

**BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:

EDWARD AND THERESA WASHINES,
DA STOR AT LILLIE'S CORNER

Wapato, Washington

Respondents.

DOCKET NO. RCRA-10-2014-0100

**JOINT SET OF STIPULATED FACTS,
EXHIBITS, AND TESTIMONY**

**JOINT MOTION TO ADMIT THE
JOINT SET OF STIPULATED FACTS,
EXHIBITS, AND TESTIMONY INTO
EVIDENCE**

JOINT SET OF STIPULATED FACTS, EXHIBITS, AND TESTIMONY

In accordance with the Presiding Officer's Notice of Hearing and Scheduling Order, dated January 8, 2015, Complainant and Respondents to the above-captioned matter respectfully submit the foregoing Joint Set of Stipulated Facts, Exhibits, and Testimony, to narrow the issues and minimize the necessity for the introduction of evidence at hearing, and move to have the Joint Set of Stipulated Facts, Exhibits, and Testimony entered into evidence.

I. STIPULATED FACTS

The parties stipulate the following facts as admitted and require no proof.

1. Respondents are "persons," as that term is defined by the Resource Conservation and Recovery Act.
2. Since at least May 1, 2009, Respondents Edward Washines and Da Stor at Lillie's Corner have operated Da Stor at Lillie's Corner (the "Facility"), a gasoline service station located at 50 West Wapato Road in Wapato, Washington, which is within the external

boundary of the Yakama Indian Reservation. Respondent Theresa Washines was an owner, as a beneficiary of federal Indian trust property, and operator of the Facility during the period from at least May 1, 2009 until July 8, 2014, when she died.

3. Since at least May 1, 2009, Respondents Edward Washines and Da Stor at Lillie's Corner were and are the operators of three underground storage tanks ("USTs") at the Facility. Respondent Theresa Washines was an owner and operator of the USTs until July 8, 2014.
4. Each of the three USTs at the Facility is a single wall, steel tank.
5. Each of the three USTs at the Facility was installed in 1990 by the previous operator.
6. Each of the three USTs at the Facility has an estimated capacity of 12,000 gallons.
7. Each of the three USTs at the Facility routinely contain gasoline.
8. Gasoline is a type of petroleum, which is a regulated substance.
9. Respondents admit liability for Violation 1, Counts 1-2. Respondents admit violating 40 C.F.R. §§ 280.41(b)(1)(i) and 280.44(a) from at least May 1, 2009, through October 15, 2009; October 16, 2010, through August 1, 2012; August 2, 2013, through August 26, 2013; and August 27, 2014, through October 12, 2014.
10. Respondents admit liability for Violation 1, Counts 3-4. Respondents admit violating 40 C.F.R. §§ 280.41(b)(1)(ii) and 280.44(b) from at least May 1, 2009, through October 15, 2009; October 16, 2010, through August 1, 2012; August 2, 2013, through August 26, 2013; and August 27, 2014, through October 12, 2014.
11. Respondents admit liability for Violation 3, Counts 7-9. Respondents admit violating 40 C.F.R. § 280.93 from at least May 1, 2009, through April 22, 2010; April 24, 2011, through April 22, 2012; April 24, 2013, through May 1, 2013; and May 2, 2014, through January 13, 2015.

