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BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

JOSEPH OH
and HOLLY INVESTMENT, LLC

Respondents

Proceeding under Section 9006(a) of the
Resource Conservation and Recovery
Act, 42 U.S.C. § 6991e(a)

Docket No. RCRA-10-2011-0164

**COMPLAINT,
COMPLIANCE ORDER, AND
NOTICE OF OPPORTUNITY
FOR HEARING**

I. PRELIMINARY STATEMENT

1.1 This Complaint, Compliance Order, and Notice of Opportunity for Hearing (“Order”) is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 9006(a) of the Resource Conservation and Recovery 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.

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

1.3 This is an action commenced pursuant to Section 9006(a) of RCRA, 42 U.S.C. § 6991e(a), requiring Respondents' compliance with Section 9003 of RCRA, 42 U.S.C. § 6991b, and the implementing regulations at 40 C.F.R. Part 280.

1.4 Joseph Oh and Holly Investment, LLC, collectively "Respondents," are hereby notified that Complainant alleges that Respondents violated the provisions identified herein.

1.5 This Order also provides notice of remedial measures that must be undertaken by Respondents to address these violations, as well as Respondents' opportunity to request a hearing.

1.6 In accordance with 40 C.F.R. § 22.13(a), issuance of this Order commences this proceeding.

1.7 This proceeding will conclude when a Final Order becomes effective in accordance with 40 C.F.R. § 22.31(b) or 22.37(b).

II. GENERAL ALLEGATIONS

2.1 Since at least October 13, 2006, Joseph Oh, and his company, Holly Investment, LLC, have owned/and or operated Totem Grocery & Gas ("the facility").

2.2 The facility is located at 105 Marine Drive NE, Marysville, Washington, 98271, which is within the external boundary of the Tulalip Indian Reservation.

2.3 Holly Investment, LLC is a limited liability company registered to do business in the State of Washington.

2.4 Joseph Oh is the governing member of Holly Investment, LLC.

2.5 Underground storage tanks ("USTs") that contain petroleum are installed at the facility.

2.6 The facility has two tanks which were installed in August 1987.

2.7 Each tank is constructed of cathodically-protected steel using a standard developed by the Steel Tank Institute, creating what is commonly known as an "STI-P3" tank.

2.8 Tank #1 has a capacity of 8,000 gallons and contains unleaded gasoline.

2.9 Tank #2 has a capacity of 10,000 gallons and has contained gasoline when in operation.

2.10 The UST piping (also referred to as a "line" or "lines") at the facility consists of two pressurized lines.

2.11 Each line is single-walled and is constructed of fiberglass-reinforced plastic, except that each line has metal flex connectors in contact with the ground where the line connects at the dispenser and at the turbine sump.

2.12 Each line is equipped with an automatic line leak detector (“ALLD”).

2.13 Respondents are “person(s)” as that term is defined in Section 9001(5) of RCRA, 42 U.S.C. § 6991(5), 40 C.F.R. § 280.12.

2.14 The USTs at the facility are used to store “regulated substance(s),” as defined in Section 9001(7), 42 U.S.C. § 6991(7), 40 C.F.R. § 280.12.

2.15 Respondents are the “owner” and/or “operator” of “underground storage tank(s)” as these terms are defined in Section 9001 of RCRA, 42 U.S.C. § 6991, and 40 C.F.R. § 280.12.

2.16 As owner and/or operator of petroleum USTs, Respondents are required to meet the release detection requirements for petroleum UST systems described in 40 C.F.R. § 280.41(a).

2.17 40 C.F.R. § 280.41(a) requires owners and operators of petroleum UST systems to monitor tanks at least every 30 days for releases using methods described in 40 C.F.R. § 280.43.

2.18 One of the methods listed in 40 C.F.R. § 280.43 is the use of an automatic tank gauge (“ATG”).

2.19 40 C.F.R. § 280.41(b)(1) requires owners and operators of petroleum UST systems to equip pressurized piping with an ALLD and have an annual test of the operation of the ALLD conducted in accordance with 40 C.F.R. § 280.44(a).

