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BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY HEARINGS CLERK
EPA--REGION 10

In the Matter of:

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

Respondents

DOCKET NO. SDWA 10-2013-0081

CONSENT AGREEMENT
AND FINAL ORDER

The United States Environmental Protection Agency ("EPA") issues the following Consent Agreement & Final Order to resolve alleged violations of the Safe Drinking Water Act by Edward Arlen Washines, Theresa Washines and Da Stor at Lillie's Corner ("Respondents").

I. PRELIMINARY STATEMENT

1.1. Issuance of this Consent Agreement & Final Order ("CAFO") commences this proceeding, which will conclude when the Final Order contained in Part V of this CAFO becomes effective. 40 C.F.R. §§ 22.13(b), 22.43.

1.2. Part II of this CAFO contains statutory and regulatory authorities under which this CAFO is issued.

1.3. Part III of this CAFO contains a statement of the legal and factual allegations against the Respondents.

1.4. This Order shall become effective in accordance with Paragraph 5.4.

II. AUTHORITIES

2.1. This CAFO is issued under the authority vested in the Administrator of the EPA under Section 1423(c) of the Safe Drinking Water Act (“SDWA” or “Act”), 42 U.S.C. § 300h-2(c).

2.2. The EPA Administrator has delegated the authority to take these actions 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, Region 10.

2.3. In accordance with Section 1423(c) of the Act, 42 U.S.C. § 300h-2(c), and the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22 (“Part 22 Rules”), EPA hereby issues, and the Respondents hereby agree to issuance of, the Final Order contained in Part V of this CAFO. Respondents waive their right, under SDWA § 1423(c)(3), 42 U.S.C. § 300h-2(c)(3), to a hearing on the issuance of this order.

2.4. Congress authorized EPA to administer the Underground Injection Control (“UIC”) program over the area in which an Indian Tribe exercises governmental jurisdiction, if that Tribe does not have an approved UIC program. SDWA § 1422(e); 42 U.S.C. § 300h-1(e).

2.5. The Confederated Tribes and Bands of the Yakama Nation do not have primacy to administer the UIC program for Class V injection wells. Therefore, EPA Region 10 directly implements the Class V UIC program within the external boundary of the Yakama Indian Reservation.

2.6. Congress authorized EPA to conduct inspections and to request information to determine whether the owner or operator of an injection well has acted or is acting in

compliance with the UIC program. SDWA § 1445, 42 U.S.C. § 300j-4.

2.7. EPA can require an owner or operator of an injection well to establish and maintain records, make reports, conduct monitoring, and provide other information as is deemed necessary to determine whether the owner or operator has acted or is acting in compliance with Part C of the SDWA or its implementing regulations. 40 C.F.R. § 144.17.

2.8. The Act authorizes EPA to issue an administrative order whenever the Administrator finds that any person subject to any requirement of any applicable UIC program is violating that requirement. SDWA §1423(a)(2), 42 U.S.C. § 300h-2(a)(2). Such an administrative order may require compliance with UIC regulations, assess penalties, or both under Section 1423(c) of the Act, 42 U.S.C. § 300h-2(c).

III. ALLEGATIONS

3.1. Respondent Edward Arlen Washines and Respondent Theresa Washines are individuals and therefore “persons” within the meaning of Section 1401(12) of the Act, 42 U.S.C. § 300f(12), and 40 C.F.R. § 144.3.

3.2. Respondent Da Stor at Lillie’s Corner is a commercial entity organized under the laws of the Confederated Tribes and Bands of the Yakama Nation and therefore a “person” within the meaning of Section 1401(12) of the Act, 42 U.S.C. § 300f(12), and 40 C.F.R. § 144.3.

3.3. Respondents own and operate Da Stor at Lillie’s Corner (“the Site”), which is a gasoline service station located at 50 West Wapato Road in Wapato, Washington, within the external boundary of the Yakama Indian Reservation. The Site is leased by the Respondents

from the U.S. Department of the Interior, which holds title in trust to the real property where the Site is located.

