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HEARINGS CLERK
EPA--REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

ANESTI AUDEH,

Klamath Falls, Oregon,

Respondent.

DOCKET NO. RCRA-10-2017-0115

CONSENT AGREEMENT

I. STATUTORY AUTHORITY

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

1.2. Pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c, EPA granted the State of Oregon final authorization to administer and enforce an underground storage tank release detection, prevention, and correction program and to carry out such program in lieu of the federal program.

1.3. Pursuant to Section 9006(a) of RCRA, 42 U.S.C. § 6991e(a), EPA may enforce the federally-approved Oregon Underground Storage Tank Program.

1.4. Pursuant to Section 9006(a)(2) of RCRA, 42 U.S.C. § 6991e(a)(2), notification of this action has been given to the Oregon Department of Environmental Quality ("ODEQ").

1.5. Pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e, and in accordance with

the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. part 22, EPA issues, and Anesti Audeh (“Respondent”) agree to issuance of, the Final Order attached to this Consent Agreement (“Final Order”).

II. PRELIMINARY STATEMENT

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

2.2. The Director of the Office of Compliance and Enforcement, EPA Region 10 (“Complainant”) has been delegated the authority pursuant to Section 9006(d) of RCRA, 42 U.S.C. § 6991e(d), to sign consent agreements between EPA and the party against whom an administrative penalty for violations of RCRA is proposed to be assessed.

2.3. Part III of this Consent Agreement contains a concise statement of the factual and legal basis for the alleged violations of RCRA together with the specific provisions of RCRA and the implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

3.1 Respondent is an individual, and a “person” as that term is defined in OAR 340-150-0010(57).

3.2 AMA Mini Mart #1 (the “Facility”) is a gasoline service station located at 7255 South 6th Street in Klamath Falls, Oregon.

3.3 Four composite, double-walled “underground storage tank(s)” (“USTs”) are located at the Facility, each of which was installed in 1996, and each of which is a “new UST system.” OAR 340-150-0010(86), OAR 340-150-0550(2).

3.3.1 Tank 1 is a 10,000 gallon UST that routinely contains gasoline.

3.3.2 Tank 2 is a 5,000 gallon UST that routinely contains gasoline.

3.3.3 Tank 3 is a 10,000 gallon UST that routinely contains gasoline.

3.3.4 Tank 4 is a 5,000 gallon UST that routinely contains diesel fuel.

3.3.5 Tank 2 and Tank 4 at the Facility are compartments within a multicompartment UST. Each compartment of a multicompartment UST is an individual tank for the purpose of OAR chapter 340, divisions 150 and 151. OAR 340-150-0006(3), OAR 340-150-0010(49).

3.4 Gasoline and diesel fuel are types of “petroleum” and are “regulated substance(s).” OAR 340-150-0010(58), (66).

3.5 For all time periods relevant to this Consent Agreement, Respondent was the “owner” of the four USTs at the Facility. OAR 340-150-0010(55).

3.6 Each UST at the Facility is part of a separate “UST system.” UST System 1 includes Tank 1, UST System 2 includes Tank 2, UST System 3 includes Tank 3, and UST System 4 includes Tank 4. OAR 340-150-0010(89).

3.7 Each UST System at the Facility includes a pressurized line, which is “underground piping” that routinely contains petroleum, and which is constructed of double-walled flexible plastic. OAR 340-150-0010(85).

3.8 Respondent is the “permittee” for UST System 1, UST System 2, UST System 3, and UST System 4. OAR 340-150-0010(56).

3.9 Owners and permittees of regulated UST systems which are not otherwise exempt or deferred must comply with OAR Chapter 340, Divisions 150 and 151. OAR 340-150-0006 to 340-150-0008; OAR 340-151-0010.

Violation 1: Failure to Conduct Release Detection for UST Systems

3.10 Respondent is and was required to provide an approved method of release detection which can detect a release from any portion of the UST and the underground piping that routinely contains a regulated substance. OAR 340-150-0400(1)(a).

3.11 For all time periods relevant to the Consent Agreement, Respondent was using automatic tank gauging to conduct release detection on Tank 1, Tank 2, Tank 3, and Tank 4. OAR 340-150-450(1).

