Description of Violations and Summary of Proposed Penalty

I. Introduction

On September 14, 2009 and July 1, 2010, the U.S. Environmental Protection Agency (EPA) inspected Totem Grocery & Gas service station, located in Marysville, Washington within the Tulalip Reservation. Joseph Oh and his company, Holly Investment, LLC (Respondents), have owned and/or operated Totem Grocery & Gas since October 13, 2006. During the inspections, EPA documented violations of federal underground storage tank (UST) release detection and corrosion protection regulations. Following is a description of the relevant UST regulations, the violations alleged at each facility, and a summary of the proposed penalty.

II. Federal Release Detection Requirements

A. Release Detection for Petroleum Tanks

40 C.F.R. § 280.41(a) requires owners and operators of petroleum UST systems to monitor tanks at least every 30 days for releases using the methods described in 40 C.F.R. § 280.43. A method listed in 40 C.F.R. § 280.43 is the use of an automatic tank gauge (ATG).

40 C.F.R. § 280.43(d)(1) describes the performance standard for an ATG. It requires that an ATG's automatic product level monitor test be able to detect a 0.2 gallon per hour leak rate from any portion of the tank that routinely contains product. To use this method of release detection, the UST owner/operator must obtain leak test reports from the ATG every thirty days.

B. Release Detection for Piping (also referred to as Lines)

40 C.F.R. § 280.41(b)(1) requires owners and operators of petroleum UST systems to equip pressurized piping with an automatic line leak detector (ALLD) and have an annual test of the operation of the ALLD conducted in accordance with § 280.44(a). § 280.41(b)(1) also requires the owner/operator to have an annual line tightness test conducted in accordance with § 280.44(b) or have monthly monitoring conducted in accordance with § 280.44(c).

III. General Operating Procedures: Corrosion Protection

40 C.F.R. § 280.31 requires owners and operators of steel UST systems to ensure all corrosion protection systems are operated and maintained to continuously provide corrosion protection to the metal components of that portion of the tank and piping that routinely contain regulated substances and are in contact with the ground. 40 C.F.R. § 280.31(b)(1) requires all UST systems equipped with cathodic protection systems be inspected for proper operation by a qualified cathodic protection tester within 6 months of installation and at least every 3 years thereafter or according to another reasonable timeframe established by the implementing agency.

IV. Violations and Penalty Calculations

A. Release Detection

1. Description of Violations

Totem Grocery & Gas has two USTs which were installed in August 1987. Tank #1 contains unleaded gasoline and can hold 8,000 gallons when full. Tank #2 contains less than ½ inch of product but can hold 10,000 gallons when full. Tank #2 was out of operation at the time of the 2009 and 2010 EPA inspections, but when in operation, it contained gasoline. There are two pressurized lines that are single-walled fiberglass-reinforced plastic. Each line is equipped with an ALLD.

During the September 14, 2009 inspection, the facility representative, John Kim, stated that the facility last used Tank #2 the previous month, August 2009. At the time of this inspection, there was no measuring stick available to verify the amount of fuel that remained in the tank. Mr. Kim indicated that the gasoline was pumped out of Tank #2 until no more could be pumped out, but that a vacuum truck was not used to pump out any residual product. During the July 1, 2010 inspection, a measuring stick was used to determine that there was less than ½ inch of product remaining in Tank #2.

During the inspections on September 14, 2009, and July 1, 2010, the facility representatives indicated the primary release detection method(s) used for the tanks is automatic tank gauging and for the piping ALLDs and line tightness tests (LTTs). The inspectors observed that the ATG equipment used at the facility was an Incon, TS-1000. At each inspection, the inspector requested release detection documentation for the previous 12 months. There were no passing monthly leak test report slips available from the ATG for Tanks #1 and #2. The monthly leak test report slips for Tanks #1 and #2 were either missing, or indicated the leak tests were aborted, or indicated that the tank had failed the particular leak test. After Tank #2 was taken out of service and emptied to less than one inch of product, release detection was no longer required.

During the September 14, 2009 inspection, the inspectors observed that the last available ALLD and LTT test results for each system were dated August 22, 2006. On November 25, 2009, the facility obtained passing ALLD and LTT test results for both lines and faxed them to EPA in December 2009. A copy of the passing ALLD and LTT test results completed on August 8, 2011 were provided.