3.4. At all times relevant to this CAFO, Respondents owned and/or operated a drywell (“Injection Well 1”) under the Site. Injection Well 1 received fluids from stormwater runoff and other surface drainage, collected through an open drain on the surface of the gasoline fuel pad. The fluid is routed through an oil/water separator and then discharged underground.

3.5. At all times relevant to this CAFO, Respondents owned and/or operated subsurface piping (“Injection Well 2”) under the Site. Injection Well 2 received fluids from stormwater runoff and other surface drainage, collected through an open grate on the surface of the diesel fuel pad. The fluid was routed through an oil/water separator, and then discharged underground.

3.6. Injection Well 1 and Injection Well 2 exist for the purpose of underground injection of fluids and are therefore Class V injection wells. 40 C.F.R. §§ 144.3, 144.6, 144.81, and 146.5.

3.7. As the “owner or operator” of two Class V injection wells, Respondents are subject to regulation under the UIC program. 40 C.F.R. § 144.3.

3.8. Underground injection is prohibited, except as authorized by rule or permit under the UIC program. 40 C.F.R. § 144.11.

3.9. The injection well at the Site overlies the regional aquifer system, and is not within the area of an exempted aquifer. 40 C.F.R. § 146.4.

3.10. The aquifer system underneath the Wapato community is an Underground

Source of Drinking Water (“USDW”), within the meaning of 40 C.F.R. § 144.3.

3.11. A “contaminant” is any physical, chemical, biological, or radiological substance or matter in water. SDWA § 1401(6), 42 U.S.C. § 300f(6); 40 C.F.R. § 144.3.

3.12. Injection activity that allows the movement of fluids containing any contaminant into an Underground Source of Drinking Water endangers drinking water sources and is prohibited if the presence of that contaminant may cause a violation of any primary drinking water regulation or may otherwise adversely affect the health of persons. 42 U.S.C. § 300h(d)(2) and 40 C.F.R. §§ 144.12(a), 144.82(a)(1).

3.13. Respondents’ injection wells dispose of untreated fluids collected through an open drain located on the gasoline fueling pad and an open grate on the diesel fueling pad.

3.14. Contaminants that enter the injection wells, such as through an accidental spill from the fuel dispensers located on the fueling pads, would be discharged into an Underground Source of Drinking Water.

Count 1: Endangerment of an Underground Source of Drinking Water

3.15. Fuels and other motor vehicle fluids may contain contaminants, such as benzene, toluene, ethylbenzene, xylenes, cadmium, chromium, and lead, in concentrations which exceed Maximum Contaminant Levels (MCLs), as established in the primary drinking water regulations under 40 C.F.R. Part 141.

3.16. Fuels, other motor vehicle fluids, and/or other contaminants may cause a violation of primary drinking water regulations or may otherwise adversely affect the health of persons if allowed to move into an Underground Source of Drinking Water.

3.17. Respondents are in violation of 40 C.F.R. §§ 144.12(a) and 144.82(a)(1) by

owning, operating or maintaining Class V injection wells which, through injection activity, allow the movement of fluid that may contain contaminants into Underground Sources of Drinking Water, where those contaminants may cause a violation of the primary drinking water regulations or may otherwise adversely affect the health of persons. 40 C.F.R. §§ 144.12(a), 144.82(a)(1); 42 U.S.C. § 300h(d)(2).

3.18. Under Section 1423(c)(1) of the Act, 42 U.S.C. § 300h-2(c)(1), and 40 C.F.R. Part 19, Respondents are liable for administrative civil penalties up to \$16,000 per violation per day during which the violation continued.

IV. CONSENT AGREEMENT

Penalty

4.1. EPA determined and Respondents agree that an appropriate penalty to settle this action is in the amount of THIRTEEN THOUSAND ONE HUNDRED FORTY DOLLARS (\$13,140). SWDA § 1423(c)(1), 42 U.S.C. § 300h-2(c)(1).

