

U.S. ENVIRONMENTAL PROTECTION AGENCY (EPA), REGION 7

901 N. 5th Street, Kansas City, Kansas 66101

UNDERGROUND STORAGE TANK (UST) FIELD CITATION FORM FOR EXPEDITED SETTLEMENT DOCKET NO. RCRA-07-2011-0019

PART I: INSPECTION SUMMARY

ENVIRONMENTAL PROTECTION AGENCY REGION VII REGIONAL HEARING CLERK

On: July 22, 2010 (Date of Inspection)

At: Bill's BBQ & Convenience Store (NE State ID #12235) (Facility Name and Identification Number)

Address: 4414 N. 24th Street Omaha, NE 68110

Robert McDowell (Name of On-site Representative if not the Owner or Operator)

Name and address of the UST Owner or Operator (circle which applies).

Name: Robert McDowell

Address: 4414 N. 24th Street Omaha, NE 68110

A duly designated officer, employee, or representative of the EPA or a duly designated officer or employee of the State or Tribe inspected this facility. EPA has reviewed the inspection report and other relevant materials and has identified the following violation(s) of the UST regulations promulgated or approved by EPA under Subtitle I of the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. § 6991 et seq.).

1. Violation: Failure to monitor tanks at least every 30 days. Tanks must be monitored at least every 30 days for releases using one of the methods listed in § 280.43. Automatic Tank Gauging (ATG) System was not operating at the time of inspection.

Cite: 40 CFR § 280.41(a) Proposed Penalty: \$ 420.00

2. Violation: Failure to have annual line tightness test or perform monthly monitoring on pressurized piping.

Cite: 40 CFR § 280.41(b)(1)(ii) Proposed Penalty: \$ 420.00

3. Violation: Failure to provide adequate testing for piping system. The required annual function test (FT) on the line leak detector (LLD) has not been performed in the past year.

Cite: 40 CFR § 280.44(a) Proposed Penalty: \$ 210.00

4. Violation:

Cite: Proposed Penalty: \$

PROPOSED PENALTY TOTAL: \$ 1050.00

PART II: SETTLEMENT AGREEMENT/COMPLIANCE ORDER

A. Settlement Agreement: The Owner or Operator by signing this Settlement Agreement (or by having an authorized representative sign it) agrees to settle the violations identified in Part I, subject to the following terms and conditions:

The Owner or Operator certifies, subject to civil and criminal penalties for making a false submission to the U. S. Government, that he or she has corrected the violations, submitted true and accurate documentation of their correction, and submitted payment to the U.S. Treasury for the amount of \$ 1050.00 in payment of the full proposed penalty amount, as described in Part I of this Form.

The Owner or Operator agrees to comply with the terms of the Compliance Order in Part II.B. Without admitting liability for the violations cited in Part I, the Owner or Operator signing below waives any objections to EPA's jurisdiction with respect to the Compliance Order and this Settlement Agreement, and consents to EPA's final approval of this Settlement Agreement without further notice. The Owner or Operator waives the opportunity for a public hearing pursuant to RCRA section 9006.

Once EPA signs the Settlement Agreement, EPA will take no further enforcement action against the Owner or Operator for the civil violations described in Part I, provided the violations have been timely corrected and the penalty has been paid. EPA does not waive its right to enforce against the Owner or Operator for any other violations not described in Part I and violations of the UST requirements or other requirements listed in Part I that were not corrected in a timely manner.

This Settlement Agreement and Compliance Order will become effective once signed by EPA and is binding on EPA and the Owner or Operator upon signature by both parties. Final approval of the Settlement Agreement and Compliance Order is in the sole discretion of the Regional Administrator, Region 7, EPA, or his or her authorized delegate. Upon final approval, EPA shall mail a copy of this document to the Owner or Operator signing below.

SIGNATURE BY OWNER, OPERATOR, OR AUTHORIZED REPRESENTATIVE:

Name (print): Robert McDowell

Title (print): District Manager

Signature: [Signature] Date: 8-16-11

B. Compliance Order: This Compliance Order is issued under the authority of RCRA section 9006 to resolve the civil violations identified in Part I. The Owner or Operator is ordered to correct the violations, submit true and accurate documentation that the violations were corrected, and pay the total penalty amount listed in Part I of this Form. This Compliance Order shall become final and enforceable only upon signature by an EPA official with the authority to sign this document.

SIGNATURE BY EPA APPROVING THE SETTLEMENT AGREEMENT AND COMPLIANCE ORDER:

Name (print): Robert L. Patrick

Title (print): Regional Judicial Officer

Signature: [Signature] Date: Sept. 22, 2011

Notes:

EPA finds the Owner or Operator in violation of the above referenced UST regulations.