12. Respondents do not dispute Complainant's proposed penalty for Violation 1, Counts 1 through 4, at \$5,284 per count. The total penalty for Violation 1 is \$21,136.
13. Respondents do not dispute Complainant's proposed penalty for Violation 3, Counts 7 through 9, as calculated through December 2, 2014, at a total penalty of \$18,702, or if calculated through January 13, 2015, at a total penalty of \$20,055.
14. Each of the three USTs at the Facility have sti-P3[®] tanks.
15. For all times relevant to this matter, each of the three USTs at the Facility were equipped with corrosion protection in the form of sacrificial anodes.
16. None of the three USTs nor associated piping at the Facility have impressed current cathodic protection.
17. The underground storage tank ("UST") system piping (also referred to as a "line" or "lines") at the Facility consists of a siphon ("suction") line and two pressurized lines; each line is in contact with the ground.
18. The UST system piping at the Facility regularly conveys regulated substances, including the pressurized lines and the siphon line.
19. Each pressurized line is equipped with an automatic line leak detector ("ALLD").
20. The siphon line is constructed of bare steel.
21. All cathodic protection systems must be tested within 6 months of installation and at least every 3 years thereafter. The United States Environmental Protection Agency ("EPA") has not established any alternative time frame for testing cathodic protection systems. 40 C.F.R. § 280.31(b)(1).
22. EPA inspected the USTs at the Facility on June 23, 1994; April 20, 1995; October 29, 1997; September 13 and 21, 2006; September 21, 2009; and June 14, 2012.

23. During the EPA inspections of September 13 and 21, 2006, EPA informed Respondents that the siphon line appeared to be galvanized steel pipe and that the existant corrosion protection equipped to the UST systems did not extend to the siphon line.
24. Respondents conducted a cathodic protection test on the USTs in October 2006, but did not conduct a cathodic protection test on the steel siphon line.
25. On February 5, 2013, Respondents conducted a cathodic protection test on the siphon line and determined that the steel siphon line lacked adequate cathodic protection.
26. Prior to and into February 13, 2013, Respondent's steel siphon line lacked cathodic protection.
27. On February 13, 2013, Respondents installed a sacrificial anode to provide cathodic protection for the siphon line.

II. JOINT STIPULATED EXHIBITS

The parties stipulate the following exhibits as admissible into evidence in this matter.

Exhibits for the Complainant

1. CX-1: Résumé of Charlotte Boulind-Yeung
2. CX-2: Résumé of Katherine Griffith
3. CX-3: EPA UST Inspection Report, September 13 and 21, 2006 (Jim Greaves, Lead Inspector)
4. CX-4: EPA UST Inspection Report, September 21, 2009 (Todd Bender, Lead Inspector)
5. CX-5: EPA UST Inspection Report, June 14, 2012 (Charlotte Boulind-Yeung, Lead Inspector)
6. CX-6: EPA UST Inspection Photolog, June 14, 2012
7. CX-7: Expedited Enforcement Compliance Order and Settlement Agreement Number 5122 dated September 21, 2006

8. CX-8: Notification for Underground Storage Tanks, EPA Form 7530-1, dated February 17, 1994
9. CX-9: Notification for Underground Storage Tanks, EPA Form 7530-1, dated October 28, 2005
10. CX-10: Mascott Equipment Company Service Order Number 160444, Cathodic Protection Test Report, dated October 16, 2009
11. CX-11: Retrofit Report, Pacific Environmental Services Company, Cathodic Protection Testing at Da Stor 50 Wapato Road W., Wapato, WA, dated February 15, 2013
12. CX-12: Cathodic Protection (CP) Compliance Test Results, “sti-p3 Tank Monitoring Test Results,” dated November 17, 1994
13. CX-13: Invoice, Pacific Environmental Services Company, Cathodic Protection Testing at Da Stor 50 Wapato Road W., Wapato, WA, dated February 15, 2013
14. CX-14: Cathodic Protection (CP) Compliance Test Report Information dated July 22, 2013, with email between EPA and Mascott Equipment Co.
15. CX-15: Certified Letter from Jim Greaves (EPA) to E. Arlen Washines, re Expedited Enforcement Compliance Order and Settlement Agreement No.5122, dated May 8, 2007
16. CX-16: Certified Letter from Jim Greaves (EPA) to E. Arlen Washines, re Expedited Enforcement Compliance Order and Settlement Agreement No.5122, dated August 13, 2007
17. CX-17: Memo to File from Jim Greaves, re “File pass off for follow-up, Da Stor at Lillie's Corner,” dated September 24, 2007
18. CX-18: Letter from Jim Greaves (EPA) to Teresa Washines, re Lillis Corner (EPA Facility ID No. 4260115), located at 50 W. Wapato Road in Wapato, Washington -Yakama Indian Reservation, dated October 5, 2005
19. CX-19: Letter from Charlotte Boulind-Yeung (EPA) to Mr. Robbins (BIA), re outstanding UST violations at the Da Stor Facility and cathodic protection concerns for piping, dated December 27, 2007
20. CX-20: Letter from Charlotte Boulind-Yeung (EPA) to Mr. Robbins (BIA), re compliance requirements for the USTs at the Da Stor Facility and cathodic protection concerns for piping, dated May 27, 2008
21. CX-21: Telephone Log of conversation between Charlotte Boulind-Yeung and E. Arlen Washines, dated June 12, 2008