4.2. Respondents consent to issuance of the Final Order set forth in Part V, below, and agree to pay the total civil penalty set forth in Paragraph 4.1, above, within 30 days of the effective date of the Final Order.

4.3. Payment under this CAFO must be made by cashier's check or certified check payable to the order of "Treasurer, United States of America" and delivered via United States mail to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077

St. Louis, MO 63197-9000

Respondents must note on the check the title and docket number of this action.

4.4. Respondents must deliver via United States mail photocopies of the check described in Paragraph 4.3, above, to the Regional Hearing Clerk and EPA Project Coordinator at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, MS ORC-158
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

Mary Millner
U.S. Environmental Protection Agency
Ground Water Unit
1200 Sixth Avenue, Suite 900, OCE-082
Seattle, WA 98101

4.5. Should Respondents fail to pay the penalty assessed by this CAFO in full by its due date, the entire unpaid balance of the penalty and any accrued interest shall become immediately due and owing. Should such a failure to pay occur, Respondents may be subject to a civil action to collect the assessed penalty under the SDWA. In any collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

4.6. Should Respondents fail to pay any portion of the penalty assessed by this CAFO in full by its due date, Respondents shall also be responsible for payment of the following amounts:

a. Interest. Any unpaid portion of the assessed penalty shall bear interest, at the rate established by the Secretary of the Treasury, from the effective date of the Final Order contained herein, however, provided that no interest shall be payable on any

portion of the assessed penalty that is paid within 30 days of the effective date of the Final Order contained herein. SDWA § 1423(c)(7), 42 U.S.C. § 300h-2(c)(7), 31 U.S.C. § 3717.

b. Costs and Attorneys Fees. Should Respondents fail to pay on a timely basis the amount of the penalty assessed by the Final Order contained herein, Respondents shall pay (in addition to any assessed penalty and interest) costs and attorneys fees. SDWA § 1423(c)(7), 42 U.S.C. § 300h-2(c)(7).

c. Federal Tax. Penalties paid pursuant to the Final Order contained herein are not deductible for federal tax purposes. 26 U.S.C § 162(f).

Compliance Order

4.7. *Prohibition of Injection:* Respondents shall not inject any fluid into the subject wells.

4.8. *Implementation of Well Closure Requirements:* Respondents shall implement the Well Closure requirements described in Paragraph 4.17.

4.9. *Notifications:*

a. Respondents shall provide EPA's Project Coordinator, identified in Paragraph 4.14, email notification no less than five days prior to commencement of any activity under this Order. Alternatively, Respondents may satisfy this requirement by notification by fax, followed by a confirmation phone call on that same date.

b. Respondents shall provide a copy of this Order to any contractor and/or consultant retained to perform any work described in this Order at least 48 hours prior to the initiation of such work. Respondents shall simultaneously provide EPA's Project

Coordinator, identified in Paragraph 4.14, written notice that the notice required in this subparagraph was given. No contract between Respondents and a contractor and/or a consultant shall affect Respondents' obligation to comply fully with this Order.

c. Respondents shall provide a copy of this Order to any successor in ownership, control, operation, or any other interest in all or part of the subject wells, at least 30 days prior to the transfer. Respondents shall simultaneously provide EPA's Project Coordinator, identified in Paragraph 4.14, written notice that the notice required in this subparagraph was given. A transfer of property rights at the Site will not affect Respondents' obligation to comply fully with this Order.

4.10. **Site Access:** This Order does not affect EPA's authority to enter, inspect, sample, or monitor compliance under any law, permit, court order, or agreement. Respondents shall provide EPA or its authorized representatives access to the Site upon reasonable notice. EPA or its authorized representatives will be permitted to move freely at the Site and appropriate off-site areas to determine compliance with this Order and to conduct actions in accordance with this Order.

