

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

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|----------------------------------|---|--------------------------------|
| IN THE MATTER OF: |) | Docket No. RCRA-08-2024-0008 |
| |) | |
| Patsy Valandra, Owner/Operator |) | ADMINISTRATIVE ORDER ON |
| |) | CONSENT |
| Valandra's II |) | |
| 120 Main Street |) | |
| St. Francis, South Dakota 57572) |) | |
| |) | |
| Respondent. |) | |

FILED

8/5/2024

9:16 AM

**U.S. EPA REGION 8
HEARING CLERK**

INTRODUCTION

The United States Environmental Protection Agency, Region 8 (EPA) and Valandra's II (Respondent) enter into this Administrative Order on Consent (Consent Order) to resolve noncompliance with subtitle I of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 42 U.S.C. §§ 6991 - 6991i.

JURISDICTION

1. Subtitle I of RCRA, 42 U.S.C. §§ 6991 - 6991i, authorizes the EPA to regulate the installation and use of "underground storage tanks" ("USTs" or "tanks") which contain "regulated substances" as defined by section 9001(2) of RCRA, 42 U.S.C. § 6991(2).

2. The EPA has jurisdiction over this matter pursuant to RCRA section 9006, 42 U.S.C. § 6991e.

3. The EPA retained authority to operate the UST Program on Indian lands when EPA approved the State of South Dakota's UST Program in 1995. No other governmental authority has applied for and been approved to administer the

program on the Rosebud Indian Reservation (Reservation).

4. Section 9003(c)(1) of RCRA, 42 U.S.C. § 6991b(c)(1), authorizes the EPA to promulgate regulations setting forth requirements for maintaining a leak detection system, an inventory control system together with tank testing, or a comparable system or method designed to identify releases in a manner consistent with the protection of human health and the environment. The EPA has promulgated such regulations at 40 C.F.R. part 280, subpart D.

5. The EPA enters into and issues this Consent Order under the authority vested in the EPA Administrator by section 9006(a) of RCRA, 42 U.S.C. § 6991e,(a) which has been delegated to the undersigned EPA official.

6. This Consent Order, including all attachments, submittals and other documentation required by this Consent Order, is entered into voluntarily by and between the EPA and the Respondent. The Respondent agrees not to contest the EPA's authority or jurisdiction to issue this Consent Order in this or in any subsequent proceeding to enforce the terms of this Consent Order. This Consent Order constitutes an enforceable agreement between the Respondent and the EPA.

7. The Respondent neither admits nor denies the findings, legal conclusions or determination of the Consent Order.

8. The EPA and the Respondent recognize that the actions taken by the Respondent in accordance with this Consent Order including, but not limited to, entering this Consent Order, do not constitute an admission of any liability or violations of RCRA subtitle I, its implementing regulations or any other

requirements by the Respondent.

PARTIES BOUND

9. This Consent Order binds the Respondent, its elected officials, officers, directors, operators, managers, employees, successors and assigns.

10. The Respondent's undersigned signatory certifies to her authority to execute this Consent Order and legally bind the Respondent to the terms of this Consent Order.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

11. Petroleum, and any fraction thereof, is a regulated substance as defined at section 9001(2) of RCRA, 42 U.S.C. § 6991(2).

12. The EPA is the "implementing agency" as that term is used at 40 C.F.R. § 280.12.

14. The Respondent is a "person" as defined in RCRA § 9001 (6), 42 U.S.C. § 6991 (6), and 40 C.F.R. § 280.12, and is therefore subject to regulation under RCRA.

15. The Respondent is an "owner" as defined in RCRA § 9001 (3), 42 U.S.C. § 6991 (3), and 40 C.F.R. 280.12 of the UST system at the Facility.

16. Respondent is an "operator" as defined in RCRA § 9001 (4), 42 U.S.C. § 6991 (10), and 40 C.F.R. § 280.12 of the underground storage tank system, as defined in RCRA § 9001(1), 42 U.S.C. 6991 (10), and 40 C.F.R. § 280.12.

17. At all times relevant to this Consent Order, the Respondent owns and/or operates one 12,000 gallon, single-walled STI-P3 UST with single-walled

steel piping at the Valandra's II Convenience Store located at 120 Main Street, St. Francis, South Dakota, within the exterior boundaries of the Rosebud Reservation. The tank contains unleaded gasoline. The UST was installed in November 1997.

17. On August 4, 2021, EPA Inspector Mark Hendrix conducted a routine facility compliance inspection of the UST at the Facility. The purpose of the inspection was to assess the Facility's compliance with the UST regulations. The EPA identified several areas of potential noncompliance with 40 C.F.R. Part 280 at the time of the inspection.