Accordingly, Joseph Oh and Holly Investment, LLC (Respondents) failed to meet the tank release detection requirements of 40 C.F.R. § 280.41(a) for Tank #1 from at least September 13, 2008 through August 16, 2011 and for Tank #2 from at least September 13, 2008 through August 13, 2009. Respondents also failed to meet the piping release detection requirements of 40 C.F.R.§ 280.41(b) for Line #1 from at least August 23, 2007 through November 24, 2009 and November 25, 2010 through August 7, 2011 and for Line #2 from at least August 23, 2007 through August 13, 2009.

2. Proposed Penalty (Counts 1 – 4)

COUNT 1: Failure to conduct tank release detection as required by 40 C.F.R. § 280.41(a) for Tank #1 from at least September 13, 2008 - August 16, 2011

[Dates of noncompliance are the result of the initial inspection date and the last date the penalty calculation was completed. The inspector on 9/14/2009 requested tank release detection documents for the year prior to the inspection (9/13/2008 – 9/14/2009).]

Gravity Component Calculation (Count 1)
Matrix Value (MV) = $1,930 [$1,930 per tank (major/major) for violations that
occurred after March 15, 2004 through January 12, 2009]

$2,130 [$2,130 per tank (major/major) for violations that
occurred after January 12, 2009]
Violator Specific Adjustments (VSA) = 1.15*
Environmental Sensitivity (ES) = 1.0**
Days of Noncompliance Multiplier (DNM) = 4.5 (1,093 days)
        First Period = 09/13/2008 – 01/12/2009 = 122 days = 1.5 DNM
        Second Period = 01/13/09 –08/16/2011 = 971 days = 4.5 DNM – 1.5 DNM = 3.0 DNM

Gravity Component = MV x VSA x ES x DNM
        $1,930 x 1.15 x 1.0 x 1.5   = $3,329 (rounded)
        $2,130 x 1.15 x 1.0 x 3.0   = $7,349 (rounded)
                                                    $10,678

*VSA was increased by 15% for the following reasons:
1) 15% for willfulness or negligence. The initial EPA inspection occurred on 9/14/09. The inspector made several attempts to receive required documentation until the reinspection that took place on 7/1/10. The facility manager and owner were informed of the noncompliance and as of February 2012 there has been no evidence presented to show the facility is in compliance.

** ES has not been determined and no adjustment will be made for it at this time.

Economic Benefit Component Calculation (Count 1)

The economic benefit component for this calculation represents the economic advantage that has been gained by avoiding expenditures to maintain a functional release detection method at this facility. For purposes of this calculation, economic benefit was not calculated for this violation because of insufficient information concerning the cause of the violation.

Total Penalty for Count 1= Gravity Component + Economic Benefit = $10,678

COUNT 2: Failure to conduct tank release detection as required by 40 C.F.R. § 280.41(a) for Tank #2 from at least September 13, 2008 – August 13, 2009

[Dates of noncompliance are the result of the initial inspection date and the last date the inspector was informed that the tank was last used and emptied. The inspector on 9/14/2009 requested tank release detection documents for the year prior to the inspection (9/13/2008 – 9/14/2009).]

Gravity Component Calculation (Count 2)

Matrix Value (MV) = $1,930 [$1,930 per tank (major/major) for violations that occurred after March 15, 2004 through January 12, 2009]

$2,130 [$2,130 per tank (major/major) for violations that occurred after January 12, 2009]

Violator Specific Adjustments (VSA) = 1.0*
Environmental Sensitivity (ES) = 1.0**
Days of Noncompliance Multiplier (DNM) = 2.5 (335 days)
    First Period = 09/13/2008 – 01/12/2009 = 122 days = 1.5 DNM
    Second Period = 01/13/09 –08/13/2009 = 213 days = 2.5 DNM – 1.5 DNM = 1.0 DNM

Gravity Component = MV x VSA x ES x DNM
                $1,930 x 1.0 x 1.0 x 1.5   = $2,895 (rounded)
                $2,130 x 1.0 x 1.0 x 1.0   = $2,130 (rounded)
                                                            $5,025

 * For purposes of this calculation, no adjustments were made to the VSA.

** ES has not been determined and no adjustment will be made for it at this time.

Economic Benefit Component Calculation (Count 2)

See explanation in Count 1.

Total Penalty for Count 2= Gravity Component + Economic Benefit = $5,025

COUNT 3: Failure to conduct piping release detection as required by 40 C.F.R. § 280.41(b) for Line #1 from at least August 23, 2007 – November 24, 2009 and November 25, 2010 – August 7, 2011

[Dates of noncompliance are the result of the date the line tightness test should have been completed to the day before the next test was completed for both time periods.]

