

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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In the Matter of:)

GURINDER BAINS, NABIN JOSHI,
and SHORT STOP LLC)

Respondents)

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

) Docket No. RCRA-10-2014-0053

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

I. PRELIMINARY STATEMENT

1.1 This Complaint, Compliance Order, and Notice of Opportunity for Hearing (“Complaint”) 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. Pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c, EPA granted approval to Washington Department of Ecology (“Ecology”) 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 approved 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. Respondents are Gurinder Bains, Nabin Joshi, and Short Stop LLC (collectively referred to as “Respondents”).

II. GENERAL ALLEGATIONS

- 2.1 Since at least November 25, 2009, Respondents have owned/and or operated Flying B #29 (“the Facility”).
- 2.2 The Facility is located at 1611 S. Canyon Road, in Ellensburg, Washington.
- 2.3 The Facility has five tanks, Tanks #1, #2, #3, #4, and #5.
- 2.4 Tank #1 is a 10,000-gallon tank that has routinely contained diesel.
- 2.5 Tank #2 is a 10,000-gallon tank that has routinely contained regular unleaded gasoline.
- 2.6 Tank #3 is a 4,000-gallon tank that has routinely contained premium unleaded gasoline.
- 2.7 Tank #4 is a 4,000-gallon tank that has routinely contained mid-grade unleaded gasoline.
- 2.8 Tank #5 is an 8,000-gallon tank that, as of April 18, 2012, had been temporarily taken out of service, but still contained one inch of diesel.
- 2.9 Diesel and unleaded gasoline are petroleum.
- 2.10 Petroleum is a “regulated substance,” as that term is defined in WAC 173-360-120.

- 2.11 Tanks #1, #2, #3, #4, and #5 are “underground storage tank(s)” as that term is defined in WAC 173-360-120.
- 2.12 Tanks #1, #2, and #3 is each an “UST system,” as that term is defined in WAC 173-360-120.
- 2.13 Tanks #4 and #5 are compartmentalized and together make up one “UST system,” as that term is defined in WAC 173-360-120.
- 2.14 Each of the four UST systems was installed at the Facility prior to December 22, 1988.
- 2.15 Each of the four UST systems at the Facility is an “existing UST system” as that term is defined in WAC 173-360-120.
- 2.16 Each of the four UST systems at the Facility is a “petroleum UST system” as that term is defined in WAC 173-360-120.
- 2.17 Short Stop LLC is a limited liability company registered to do business in the State of Washington.
- 2.18 Gurinder Bains and Nabin Joshi are governing persons and members of Short Stop LLC.
- 2.19 Respondents are “person(s)” as that term is defined in WAC 173-360-120.
- 2.20 Respondents are the “owner(s)” and/or “operator(s)” of “underground storage tank(s)” and “UST system(s)” as those terms are defined in WAC 173-360-120, at the Facility.
- 2.21 On May 3, 2011, Ecology issued a Notice of Non-Compliance citing Respondents for, among other things, failure to properly monitor tanks for releases and failure to provide cathodic protection to steel piping.
- 2.22 On April 18, 2012, EPA inspected the Facility.
- 2.23 Based on information gathered during the inspection and provided by Respondents and Ecology, EPA identified the following violations of the WAC regulations governing USTs, described below.

III. VIOLATIONS

Failure to Conduct Release Detection for USTs

3.1 WAC 173-360-335(2)(a) provides that an owner or operator of a petroleum 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).

3.2 **Count 1:** Respondents failed to conduct monthly release detection monitoring for Tank #1 for the months of December 2011; January, March, and June 2012; and February 2013 in violation of WAC 173-360-335(2)(a).

3.3 **Count 2:** Respondents failed to conduct monthly release detection monitoring for Tank #2 for the months of April, May, and December 2011; and January 2013 in violation of WAC 173-360-335(2)(a).

3.4 **Count 3:** Respondents failed to conduct monthly release detection monitoring for Tank #3 for the month of December 2011 in violation of WAC 173-360-335(2)(a).

3.5 **Count 4:** Respondents failed to conduct monthly release detection monitoring for Tank #4 for the months of December 2011 and March 2012 in violation of WAC 173-360-335(2)(a).

Failure to Equip Piping with Cathodic Protection

3.6 WAC 173-360-310(3) requires owners and operators of existing UST systems to upgrade the piping associated with each UST system so that all metal piping that routinely contains regulated substances and is in contact with the ground has cathodic protection.

3.7 The piping associated with the four UST systems is fiberglass-reinforced plastic with metal flex connectors at the turbines and dispensers.

3.8 **Count 5:** Respondents failed to equip the metal flex connectors in contact with the ground at the dispenser associated with Tank #1 and in the turbine sump associated with Tank #4 with cathodic

protection from at least November 25, 2009 through at least July 9, 2013 in violation of WAC 173-360-310(3).

