



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8**

**1595 WYNKOOP STREET  
DENVER, CO 80202-1129**

**Phone 800-227-8917**

**http://www.epa.gov/region08**

2008 NOV 19 AM 8:47

EPA REGION VIII  
HEARING CLERK

**DOCKET NO.: RCRA-08-2008-0005**

**IN THE MATTER OF:**

**DEBRA WERNER  
MICHAEL WERNER  
UNITED OIL AND GAS, INC.  
UNITED C STORE**


**RESPONDENTS**

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**FINAL ORDER**

Pursuant to 40 C.F.R. §22.18, of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondents are hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondents of this Consent Agreement and Final Order.

**SO ORDERED THIS** 19<sup>th</sup> **DAY OF** November, 2008.

  
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Elyana R. Sutin  
Regional Judicial Officer

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8  
Docket No. RCRA-08-2008-0005**

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EPA REGION VIII  
HEARING CLERK

**IN THE MATTER OF:** )  
 )  
**Debra Werner** )  
**Michael Werner** )  
**United Oil and Gas, Inc.** )  
**United C Store** )  
**BIA 7 South** )  
**Belcourt, ND 58316** )  
**EPA ID Number 3050006** )  
 )  
**Respondents.** )

**CONSENT AGREEMENT**

Complainant, United States Environmental Protection Agency, Region 8 (EPA), and Respondents, Debra Werner, Michael Werner, United Oil and Gas, Inc., and United C Store, by their undersigned representatives, hereby consent and agree as follows:

1. On October 15, 2008, Complainant issued a First Amended Complaint and Notice of Opportunity for Hearing (Complaint), subject to 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 ("CROP") set forth at 40 C.F.R. Part 22, and alleging certain violations of Subtitle I of the Resource Conservation and Recovery Act ("RCRA"), RCRA §§ 9001 - 9010, 42 U.S.C. §§ 6991 - 6991i, and regulations promulgated thereunder. The Complaint was authorized by statute and properly delegated to the Complainant's officials who issued the Complaint. The Complaint proposed a civil penalty for the violations alleged therein.
2. This civil administrative action is also authorized by "*ORDER ON MOTION TO AMEND COMPLAINT*" dated August 20, 2008 (filed in Docket No. RCRA-08-2008-0005) and also by "*ORDER REGARDING MOTIONS TO AMEND COMPLAINT*" dated October 8, 2008 (filed in Docket No. RCRA-08-2008-0005).
3. Simultaneous to proceeding toward litigation, the parties have engaged in informal settlement discussions to settle this matter without the necessity of a formal hearing as encouraged by the Rules of Practice at Section 22.18(b), 40 C.F.R. § 22.18(b). This Consent Agreement sets forth the terms and conditions to resolve the violations alleged in the Complaint filed herein.
4. Respondent admits the jurisdictional allegations of the Complaint and neither admits nor denies the specific factual allegations of the Complaint.

5. Respondent waives its right to a hearing before any tribunal, to contest any issue of law or fact set forth in the Complaint, or this Consent Agreement.
6. This Consent Agreement, upon incorporation into a final consent order, applies to and is binding upon EPA and upon Respondents and Respondents' heirs, successors and assigns. Any change in ownership or corporate status of Respondent, including, but not limited to, any transfer of assets or real or personal property, shall not alter Respondents' responsibilities under this agreement. This Consent Agreement contains all terms of the settlement agreed to by the parties.
7. Respondents, jointly and severally, consent and agree to pay a civil penalty in the total amount of **ONE THOUSAND TWO HUNDRED DOLLARS (\$1,200.00)**, in the manner described below in this paragraph:
  - a. Payment is due within 30 calendar days from the date written on the Final Consent Order, issued by the Regional Judicial Officer, which adopts this Consent Agreement. If the due date falls on a weekend or legal federal holiday, then the due date becomes the next business day. The date the payment is made is considered to be the date processed by Mellon Bank described below. Payments received by 11:00 AM EST are processed on the same day, those received after 11:00 AM are processed on the next business day.
  - b. The payment shall be made by remitting a cashier's or certified check, including the name and docket number of this case, for the amount, payable to "Treasurer, United States of America," (or be paid by one of the other methods listed below) and sent as follows:

**US checks by regular  
US postal service mail:**

US EPA Fines and Penalties  
Cincinnati Finance Center  
PO Box 979077  
St. Louis, MO 63197-9000

**Federal Express, Airborne,  
or other commercial carrier:**

U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101

**Wire transfers:**

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York NY 10045

Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency "

**On Line Payment:**

WWW.PAY.GOV  
Enter sfo 1.1 in the search field

Open form and complete required fields.

Copies of the check or wire transfer shall be simultaneously sent to:

Ms. Lisa Luebke  
U.S. EPA Region 8 (8P-W-GW)  
1595 Wynkoop Street  
Denver, CO 80202-1129

Tina Artemis, Regional Hearing Clerk  
U.S. EPA Region 8 (8RC)  
1595 Wynkoop Street  
Denver, CO 80202-1129

- c. In the event payment is not received by the specified due date, interest accrues from the date of the final order, not the payment due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until the payment is received in full (i.e., on the 1<sup>st</sup> late day, 30 days of interest accrues).
  - d. In addition to the accrual of interest specified in paragraph 16 of this Agreement, a handling charge of fifteen dollars (\$15.00) shall be assessed on the 31<sup>st</sup> day from the date of the final order, and each subsequent 30-day period that the penalty, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if the penalty payment is not received within 90 days of the due date (i.e., the 121<sup>st</sup> day from the date the final order is signed). Payments are first applied to outstanding handling charges, 6% penalty interest, and late interest. The remainder is then applied to the outstanding principal amount.
  - e. Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.
8. The Respondents agree explicitly that within thirty days (30) days of entry of the Final Order issued in this matter, they shall retain a skilled professional (individual or firm) experienced in the proper operation and maintenance of underground storage tank systems who is also knowledgeable of the Federal regulatory technical requirements. This individual will be tasked with the following:

- a. Ensure that cathodic protection on the underground storage tanks and piping at the United C-Store is tested at least every 3 years by a qualified cathodic protection tester in accordance with 40 C.F.R. § 280.31. If any of the components fail, the components must be retested and, if appropriate, repaired in accordance with 40 C.F.R. § 280.33. (Among other things, 40 C.F.R. § 280.33 requires testing the cathodic protection system within 6 months following the repair.)
  - b. Ensure the underground storage tanks are monitored at least every 30 days for releases in accordance with 40 C.F.R. § 280.40 and 280.41(a). (Among other things, these regulations require that the leak detection method meet certain performance standards and that any suspected releases be reported to EPA within 24 hours.)
  - c. Ensure all pressurized piping at the United C-Store is equipped with an automatic line leak detector and is tested annually or monthly in accordance with 40 C.F.R. § 280.41(b)(1). (Among other things, this regulation outlines the testing performance standards.)
9. The Respondents agree explicitly to fund a monetary retainer to the skilled professional identified in the preceding paragraph in the amount of **ONE THOUSAND DOLLARS (\$1,000.00)**, and to maintain at least this amount at all times for the period beginning thirty days after entry of the Final Order issued in this matter and ending on December 31, 2011.
10. In order for the Complainant to assure compliance with the requirement contained in the preceding paragraph, Respondents agree to identify to Complainant the name, address and contact information of the skilled professional identified in Paragraph Eight above, and to allow Complainant to contact such skilled professional, from time to time, to confirm that the retainer is being funded as required herein.
11. The Respondents agree explicitly to pay a stipulated penalty of **ONE HUNDRED DOLLARS (\$100.00)** for every month that it is determined that the retainer required in Paragraph Nine above fails to have a balance of at least **ONE THOUSAND DOLLARS (\$1,000.00)**.
12. The Respondents agree explicitly that they, and not the retained skilled professional identified in Paragraph Eight above, are responsible to comply with all of the Underground Storage Tank regulations at 40 C.F.R. part 280 which include, but are not limited to:
  - a. Ensuring that releases due to spill or overfill do not occur (40 C.F.R. § 280.30) and the spill and overfill equipment meets the requirements of 40 C.F.R. § 280.20(c).
  - b. Maintaining a financial responsibility mechanism as required by Subpart H (40 C.F.R. § 280.90) of the Federal requirements for underground storage tanks.

