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EPA -- REGION 10

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of: )

In Suk Yi and )  
and Hye Rang Yi )

Pik-A-Pop #12 )  
1235 South First Street )  
Othello, Washington )

Respondents. )

Docket No. RCRA-10-2013-0066

**CONSENT AGREEMENT  
AND FINAL ORDER**

**I. STATUTORY AUTHORITY**

1.1. This Consent Agreement and Final Order ("CAFO") is issued under the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") by Section 9006 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6991e.

1.2 The Administrator has delegated the authority to issue the Final Order contained in Part V of this CAFO to the Regional Administrator of EPA Region 10, who has delegated this authority to the Regional Judicial Officer in EPA Region 10.

1.3 Pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c, EPA granted approval to the State of Washington to administer a state underground storage tank (UST) program in lieu of the federal UST program (Subtitle I of RCRA, 42 U.S.C. § 6991

*et seq.*)

1.4 The State of Washington'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.

1.5 EPA has given Washington prior notice of this enforcement action in accordance with Section 9006(a)(2) of RCRA, 42 U.S.C. § 6991e(a)(2).

1.6 Pursuant to Section 9006(d) of RCRA and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties," 40 C.F.R. Part 22, EPA hereby issues, and In Suk Yi (also known as Michael Yi) and Hye Rang Yi ("Respondents") agree to issuance of, the Final Order contained in Part V of this CAFO.

## **II. PRELIMINARY STATEMENT**

2.1 In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this CAFO commences this proceeding, which will conclude when the Final Order contained in Part V of this CAFO becomes effective.

2.2 Part III of this CAFO contains a concise statement of the factual and legal basis for the alleged violations of RCRA and the implementing regulations that Respondents are alleged to have violated.

## **III. ALLEGATIONS**

3.1 Respondents are "persons" as that term is defined in WAC 173-360-120.

3.2 Respondents are the "owners" and/or "operators," as those terms are defined in WAC 173-360-120, of Pik-A-Pop #12 located at 1235 South First Street, Othello, Washington (the "Facility").

3.3 The Facility has four tanks, Tanks #1, #2, #3, and # 4.

3.4 Tank #1 routinely contains diesel and Tanks #2, #3, and #4 routinely contain petroleum.

3.5 Diesel and petroleum are “regulated substance(s),” as that term is defined in WAC 173-360-120.

3.6 Tanks #1, #2, #3, and #4 are “underground storage tank(s)” as that term is defined in WAC 173-360-120.

3.7 Respondents operate “UST system(s),” as that term is defined in WAC 173-360-120, at the Facility.

3.8 The capacity of each of the Facility’s UST systems is greater than 110 gallons.

**Failure to Conduct Release Detection for USTs**

3.9 WAC 173-360-335(2)(a) provides that an owner or operator of an UST system must monitor each tank at least every 30 days to detect releases using the methods described in WAC 173-360-345(6)(e) through (j).

3.10 Respondents failed to conduct monthly release detection monitoring for Tank #1 from at least November 1, 2010 through May 31, 2011, in violation of WAC 173-360-335(2)(a).

3.11 Respondents failed to conduct monthly release detection monitoring for Tanks #2 and #3 from at least September 1, 2010 through January 31, 2012, in violation of WAC 173-360-335(2)(a).

3.12 Respondents failed to conduct monthly release detection monitoring for Tank #4 from at least September 1, 2010 through September 30, 2010, and November 1, 2010 through May 31, 2011, in violation of WAC 173-360-335(2)(a).



### **Failure to Conduct Release Detection for Piping**

3.13 WAC 173-360-350(3)(a) requires the owners and operators of pressurized lines equipped with an automatic line leak detector (ALLD) to conduct an annual test of the operation of the ALLD in accordance with the manufacturer's requirements.

3.14 WAC 173-360-350(2)(a)(ii) requires the owners and operators of pressurized lines to have an annual line tightness test conducted by a certified UST supervisor in accordance with subsection (3)(b) or have monthly monitoring conducted in accordance subsection (3)(c).