2.20 40 C.F.R. § 280.41(b)(1) also requires that either an annual line tightness test be conducted on the piping in accordance with 40 C.F.R. § 280.44(b) or monthly monitoring of the piping be conducted in accordance with 40 C.F.R. § 280.44(c).

2.21 40 C.F.R. § 280.31 requires owners and operators of steel UST systems to ensure all corrosion protection systems are operated and maintained to continuously provide corrosion protection to the metal components of that portion of the tank and piping that routinely contain regulated substances and are in contact with the ground.

2.22 40 C.F.R. § 280.31(b)(1) requires all UST systems equipped with cathodic protection systems be inspected for proper operation by a qualified cathodic protection tester within six months of installation and at least every three years thereafter or according to another reasonable time frame established by the implementing agency.

2.23 40 C.F.R. § 280.31(b)(1) requires that cathodic protection installed on the metal flex connectors on the section of the lines at the turbine sumps be tested within six months of installation.

2.24 EPA is the implementing agency for the UST Program within the Tulalip Indian Reservation.

2.25 EPA has not established an alternative time frame for the testing described in 40 C.F.R. § 280.31(b)(1).

2.26 40 C.F.R. § 280.70(a) requires the owner and operator of an UST that is temporarily out of use to continue to operate and maintain corrosion protection and release detection on the UST, except that, if the UST is empty (containing no more than one inch of residue), then release detection is not required for the empty UST.

III. VIOLATIONS

3.1 On September 14, 2009 and July 1, 2010, EPA inspected the facility.

3.2 During the September 14, 2009 inspection ("2009 inspection"), Respondents' representative indicated that Tank #1 was currently in use, but Tank #2 had not been used since the prior month, August 2009.

3.3 During the 2009 inspection, the EPA inspectors observed liquids present in Tank #2.

3.4 During the July 1, 2010 ("2010 inspection"), the EPA inspector measured ½ inch of product in Tank #2.

3.5 During the 2009 and 2010 inspections, Respondents' representatives indicated that an ATG is used as the release detection method for the tanks at the facility.

3.6 Respondents have no valid passing leak detection records from the ATG for Tanks #1 or #2 for anytime on or after September 13, 2008.

3.7 ALLD testing and line tightness testing was conducted on both lines of piping at the facility on August 22, 2006 and November 25, 2009, and on the line of piping to Tank #1 on August 16, 2011.

3.8 In March 2003, sacrificial anodes were installed and tested at the facility to provide corrosion protection for the metal flex connectors connected at the dispensers for the piping to Tanks #1 and #2.

3.9 In 2006 and 2009, the cathodic protection systems installed on Tanks #1 and #2 were tested, but the sacrificial anodes installed at the dispensers were not tested.

3.10 The sacrificial anodes installed at the dispensers were tested on October 15, 2010 and August 16, 2011.

3.11 Corrosion protection has never been installed on the metal flex connectors connected to the lines of piping at the turbine sump for either Tank #1 or #2.

3.12 **Count 1:** Respondents did not have valid ATG leak tests conducted on Tank #1 at the facility from at least September 13, 2008 through August 16, 2011. Therefore, Respondents failed to meet the release detection requirements for Tank #1 from at least September 13, 2008 through August 16, 2011, in violation of Section 9003 of RCRA, 42 U.S.C. § 6991b, and 40 C.F.R. § 280.41(a).

3.13 **Count 2:** Respondents did not have valid ATG leak tests conducted on Tank #2 at the facility from at least September 13, 2008 through August 13, 2009. Therefore,

Respondents failed to meet the release detection requirements for Tank #2 from at least September 13, 2008 through August 13, 2009, in violation of Section 9003 of RCRA, 42 U.S.C. § 6991b, and 40 C.F.R. § 280.41(a).

3.14 **Count 3:** Respondents did not have annual ALLD and line tightness testing for Line #1 at the facility from at least August 23, 2007 through November 24, 2009 and November 25, 2010 through August 15, 2011. Therefore, Respondents failed to meet the release detection requirements for Line #1 from at least August 23, 2007 through November 24, 2009, and November 25, 2010 through August 15, 2011, in violation of Section 9003 of RCRA, 42 U.S.C. § 6991b, and 40 C.F.R. § 280.41(b).