4.11. **Site Data:** At EPA's request, Respondents shall provide access to all records and documentation related to the conditions at the Site and to results or data pertaining to the restoration and mitigation activities conducted under this Order.

4.12. **Record Preservation:** Respondents shall preserve and retain, and shall instruct its consultant and other persons acting on its behalf, to preserve and retain all records and documents relating in any manner to the Requirements of Paragraph 4.17 for three years after termination of this Order. Upon termination of the three-year period, EPA may request

Respondents to provide EPA with copies of any records and documents related to this Order or implementation of the Requirements of Paragraph 4.17. If EPA requests records and documents, Respondents shall, at no cost to EPA, but subject to a claim of privilege, provide EPA the original or copies of the records and documents within 30 days of EPA's request. If EPA makes no request at the end of the three-year period, Respondents may dispose of the records and documents.

4.13. **Modification:** EPA may, after consultation with Respondents, make a preliminary determination that tasks in addition to those defined in the Requirements of Paragraph 4.17, including any approved modifications, are necessary to accomplish the Well Closure Requirements. EPA shall notify Respondents of preliminary determinations in writing, and Respondents shall have seven days from receipt to submit a written response. Modifications of this Order, including oral modifications, shall be memorialized in writing and shall take effect only when agreed to in writing by all parties.

4.14. **Project Coordinator:**

a. Mary Millner is the EPA Project Coordinator who will oversee implementation of this Order. The Project Coordinator shall receive communications, which include, but are not limited to, all documents, reports, comments, approvals, and other correspondence submitted or exchanged under this Order. All submissions required by this Order shall be sent to:

Mary Millner
U.S. Environmental Protection Agency
Ground Water Unit
1200 Sixth Avenue, Suite 900, OCE-082
Seattle, WA 98101
Ph: 206-553-6061

Fax: 206-553-6984
Email: millner.mary@epa.gov

b. Within 10 days of the effective date of this Order, Respondents must identify a project coordinator for purpose of receipt of all communication and implementation of this Order. The contact information for this project coordinator must be sent to the EPA Project Coordinator identified above in Paragraph 4.14.a.

4.15. **Failure to comply:** Failure to timely and appropriately implement to EPA's satisfaction any element of the Requirements of Paragraph 4.17 shall be deemed a violation of this Order and the SDWA.

4.16. **Scope of Order:**

a. This Order is not and shall not be construed to be a permit under the SDWA, nor shall it in any way relieve or affect Respondents' obligation under the SDWA, or any other applicable federal, state or local laws, regulations or permits. Compliance with this Order shall be no defense to any actions commenced pursuant to applicable laws, regulations, or permits.

b. This Order shall not be construed to preempt or preclude in any way any future administrative order issued by EPA or judicial action brought by the United States. This Order shall not be construed to resolve any claims for administrative or civil penalties that are not set out in this Order and that may be assessed or sought by EPA or the United States.

c. This Order shall in no way affect the rights of EPA or the United States against any person not a party to this Order.

d. Nothing in this Order shall be deemed to constitute a precedent by any party

for any future administrative order, consent decree or civil action relating to the Site and/or any restoration work undertaken at the Site.

4.17. ***Well Closure Requirements:*** To successfully implement the well closure requirements, Respondents must comply with the following standards and requirements:

a. *Well Closure:*

1. Respondents must submit a Closure Plan to EPA for closing both Class V injection wells at the Site by May 31, 2013. Respondents' Closure Plan must close the Class V injection wells in accordance with 40 C.F.R. §§ 144.82 and 146.10(c). *See Attachment 1: Guidance for Underground Injection Control Class V Well Closures.*

2. EPA will review and approve or disapprove the Closure Plan and notify Respondents regarding the results of review, including any additional requirements or recommendations. All revisions to the Closure Plan must be completed within 14 calendar days of notice that the plan has been disapproved.