22. CX-22: Telephone Notes of Katherine Griffith, dated January 27, 2013 and March 5, 2013.
23. CX-23: Telephone Record regarding Da Stor at Lillie's Corner between Todd Bender and E. Arlen Washines, dated August 14, 2009
24. CX-24: Email from Todd Bender (EPA) to E. Arlen Washines regarding "Important logistics and environmental compliance results information for you to digest in advance of our inspection," dated August 14, 2009
25. CX-25: Email from Todd Bender (EPA) to Pablo Ramirez (Farmers Insurance) regarding "Lastly, the self certification of compliance, which, if you wish, you may help the Washines with" dated October 14, 2009
26. CX-26: Email from Todd Bender, Environmental Protection Agency, to E. Arlen Washines regarding "Da Stor in Wapato (Lillies Corner)," dated October 14, 2009
27. CX-27: Email conversation between Todd Bender (EPA), E. Arlen Washines, and Pablo Ramirez (Farmers Insurance), regarding "Insurance documents needed for Da Stor compliance – some regulatory feedback," dated April 19, 2010 and October 14, 2009
28. CX-28: Email conversation between Todd Bender (EPA) and Mr. Washines regarding "Please send an update on Da Stor compliance status," dated October 20, 2009
29. CX-29: Email from Todd Bender (EPA) to E. Arlen Washines regarding "Da Stor Update," dated January 4, 2010
30. CX-30: Email from Todd Bender (EPA) to E. Arlen Washines regarding "Lacking a compliance update for Da Stor," dated April 9, 2010
31. CX-31: Email from Todd Bender (EPA) to E. Arlen Washines regarding "Da Stor compliance needs include (right now)," dated April 12, 2010
32. CX-32: Email from Todd Bender (EPA) to E. Arlen Washines regarding "Have you booked day/time for pipe trenchwork investigation yet? If so, when?," dated April 26, 2010 through May 5, 2010
33. CX-33: Email from Todd Bender (EPA) to E. Arlen Washines regarding "Please provide me with a full compliance update," dated May 18, 2010 through August 6, 2010
34. CX-34: Business Lease for Da Stor, between BIA, Teresa Washines, and E. Arlen Washines, dated October 14, 2004

35. CX-35: EPA Publication, "Musts for USTs, a Summary of Federal Regulations for Underground Storage Tank Systems," published July 1995
36. CX-36: U.S. EPA Penalty Guidance for Violations of UST Regulations, OSWER Directive 9610.12, November 14, 1990
37. CX-37: Memorandum from Rosemarie A Kelley, Director Waste and Chemical Enforcement Division, "Revision to Adjusted Attachment C: Clarification to OSWER Directive 9610.12. Use in place of Exhibit 4," dated April 6, 2010
38. CX-38: Memorandum for Record from Katherine Griffith, Case Developer, UST Program "Underground Storage Tanks (UST) Enforcement Case – Da Stor at Lillie’s Corner – Penalty Justification," dated April 15, 2014
39. CX-39: Email from Todd Bender (EPA) to E. Arlen Washines regarding "Documentation of previous Financial Responsibility (insurance) for Da Stor," dated October 20, 2009
40. CX-40: Financial Responsibility, Zurich American Insurance Company, Insurance Policy for Da Stor, dated April 23, 2010
41. CX-41: Financial Responsibility, Zurich American Insurance Company, Insurance Policy for Da Stor, dated April 23, 2012
42. CX-42: Financial Responsibility, ACE American Insurance Company Policy, Insurance Policy for Da Stor, dated May 2, 2013