[Signature] Date: 8-16-11 (Signature of Authorized Officer or Employee of EPA)

INSTRUCTIONS

On the reverse side is an Underground Storage Tank (UST) Field Citation Form (Form) for expedited settlement. If you, the Owner or Operator, wish to settle this case using this Form, you must do the following:

1. Correct the violation(s) cited in Part I of the Form ("Part I");
2. Pay the total penalty amount listed in Part I in accordance with the directions provided below;
3. Sign the Settlement Agreement in Part II of the Form ("Part II") (or in the case when an Owner or Operator is a corporate entity, have an authorized representative sign it); and
4. Return the Field Citation Form along with documentation of compliance and payment information (copy of the check would suffice) to EPA at the following address (within the 30-day time limit specified below): Wilfredo Rosado-Chaparro, EPA Region 7 AWMD/STOP, 901 N. 5th Street, Kansas City, Kansas 66101.

This settlement process is optional. You are not required to submit this Form to EPA. If you do not submit this Form, EPA will conclude that you are not interested in pursuing an expedited settlement. EPA will then consider other actions to resolve these violations including the possibility of formal administrative or judicial enforcement.

Whether you submit the Form or not, you are by law required to correct any noncompliance and comply with all applicable UST requirements. EPA will not approve the Settlement Agreement if there is an alteration of any of the information in the Form or if the payment submitted is less than the full amount of settlement.

Timeline: The Form must be postmarked no later than thirty (30) days after the date of the inspection. In the event the Form is sent to you via registered or certified mail, the timeline begins on the date of receipt of that mail. If EPA does not receive the Form within thirty (30) days, EPA will conclude that you do not wish to pursue expedited settlement. EPA will then consider taking other actions to resolve these violations including pursuing formal administrative or judicial enforcement. (Note: All time periods and deadlines in the Form, including these Instructions, are in calendar days. If a deadline falls on a Saturday, Sunday, or federal holiday, EPA will consider the deadline to fall on the next business day.)

Requesting An Extension: EPA may grant, at its discretion, an extension of thirty (30) days if you can demonstrate that it is not feasible for you to come into compliance within the initial 30-day time period. You must request that extension in writing before the initial 30-day time period expires. That written request must explain why compliance within 30 days is not feasible and it must contain a schedule for when you will come into compliance (which must not extend beyond the 30-day extension period).

Requesting that EPA Modify or Withdraw the Form: If you can document that you were in compliance with the regulations cited in Part I at the time of the inspection, you must submit that documentation to EPA within fifteen (15) calendar days of your receipt of the Form. EPA will review the documentation and may choose to not pursue enforcement or may withdraw some or all of the violations and reissue a modified Form to the Owner/Operator (via certified or registered mail) for any violations that are not withdrawn.

Payment: Payment can be made by sending a personal or certified check made out to the "Treasury of the United States" to the following address: U.S. Environmental Protection Agency, Fines and Penalties, Cincinnati Finance Center, P.O. Box 979077, St. Louis, MO 63197-9000. The check should refer to the Field Citation Docket Number (located at the top of the Form). If no such number is provided on the Form, the check should have the name of the facility on it. Other forms of payment such as wire transfers and online payment are also accepted by EPA. For further information on those other forms of payment, please email CINWD_AcctsReceivable@epa.gov or use the EPA contact listed below.

Settlement Agreement Certification: By signing the Settlement Agreement in Part II, you are certifying under penalty of law that you have corrected the violations, submitted true and accurate documentation of compliance, and have paid the penalty. Failure to meet those conditions means you will remain liable for the original violations with the possibility of being liable for additional violations for noncompliance with the Compliance Order and for making a false representation to the U.S. Government.

EPA Review: Once EPA has received the Form, EPA will review it and the documentation of compliance, and verify that payment was made. If EPA decides to settle the case using this Field Citation, EPA will sign and approve the Settlement Agreement and the Compliance Order and send a copy of the completed Form to you. Once EPA has signed the Compliance Order and Settlement Agreement, you and EPA are bound by their terms. EPA reserves the right not to pursue settlement under the Field Citation and instead pursue formal enforcement. In that event, you will be promptly reimbursed for the amount you paid into the U.S. Treasury when submitting the Field Citation.

If you have any questions, please contact Wilfredo Rosado-Chaparro at 913-551-7944 or rosado-chaparro.wilfredo@epa.gov

IN THE MATTER OF Bill's BBQ & Convenience Store, Respondent
Docket No. RCRA-07-2011-0019

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Underground Storage Tank (UST) Field Citation Form was sent this day in the following manner to the addressees:

Copy hand delivered to
Attorney for Complainant:

Raymond C. Bosch
Assistant Regional Counsel
Region 7
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Robert McDowell
Bill's BBQ & Convenience Store
4414 N 24th Street
Omaha, Nebraska 68110

Dated: 9/27/11



Kathy Robinson
Kathy Robinson
Hearing Clerk, Region 7