Gravity Component Calculation (Count 3)

Matrix Value (MV) = $1,930 [$1,930 per line (major/major) for violations that occurred after March 15, 2004 through January 12, 2009]

$2,130 [$2,130 per line (major/major) for violations that occurred after January 12, 2009]

Violator Specific Adjustments (VSA) = 1.00*

Environmental Sensitivity (ES) = 1.0**

Days of Noncompliance Multiplier (DNM) = 4.5 (1,080 days)
    First Period = 08/23/07 – 01/12/2009 = 508 days = 3.0 DNM
    Second Period = 01/13/09 –11/24/09 and 11/25/10 – 08/07/11= 572 days
        = 4.5 DNM – 3.0 DNM = 1.5 DNM

Gravity Component = MV x VSA x ES x DNM
        $1,930 x 1.00 x 1.0 x 3.0   = $5,790 (rounded)
        $2,130 x 1.00 x 1.0 x 1.5   =   <u>$3,195</u> (rounded)
                          $8,985

 * For purposes of this calculation, no adjustments were made to the VSA.
** ES has not been determined and no adjustment will be made for it at this time.

Economic Benefit Component Calculation (Count 3)
The economic benefit component for this calculation represents the economic advantage that Respondents gained by avoiding operation and maintenance expenditures to conduct the 2007, 2008 and 2010 annual line tightness and automatic line leak detector tests.

On March 7, 2011, EPA received a quote from SME Solutions of $150 per line for the cost of a line tightness test and an automatic line leak detector test. Therefore, an avoided expenditure amount of $450 was used to calculate the costs Respondents avoided as result of their noncompliance for Line #1's 2007, 2008 and 2010 tests.

Avoided Expenditures (AE) = $450
Interest (I) = 8.7%
Number of Days (Days) = 1,080
Marginal Tax Rate (MTR) = 15%

Avoided Costs = (AE + <u>AE x I x Days / 365</u>) x (1 – MTR) =
        ($450 + <u>$450 x .087 x 1,080 / 365</u>) x (1-.15) = $481 (rounded)

Total Penalty for Count 3= Gravity Component + Economic Benefit = $9,466

<u>COUNT 4</u>: Failure to conduct piping release detection as required by 40 C.F.R. § 280.41(b) for Line #2 from at least August 23, 2007 – August 13, 2009

[Dates of noncompliance are the result of the date the line tightness test should have been completed to the last date the inspector was informed that the tank was last used and emptied.]

Gravity Component Calculation (Count 4)

Matrix Value (MV) = $1,930 [$1,930 per line (major/major) for violations that occurred
after March 15, 2004 through January 12, 2009]

$2,130 [$2,130 per line (major/major) for violations that occurred
after January 12, 2009]

Violator Specific Adjustments (VSA) = 1.00*

Environmental Sensitivity (ES) = 1.0**

Days of Noncompliance Multiplier (DNM) = 3.5 (721 days)
First Period = 08/23/07 – 01/12/2009 = 508 days = 3.0 DNM
Second Period = 01/13/09 –08/13/2009 = 213 days = 3.5 DNM – 3.0 DNM = 0.5 DNM

Gravity Component = MV x VSA x ES x DNM
$1,930 x 1.00 x 1.0 x 3.0   = $5,790 (rounded)
$2,130 x 1.00 x 1.0 x0.5   = $1,065 (rounded)
$6,855

 * For purposes of this calculation, no adjustments were made to the VSA.

** ES has not been determined and no adjustment will be made for it at this time.

Economic Benefit Component Calculation (Count 4)

The economic benefit component for this calculation represents the economic advantage that
Respondents gained by avoiding operation and maintenance expenditures to conduct the 2007
and 2008 annual line tightness and automatic line leak detector tests.

On March 7, 2011, EPA received a quote from SME Solutions of $150 per line for the cost of a
line tightness test and an automatic line leak detector test. Therefore, an avoided expenditure
amount of $300 was used to calculate the costs Respondents avoided as result of their
noncompliance for Line #2's 2007 and 2008 tests.

