



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 10

1200 Sixth Avenue, Suite 155  
Seattle, Washington 98101-3140

MAY 16 2018

OFFICE OF  
COMPLIANCE AND ENFORCEMENT

Reply To: OCE-101

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Mr. Jim Pendowski  
Program Manager  
Toxics Cleanup Program  
Washington Department of Ecology  
300 Desmond Drive SE  
Lacey, Washington 98503

Re: Kenneth A. Stedham, d/b/a Bi-Rights Motors Company, Centralia, WA  
Docket No. RCRA-10-2018-0256

Dear Mr. Pendowski:

This is to advise you that an Administrative Complaint/Compliance Order/Notice of Opportunity for Hearing has been initiated in the state of Washington by Region 10 of the U.S. Environmental Protection Agency (EPA). The proposed action will address alleged ongoing underground storage tank (UST) violations at the Bi-Rights Motors Company in Centralia, Washington.

This notice is being provided to you pursuant to Section 9006(a)(2) of the Resource Conservation and Recovery Act, which requires the EPA to give notice to the State whose authorized program has jurisdiction in this matter. Please direct any comments or questions you may have regarding this action to David Domingo at (206) 553-2456. Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Edward J. Kowalski".

Edward J. Kowalski  
Director

cc: Kristopher Grinnell  
Washington Department of Ecology  
krgr461@ecy.wa.gov

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

RECEIVED

JAN 17 PM 3:26  
HEARINGS CLERK  
EPA -- REGION 10

In the Matter of:

KENNETH A. STEDHAM  
d/b/a BI-RIGHTS MOTORS COMPANY

Centralia, Washington

Respondent.

DOCKET NO. RCRA-10-2018-0256

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

**I. PRELIMINARY STATEMENT**

1.1. This Administrative 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 EPA 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 for EPA Region 10, who in turn has delegated the authority to the Director of the Office of Compliance and Enforcement, EPA Region 10 ("Complainant").

1.3. Respondent is Kenneth A. Stedham d/b/a Bi-Rights Motors Company (including variations such as Bi-Right Motors Company, Bi Right Motors, Kens Mobile Service, and Kens

Service Bi-Right Motors) ("Respondent").

1.4. Pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c, the EPA granted the State of Washington 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.

1.5. Pursuant to Section 9006(a) of RCRA, 42 U.S.C. § 6991e(a), the EPA may enforce the federally-approved State of Washington's underground storage tank release detection, prevention, and correction program.

1.6. Pursuant to Section 9006(a)(2) of RCRA, 42 U.S.C. § 6991e(a)(2), notification of this action has been given to the Washington State Department of Ecology.

## II. GENERAL ALLEGATIONS

2.1. Respondent is an individual and therefore a "person" as that term is defined in the Washington Administrative Code ("WAC") 173-360-120.

2.2. Bi-Right Motors Company (the "Facility") is a used vehicle dealership located at 515 West Main Street in Centralia, Washington.

2.3. At all times relevant to this Complaint, Respondent was, and is, the "owner" and/or "operator" of one "underground storage tank" ("UST") at the Facility. WAC 173-360-120.

2.4. The UST at the Facility is considered an "UST system." WAC 173-360-120. The UST system includes Tank 1.

2.5. Tank 1 consists of a 2,000 gallon, bare steel tank that, according to Respondent, was last used in April 2008 to store petroleum.

2.6. Petroleum is a "regulated substance." WAC 173-360-120.

2.7. Owners and operators of regulated UST systems which are not otherwise exempt or deferred must comply with WAC Chapter 173-360. WAC 173-360-110.

2.8. On August 9, 2013, the Washington Department of Ecology (“WDOE”) inspected the Facility to determine compliance with the Washington State UST regulations found in WAC Chapter 173-360.

2.9. During the August 9, 2013 inspection, the WDOE listed the UST system as “temporarily closed.”

2.10. On September 22, 2016, the EPA inspected the Facility to determine compliance with UST requirements under Subtitle I of RCRA and its implementing regulations in WAC Chapter 173-360.