18. During the August 4, 2021 inspection, the EPA reviewed cathodic protection system testing on the UST's tank and piping, performed by a contractor, Grimm's Pump and Industrial Supply, on July 26, 2021. The testing showed that the cathodic protection on the tank passed, but the cathodic protection on the piping failed. There was no documentation showing the cathodic protection on the piping had been repaired or retested.

19. During the August 4, 2021, inspection, the EPA requested records of monthly release monitoring. The Respondent did not provide those records. The Respondent provided the EPA with some inventory records, which do not meet the requirements for release detection monitoring.

20. On October 6, 2021, the EPA informed the Respondent of potential noncompliance by certified mail and provided a copy of the inspection report. The EPA informed the Respondent of what corrective actions were needed to return the

FINDINGS OF VIOLATIONS

Failure to Maintain Cathodic Protection System

26. 40 C.F.R. § 280.31(a) requires that owners and operators of USTs with corrosion protection must operate and maintain their cathodic protection system to prevent releases due to corrosion.

27. During the August 4, 2021 inspection, the EPA reviewed cathodic protection system testing on the UST's tank and piping, performed by a contractor, Grimm's Pump and Industrial Supply, on July 26, 2021. The testing showed that the cathodic protection on the tank passed, but the cathodic protection on the piping failed.

28. The EPA discussed repair or replacement of the cathodic protection for the system piping with the Respondent in the inspection report mailed to Respondent on October 6, 2021, and via phone conversation on September 9, 2022, March 3, 2022, March 26, 2023, and November 10, 2023.

29. On June 29, 2023, the EPA received paperwork from Respondent that Grimm's retested the cathodic protection system and the piping failed again. No repairs were made.

30. On November 25, 2023, another contractor, Midwest Petroleum, made a repair to the line and checked the readings for the Facility's cathodic protection system, and noted that the piping would still not pass a cathodic protection test.

Facility to compliance and requested proof of compliance within forty-five days of receipt of the letter.

21. On December 21, 2021, the EPA again contacted the Respondent by certified mail, requesting that the Respondent complete corrective actions to bring the facility into compliance and submit proof of compliance within 45 days of receipt of the letter.

22. On September 9, 2022, the EPA contacted the Respondent by telephone to determine if the repairs to the equipment had been completed and if monthly release detection monitoring was being performed. During the conversation, the Respondent stated she performed inventory reconciliation in lieu of ATG release detection, but this is not an allowable method of release detection based on the age and size of the UST.

23. On October 6, 2022, the EPA issued a Field Citation in the amount of \$2,199 to the Respondent.

24. On March 6, 2023, the EPA withdrew the field citation and issued an expedited settlement agreement (ESA) to the Respondent in the amount of \$3,666. EPA received an email from Respondent requesting an extension of the ESA deadline. An extension was granted until May 16, 2023, but Respondent failed to address the Facility's continued non-compliance by this date.

25. On February 12, 2024, the EPA withdrew the ESA and issued a Notice of Violation and Opportunity to Confer (NOVOC) to the Respondent.

detection based on this size and age of UST.

38. The EPA discussed the requirement to either fill the UST with fuel to a 50% or greater level to generate consistent, valid readings or install/use a method that is capable of generating consistent results on March 3, 2022, September 9, 2022, and March 23, 2023.

39. The Respondent has not provided proof of valid monthly tank release detection monitoring to EPA.

40. The Respondent's failure to monitor tanks for releases every 30 days constitutes a violation of 40 C.F.R. § 280.41(a)(1) and section 9003(b) of RCRA, 42 U.S.C. § 6991b(c).

COMPLIANCE ORDER

41. Based on the foregoing Findings of Violations, and pursuant to section 9006(a) of RCRA, 42 U.S.C. § 9661(e)(a), the Respondent agrees and is hereby ORDERED to perform the following:

42. By June 30, 2024, the Respondent shall comply with the cathodic protection requirements of 40 C.F.R. § 280.31(d) and 40 C.F.R § 280.20(c) by repairing the cathodic protection system for the piping or replacing the piping. Upon repair or replacement of the UST system piping, the Respondent shall notify the EPA and provide documentation of the repair or replacement. Documentation of corrective action must include a completed work order to repair the piping and a passing test of the cathodic protection system or a completed work order stating that the piping was replaced.

31. On November 30, 2023, EPA received a notice from the South Dakota Department of Agriculture and Natural Resources that a permit for the upgrade of the cathodic protection system for the piping was approved.