IV. COMPLIANCE ORDER

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

- a. After this Order becomes a Final Order, Respondents shall immediately conduct release detection in accordance with WAC 173-360-335(2)(a) for all tanks at the Facility that contain more than one inch of a regulated substance.
- b. Within 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 for the tanks at the Facility for the previous month. If the Facility has continued to use statistical inventory reconciliation ("SIR") as its tank release detection method, then Respondents' submission must include the raw data the Facility sent to the SIR vendor for the month and the test results received from the SIR vendor.
- c. Respondents shall continue to submit the monthly monitoring test results and raw data referenced in subparagraph 4.1.b. above to EPA every 30 days for a period of six months.
- d. Within 14 days of the date this Order becomes a Final Order, Respondents shall:
 - (1) equip the metal piping that is in contact with the ground at the dispenser associated with Tank #1, and in the turbine sump associated with Tank #4, with cathodic protection in accordance with WAC 173-360-310(3); and
 - (2) submit a copy of the installation report from a qualified cathodic protection installer within 14 days of completion of the installation. Respondents shall have a test of the cathodic protection system completed by a qualified cathodic protection tester within six months of the installation and submit to EPA copies of the results within 14 days of the test.

e. Within 14 days of the date this Order becomes a Final Order, Respondents shall submit to EPA a copy of the results of all annual line tightness tests and automatic leak detector tests of the piping conducted within the prior 12 months. If Respondents have not conducted these tests within the prior 12 months, then within 14 days of the date this Order becomes a Final Order, Respondents must conduct these tests of the piping at the Facility for any UST that has not been permanently closed, and submit a copy of the test results to EPA within 45 days of having each test conducted.

f. Respondents shall provide a copy of current financial responsibility documentation within 14 days of the date this Order becomes a Final Order.

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 Complaint and taking into account the seriousness of the violations, any good faith efforts by Respondents to comply with the applicable requirements, and Respondents' compliance history, 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 \$39,467. This penalty was calculated in accordance with the November 1990 "U.S. EPA Penalty Guidance for Violations of UST Requirements," as amended on April 6, 2010, a copy of which accompanies this Complaint. The proposed penalty is briefly described as follows:

Count 1: Proposed penalty for failure to conduct release detection for Tank #1 for the months of December 2011; January, March, and June 2012; and February 2013, as required by WAC 173-360-335: \$3,515;

Count 2: Proposed penalty for failure to conduct release detection for Tank #2 for the months of April, May, and December 2011; and January, 2013, as required by WAC 173-360-335: \$3,514;

Count 3: Proposed penalty for failure to conduct release detection for Tank #3 for the month of December 2011, as required by WAC 173-360-335: \$2,343;

Count 4: Proposed penalty for failure to conduct release detection for Tanks #4/#5 for the months of December 2011 and March 2012, as required by WAC 173-360-335: \$2,343; and

Count 5: Proposed penalty for failure to equip the metal flex connectors on the piping in contact with the ground at the dispenser associated with Tank #1 and in the turbine sump associated with Tank #4 with corrosion protection, as required by WAC 173-360-310(3), from November 25, 2009, through at least July 9, 2013: \$27,752.

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 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 Section 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 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 30 days of service of this Complaint. In their answer(s), Respondents may contest any material fact contained in the Complaint. 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 Complaint 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 Complaint will constitute an admission of that allegation.

Respondents’ answer(s) must be sent to:

Candace Smith, Regional Hearing Clerk
U.S. Environmental Protection Agency Region 10
1200 Sixth Ave., Suite 900
Mail Stop: ORC-158
Seattle, WA 98101
Tel: 206-553-6524
smith.candace@epa.gov


5.2 Pursuant to 40 C.F.R. § 22.37(b) the Compliance Order shall automatically become a Final Order unless, no later than 30 days after the Complaint 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: 3/24/2014

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

In the Matter of: Gurinder Bains, Nabin Joshi, and Short Stop LLC
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U.S. Environmental Protection Agency
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101
(206) 553-1037

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)
)
) Docket No. RCRA-10-2014-0053
)
GURINDER BAINS, NABIN JOSHI,)
)
) and SHORT STOP LLC,)
)
) CERTIFICATE OF SERVICE
)
) Respondents.)
)
)
)
Proceeding under Section 9006(a) of the)
Resource Conservation and Recovery)
Act, 42 U.S.C. § 6991e(a))
_____)

I hereby certify that the original of the Complaint, Compliance Order, and Notice of Opportunity for Hearing, Docket Number RCRA-10-2014-0053, and one true and correct copy were hand-delivered today to the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Suite 900, ORC-158, Seattle, WA 98101.

I also certify that true and correct copies of the Complaint (with accompanying copies of the Consolidated Rules of Practice and the UST Penalty Guidance) were sent by Certified Mail, Return Receipt Requested today, to:

Gurinder Bains
765 S Thorp Hwy
Ellensburg, WA 98926

Nabin Joshi
2108 W Clearview Dr
Ellensburg, WA 98926

Nabin Joshi, Registered Agent
Short Stop LLC
1307 N Dollarway RD
Ellensburg, WA 98926

DATED this 26th day of February, 2014



U.S. Environmental Protection Agency
Region 10