3.15 **Count 4:** Respondents did not have annual ALLD and line tightness testing for Line #2 at the facility from at least August 23, 2007 through August 13, 2009. Therefore, Respondents failed to meet the release detection requirements for Line #2 at the facility from at least August 23, 2007 through August 13, 2009, in violation of Section 9003 of RCRA, 42 U.S.C. § 6991b, and 40 C.F.R. § 280.41(b).

3.16 **Count 5:** Since they became owners and/or operators of the facility on October 13, 2006, Respondents have never installed corrosion protection on the metal flex connectors connected on the section of piping at the turbine sumps for Tanks #1 and #2. Respondents also did not test the corrosion protection installed on the metal flex connectors connected on the section of piping at the dispensers for Tanks #1 and #2 until October 15, 2010. Therefore, Respondents failed to meet the corrosion protection requirements for the

pipng for Tanks #1 and #2 at the facility from October 13, 2006 through at least August 16, 2011, in violation of Section 9003 of RCRA, 42 U.S.C. § 6991b, and 40 C.F.R. § 280.31(b)(1).

IV. COMPLIANCE ORDER

4.1 Based on the foregoing findings, Respondents are hereby ordered to take the following actions:

a. Within fourteen (14) days of the date this Order becomes a Final Order, Respondents shall submit to EPA documentation that Tank #2 is in proper temporary closure by verifying that the regulated substances have been removed; the vent lines for Tank #2 are open and functioning; the lines, pumps, manways, and ancillary equipment are capped and secured; and financial responsibility is being maintained.

b. Respondents shall immediately conduct release detection in accordance with 40 C.F.R. § 280.41(a) for all tanks at the facility that contain more than one inch of regulated substances.

c. Within fourteen (14) days of the date this Order becomes a Final Order, Respondents shall submit to EPA copies of all release detection monthly monitoring test results obtained for the tanks at the facility for the past twelve (12) consecutive months.

d. Respondents shall continue to submit the monthly monitoring test results referenced in subparagraph c above to EPA every thirty (30) days for a period of six (6) months.

e. Respondents shall immediately conduct release detection in accordance with

40 C.F.R. § 280.41(b) for the piping connected to any tank at the facility that contains more than one inch of regulated substances.

f. Respondents shall conduct the 2012 annual line tightness test and ALLD test of the piping at the facility by August 2012 for any tank that has not been permanently closed, and submit a copy of the test results to EPA within forty-five (45) days of having each test conducted.

g. Within fourteen (14) days of the date this Order becomes a Final Order, Respondents shall equip the lines at the turbine sumps with cathodic protection in accordance with 40 C.F.R. § 280.31 for the piping at the facility for any tank that has not been permanently closed, and submit a copy of the installation report from a qualified cathodic protection installer within fourteen (14) days of completion of the installation. Respondents shall complete a test on the cathodic protection system by a qualified cathodic protection tester at the turbine sumps within six (6) months of the installation and submit to EPA copies of the results within fourteen (14) days of the test.

h. Respondents shall provide a copy of financial responsibility documentation within fourteen (14) days of renewing their insurance policy in November 2011.

4.2 The information requested in this Order is not subject to the Paperwork Reduction Act of 1980, 44 U.S.C. § 3501 *et seq.*

4.3 Respondent shall submit any information 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
Mail Stop: OCE-082
Seattle, Washington 98101
griffith.katherine@epa.gov

4.4 Section 9006(d)(2) of RCRA, 42 U.S.C. § 6991e(d)(2), authorizes the assessment of a civil penalty of up to \$10,000 for each tank for each day of violation. Pursuant to the Debt Collection Improvement Act of 1996, and the regulations promulgated thereunder codified at 40 C.F.R. Part 19, for violations occurring after March 15, 2004 through January 12, 2009, the statutory maximum penalty for each tank for each day of violation has been raised to \$11,000 and for violations occurring after January 12, 2009, the statutory maximum penalty for each tank for each day of violation has been raised to \$16,000.