3.15 The line associated with Tank #1 is pressurized and equipped with an ALLD.

3.16 Respondents failed to conduct an ALLD test for the line associated with Tank #1 from at least February 16, 2011 through October 26, 2011, in violation of WAC 173-360-350(3)(a).

3.17 Respondents failed to conduct an annual line tightness test or conduct monthly monitoring for the pressurized piping to Tank #1, from at least February 16, 2011 through October 26, 2011, in violation of WAC 173-360-350(2)(a)(ii).

### **Failure to Conduct Cathodic Protection Testing of Metal Piping**

3.18 WAC 173-360-320(2) requires that all UST systems equipped with cathodic protection systems be tested within six months of installation and at least every three years thereafter or according to another reasonable time frame established by the Washington Department of Ecology or delegated agency.

3.19 The Washington Department of Ecology or delegated agency has not established another time frame for testing UST cathodic protection systems.

3.20 The lines associated with Tanks #2, #3, and #4 at the Facility contain steel braided flexible connectors (metal piping) which are in contact with the ground under the dispensers and are cathodically-protected.

3.21 Respondents failed to test the cathodically-protected metal piping in contact with the ground under the dispensers for Tanks #2, #3 and #4, from at least January 31, 2007 through January 31, 2012, in violation of WAC 173-360-320(2).

#### **IV. CONSENT AGREEMENT**

4.1 Respondents admit the jurisdictional allegations contained in Part I of this CAFO.

4.2 Respondents neither admit nor deny the specific factual allegations contained in Part III of this CAFO.

4.3 Respondents waive their right to request an adjudicatory hearing on any issue addressed in this CAFO.

4.4 Respondents represent that they are duly authorized to execute this CAFO and that the parties signing this CAFO on their behalf are duly authorized to bind Respondents to the terms of this CAFO.

4.5 Pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e, taking into account the seriousness of the violation and Respondents' good faith efforts to comply, EPA and Respondents agree that an appropriate penalty to settle this action is twenty thousand four hundred twenty-seven dollars (\$20,427).

4.6 Respondents consent to the issuance of the Final Order in Part V below and to payment of the civil penalty cited in the foregoing paragraph plus interest in the

amount of ONE HUNDRED TWO DOLLARS (\$102) in accordance with the schedule set forth below.

4.6.1 Within 30 days of the effective date of the Final Order, Respondents shall make an initial payment of \$4,087.

4.6.2 Within three (3) months of the effective date of the Final Order, Respondents shall make a second payment of \$4,126 (\$4,085 plus \$41 interest).

4.6.3 Within six (6) months of the effective date of the Final Order, Respondents shall make a third payment of \$4,116 (\$4,085 plus \$31 interest).

4.6.4 Within nine (9) months of the effective date of the Final Order, Respondents shall make a fourth payment of \$4,105 (\$4,085 plus \$20 interest).

4.6.5 Within 12 months of the effective date of the Final Order, Respondents shall make a fifth and final payment of \$4,095 (\$4,085 plus \$10 interest).

4.7 Each payment under this CAFO shall be made by cashier's check or certified check, payable to the order of "Treasurer, United States of America" and shall 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 must note on each check the title and docket number of this case.

Respondents may also make their penalty payments by wire transfer or electronically in accordance with instructions provided by EPA, upon request.

4.8 Respondents must serve photocopies of the checks on the Regional Hearing Clerk and EPA at the following two addresses:



Regional Hearing Clerk  
U.S. Environmental Protection Agency  
1200 Sixth Avenue, Suite 900, Mail Stop ORC-158  
Seattle, Washington 98101-3140

Katherine Griffith  
U.S. Environmental Protection Agency  
1200 Sixth Avenue, Suite 900, Mail Stop OCE-082  
Seattle, Washington 98101-3140

4.9 If Respondents fail to pay the penalty assessed in this CAFO by the due dates set forth in Paragraph 4.6 above, the entire unpaid balance of the penalty and accrued interest shall become immediately due and owing. Such a failure may also subject Respondents to an administrative action to collect payment under the federal Debt Collection Act of 1982, as amended, or to a civil action to collect the assessed penalty plus interest, handling charges, and nonpayment penalties as set forth below.