3.12 Respondent is and was required to monitor and test for releases from each of Respondent's USTs at least once every 30 days and to record the results for each month. OAR 340-150-0450(2).

3.13 Respondent is and was required to maintain the most current 12 consecutive months of release detection records. OAR 340-150-0450(5).

3.14 On April 11, 2016, Respondent did not have any record of monitoring and testing for releases from Tank 1 in October 2015 or February 2016.

3.15 On April 11, 2016, Respondent did not have any record of monitoring and testing for releases from Tank 2 in April 2015 through May 2015, and did not have any record of monitoring and testing for releases from Tank 2 after June 2015.

3.16 On April 11, 2016, Respondent did not have any record of monitoring and testing for releases from Tank 3 in October 2015 through November 2015.

3.17 On April 11, 2016, Respondent did not have any record of monitoring and testing for releases from Tank 4 in October 2015 through January 2016.

3.18 **Count 1:** Respondent violated OAR 340-150-0450(2) on 19 occasions during the period April 2015 through February 2016, when Respondent failed to monitor and test for

releases from each of Respondent's USTs at least once every 30 days and to record the results for each month.

Violation 2: Failure to Provide Operator Training

3.19 Respondent is and was required to employ Class A, Class B and Class C operators who can properly operate and maintain Respondent's UST systems and respond to events indicating emergency conditions and alarms caused by spills or releases from Respondent's UST systems. OAR-340-150-0210(2).

3.20 Respondent is and was required to designate Class A operators for Respondent's UST systems and, within 90 days of that designation and ensure the designated operators completed a training session for Class A operators approved by ODEQ, or successfully passed an examination for Class A operators approved by ODEQ. OAR 340-150-0210.

3.21 Respondent is and was required to designate Class B operators for Respondent's UST systems and, within 90 days of that designation and ensure the designated operators completed a training session for Class B operators approved by ODEQ, or successfully passed an examination for Class B operators approved by ODEQ. OAR 340-150-0210.

3.22 Respondent is and was required to designate Class B operators for Respondent's UST systems and, before dispensing a regulated substance or assuming responsibility for responding to emergencies, be appropriately trained by a trained Class A or Class B operator. OAR 340-150-0210.

3.23 Respondent is and was required to maintain each certificate of completion, including a copy of any examination results, for each designated Class A, Class B, and Class C operator. Training records for Respondent's Class A, Class B, and Class C operators must be

either kept on file at the Facility, or have those records available for review upon request.
OAR 340-150-0210(7)(b).

3.24 On April 11, 2016, Respondent was requested to produce certificates of completion for the trained operators at the Facility. Respondent provided certificates of completion for Class C operators at the Facility, but was unable to provide certificates of completion for any Class A or Class B operators at the Facility.

3.25 **Count 2:** Respondent violated OAR 340-150-0210(7)(b) from at least April 2015 through March 2016, when Respondent failed to maintain each certificate of completion, including a copy of any examination results, for each designated Class A and Class B operators either on file at Respondent's Facility, or otherwise have those records available for review upon request.

Penalty Authority

3.26 Under Section 9006(d) of RCRA, 42 U.S.C. § 6991e(d), and 40 C.F.R. part 19, EPA may assess a civil penalty of up to \$16,000 for each tank for each day during which violations occurred prior to and including November 2, 2015, and up to \$22,587 for each tank for each day during which violations occurred after November 2, 2015.

IV. TERMS OF SETTLEMENT

4.1. Respondent admits the jurisdictional allegations of this Consent Agreement.

4.2. Respondent neither admits nor denies the specific factual allegations contained in this Consent Agreement.

4.3. As required by Section 9006(c) of RCRA, 42 U.S.C. § 6991e(c), EPA has taken into account the seriousness of the violations and any good faith efforts to comply with

applicable requirements. After considering these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$16,438 (the "Assessed Penalty").

4.4. Respondent agrees to pay the Assessed Penalty within 30 days of the effective date of the Final Order, and to undertake the actions specified in this Consent Agreement.

4.5. Payments under this Consent Agreement and the Final Order may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier's check or certified check must be payable to the order of "Treasurer, United States of America" and delivered to the following address:

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

Respondent must note on the check the title and docket number of this action.