4.5 Based upon the facts alleged in this Order and taking into account the seriousness of the violations and any good faith efforts by Respondents to comply with the applicable requirements, Complainant proposes an assessment of penalties for the violations cited in Section III of this Order, as provided by Section 9006(d)(2) of RCRA, 42 U.S.C. § 6991e(d)(2), in the amount of **Forty-Eight Thousand and Seventy Nine Dollars (\$48,079)**. This penalty was calculated in accordance with the November 1990 "U.S. EPA Penalty Guidance for Violations of UST Requirements" ("UST Penalty Policy"), a copy of which accompanies this Order. An explanation of the penalty calculation is provided in Attachment I to this Order.

4.6 After this Order becomes a Final Order, if Respondents fail to pay any penalty assessed in the Final Order or comply with the requirements of the Compliance Order within the time specified in Paragraph 4.1 above, EPA may seek an assessment 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, in accordance with Section 9006(a)(3) of RCRA, 42 U.S.C. § 6991e(a)(3), and 40 C.F.R. Part 19.

4.7 This Order shall be effective on the date that a Final Order is issued or the date that this Order becomes a Final Order by default pursuant to RCRA § 9006(b), 42 U.S.C. § 6991e(b). In accordance with 40 C.F.R. § 22.37(b), this Order (including the assessment of the civil penalty) shall automatically become a Final Order unless, no later than thirty (30) days after this Order is served, Respondents request a hearing pursuant to 40 C.F.R. § 22.15.

V. OPPORTUNITY TO REQUEST A HEARING AND FILE ANSWER

5.1 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 (“Part 22 rules”). A copy of the Part 22 rules accompanies this Complaint. A request for a hearing must be incorporated in a written answer filed with the Regional Hearing Clerk within thirty (30) days of service of this Order. In their answer(s), Respondents may contest any material fact contained in the Order. Respondents may also contest the appropriateness of the proposed penalty or compliance actions required by the Order. The answer shall directly admit, deny, or explain each of the

factual allegations contained in the 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. Any failure of Respondents to admit, deny, or explain any material fact contained in the Order will constitute an admission of that allegation.

Respondents' answer(s) must be sent to:

Carol Kennedy, Regional Hearing Clerk
U.S. Environmental Protection Agency Region 10
1200 Sixth Ave., Suite 900
Mail Stop: ORC-158
Seattle, WA 98101
Tel: 206-553-0242
kennedy.carol@epa.gov

5.2 Pursuant to 40 C.F.R. § 22.37(b) this Compliance Order shall automatically become a Final Order unless, no later than thirty (30) days after the Order is served, Respondents request a hearing pursuant to 40 C.F.R. § 22.15.

5.3 Pursuant to 40 C.F.R. § 22.31(c), Respondents must pay the full amount of any penalty assessed in a Final Order within 30 days after the effective date of the Final Order, unless otherwise ordered. Payment must be made by sending a cashier's or certified check payable to the "Treasurer, United States of America" and must be delivered to the following address:

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

Respondents shall note on the check the title and docket number of this case. Respondents may also make the penalty payment by wire transfer or credit card in accordance with instructions which can be provided by EPA upon request. Respondents must serve a copy of the check or other instrument of payment on the Regional Hearing Clerk at the address indicated in paragraph 5.1 above and on the EPA Compliance Officer at the address indicated in paragraph 4.3 above.

FOR COMPLAINANT U.S. ENVIRONMENTAL PROTECTION AGENCY:



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

Dated: 9/27/2011

PARTY DESIGNATED TO RECEIVE SERVICE ON BEHALF OF THE COMPLAINANT:

Deborah E. Hilsman, Assistant Regional Counsel
EPA Region 10
1200 Sixth Ave., Suite 900
Mail Stop: ORC-158
Seattle, WA 98101
Tel: 206-553-1810
Hilsman.deborah@epa.gov

CERTIFICATE OF SERVICE

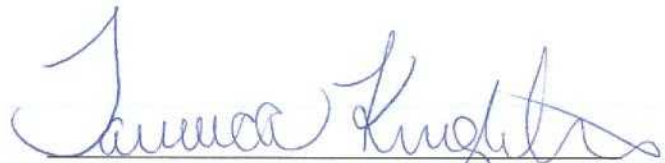
I hereby certify that the originals of the Complaint, Compliance Order and Notice of Opportunity for Hearing, Docket No. RCRA-10-2011-0164 and Attachment 1 - Penalty Calculation Summary was hand-delivered to the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Suite 900, Seattle, Washington 98101, on September 28, 2011.

