



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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6/14/2022

3:51PM

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DOCKET NO.: RCRA-08-2022-0010

IN THE MATTER OF:

THE NATIONAL PARK SERVICE
(OK-A-BEH MARINA),

RESPONDENT

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FINAL ORDER

Pursuant to 40 C.F.R. § 22.13(b) and §§ 22.18(b)(2) and (3) of EPA’s Consolidated Rules of Practice, the Consent Agreement for Compliance resolving this matter is hereby approved and incorporated by reference into this Final Order.

The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement for Compliance, effective immediately upon filing this Consent Agreement for Compliance and Final Order.

SO ORDERED THIS 14th DAY OF June, 2022.

STEPHANIE
TALBERT

Digitally signed by STEPHANIE
TALBERT
Date: 2022.06.14 15:49:59 -06'00'

Stephanie Talbert
Regional Judicial Officer

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

IN THE MATTER OF:)	Docket No. RCRA-08-2022-0010
)	
The National Park Service)	CONSENT AGREEMENT
(Ok-A-Beh Marina),)	FOR COMPLIANCE
)	(40 C.F.R. § 22.13(b))
Respondent.)	

INTRODUCTION

1. The parties to this proceeding are the National Park Service, a Bureau of the U.S. Department of the Interior (Respondent) and the undersigned U.S. Environmental Protection Agency Region 8 (EPA) official (Complainant).
2. This proceeding pertains to Ok-A-Beh Marina, in Fort Smith, Montana, within the exterior boundaries of the Crow Indian Reservation.
3. The parties, having agreed settlement of this action is in the public interest, consent to the entry of this Consent Agreement for Compliance (Agreement) without adjudication of any issues of law or fact herein, and the Respondent agrees to comply with the terms of this Agreement.

JURISDICTIONAL ALLEGATIONS

4. This Agreement is issued under the authority of section 9006 of the Solid Waste Disposal Act (Act), 42 U.S.C. § 6991e.
5. This proceeding is subject to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, under which this proceeding may be resolved by a final order from EPA Region 8’s Regional Judicial Officer or Regional Administrator ratifying this Agreement. The final order will simultaneously commence and conclude this proceeding. 40 C.F.R. § 22.13(b).

STATUTORY AND REGULATORY BACKGROUND

6. Sections 9001 through 9014 of the Act, 42 U.S.C. §§ 6991 through 6991m, which are sometimes referenced as Subtitle I of the Act, authorize the EPA to regulate the installation and use of underground storage tanks, which are sometimes referenced as USTs.
7. The term “underground storage tank” is defined in section 9001(10) of the Act, 42 U.S.C. § 6991(10) and 40 C.F.R. § 280.12. The definition of “underground storage tank” in 40 C.F.R. § 280.12 includes, with certain exceptions not relevant here, “any one or combination of tanks (including underground pipes connected thereto) that is used to contain an accumulation of regulated substances, and the volume of which (including the volume of underground pipes connected thereto) is 10 percent or more beneath the surface of the ground.”
8. The term “regulated substance” is defined in section 9001(7) of the Act, 42 U.S.C. § 6991(7), and 40 C.F.R. § 280.12 to include “petroleum.”
9. “Petroleum” is defined in section 9001(6) of the Act, 42 U.S.C. § 6991(6), to include “crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute).”
10. According to 40 C.F.R. § 280.12, “*Petroleum UST system* means an underground storage tank system that contains petroleum or a mixture of petroleum with *de minimis* quantities of other regulated substances. Such systems include those containing motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.”

11. An “underground storage tank system” or “UST system” is defined in 40 C.F.R. § 280.12 as “an underground storage tank, connected underground piping, underground ancillary equipment, and containment system, if any.”
12. Section 9003(c)(1) of the Act, 42 U.S.C. § 6991b(c)(1), directed the EPA to promulgate regulations setting forth requirements pertaining to USTs, including 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. The EPA promulgated such regulations. They are codified at 40 C.F.R. part 280.
13. For purposes of carrying out the UST program on the Crow Indian Reservation, the EPA is the “implementing agency” as that term is used at 40 C.F.R. § 280.12. Although the EPA approved an UST program for the State of Montana in 1996, no governmental authority has applied for or been approved to administer the UST program on that reservation.
14. Section 9006 of the Act, 42 U.S.C. § 6991e, authorizes the EPA to issue administrative orders directing compliance with the Act and its implementing regulations.

