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HEARINGS CLERK
EPA -- REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

ANESTI AUDEH
and AMA MINI MART, INC.

Respondents

Proceeding under Section 9006(a) of the
Resource Conservation and Recovery
Act, 42 U.S.C. § 6991e(a)

)
)
)
) Docket No. RCRA-10-2011-0053

)
) **COMPLAINT,**
) **COMPLIANCE ORDER, AND**
) **NOTICE OF OPPORTUNITY**
) **FOR HEARING**
)
)
)

I. PRELIMINARY STATEMENT

1.1 This Complaint, Compliance Order, and Notice of Opportunity for Hearing (“Order”) is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 9006(a) of the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6991e(a), and 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, 40 C.F.R. Part 22.

1.2 The Administrator has delegated the authority to issue complaints and compliance orders in Section 9006(a) of RCRA, 42 U.S.C. § 6991e(a), to the Director of the Office of Compliance and Enforcement, EPA Region 10 (“Complainant”).

1.3 This is an action commenced pursuant to Section 9006(a) of RCRA, 42 U.S.C. § 6991e(a), requiring Respondents’ compliance with Section 9003 of RCRA, 42 U.S.C. § 6991b, and the implementing regulations at 40 C.F.R. Part 280.

1.4 Anesti Audeh and AMA Mini Mart, Inc., collectively “Respondents,” are hereby notified that Complainant alleges that Respondents violated the provisions identified herein.

1.5 This Order also provides notice of remedial measures that must be undertaken by Respondents to address these violations, as well as Respondents’ opportunity to request a hearing.

1.6 In accordance with 40 C.F.R. § 22.13(a), issuance of this Order commences this proceeding.

1.7 This proceeding will conclude when a Final Order becomes effective in accordance with 40 C.F.R. § 22.37(b) or 22.31(b).

II. GENERAL ALLEGATIONS

2.1 Respondent Anesti Audeh is the president of AMA Mini Mart, Inc.

2.2 Respondent AMA Mini Mart, Inc. is a corporation incorporated in the state of Oregon.

2.3 Respondents own and/or operate three service stations in Klamath Falls, Oregon, referred to herein as AMA Mini Marts #1, #2 and #3.

2.4 Underground storage tanks (“USTs”) that contain petroleum are installed at each service station.

2.5 AMA Mini Mart #1 is located at 7255 S. 6th St., Klamath Falls, Oregon.

2.6 AMA Mini Mart #1 has three composite double-walled tanks which were installed in 1996.

2.7 The first tank at AMA Mini Mart #1 has a capacity of 10,000 gallons and contains gasoline.

2.8 The second tank at AMA Mini Mart #1 has a capacity of 10,000 gallons and contains diesel.

2.9 The third tank at AMA Mini Mart #1 is a compartmentalized tank with two 5,000-gallon compartments. One compartment contains gasoline; the other contains diesel.

2.10 The UST piping at AMA Mini Mart #1 consists of four pressurized lines that are double-walled flexible plastic. One line is connected to the first tank, one line is connected to the second tank, and two lines are connected to the third tank with one line connected to each compartment.

2.11 AMA Mini Mart #2 is located at 5350 Hwy 97, Klamath Falls, Oregon.

2.12 AMA Mini Mart #2 has three composite double-walled tanks which were installed in 1995.

2.13 The first tank at AMA Mini Mart #2 is a compartmentalized tank with two 5,000-gallon compartments which contain gasoline.

2.14 The second tank at AMA Mini Mart #2 has a capacity of 10,000 gallons and contains gasoline.

2.15 The third tank at AMA Mini Mart #2 has a capacity of 10,000 gallons and contains diesel.

2.16 The UST piping at AMA Mini Mart #2 consists of four pressurized lines that are double-walled flexible plastic. Two lines are connected to the first tank with one line connected to each of the two compartments, one line is connected to the second tank, and one line is connected to the third tank.