Exhibits for the Respondents

43. RX-1: Declaration of Thomas Zeilman re: Exhibits
44. RX-2: EPA Reg. 10 letter of July 8, 2013 to Thomas Zeilman (response to FOIA request)
45. RX-3: EPA Reg. 10 Underground Storage Tank Inspection Report (June 23, 1994)
46. RX-4: EPA Reg. 10 Underground Storage Tank Inspection Report (April 20, 1995)
47. RX-5: EPA Reg. 10 letter of May 22, 1995 to Dustin Ramsey (Notice of Violation)
48. RX-6: Underground Storage Tank Inspection Form (October 29, 1997)
49. RX-7: EPA Reg. 10 UST Site Data-Existing (undated)
50. RX-8: EPAUSTRAC Facility Summary (November 7, 2005)

51. RX-9: BIA letter of May 20, 2010 to Theresa Washines (responding to design information re construction of facilities)
52. RX-10: BIA letter of December 27, 2012 to EPA (replying to EPA: OCE-082, RCRA Section 9005 Information Request)

III. JOINT STIPULATED TESTIMONY

The parties stipulate the following testimony as admitted and require no proof.

Witnesses for the Complainant

1. Charlotte Boulind-Yeung.
 - Ms. Boulind-Yeung is an inspector for the Ground Water Unit in the Office of Compliance and Enforcement at EPA Region 10.
 - Ms. Boulind-Yeung has been a certified UST inspector with a federal inspector credentials since April 23, 2004, and has conducted numerous UST inspections on tribal and state lands.
 - Ms. Boulind-Yeung wrote a letter to Guy Robbins of the Bureau of Indian Affairs on December 27, 2007, which is documented in Complainant's Exhibit CX-19. Ms. Boulind-Yeung's letter explained that EPA as of the date of the letter had not received documentation from Respondents to confirm the piping material of the UST systems.
 - Ms. Boulind-Yeung wrote a letter to Guy Robbins of the Bureau of Indian Affairs on May 27, 2008, which is documented in Complainant's Exhibit CX-20 Ms. Boulind-Yeung's letter explained, *inter alia*, that cathodic protection must be maintained for any metal in contact with the ground and that if it is found that there is metal piping that is in contact with the ground, then the cathodic protection system needs to be extended to fully protect the piping. Ms. Boulind-Yeung further explained her efforts to obtain information from the Bureau of Indian Affairs regarding the material of the product piping associated with Respondent's UST systems.
 - Ms. Boulind-Yeung had a telephone conversation with Mr. Washines on June 12, 2008, the contents of which are documented in Complainant's Exhibit CX-21.
 - Ms. Boulind-Yeung conducted an inspection of the UST systems at the Facility on June 14, 2012, as documented in Complainant's Exhibit CX-5.
 - During the June 14, 2012, EPA inspection, Ms. Boulind-Yeung noted within the turbine sump what appeared to be steel piping with corrosion, where the piping regularly contained gasoline and was in contact with the ground. Ms. Boulind-Yeung further explained to Respondent that the corrosion protection on the UST Tank systems must extend to all metal piping that routinely contains regulated substances.
 - During the June 14, 2012, EPA inspection, Ms. Boulind-Yeung's review of the cathodic protection records available at the Facility indicate that the siphon line was not tested during the previous cathodic protection tests.