2.11. During the September 22, 2016 inspection, the EPA inspector indicated that Tank 1 was lined, had galvanic protection, was “in place [temporarily out of use] TOU,” and that Respondent had not conducted a cathodic protection test since April 2008.

### III. VIOLATION

#### **Violation 1: Failure to Permanently Close an UST System**

3.1. The allegations in Paragraphs 1 through 2.11 are realleged and incorporated herein by reference.

3.2. The RCRA authorized regulation at WAC 173-360-380(4) requires that when an UST system is temporarily closed for more than twelve months, owners and operators shall have a licensed tank services provider permanently close the UST system if it does not either meet the performance standards in WAC 173-360-305 for new UST systems or the upgrading requirements in WAC 173-360-310(2) and (3).

3.3. Respondent was required to permanently close the UST system by August 9, 2014 after the UST system was documented as “temporarily closed” on August 9, 2013 by WDOE if it

did not either meet the performance standards in WAC 173-360-305 for new UST systems or the upgrading requirements in WAC 173-360-310(2) and (3) for existing UST systems.

3.4. To meet the upgrading requirements for existing UST systems, Respondent was required to ensure cathodic protection systems meet the requirements of WAC 173-360-305(1)(b)(ii), (iii), and (iv), and to ensure the tank is assessed for corrosion holes. WAC 173-360-310(2)(b).

3.5. Specifically, Respondent was required to operate and maintain the cathodic protection system in accordance with WAC 173-360-320. WAC 173-360-305(1)(b)(iv).

3.6. According to WAC 173-360-320, owners and operators of steel UST systems must operate and maintain corrosion protection continuously and shall test the cathodic protection systems at least every three years. WAC 173-360-320(1) and (2)(a).

3.7. Respondent failed to operate and maintain continuous cathodic protection on the UST system. WAC 173-360-305(1)(b)(iv) & WAC 173-360-320(1).

3.8. Respondent failed to have the corrosion protection system inspected and tested for proper operation by a licensed supervisor of cathodic protection installation and testing at least once every three years. WAC 173-360-320(2)(a).

3.9. There is no evidence that Respondent assessed the integrity of the UST system to ensure that the tank was free of corrosion holes since it was last used in April 2008. WAC 173-360-310(2)(b).

3.10. Respondent failed to meet the upgrading requirements for cathodic protection in WAC 173-360-305(1)(b)(iv) and failed to ensure the integrity of Tank 1 to avoid permanent closure of the UST System at the end of the 12-month period of temporary closure. WAC 173-360-310(2)(b).

3.11. Respondent violated WAC 173-360-380(4) from at least August 9, 2014 through

the present when Respondent failed to have a licensed tank services provider permanently close the UST system since it did not meet the performance standards for upgrading requirements in WAC 173-360-310(2) for operating and maintaining continuous corrosion protection. WAC 173-360-380(4).

#### IV. PROPOSED CIVIL PENALTY

4.1. 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, the statutory maximum civil penalty has subsequently been raised to \$16,000 for each violation that occurred on or after December 6, 2013, through November 2, 2015, and to \$23,426 for each violation that occurred after November 3, 2015, and assessed on or after January 15, 2018. A copy of the EPA's Office of Enforcement and Compliance Assurance January 11, 2018 Memorandum "Amendments to the EPA's Civil Penalty Policies to Account for Inflation (Effective 1/15/18) and Transmittal of the 2018 Civil Monetary Penalty Inflation Adjustment Rule" accompanies this Complaint.

4.2. Based upon the facts alleged in this Complaint and taking into account the seriousness of the violations and any good faith efforts by Respondent to comply with the applicable requirements, Complainant proposes an assessment of penalties for the violation cited in Section III of this Complaint, as provided by Section 9006(d)(2) of RCRA, 42 U.S.C. § 6991e(d)(2), in the amount of \$18,996. This penalty was calculated in accordance with the November 1990 "U.S. EPA Penalty Guidance for Violations of UST Requirements" (Penalty Policy), a copy of which accompanies this Complaint.