3. Respondents must close the wells by July 31, 2013, following an approved Closure Plan. Closure must be in accordance with 40 C.F.R. §§ 144.82 and 146.10(c), including removal of all contaminated liquids, sludge, and soil from in and around the injection wells. The sample results will be compared to State of Washington cleanup levels, SDWA maximum contaminant levels, and other EPA regulatory or risk-based screening and cleanup levels as appropriate to determine whether the materials are contaminated at levels that endanger drinking water resources (and require

additional work by Respondents).

4. Respondents must submit to EPA a Final Well Closure Report for the wells by August 30, 2013, with documentation of all closure activity for the subject wells, including a narrative statement describing the closure procedures, photographic documentation of all closure activities, and confirmatory sample results and waste manifests from the closure of the Class V injection wells, in accordance with Attachment 1 and Paragraph 4.17.

5. EPA will review and approve or disapprove the Final Well Closure Report. All revisions to the Final Well Closure Report must be completed within 14 calendar days of notice that the report has been disapproved.

b. *Performance Standards for Well Closure:* Closures of all Class V injection wells must be conducted in a manner that protects Underground Sources of Drinking Water and complies with all applicable laws and regulations related to removal of materials from the well and adjacent to the well: 40 C.F.R. §§ 144.12(a), 144.82, and 146.10(c).

c. *Sampling Requirements:*

1. Respondents must collect an end-point sample from each cleaned out Class V injection well, beneath the point of discharge. Respondents must select the sampling location based on the construction of the injection well and likelihood of detecting any contaminants that were injected beneath the ground surface. Respondents must propose an appropriate location for sampling for the injection wells to be closed. Respondents must analyze the end-point samples

for the following constituents:

- i. Volatile organic compounds by the most current version of EPA Method 8260;
- ii. Semivolatile organic compounds by EPA Method 8270; and
- iii. Arsenic, cadmium, chromium, and lead by an EPA approved metals analysis method.

2. Within 14 calendar days of this CAFO becoming effective,

Respondents must sample and analyze raw water from the Public Drinking Water System (PWS ID 105338106) located at the west end of the Site, for:

- i. Volatile organic compounds (VOCs) by either EPA Method 524.2 or the most current version of EPA Method 8260;
- ii. Semivolatile organic compounds by EPA Method 8270; and
- iii. Dissolved arsenic, cadmium, chromium, and lead by EPA Method 200.7.

3. Respondents must select a certified or accredited laboratory for analyzing samples. When analyzing drinking water samples for analytes with an MCL, Respondents must select a laboratory that has minimum detection limits lower than that MCL.

4. Respondents must provide copies of all analytical data received from the selected laboratory to the EPA Project Coordinator within 21 calendar days after sample collection.

d. Reporting Requirements: By May 31, 2013, Respondents must submit a

Closure Plan to EPA's Project Coordinator, identified in Paragraph 4.14, for the Class V injection wells at the Site. By August 30, 2013, Respondents must submit the Final Well Closure Report for the subject wells.

The schedule of activities under the Requirements of Paragraph 4.17 is as follows:

Deliverables	Due Date
Closure Plan for Class V injection wells	May 31, 2013
Deadline to finish closure work for Class V injection wells	July 31, 2013
Final Well Closure Report of all closure activities due	August 30, 2013

e. Public Health Contingency:

1. If the drinking water sample results, sampled and analyzed in accordance with subparagraphs c.2-3, show the sample had concentrations of one or more contaminants which equal or exceed the MCL, Respondents and EPA shall determine an accelerated schedule for closing the well, which will supercede the dates shown in Paragraph 4.17 of this CAFO. At a minimum, that accelerated schedule will have due dates of no less than 30 days earlier than the original schedule.

2. If one or more contaminants have an analytical result with a data qualifier, for a concentration of 90% of the MCL or higher, it will be treated as if it exceeded the MCL for purposes of Paragraph 4.17.e.1, except that Respondent may choose to concurrently resample the well, in accordance with subparagraphs c.2-3, for confirmation. If the confirmation results establish that

none of the MCLs were met or exceeded, the deliverable dates will return to the original schedule shown in Paragraph 4.17. of this CAFO.