4.6. Concurrently with payment, Respondent must serve photocopies of the check, or proof of other payment method, described in Paragraph 4.5 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-113
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101
Young.teresa@epa.gov

Katie Griffith
U.S. Environmental Protection Agency
Region 10, Mail Stop OCE-101
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101
Griffith.katherine@epa.gov

4.7. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, the entire unpaid balance of the Assessed Penalty and accrued interest shall become immediately due and owing. If such a failure to pay occurs, Respondent may be subject to a civil action to collect any unpaid penalties, together with interest, handling charges, and nonpayment

penalties, as set forth below. In any collection action, the validity, amount, and appropriateness of the Assessed Penalty shall not be subject to review.

4.8. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, Respondent shall also be responsible for payment of the following amounts:

4.8.1. *Interest.* Pursuant to 31 U.S.C. § 3717(a)(1), any unpaid portion of the Assessed Penalty shall bear interest at the rate established by the Secretary of the Treasury from the effective date of the Final Order contained herein, provided, however, that no interest shall be payable on any portion of the Assessed Penalty that is paid within 30 days of the effective date of the Final Order contained herein.

4.8.2. *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 Penalty is more than 30 days past due.

4.8.3. *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 Penalty that is more than 90 days past due, which nonpayment shall be calculated as of the date the underlying penalty first becomes past due.

4.9. The Assessed Penalty, including any additional costs incurred under Paragraph 4.8, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes. 26 U.S.C. § 162(f).

4.10. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondent to this document.

4.11. The undersigned representative of Respondent also certifies that, as of the date of Respondent's signature of this Consent Agreement, Respondent has corrected the violations alleged in Part III.

4.12. Except as described in Paragraph 4.8, each party shall bear its own costs and attorneys' fees in bringing or defending this action.

4.13. For the purposes of this proceeding, Respondent expressly waives any right to contest the allegations contained in this Consent Agreement and to appeal the Final Order.

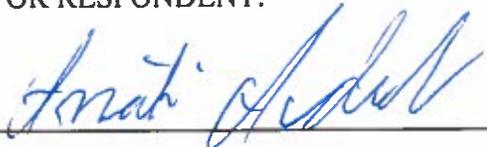
4.14. The provisions of this Consent Agreement and the Final Order shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.15. Respondent consents to the issuance of any specified compliance or corrective action order, to any conditions specified in this consent agreement, and to any stated permit action.

4.16. The above provisions in Part IV are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

FOR RESPONDENT:

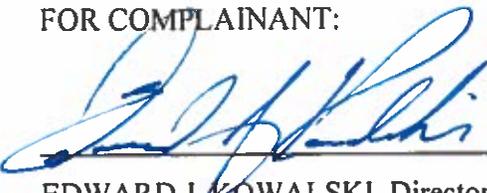


ANESTI AUDEH

DATED:

5/26/2017

FOR COMPLAINANT:



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

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

ANESTI AUDEH,

Klamath Falls, Oregon,

Respondent.

DOCKET NO. RCRA-10-2017-0115

FINAL ORDER

1.1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Regional Judicial Officer in EPA Region 10.

1.2. The terms of the foregoing Consent Agreement are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

1.3. The Consent Agreement and this Final Order constitute a settlement by EPA of all claims for civil penalties under RCRA for the violations alleged in Part III of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(a), nothing in this Final Order 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 Final Order does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of RCRA and regulations promulgated or permits issued thereunder.

1.4. This Final Order shall become effective upon filing with the Regional Hearing Clerk.

SO ORDERED this 8th day of June, 2017.



M. SOCORRO RODRIGUEZ
Regional Judicial Officer
EPA Region 10

Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of: Anesti Audeh, Docket No.: RCRA-10-2017-0015** 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:

Katherine Griffith, Compliance Office
U.S. Environmental Protection Agency
1200 Sixth Avenue, OCE-101
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:

Anesti Audeh, President
AMA Mini Mart, Inc.
522 South Sixth Street
Klamath Falls, Oregon 97601

DATED this 8th day of June, 2017


Teresa Young
Regional Hearing Clerk