Also, certify that true and correct copies of the Complaint and Attachment 1 (with accompanying copies of the Consolidated Rules of Practice and the Small Business Regulatory Enforcement and Fairness Act Information Sheet) were sent by certified/ return receipt on September 28, 2011, to:

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

Amie Kim
Registered Agent
Holly Investment, LLC
4905 70th Avenue West
University Place, Washington 98467

DATED this 28 of September 2011.



U.S. Environmental Protection Agency
Region 10

Penalty Calculation Summary**I. Release Detection Violations**

COUNT 1: Failure to conduct tank release detection as required by 40 C.F.R. § 280.41(a) for Tank #1 from at least September 13, 2008 - August 16, 2011

Gravity Component Calculation (Count 1)

Matrix Value (MV) = \$1,930 [\$1,930 per tank (major/major) for violations that occurred after March 15, 2004 through January 12, 2009]

\$2,130 [\$2,130 per tank (major/major) for violations that occurred after January 12, 2009]

Violator Specific Adjustments (VSA) = 1.15*

Environmental Sensitivity (ES) = 1.0**

Days of Noncompliance Multiplier (DNM) = 4.5 (1,068 days)

First Period = 09/13/2008 – 01/12/2009 = 122 days = 1.5 DNM

Second Period = 01/13/09 – 07/22/2011 = 946 days = 4.5 DNM – 1.5 DNM = 3.0 DNM

Gravity Component = MV x VSA x ES x DNM

\$1,930 x 1.15 x 1.0 x 1.5 = \$3,329 (rounded)

\$2,130 x 1.15 x 1.0 x 3.0 = \$7,349 (rounded)

\$10,678

*VSA was increased by 15% for the following reasons:

1) 15% for willfulness or negligence. The initial EPA inspection occurred on 9/14/09. The inspector made several attempts to obtain required documentation from Respondents until the re-inspection that took place on 7/1/10. The facility manager and owner were informed of the noncompliance and as of 9/19/11 there has been no evidence presented to show the facility is in compliance.

** ES has not been determined and no adjustment will be made for it at this time.

Economic Benefit Component Calculation (Count 1)

The economic benefit component for this calculation represents the economic advantage that has been gained by avoiding expenditures to maintain a functioning release detection method at this facility. For purposes of this calculation, economic benefit was not calculated for this violation because of insufficient information concerning the cause of the violation.

Total Penalty for Count 1 = Gravity Component + Economic Benefit = \$10,678

COUNT 2: Failure to conduct tank release detection as required by 40 C.F.R. § 280.41(a) for Tank #2 from at least September 13, 2008 – August 13, 2009

Gravity Component Calculation (Count 2)

Matrix Value (MV) = \$1,930 [\$1,930 per tank (major/major) for violations that occurred after March 15, 2004 through January 12, 2009]

\$2,130 [\$2,130 per tank (major/major) for violations that occurred after January 12, 2009]

Violator Specific Adjustments (VSA) = 1.0*

Environmental Sensitivity (ES) = 1.0**

Days of Noncompliance Multiplier (DNM) = 2.5 (335 days)

First Period = 09/13/2008 – 01/12/2009 = 122 days = 1.5 DNM

Second Period = 01/13/09 – 08/13/2009 = 213 days = 2.5 DNM – 1.5 DNM = 1.0 DNM

Gravity Component = MV x VSA x ES x DNM

\$1,930 x 1.0 x 1.0 x 1.5 = \$2,895 (rounded)

\$2,130 x 1.0 x 1.0 x 1.0 = \$2,130 (rounded)

\$5,025

* For purposes of this calculation, no adjustments were made to the VSA.