4.3. The Penalty Policy provides a methodology for calculating the "economic-based component" and "the gravity-based component" of the penalty. The economic-based component

is based on the benefit from avoided costs such as periodic, operation and maintenance expenditures and delayed costs such as capital expenditures to achieve compliance. The gravity-based component is determined based on an evaluation of four factors: (1) matrix value (based on potential for harm and deviation from the regulatory requirement); (2) violator-specific adjustments (based on a violator's cooperation, willfulness, history of noncompliance, and other factors); (3) an environmental sensitivity multiplier; and (4) a days of noncompliance multiplier (a value based on the number of days of noncompliance).

4.4. For Violation 1, Failure to Permanently Close an UST System, the economic-based component was calculated using EPA's economic benefit model BEN (version 5.7.0). For the gravity-based component of the penalty, Appendix A of the Penalty Policy specifies a matrix gravity level of "major" for both "potential for harm" and the "extent of deviation from the regulatory requirement."

## V. COMPLIANCE ORDER

5.1. Pursuant to Section 9006(a) of RCRA, 42 U.S.C. § 6991e(a), Respondent is hereby ordered to take the following actions:

5.1.1. **Notice of Intent to Decommission Tank 1:** Within thirty (30) days of the date this Order becomes final, Respondent shall provide to the EPA a copy of the signed 30-day notice of intent to decommission the tank, pursuant to WAC 173-360-385;

5.1.2. **Decommission Tank 1:** Within ninety (90) days of the date this Order becomes final, Respondent shall provide to the EPA a copy of an invoice that demonstrates Tank 1 was decommissioned; and

5.1.3. **Site Assessment:** Within one-hundred twenty (120) days of the date this

Order becomes final, Respondent shall provide to the EPA a copy of the site assessment performed according to WAC 173-360-390.

5.1.4. Respondent shall provide compliance documentation required to the following address:

David Domingo  
U.S. Environmental Protection Agency  
Region 10, Mail Stop OCE-101  
1200 Sixth Avenue, Suite 155  
Seattle, Washington 98101

5.2. Pursuant to 40 C.F.R. § 22.37(b), this Compliance Order automatically becomes a final order unless, no later than 30 days after this Complaint is served, Respondent requests a hearing pursuant to 40 C.F.R. § 22.15.

5.3. Failure to comply with any requirement of this Compliance Order may subject Respondent to the imposition of a civil penalty of up to \$58,562 for each day of continued noncompliance. RCRA Section 9006(a), 42 U.S.C. § 6991e(a), 40 C.F.R. Part 19.

## **VI. OPPORTUNITY TO REQUEST A HEARING AND FILE ANSWER**

6.1. Under Section 9006(b) of RCRA, 42 U.S.C. § 6991e(b), and 40 C.F.R. § 22.15, Respondent has a right to request a hearing to contest any material fact set forth in this Complaint, or the appropriateness of the penalty and Compliance Order proposed herein. 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.

6.2. 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. 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 Respondent intends to place at issue; and (3) whether a hearing is requested. Where Respondent has no knowledge as to a particular factual allegation and so states, the allegation is deemed denied. Any failure of Respondent to admit, deny, or explain any material fact contained in the Complaint will constitute an admission of that allegation. Respondent's answer must be sent to:

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 10, Mail Stop ORC-113  
1200 Sixth Avenue, Suite 155  
Seattle, Washington 98101  
Tel: 206-553-1632  
Email: young.teresa@epa.gov

6.3. Respondent's failure to file a written answer and request for a hearing within thirty (30) days of service of this Complaint may result in the entry of a default order against Respondent. Default by Respondents constitutes a binding admission of all allegations contained in the Complaint, and a waiver of Respondent's right to a hearing.

6.4. Respondent is advised that pursuant to 40 C.F.R. § 22.8, after the Complaint is issued, the Part 22 rules prohibit any *ex parte* (unilateral) discussion of the merits of these or any other factually related proceedings with the Administrator, the Environmental Appeals Board or its members, the Regional Judicial Officer, the Presiding Officer, or any other person who is likely to advise these officials in the decision on this case.

