOR COMPLAINANT U.S. ENVIRONMENTAL PROTECTION AGENCY:



Edward J. Kowalski, Director  
Office of Compliance and Enforcement  
EPA Region 10

Dated: 12/14/07

CERTIFICATE OF SERVICE

I hereby certify that the original of the foregoing Complaint and Compliance Order, Docket Number RCRA-10-2010-0061 and Exhibit A - Information Request, and one true and correct copy have been filed with the Region 10 Hearing Clerk at:

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

I also certify that true and correct copies of the Complaint and Compliance Order and Exhibit A (with accompanying copies of the Consolidated Rules of Practice, the Notice of SEC Registrant's Duty to Disclose Environmental Legal Proceedings, and the U.S. EPA Small Business Resources Information Sheet were sent by Certified Mail, Return Receipt Requested, to:

Devendra (David) Malik, individually, and as  
President of Mahadev Inc., Priyana Inc. and TM Investment Co.  
26220 116<sup>th</sup> Avenue SE, Suite 201  
Kent, Washington 98030

14 Dec 2009

DATE

[Handwritten Signature]  
NAME  
Secretary  
TITLE



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 10

1200 Sixth Avenue, Suite 900  
Seattle, Washington 98101-3140

DEC 14 2009

Reply To: OCE-082

**CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

Devendra Malik, individually, and as President of  
Mahadev Inc., dba Kent Shell; Priyana Inc., dba Renton 76; and  
TM Investment Co., dba Kangly Chevron  
26220 116<sup>th</sup> Avenue, Suite 201  
Kent, Washington 98030

Re: Complaint, Compliance Order, and Notice of Opportunity for Hearing  
EPA Docket No. RCRA-10-2010-0061

Dear Mr. Malik:

Enclosed is a Complaint, Compliance Order, and Notice of Opportunity for Hearing (“Order”) that has been filed against you and your companies by the United States Environmental Protection Agency (EPA), Region 10. A copy of the Consolidated Rules of Practice is also enclosed. Please read these documents carefully and respond to EPA allegations within the time limit specified in the Order.

The Order alleges that Devendra (David) Malik, Mahadev Inc., dba Kent Shell; Priyana Inc., dba Renton 76; and TM Investment Co., dba Kangly Chevron (“Respondents”) violated Section 9005 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6991d, by failing to respond to a September 11, 2009 Information Request that was received at the above address on September 12, 2009. A copy of the Information Request is attached to the Order.

As explained in the Order, Respondents have 30 days to file a written answer and request a hearing with an administrative law judge. If Respondents fail to do this, then the Order becomes final and Respondents must comply with the Order within 14 days. Failure to comply with any requirement of a final compliance order by the specified date could subject you and your companies to a civil penalty of up to \$37,500 per day of continued noncompliance in addition to any other penalties that may be assessed for past or ongoing violations.

As an alternative to filing an answer requesting a hearing, Respondents may proceed with complying with the Order by submitting to EPA a full response to the September 11, 2009 Information Request and a completed Statement of Certification attached to the September 11, 2009 Information Request as Enclosure 1.

We are available to discuss with you the alleged violation, Compliance Order and/or settlement of this matter. Note that a request for an informal settlement conference does not extend the 30 day period for filing a written answer requesting a hearing, nor does it waive Respondents’ right to request a hearing. Deborah Hilsman, Assistant Regional Counsel, is the

attorney handling this Order for EPA. If you desire an informal settlement conference or have any questions, please contact Ms. Deborah Hilsman at (206) 553-1810.

Sincerely,

A handwritten signature in black ink, appearing to read "Edward J. Kowalski for". The signature is fluid and cursive.

Edward J. Kowalski, Director  
Office of Compliance and Enforcement

Enclosures

cc: James Pendowski, Washington Department of Ecology