FINDINGS OF FACT AND VIOLATION

15. The Respondent is a bureau of the United States Department of the Interior.
16. As a department, agency, or instrumentality of the United States, the Respondent is a “person” as defined in section 9001(15) of the Act, 42 U.S.C. § 6991(15).
17. At all times relevant to this proceeding, the Respondent has owned the Ok-A-Beh Marina (Marina), at 5th Avenue B, Fort Smith, Montana
18. The Marina is located within the exterior boundaries of the Crow Indian Reservation.

19. The Marina operates seasonally, beginning and ending operations each year on approximately Memorial Day and Labor Day.
20. The Marina includes one double-walled, 2,000-gallon STIP3 UST (the Tank).
21. The Tank was installed in May 1998. Its piping is pressurized, double-walled flexible plastic.
22. The Tank is used to store unleaded gasoline.
23. The gasoline stored in the Tank contains is “petroleum” and a “regulated substance” as defined in section 9001, subsections (6) and (7), respectively, of the Act, 42 U.S.C. § 6991, subsections (6) and (7), respectively, and 40 C.F.R. 280.12.
24. The Tank is an “underground storage tank” as defined in section 9001(10) of the Act, 42 U.S.C. § 6991(10) and 40 C.F.R. § 280.12.
25. The Tank is part of a “petroleum UST system” as defined in 40 C.F.R. 280.12.
26. The Respondent is an owner of a “petroleum UST system.”
27. Owners and operators of petroleum UST systems are required to provide release detection for tanks and piping, according to 40 C.F.R. § 280.41.
28. Under 40 C.F.R. § 280.41(a)(1), the Tank is required to be monitored for releases at least once every 30 days using one of the methods listed in 40 C.F.R. § 280.43, subsections (d) through (i).
29. A tank that is operated seasonally, i.e., in temporary closure, is exempt from the release detection requirement cited in paragraph 28, above, if it is empty. A tank is considered empty “when all materials have been removed using commonly employed practices so that no more than 2.5 centimeters (one inch) of residue, or 0.3 percent by weight of the total capacity of the UST system, remain in the system.” (40 C.F.R. § 280.70.)

30. In December 2004, the EPA issued an *Expedited Enforcement Compliance Order & Settlement Agreement* (Field Citation) to the Marina for failure to monitor tanks for releases at least every 30 days. The Field Citation was concluded and finalized on May 16, 2005.
31. In May 2019, the EPA provided the Respondent at least four working days' advance notice of a planned UST inspection of the Marina.
32. The EPA conducted an inspection of the Marina on May 15, 2019.
33. At the time of the EPA inspection, the Marina had not yet begun its operations for the year.
34. During the inspection, the Respondent provided the EPA inspector with a *Montana DEQ Notification of Inactive Status for USTs* form dated December 6, 2018, which indicated the Tank had been emptied on November 5, 2018.
35. During the inspection, the EPA inspector asked the Respondent for leak detection records for the Tank, including records from the Marina's last operating season (June 2018 – October 2018). The Respondent did not provide those records.
36. The EPA sent letters dated August 21, 2019, and February 5, 2020, to the Marina's Maintenance Mechanic Supervisor, containing findings from the inspection, including lack of release detection records for the Tank.
37. On March 17, 2020, the Respondent provided the EPA with release detection printouts for the Tank for January – March 2020. The printouts indicated test errors due to low fuel level in the tank.
38. On March 25, 2020, the EPA presented two options to the Respondent for compliance with the leak detection requirement outside of the Marina's operating season: empty the Tank every October to one inch or less, or install a system capable of properly gauging the Tank at low fuel levels.

39. In February 2021, the EPA learned that the Respondent was unable to find a leak detection system suitable for low fuel levels.
40. On May 8, 2021, prior to the beginning of the 2021 operating season, the State of Montana performed an inspection of the Marina. The Montana inspector noted that the release detection system for the Tank was not operational and that 11 inches of fuel remained in the Tank.
41. On September 28, 2021, the Respondent provided documentation to the EPA that the Tank had been emptied to a level of less than an inch of fuel at the end of the 2021 season.
42. The Respondent's failure to provide release detection for the Tank every 30 days, including but not limited to the periods of June to October 2018, and January through March of 2020, constituted a violation of 40 C.F.R. § 280.41.