## VII. INFORMAL SETTLEMENT CONFERENCE

7.1. Whether or not Respondent requests a hearing, Respondent may request an informal settlement conference to discuss the facts of this case, the proposed penalty, and the possibility of settling this matter. To request such a settlement conference, Respondent should contact Lynne Davies and Danielle Meinhardt:

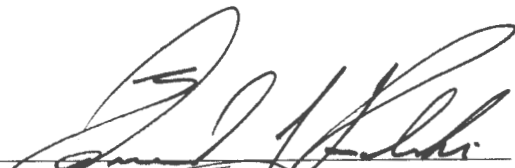
Lynne Davies, Assistant Regional Counsel  
U.S. Environmental Protection Agency,  
Region 10  
1200 Sixth Avenue  
Suite 155 (Mail Stop ORC-113)  
Seattle, Washington 98101  
Tel: (206) 553-5556  
Email: [davies.lynne@epa.gov](mailto:davies.lynne@epa.gov)

Danielle Meinhardt, Assistant Regional  
Counsel  
U.S. Environmental Protection Agency,  
Region 10  
1200 Sixth Avenue  
Suite 155 (Mail Stop ORC-113)  
Seattle, Washington 98101  
Tel: (206) 553-4858  
Email: [meinhardt.danielle@epa.gov](mailto:meinhardt.danielle@epa.gov)

7.2. A request for an informal settlement conference does not extend the 30-day period for filing a written Answer to this Complaint, nor does it waive Respondents' right to request a hearing.

7.3. EPA encourages all parties against whom a civil penalty is proposed to pursue the possibility of settlement through an informal conference. However, no penalty reduction will be made simply because such a conference is held. Such a conference might resolve matters by settlement, making a hearing unnecessary. Any settlement reached as a result of such a conference shall be embodied in a written Consent Agreement and Final Order in accordance with 40 C.F.R. § 22.18.

FOR COMPLAINANT, U.S. ENVIRONMENTAL PROTECTION AGENCY:

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

Dated: 5/16/2018

PARTIES DESIGNATED TO RECEIVE SERVICE ON BEHALF OF THE COMPLAINANT:

Lynne Davies, Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region 10, MS ORC-113  
1200 Sixth Avenue, Suite 155  
Seattle, WA 98101  
Tel: 206-553-5556  
Email: [davies.lynne@epa.gov](mailto:davies.lynne@epa.gov)

Danielle Meinhardt, Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region 10, MS ORC-113  
1200 Sixth Avenue, Suite 155  
Seattle, WA 98101  
Tel: 206-553-4858  
Email: [meinhardt.danielle@epa.gov](mailto:meinhardt.danielle@epa.gov)

**BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:

KENNETH A. STEDHAM  
d/b/a BI-RIGHTS MOTORS COMPANY

Centralia, Washington

Respondent.

**DOCKET NO. RCRA-10-2018-0256**

**CERTIFICATE OF SERVICE**

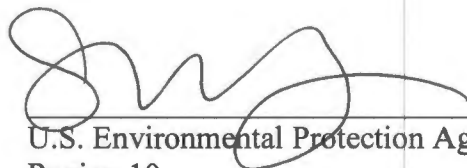
**ADMINISTRATIVE COMPLAINT,  
COMPLIANCE ORDER, AND  
NOTICE OF OPPORTUNITY  
FOR HEARING**

I hereby certify that the original of the Complaint, Compliance Order, and Notice of Opportunity for Hearing, Docket Number RCRA-10-2018-0256, 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 155, ORC-113, 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 Policy) were sent by Certified Mail, Return Receipt Requested today, to:

Mr. Kenneth A. Stedham  
515 West Main Street  
Centralia, Washington 98531-4251

DATED this 17 day of May 2018

  
\_\_\_\_\_  
U.S. Environmental Protection Agency  
Region 10

