

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

IN THE MATTER OF:	)	Docket No. RCRA-08-2008-2007
	)	
Stockton Oil Company, Inc.,	)	<b>DECLARATION OF CHRISTOPHER</b>
	)	<b>GUZZETTI</b>
Battlefield Express Center Facility	)	
Junction Hwy 212 and I-90	)	
Crow Agency, MT 59022	)	
EPA ID Number 2020002	)	
	)	
Respondent.	)	

Pursuant to the Order to Show Cause and Order to Supplement the Record issued by the Honorable Elyana R. Sutin, Regional Judicial Officer, on January 13, 2009, ordering the Complainant Environmental Protection Agency (EPA) to supplement the record with respect to its penalty calculation, Christopher Guzzetti, EPA Region 8 Underground Storage Tank Program, hereby submits the following declaration with regard to the penalty calculated in this matter.

I, Christopher Guzzetti, declare as follows:

1. I am employed by the EPA Region 8 Underground Storage Tank Program (UST Program) located at 1595 Wynkoop, in Denver, Colorado.
2. As the EPA representative responsible for calculating the proposed penalty in this matter, I have personal knowledge of the matters set forth in this Declaration.
3. EPA filed a Complaint and Notice of Opportunity for Hearing (Complaint) in this matter on July 2, 2008, citing alleged violations of the Resource Conservation and Recovery Act (RCRA) Subtitle I, 42 U.S.C. § 6991, *et seq.*, and the UST regulations set forth at 40 C.F.R. Part 280. The violations were identified at the Battlefield Express Center facility located at the

junction of Highway 212 and Interstate 90 in Crow Agency, Montana, during an UST inspection conducted by EPA on September 13, 2007.

4. The Complaint proposes a penalty of \$41,511 based on the Respondent's alleged violation of 40 C.F.R. § 280.41(b)(1)(ii) for failure to conduct an annual line tightness test or perform monthly monitoring on pressurized piping for three USTs.

5. Prior to the inspection, I spoke with the facility operator, Marla Jeffers, and informed her that the inspection would be taking place on September 12, 2007. I instructed Ms. Jeffers to have available at the time of inspection a list of documents including, but not limited to, the last 12-months of leak detection records.

6. The UST inspection was performed by fellow UST inspectors Patricia Pfeiffer and John Padden. Crow Tribe representatives Roberta Harjo, Carolyn Morrison and Theodore Round Face participated in the inspection.

7. At the time of the inspection the inspectors observed that the sump sensor probes on the unleaded, premium and plus sumps were raised to avoid contact with liquids and not performing leak detection on the piping.

8. Based on the inspection, EPA determined that the Respondent had failed to perform monthly monitoring or have an annual line tightness test on the pressurized piping for the three tanks at the facility since July 8, 2004, constituting a violation of Section 9003(c) of RCRA, 42 U.S.C. 6991b(c), and 40 C.F.R. § 280.41(b)(1)(ii), for the period July 8, 2005, through September 13, 2007.

9. Based on the inflationary adjustment rule in effect at the time of filing the

Complaint, RCRA § 9006(d)(2), 42 U.S.C. § 6991e(d)(2), authorizes the assessment of a civil penalty of up to \$11,000 for each UST for each day of violation for non-compliance with any requirement or standard promulgated by the Administrator under RCRA § 9003, 42 U.S.C. §6991b.

10. RCRA § 9006(c), 42 U.S.C. § 6991e(c), provides that any penalty assessed shall take into account the seriousness of the violations and any good faith efforts to comply with the applicable requirements.

11. RCRA § 9006(e), 42 U.S.C. § 6991e(e), sets forth the following additional factors that may be taken into account in determining the terms of a civil penalty under subsection (d): compliance history of a facility owner or operator, and any other factor the Administrator considers appropriate.

12. To rationally and consistently apply the statutory factors set forth at RCRA §§ 9006(c) and (e), 42 U.S.C. §§ 6991e(c) and (e), to the facts and circumstances of each case, EPA adopted the U.S. EPA Penalty Guidance for Violations of UST Regulations (Penalty Policy) in November 1990. This document was submitted as Exhibit I to the Complaint and is attached hereto.

13. The Penalty Policy includes both a gravity and economic benefit component. Gravity is a monetary value reflective of the seriousness of the violations and the population at risk. Factors including the degree of willfulness/negligence, history of noncompliance and duration are considered in determining the gravity component of a penalty.

14. I personally calculated the proposed penalty in this matter consistent with the

RCRA § 9006 statutory factors described above and the Penalty Policy.