3. Respondent will work with the EPA Region 10 drinking water program to determine what steps, if any, need to be taken in regards to the drinking water well.

4.18. **Termination and Satisfaction:** In accordance with Paragraph 4.17, Respondents shall submit to EPA the Final Well Closure Report documenting the completion of all requirements described in Paragraph 4.17. Upon receipt of the final report, EPA may schedule an inspection of the subject wells with Respondents and other interested tribal and/or federal agencies. After completion of the inspection, EPA will notify Respondents in writing whether the compliance with this Order is fully completed. EPA's Project Coordinator will provide this notification by telephone as promptly as possible. This Order shall terminate after Respondents pay the administrative penalty in accordance with Paragraph 4.3 and EPA issues a written approval of Respondents' final report.

General Provisions

4.19. For the purpose of this proceeding, Respondents admit the jurisdictional allegations contained in Part III of this CAFO.

4.20. Respondents neither admit nor deny the specific factual allegations contained in Part III of this CAFO.

4.21. Except as described in Paragraph 4.6 of this CAFO, each party shall bear its own costs in bringing or defending this action.

4.22. The undersigned representative of Respondents certifies that he or she is fully

authorized to enter into the terms and conditions of this CAFO and to bind Respondents to this document.

4.23. Respondents expressly waive any right to contest the allegations and waive any right to appeal the Final Order set forth in Part V, below.

4.24. The provisions of this CAFO shall bind Respondents and their agents, servants, employees, successors, and assigns.

4.25. The above provisions are STIPULATED AND AGREED upon by Respondents and Complainant EPA Region 10.

DATED:

3-8-13

FOR RESPONDENTS:




Print Name: Edward A. Washines

Title: Co-owner

DATED:

3/15/2013

FOR COMPLAINANT:



EDWARD J. KOWALSKI, Director
Office of Compliance and Enforcement

V. FINAL ORDER

5.1. The terms of the foregoing Parts I-IV are hereby ratified and incorporated by reference into this Final Order. Respondents are hereby ordered to comply with the foregoing terms of the settlement.

5.2. This CAFO shall constitute a settlement by EPA of all claims for administrative penalties pursuant to the SDWA for the violations alleged in Part III, above. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This CAFO does not waive, extinguish or otherwise affect Respondents' obligations to comply with all applicable provisions of the SDWA and regulations or permits promulgated thereunder.

5.3. Pursuant to Section 1423(c)(3) of the Act, 42 U.S.C. § 300h-2(c)(3), and 40 C.F.R. § 22.43(c), EPA provided public notice of Consent Agreement and Final Order served on the parties, and provided public notice that any interested person may, within 30 days of the effective date of the final Order, obtain judicial review of the penalty order pursuant to Section 1423(c)(6) of the Act, 42 U.S.C. § 300h-2(c)(6).

5.4 In accordance with 40 C.F.R. § 22.43(b), this Final Order shall become effective 30 days after it is served on the parties.

SO ORDERED this 29th day of April, 2013.


THOMAS M. JAHNKE
Regional Judicial Officer
U.S. Environmental Protection Agency, Region 10

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in: **In the Matter of: Da Stor at Lillie's Corner, Docket No. SDWA 10-2013-0081**, was filed, and served as follows, on the signature date below.


The undersigned certifies that a true and correct electronic copy of the document was delivered to:

Chris Bellovary
U.S. Environmental Protection Agency
Region 10, M/S: ORC-158
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

Further, the undersigned certifies that a true and correct copy of this document was placed in the United States mail, certified/return receipt, to:

Tom Zeilman
Law Offices of Thomas Zeilman
402 E Yakima Ave, Suite 710
P.O. Box 34
Yakima, WA 98907

30th April 2013
Dated


Candace H. Smith
Regional Hearing Clerk
EPA Region 10