Avoided Expenditures (AE) = $300
Interest (I) = 8.7%
Number of Days (Days) = 721
Marginal Tax Rate (MTR) = 15%

Avoided Costs = (AE + AE x I x Days / 365) x (1 – MTR) =
($300 + $300 x .087 x 721 / 365) x (1-.15) = $299 (rounded)

Total Penalty for Count 4= Gravity Component + Economic Benefit = $7,154

Total Proposed Penalty for Release Detection Violations (Counts 1 – 4) = $32,323

B. Corrosion Protection

1. Description of Violation

During the September 14, 2009 and July 1, 2010 inspections of Totem Grocery & Gas, the EPA inspectors observed that both tanks are STI-P3 tanks. A STI-P3 tank is a steel tank manufactured to meet standards set by the Steel Tank Institute to protect the tank from external corrosion. Tanks that meet these standards have: 1) a protective dielectric coating, 2) dielectric bushings which isolate the tank from the piping, and 3) cathodic protection using galvanic (sacrificial) anodes. During the EPA inspections, the inspectors also observed that, although the lines were constructed of fiberglass reinforced plastic, each line had a metal flex connector in contact with the ground where the line connected at the dispenser and at the turbine sump. In March 2003, sacrificial anodes were installed and tested at each of the four dispensers to provide cathodic protection for the metal flex connectors on each line. The cathodic protection system for the two tanks was tested in 2006 and 2009, but the anodes at the dispensers were not tested. Subsequently, the anodes at the dispensers were tested on October 15, 2010. The metal flex connector at each turbine sump has never been equipped with cathodic protection.

Accordingly, Respondents failed to meet the corrosion protection requirement of 40 C.F.R. § 280.31(b)(1) for the piping lines to Tanks #1 and #2 from October 13, 2006 (when Respondents took ownership) through the present (for purposes of this calculation, August 16, 2011).

2. Proposed Penalty

COUNT 5: Failure to provide cathodic protection as required by 40 C.F.R. § 280.31(b)(1) from at least October 13, 2006 – August 16, 2011

[Dates of noncompliance are the result of the date the owner acquired the property to the last date the penalty calculation was completed.]

Gravity Component Calculation (Count 5)

Matrix Value (MV) = $1,940 [$970 per line (major/moderate) for violations that
occurred after March 15, 2004 through January 12, 2009]

$2,120 [$1,060 per line (major/moderate) for violations that
occurred after January 12, 2009]

Violator Specific Adjustments (VSA) = 1.15*

Environmental Sensitivity (ES) = 1.0**

Days of Noncompliance Multiplier (DNM) = 6.5 (1,768 days)
    First Period = 10/13/06 – 01/12/2009 = 822 days = 3.5 DNM
    Second Period = 01/13/09 –08/16/2011 = 946 days = 6.5 DNM – 3.5 DNM = 3.0 DNM

Gravity Component = MV x VSA x ES x DNM
                $1,940 x 1.15 x 1.0 x 3.5   = $7,809 (rounded)
                $2,120 x 1.15 x 1.0 x 3.0   = $7,314 (rounded)
                                                    $15,123

*VSA was increased by 15% for the following reasons:
1) 15% for willfulness or negligence. The initial EPA inspection occurred on 9/14/09. The inspector made several attempts to receive required documentation until the reinspection that took place on 7/1/10. The facility manager and owner were informed of the noncompliance and as of 7/27/12 there has been no evidence presented to show the facility is in compliance.

** ES has not been determined and no adjustment will be made for it at this time.

Economic Benefit Component Calculation (Count 5)

The economic benefit component for this calculation represents the economic advantage that has been gained by delaying capital expenditures to install and maintain cathodic protection on the lines at the turbine sump where the metal flex connectors are in contact with the ground. Economic benefit also includes the advantage gained by avoiding expenditures to conduct cathodic protection testing on each line at the dispenser and turbine sumps.

On March 7, 2011, EPA received a quote from Norton Corrosion of $1500 to install two anodes at each turbine sump and conduct the cathodic protection test. Therefore, a delayed expenditure

amount of $1500 was used to calculate the costs Respondents gained as result of their noncompliance. Norton Corrosion also informed EPA that there is no additional cost to conduct cathodic protection testing on the lines at the same time as testing is conducted on the tanks. Therefore, EPA only calculated the delayed economic benefit from failing to install corrosion protection on the lines at the turbine sump.

Delayed Expenditures (DE) = $1,500
Interest (I) = 8.7%
Number of Days (Days) = 1,768

Delayed Costs = (DE x I x Days / 365) =
 ($1,500 x .087 x 1,768 / 365) = $632 (rounded)

Total Penalty for Count 5= Gravity Component + Economic Benefit = $15,755

Total Proposed Penalty for Corrosion Protection (Counts 5) = $15,755

III. Total Proposed Penalty for All Violations

Total Proposed Penalty Calculation for Release Detection $32,323
Total Proposed Penalty for Corrosion Protection $15,755

Total Proposed Penalty Calculated   <u>$48,078</u>