** ES has not been determined and no adjustment will be made for it at this time.

Economic Benefit Component Calculation (Count 2)

See explanation in Count 1.

Total Penalty for Count 2 = Gravity Component + Economic Benefit = \$5,025

COUNT 3: Failure to conduct piping release detection as required by 40 C.F.R. § 280.41(b) for Line #1 from at least August 23, 2007 – November 24, 2009 and November 25, 2010 – August 15, 2011

Gravity Component Calculation (Count 3)

Matrix Value (MV) = \$1,930 [\$1,930 per line (major/major) for violations that occurred after March 15, 2004 through January 12, 2009]

\$2,130 [\$2,130 per line (major/major) for violations that occurred after January 12, 2009]

Violator Specific Adjustments (VSA) = 1.00*

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Environmental Sensitivity (ES) = 1.0**

Days of Noncompliance Multiplier (DNM) = 4.5 (1,088 days)

First Period = 08/23/07 – 01/12/2009 = 508 days = 3.0 DNM

Second Period = 01/13/09 – 11/24/09 = 580 days = 4.5 DNM – 3.0 DNM = 1.5 DNM

Gravity Component = MV x VSA x ES x DNM

\$1,930 x 1.00 x 1.0 x 3.0 = \$5,790 (rounded)

\$2,130 x 1.00 x 1.0 x 1.5 = \$3,195 (rounded)

\$8,985

* For purposes of this calculation, no adjustments were made to the VSA.

** ES has not been determined and no adjustment will be made for it at this time.

Economic Benefit Component Calculation (Count 3)

The economic benefit component for this calculation represents the economic advantage that Respondents gained by avoiding operation and maintenance expenditures to conduct the 2007, 2008 and 2010 annual line tightness and automatic line leak detector tests.

On March 7, 2011, EPA received a quote from SME Solutions of \$150 per line for the cost of a line tightness test and an automatic line leak detector test. Therefore, an avoided expenditure amount of \$450 was used to calculate the costs Respondents avoided as result of their noncompliance for Line #1's 2007, 2008 and 2010 tests.

Avoided Expenditures (AE) = \$450

Interest (I) = 8.7%

Number of Days (Days) = 1,088

Marginal Tax Rate (MTR) = 15%

Avoided Costs = $(AE + \frac{AE \times I \times \text{Days}}{365}) \times (1 - \text{MTR}) =$

$(\$450 + \frac{\$450 \times .087 \times 1,088}{365}) \times (1 - .15) = \482 (rounded)

Total Penalty for Count 3 = Gravity Component + Economic Benefit = \$9,467

COUNT 4: Failure to conduct piping release detection as required by 40 C.F.R.

§ 280.41(b) for Line #2 from at least August 23, 2007 – August 13, 2009

Gravity Component Calculation (Count 4)

Matrix Value (MV) = \$1,930 [\$1,930 per line (major/major) for violations that occurred after March 15, 2004 through January 12, 2009]

\$2,130 [\$2,130 per line (major/major) for violations that occurred after January 12, 2009]

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Violator Specific Adjustments (VSA) = 1.00*

Environmental Sensitivity (ES) = 1.0**

Days of Noncompliance Multiplier (DNM) = 3.5 (721 days)

First Period = 08/23/07 – 01/12/2009 = 508 days = 3.0 DNM

Second Period = 01/13/09 – 08/13/2009 = 213 days = 3.5 DNM – 3.0 DNM = 0.5 DNM

Gravity Component = MV x VSA x ES x DNM

\$1,930 x 1.00 x 1.0 x 3.0 = \$5,790 (rounded)

\$2,130 x 1.00 x 1.0 x 0.5 = \$1,065 (rounded)

\$6,855

* For purposes of this calculation, no adjustments were made to the VSA.

** ES has not been determined and no adjustment will be made for it at this time.

Economic Benefit Component Calculation (Count 4)

The economic benefit component for this calculation represents the economic advantage that Respondents gained by avoiding operation and maintenance expenditures to conduct the 2007 and 2008 annual line tightness and automatic line leak detector tests.