4.9.1 Interest. Any unpaid portion of the assessed penalty shall bear interest at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the Final Order set forth in Part V, provided however, that no nonpayment interest shall be payable on any portion of the assessed penalty that is paid in accordance with the payment schedule established in Paragraph 4.6.

4.9.2 Handling Charge. Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of \$15 shall be paid if any portion of the assessed or stipulated penalty is more than 30 days past due.

4.9.3 Nonpayment Penalty. Pursuant to 31 U.S.C. § 3717(e)(2), a nonpayment penalty of 6% per annum shall be paid on any portion of the assessed or stipulated penalty that is more than 90 days past due, which nonpayment

penalty shall be calculated as of the day the underlying penalty first becomes past due.

4.10 The penalty described in Paragraphs 4.5 and 4.6 of this CAFO, including any additional costs incurred under Paragraph 4.9, above, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.11 Each party shall bear its own fees and costs in bringing or defending this action.

4.12. Respondents expressly waive any right to contest the allegations and waive any right to appeal the Final Order set forth in Part V.


4.13 The provisions of this CAFO shall bind Respondents and their agents, servants, employees, successors, and assigns.

4.14. The above provisions are STIPULATED AND AGREED upon by Respondents and EPA Region 10.

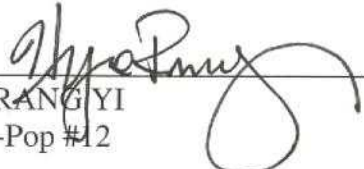
DATED:

FOR RESPONDENTS:

02-18-2013

  
\_\_\_\_\_  
IN SUK YI  
Pik-A-Pop #12

02-18-2013

  
\_\_\_\_\_  
HYE RANG YI  
Pik-A-Pop #12



DATED:

FOR COMPLAINANT:

2/27/2013



EDWARD J. KOWALSKI, Director  
Office of Compliance and Enforcement  
EPA Region 10

**V. FINAL ORDER**

5.1. The terms of the foregoing Parts I-IV are ratified and incorporated by reference into this Final Order. Respondents are ordered to comply with the terms of the settlement.

5.2. Based on the findings contained in the Consent Agreement, Respondents are also ordered to comply with the following requirements pursuant to Section 9006(a) of RCRA, 42 U.S.C. § 6991e(a):

5.2.1 Respondents shall immediately comply with the release detection requirements in WAC 173-360-335(2)(a) for the USTs at the Facility.

5.2.2 Respondents shall provide documentation of compliance with the release detection requirements in WAC 173-360-335(2)(a) for the USTs at the Facility within 30 days of the effective state of this Final Order and every 30 days thereafter for six (6) months.

5.3 Respondent shall provide compliance documentation required to the following address:

Katherine Griffith  
U.S. Environmental Protection Agency  
1200 Sixth Avenue, Suite 900, Mail Stop OCE-082  
Seattle, Washington 98101-3140

5.4 This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to RCRA for the violations and facts alleged in the Consent Agreement above. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This CAFO does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of RCRA and regulations and permits issued thereunder.

5.5 This Final Order shall become effective upon filing.

SO ORDERED this 28<sup>th</sup> day of February, 2013

  
\_\_\_\_\_  
THOMAS JAHNKE  
Regional Judicial Officer  
U.S. Environmental Protection Agency  
Region 10

Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of : In Suk Yi and Hye Rang Yi, Docket No.: RCRA-10-2013-0066**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

The undersigned certifies that a true and correct copy of the document was delivered to:

Deborah Hilsman  
U.S. Environmental Protection Agency  
1200 Sixth Avenue, ORC-158  
Suite 900  
Seattle, Washington 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt to:

In Suk Yi  
Hye Ran Yi  
1210 Oxford Avenue  
Richland, WA 99352

DATED this 28<sup>th</sup> day of February 2013

  
Signature

Candace H. Smith  
Regional Hearing Clerk  
EPA Region 10