13. Nothing in this Consent Agreement shall relieve Respondents of the duty to comply with the Act and its implementing regulations.
14. Failure by Respondents to comply with any of the terms of this Consent Agreement shall constitute a breach of the agreement and may result in referral of the matter to the Department of Justice for enforcement of this Consent Agreement and for such other relief as may be appropriate in federal district court.
15. Nothing in this Consent Agreement shall be construed as a waiver by the EPA or any other federal entity of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondents' failure to perform pursuant to the terms of the Consent Agreement.
16. The undersigned representative of Respondents certify that he/she is fully authorized to enter into and bind the Respondents to the terms and conditions of this Consent Agreement.
17. The parties agree to submit this Consent Agreement to the Regional Judicial Officer, with a request that it be incorporated into a final order.
18. Each party shall bear its own costs and attorney fees in connection with this matter.
19. This Consent Agreement, upon incorporation into a final order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete and full civil settlement of the specific violations alleged in the Complaint.

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 8,  
Complainant.**

Date: Nov 14, 2008 By: Kelley Sand for  
Sharon L. Kercher, Director  
Technical Enforcement Program

Date: 11/17/08 By: Michael T. Risner  
Michael T. Risner, Director  
Matthew D. Cohn, Supervisory Enforcement Attorney  
Legal Enforcement Program

Date: Nov. 11, 2008 By: Dana J. Stotsky  
Dana J. Stotsky, Senior Enforcement Attorney  
Legal Enforcement Program (8LEP)  
U.S. EPA Region 8  
1595 Wynkoop Street  
Denver, CO 80202-1129  
Colorado Bar # 14717  
Phone: (303)-312-6905  
FAX: (303) 312-6953  
stotsky.dana@epa.gov

**DEBRA WERNER, MICHAEL WERNER, UNITED OIL AND GAS, INC.,  
AND UNITED C STORE Respondent.**

Date: 10/30/2008 By: Debra Werner  
Debra Werner

Date: 10/30/08

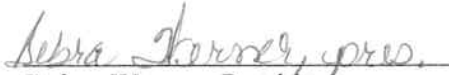
By:



Michael Werner

Date: 10/30/08

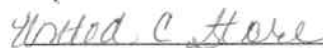
By:



Debra Werner, President  
United Oil and Gas, Inc.

Date: 10/30/08

By:



United C Store



## CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT/FINAL ORDER, DOCKET NO.: RCRA-08-2008-0005** was filed with the Regional Hearing Clerk on November 19, 2008.

Further, the undersigned certifies that a true and correct copy of the document was delivered to Dana Stotsky, Senior Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned document were placed in the United States mail certified/return receipt requested on November 19, 2008, to:

Michael Werner  
POB 386  
Bottineau, ND 58318

Debra Werner  
POB 386  
Bottineau, ND 58318


Debra Werner, President  
United Oil and Gas, Inc. of Bottineau  
POB 386  
Bottineau, ND 58318

and  
United C Store  
POB 386  
Bottineau, ND 58318

E-mailed to:

Michelle Angel  
U. S. Environmental Protection Agency  
Cincinnati Finance Center  
26 W. Martin Luther King Drive (MSD-0002)  
Cincinnati, OH 45268

November 19, 2008

  
Tina Artemis  
Paralegal/Regional Hearing Clerk



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