15. The Penalty Policy's initial gravity component for noncompliance with 40 C.F.R. § 280.41(b)(1)(ii) classifies the Potential for Harm and Extent of Deviation as "Major."

16. Typically, EPA increases the initial gravity amounts in accordance with the Penalty Policy based on the degree of willfulness/negligence factor (0.25), and history of noncompliance factor involving similar violations (0.25) for an adjusted gravity amount.

17. In this particular matter, I deemed that the Respondent's receipt of an Expedited Enforcement Compliance Order and Settlement Agreement in the amount of \$300.00 for the very same violation in July 2004 warranted an increase of 25% under willfulness/negligence and history of noncompliance consistent with the Penalty Policy.

18. I increased the days of noncompliance multiplier (4.0) in accordance with the Penalty Policy, starting at 2.5 for one year and adding 0.5 for each additional 6 months of noncompliance.

19. I increased the environmental sensitivity multiplier (1.5) consistent with standard operating policy because the facility is in Indian country.

20. Based on careful consideration of all of the factors set forth in the gravity component of the Penalty Policy, I calculated the initial gravity component of the penalty in this matter at \$40,500.

21. In addition, I calculated an economic benefit component of \$1,011 which consists of the operation and maintenance costs the Respondent would have incurred had it performed the required monthly monitoring on pressurized piping to eliminate any savings enjoyed by the

Respondent for not complying with the regulations.

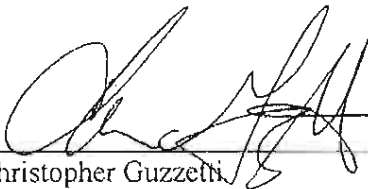
22. The gravity and economic benefit components calculated in accordance with the Penalty Policy totaled \$41,511.

23. There was no reduction to the proposed penalty amount based on ability to pay absent notice or information from the Respondent indicating that it was otherwise unable to pay the proposed penalty amount.

24. The penalty calculation worksheets for the alleged violation in this matter prepared by myself with oversight from UST Program manager Lisa Luebke, were submitted as Exhibit 2 to the Complaint and are attached hereto.

I declare the foregoing to be true and correct to the best of my knowledge, information and belief under penalty of perjury.

Dated: 1/30/2009

  
Christopher Guzzetti  
U.S. EPA, Region 8,  
Underground Storage Tank Program

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and one copy of the DECLARATION OF CHRISTOPHER GUZZETTI were hand-carried to the Regional Hearing Clerk, EPA Region 8, 1595 Wynkoop Street, Denver, Colorado, and that true copies of the same were sent as follows:


Via hand delivery to:

The Honorable Elyana R. Sutin  
Regional Judicial Officer  
U.S. EPA Region 8 (8RC)  
1595 Wynkoop Street  
Denver, CO 80202-1159

Via regular mail to:

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

2/2/2009  
Date

  
Signature

RESPONDENT: Stockton Oil Company  
 ADDRESS: Junction Highway 212 and I-90  
 CITY, STATE: Crow Agency, Montana

FACILITY NAME: Battlefield Express Center  
 UST NAME/NO.: 1,2,3

COUNT ID: 1

VIOLATION: 280.41(b)(1)(ii)-Failure to perform monthly monitoring on pressurized piping

1. ECONOMIC BENEFIT COMPONENT

2. GRAVITY BASED COMPONENT

Avoided Expense: \$900  
 Delayed Expense: \$450  
 Interest Rate: 0.094  
 Marginal Tax Rate: 0.15  
 Days of Violation: 785

Potential for Harm: Major  
 Extent of Deviation: Major  
 Matrix Value: \$4,500  
 Cooperation (-25%/+50%): 0.00  
 Willfulness (-25%/+50%): 0.25  
 History (+50%): 0.25  
 Unique Factors (-25%/+50%): 0.00

Net Avoided Costs: \$920  
 Net Delayed Costs: \$91

Adjusted Matrix Value: \$6,750  
 DNM: 4  
 ESM: 1.5

Total Economic Benefit: \$1,011

Total Gravity Based Component: \$40,500

UNADJUSTED PENALTY: \$41,511  
 ABILITY TO PAY REDUCTION: \$0  
 PROPOSED PENALTY: \$41,511

EXPLANATIONS:

Violation Start Date: 07/08/05 Violation End Date: 09/13/07  
 Avoided Costs: Failure to conduct LTT on 3 lines  
 Delayed Costs: Cost of LTT for 3 lines  
 ESM: 1.5, because facility is in Indian Country  
 Cooperat'n: No change  
 Willfulness: 0.25 Previous field citation  
 History: 0.25 Previous field citation  
 Unique: No change  
 Ability to Pay: No evidence of inability to pay has been demonstrated.