32. The Respondent has not provided proof of repair of the cathodic protection system for the piping or replacement of the piping to the EPA.

33. The Respondent's failure to maintain cathodic protection constitutes a violation of 40 C.F.R. § 280.21(a) and section 9003(b) of RCRA, 42 U.S.C. § 6991b(c).

Failure to Monitor Tanks for releases at least every 30 days

34. 40 C.F.R. § 280.41(a)(1) requires that owners and operators of USTs use automatic tank gauging (ATG) equipment that will either alert the owner or automatically shut off flow into the tank to prevent release of product into the environment. The UST automatic tank gauging standards at 40 C.F.R. § 280.43(d)(3) require testing to be conducted at least once every 30 days.

35. Respondent has an installed ATG system but does not keep the tank sufficiently full to generate consistent, valid release detection monitoring results from the ATG. According to manufacturer recommendations, the tank must remain at least 50% full to generate consistent, valid monitoring results.

36. Because the tank is insufficiently full, the ATG cannot generate valid release detection monitoring records at least once every 30 days.

37. On November 17, 2022, the Respondent provided documentation of a monthly inventory control record, which is not an allowable method of release

43. By June 30, 2024, the Respondent shall comply with the monthly tank monitoring requirements of 40 C.F.R. § 280.41(a)(1) by either filling the UST above 50% full, so that the ATG will produce consistent, valid monitoring results or replacing the current release detection system. Upon correcting the violation, the Respondent shall notify the EPA and provide documentation of the installation and valid monitoring results. Documentation of corrective action must include a completed work order, along with providing records of valid monitoring results at least once every 30 days.

44. The Respondent must submit all forms, reports and other information required under this Consent Order to:

Roberta Person
Underground Storage Tank Program (8ECA-RO)
U.S. EPA Region 8
1595 Wynkoop Street
Denver, Colorado 80202
Email: Person.Roberta@epa.gov

GENERAL PROVISIONS

49. The Respondent's failure to fully implement all requirements of this Consent Order in the manner and time period required shall be deemed a violation of this Consent Order.

50. This Consent Order constitutes the entire agreement and understanding of the parties concerning settlement of the above-captioned action and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Consent Order. This

Consent Order, however, will not prohibit, prevent, or otherwise preclude the EPA from taking whatever action(s) it deems appropriate to enforce RCRA subtitle I in any manner and will not prohibit, prevent, or otherwise preclude the EPA from enforcing this Consent Order in subsequent administrative proceedings. Nothing in this Consent Order constitutes a waiver, suspension or modification of the requirements of RCRA subtitle I, or the rules and regulations promulgated thereunder, which remain in full force and effect. Issuance of this Consent Order is not an election by the EPA to forgo any civil or administrative action otherwise authorized under the law.

51. Violations of applicable requirements of RCRA subtitle I under section 9003 of RCRA, 42 U.S.C. § 6991b, may subject the Respondent to a civil penalty not to exceed \$29,211 for each tank for each day of violation, as assessed by a United States district court, under section 9006(d)(1), 42 U.S.C. § 6991e(d)(1), and 40 C.F.R. § 19.4. Violations of any term of this Consent Order may subject the Respondent to an administrative penalty of up to \$73,045 for each day of continued noncompliance, after notice and opportunity for a hearing, under section 9006(a)(3) of RCRA, 42 U.S.C. § 6991e(a)(3).

52. This Consent Order does not relieve the Respondent of any responsibilities or liabilities established pursuant to any applicable local, tribal or federal law.

53. The Respondent waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that the Respondent

may have with respect to this Consent Order, including any right of judicial review under section 9006(b) of RCRA, 42 U.S.C. § 6991e(b).

54. This Consent Order may be amended or modified by written agreement of the EPA and Respondent.

55. Except for any data, reports, records, documents, and information required by this Consent Order, the Respondent (1) may assert business confidentiality claims under 40 C.F.R. part 2, Subpart B for any other information (in whatever form) provided to the EPA or (2) may assert that such information is privileged as recognized by and consistent with federal law.

EFFECTIVE DATE

56. This Consent Order shall become effective upon official filing with the EPA Region 8 Regional Hearing Clerk, and will remain in effect until the EPA provides the Respondent written notice that the Consent Order, its terms and conditions, have been fully complied with.

IT IS SO AGREED AND ORDERED:

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8,
Complainant.**

Date _____

By: _____
Colleen Rathbone, Acting Manager
RCRA and OPA Branch
Enforcement and Compliance Assurance
Division

**VALANDRA'S II,
Respondent.**

Date: 7-17-24

By: Patsy Valandra
Patsy Valandra
Owner/Operator