- Ms. Boulind-Yeung discussed the work conducted in February of 2013 with the Respondents’ contractor, Tom Carroll at Pacific Environmental Services Company covering the time period in which the contractor determined that the siphon line lacked cathodic protection and installed cathodic protection for the siphon line in the form of a sacrificial anode.
2. Katherine Griffith.
- Ms. Griffith is a case developer for the Ground Water Unit in the Office of Compliance and Enforcement at EPA Region 10, and has performed numerous UST penalty calculations, following the method used in the present case, since June 2008.
 - Ms. Griffith attended “Liquid Storage Tank Technology” training at the University of Wisconsin-Extension in November of 1996.
 - Ms. Griffith attended “Underground Storage Tank Management” training at the University of Wisconsin-Madison in December of 1996.
 - Ms. Griffith attended “Introduction to the Basic Underground Storage Tank (UST) Program and Basic Inspector Training Courses” at the National Enforcement Training Institute in April of 2005.
 - Ms. Griffith attended the “UST Inspector Boot Camp Training” at Petroleum Training Solutions in October of 2010.
 - Ms. Griffith calculated the proposed penalty using Complainant’s Exhibit CX-36, the U.S. *EPA Penalty Guidance for Violations of UST Regulations*, OSWER Directive 9610.12, November 14, 1990, and in conformance with the statutory provisions under RCRA.
 - Ms. Griffith reviewed Complainant’s Exhibits CX-3-21, CX-23 through CX-34, CX-36, and CX-39 through CX-42 prior to preparing Complainant’s Exhibit CX-38.
 - Ms. Griffith consulted with EPA UST inspector Todd Bender and Charlotte Boulind-Yeung prior to preparing Complainant’s Exhibit CX-38.
 - Ms. Griffith prepared the summary of the violations alleged and calculated the penalty proposed by Complainant within the “Notice of Intent to File Administrative Complaint and Compliance Order for Violation of Federally-Approved Underground Storage Tank (UST) Regulations, dated July 1, 2013.

Witnesses for the Respondents

3. Edward Arlen Washines.
- Mr. Washines and the heirs of his deceased wife Theresa Washines lease the Facility from the United States government.
 - The United States, through the Bureau of Indian Affairs (BIA), owns the Facility in trust for the benefit of certain enrolled Yakama Nation members, including the heirs of Theresa Washines.
 - The Facility and its USTs had been abandoned by the previous operator, Robert Ramsey, whose lease thereof was then terminated by the BIA in 2003.
 - Mr. Washines and Da Stor at Lillie’s Corner first became the operators of the Facility on October 14, 2004.

- Mr. Ramsey did not provide the Respondents with any records regarding the USTs, their installation, EPA inspections, or testing.
- The BIA did not provide the Respondents with any records regarding the USTs, their installation, EPA inspections, or testing.

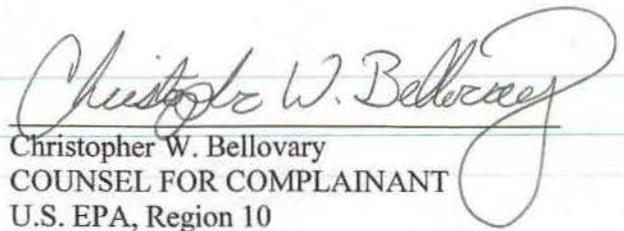
Complainant's Counsel may be contacted by phone at (206) 553-2723, by email at bellovary.chris@epa.gov, or by mail at Christopher W. Bellovary, EPA Region 10, 1200 Sixth Avenue, Suite 900, Mail Stop ORC-158, Seattle, Washington 98101.

Respondents' Counsel may be contacted by phone at (509) 575-1500 or (509) 949-7942, by email at tzeilman@qwestoffice.net, or by mail at Thomas Zeilman, Law Offices of Thomas Zeilman, 402 E. Yakima Ave, Suite 710, P.O. Box 34, Yakima, Washington 98907.

Respectfully submitted this 6th day of March, 2015.

For Complainant:

March 6, 2015
Date


Christopher W. Bellovary
COUNSEL FOR COMPLAINANT
U.S. EPA, Region 10

For Respondents:

3/5/15
Date


Thomas Zeilman
COUNSEL FOR RESPONDENTS
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