On March 7, 2011, EPA received a quote from SME Solutions of \$150 per line for the cost of a line tightness test and an automatic line leak detector test. Therefore, an avoided expenditure amount of \$300 was used to calculate the costs Respondents avoided as result of their noncompliance for Line #2's 2007 and 2008 tests.

Avoided Expenditures (AE) = \$300

Interest (I) = 8.7%

Number of Days (Days) = 721

Marginal Tax Rate (MTR) = 15%

Avoided Costs = $(AE + \frac{AE \times I \times \text{Days}}{365}) \times (1 - \text{MTR}) =$

$(\$300 + \$300 \times .087 \times 721 / 365) \times (1 - .15) = \299 (rounded)

Total Penalty for Count 4 = Gravity Component + Economic Benefit = \$7,154

Total Proposed Penalty for Release Detection Violations (Counts 1 – 4) = \$32,324

II. Corrosion Protection Violation

COUNT 5: Failure to provide cathodic protection as required by 40 C.F.R. § 280.31(b)(1) from at least October 13, 2006 – August 16, 2011

Gravity Component Calculation (Count 5)

Matrix Value (MV) = \$1,940 [\$970 per line (major/moderate) for violations that occurred after March 15, 2004 through January 12, 2009]

\$2,120 [\$1,060 per line (major/moderate) for violations that occurred after January 12, 2009]

Violator Specific Adjustments (VSA) = 1.15*

Environmental Sensitivity (ES) = 1.0**

Days of Noncompliance Multiplier (DNM) = 6.5 (1,768 days)

First Period = 10/13/06 – 01/12/2009 = 822 days = 3.5 DNM

Second Period = 01/13/09 – 08/16/2011 = 946 days = 6.5 DNM – 3.5 DNM = 3.0 DNM

Gravity Component = MV x VSA x ES x DNM

\$1,940 x 1.15 x 1.0 x 3.5 = \$7,809 (rounded)

\$2,120 x 1.15 x 1.0 x 3.0 = \$7,314 (rounded)

\$15,123

***VSA was increased by 15% for the following reasons:**

1) 15% for willfulness or negligence. The initial EPA inspection occurred on 9/14/09. The inspector made several attempts to obtain required documentation from Respondents until the re-inspection that took place on 7/1/10. The facility manager and owner were informed of the noncompliance and as of 9/19/11 there has been no evidence presented to show the facility is in compliance.

**** ES has not been determined and no adjustment will be made for it at this time.**

Economic Benefit Component Calculation (Count 5)

The economic benefit component for this calculation represents the economic advantage that has been gained by delaying capital expenditures to install and maintain cathodic protection on the lines at the turbine sump where the metal flex connectors are in contact with the ground.

Economic benefit also includes the advantage gained by avoiding expenditures to conduct cathodic protection testing on each line at the dispenser and turbine sumps.

On March 7, 2011, EPA received a quote from Norton Corrosion of \$1500 to install two anodes at each turbine sump and conduct the cathodic protection test. Therefore, a delayed expenditure amount of \$1500 was used to calculate the costs Respondents gained as result of their noncompliance. Norton Corrosion also informed EPA that there is no additional cost to conduct cathodic protection testing on the lines at the same time as testing is conducted on the tanks. Therefore, EPA only calculated the delayed economic benefit from failing to install corrosion protection on the lines at the turbine sump.

Delayed Expenditures (DE) = \$1,500

Interest (I) = 8.7%

Number of Days (Days) = 1,768

Delayed Costs = $(\text{DE} \times \text{I} \times \text{Days} / 365) =$
 $(\$1,500 \times .087 \times 1,768 / 365) = \632 (rounded)

Total Penalty for Count 5= Gravity Component + Economic Benefit = \$15,755

Total Proposed Penalty for Corrosion Protection (Counts 5) = \$15,755

III. Total Proposed Penalty for All Violations

Total Proposed Penalty Calculation for Release Detection	\$32,324
Total Proposed Penalty for Corrosion Protection	\$15,755
Total Proposed Penalty Calculated	<u>\$48,079</u>