COMPLIANCE ORDER

Based on the foregoing Findings of Fact and Violation, and pursuant to section 9006(a) of the Act, 42 U.S.C. § 9661e(a), the Respondent agrees and is hereby ORDERED to perform the following:

43. Beginning when the Respondent fills the Tank with fuel for the 2022 operating season, the Respondent shall monitor the Tank for releases at least every 30 days, except as otherwise provided by paragraph 44, below, for times outside of the Marina's operating season. The Respondent shall maintain records of the tests and provide the test results to the EPA upon request.
44. The Respondent need not monitor the Tank for releases outside of the Marina's operating season if, no later than 30 days after the close of the season, the Respondent provides written proof to the EPA that the fuel level in the Tank has been emptied to no more than one inch of residue. At a minimum, the written proof shall include a description of when, how, and by

whom the Tank was emptied and at least one photograph clearly indicating the depth of residue on a gauge stick used to measure the fuel level in the Tank after it has been emptied.

45. The Respondent must submit all forms, reports, and other information required under this Agreement to:

Marta Grabowski, Environmental Engineer
U.S. EPA Region 8
MC 8ENF RO-O
1595 Wynkoop Street
Denver, Colorado 80202-1129
Email: grabowski.marta@epa.gov

46. The Respondent shall provide a copy of this Agreement to any contractors whose duties include maintaining or fueling the Tank.

OTHER TERMS AND CONDITIONS

47. For the purpose of this proceeding, the Respondent admits the jurisdictional allegations in paragraphs 4 and 5, above; neither admits nor denies the factual allegations in this Agreement; consents to the issuance of the compliance order in paragraphs 43 through 46, above; and waives any right to contest the allegations in this Agreement and to appeal any final order approving this Agreement.
48. Any failure by the Respondent to implement all requirements of this Agreement in full and in the manner and time period required shall be deemed a violation of this Agreement.
49. Nothing in this Agreement constitutes a waiver, suspension or modification of the requirements of the Act or the rules and regulations promulgated thereunder, which remain in full force and effect. Issuance of this Agreement is not an election by the EPA to forgo any civil or administrative action otherwise authorized under the law.
50. Section 9006(d)(1) of the Act, 42 U.S.C. § 6991e(d)(1), provides, in relevant part, that any owner or an UST who fails to comply with any requirement or standard promulgated by the

EPA Administrator under section 6991b of the Act, 42 U.S.C. § 9003, shall be liable for a civil penalty not to exceed \$10,000 for each tank for each day of violation. This amount has been adjusted for inflation by 40 C.F.R. § 19.4 to \$26,269, for violations occurring after November 2, 2015, where penalties are assessed on or after January 12, 2022.

51. This Agreement does not relieve the Respondent of any responsibilities or liabilities established pursuant to any applicable local, tribal or federal law.
52. This Agreement binds the Respondent, its managers and employees, and their successors.
53. The individual executing this Agreement on behalf of the Respondent certifies to his or her authority to execute this Agreement and legally bind the Respondent to the terms of this Agreement.

EFFECTIVE DATE

54. This Agreement shall become effective upon the signature of a final order by the Regional Judicial Officer or Regional Administrator of EPA Region 8 ratifying this Agreement. This Agreement shall remain in effect for a period of three years following the issuance of the final order.

[Signatures on Following Page]

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8**

JANICE PEARSON

Digitally signed by JANICE
PEARSON

Date: _____

By: _____
Janice Pearson, Chief
RCRA-OPA Enforcement Branch
Complainant

Date: 2022.06.01 09:21:13 -06'00'

NATIONAL PARK SERVICE

Respondent

Date: _____

5/26/2022

By: _____

James P. Hite

CERTIFICATE OF SERVICE

The undersigned certifies that the attached **FINAL ORDER** in the matter of **THE NATIONAL PARK SERVICE (OK-A-BEH MARINA)**; **DOCKET NO.: RCRA-08-2022-0010** were sent via certified receipt email on June 16, 2022, to:

Respondent

Todd Johnson
Bighorn Canyon National Recreation Area
National Park Service
Todd_Johnson@nps.gov

EPA Region 8

Peggy Livingston
Enforcement Attorney
Office of Regional Counsel

June 16, 2022

Kate Tribbett
Acting Regional Hearing Clerk