2.17 AMA Mini Mart #3 is located at 522 S 6th St., Klamath Falls, Oregon.

2.18. AMA #3 has one composite double-walled compartmentalized tank which was installed in April 2001.

2.19 The tank at AMA Mini Mart #3 has a 15,000-gallon compartment and a 5,000-gallon compartment; each compartment contains gasoline.

2.20 The UST piping at AMA Mini Mart #3 consists of two pressurized lines that are double-walled flexible plastic, one line connected to each of the two compartments of the tank.

2.21 Each Respondent is a “person” as that term is defined in Section 9001(6) of RCRA, 42 U.S.C. § 6991(6), 40 C.F.R. § 280.12.

2.22 The USTs at each service station are used to store “regulated substance(s),” as defined in Section 9001(2), 42 U.S.C. § 6991(2), 40 C.F.R. § 280.12.

2.23 Respondents are each the “owner” and/or “operator” of an “underground storage tank(s)” as these terms are defined in Section 9001 of RCRA, 42 U.S.C. § 6991, and 40 C.F.R. § 280.12.

2.24 As an owner and/or operator of petroleum USTs, each Respondent is required to meet the release detection requirements for petroleum UST systems described in 40 C.F.R. § 280.41(a).

2.25 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 methods described in 40 C.F.R. § 280.43.

2.26 Two of the methods listed in 40 C.F.R. § 280.43 are inventory control and the use of an automatic tank gauge (“ATG”).

2.27 Under 40 C.F.R. § 280.41(a)(1), inventory control can only be used as a release detection method for up to 10 years after tank installation or upgrade, whichever is later.

2.28 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 40 C.F.R.

§ 280.44(a).

2.29 40 C.F.R. § 280.41(b)(1) also requires that either an annual line tightness test be conducted on the piping in accordance with 40 C.F.R. § 280.44(b) or monthly monitoring of the piping be conducted in accordance with 40 C.F.R. § 280.44(c).

III. VIOLATIONS

AMA Mini Mart #1

3.1 On October 29, 2009, EPA inspected AMA Mini Mart #1 (“AMA #1”).

3.2 During the inspection of AMA #1, Respondents’ representative indicated that the three tanks were currently in use, except for the diesel compartment of the third tank which was temporarily out of use.

3.3 At the time of the inspection of AMA #1, one inch of product remained in the diesel compartment of the third tank.

3.4 An ATG had been installed at AMA #1.

3.5 Respondents’ representatives indicated that the ATG and inventory control are used as release detection methods for the tanks at AMA #1.

3.6 At the time of the inspection of AMA #1, the piping to the first two tanks and the gasoline compartment of the third tank were equipped with an ALLD.

3.7 At the time of the inspection of AMA #1, the diesel compartment of the third tank did not have an ALLD.

3.8 Respondents did not have valid ATG leak tests conducted on the tanks at AMA #1, from at least October 30, 2008 through October 29, 2009.

3.9 Because the tanks had been installed in 1996 and did not require upgrading, Respondents could no longer use inventory control as a release detection method for the tanks at AMA #1.

3.10 Respondents did not have ALLD testing, line tightness testing, or monthly monitoring conducted on the piping at AMA #1 anytime between October 30, 2008 and October 29, 2009.

3.11 **Count 1:** Respondents failed to meet the release detection requirements for tanks at the AMA #1 from at least October 30, 2008 through October 29, 2009, in violation of Section 9003 of RCRA, 42 U.S.C. § 6991b, and 40 C.F.R. § 280.41(a).

3.12 **Count 2:** Respondents failed to meet the release detection requirements for piping at the AMA #1 from at least October 30, 2008 through October 29, 2009, in violation of Section 9003 of RCRA, 42 U.S.C. § 6991b, and 40 C.F.R. § 280.41(b).

AMA Mini Mart #2

3.13 On October 27, 2009, EPA inspected AMA Mini Mart #2 (“AMA #2”).

3.14 During the inspection of AMA #2, Respondents’ representative indicated that the three tanks were currently in use, except for the first compartment of the first tank which was temporarily out of use.

3.15 At the time of the inspection of AMA #2, 13 inches of product remained in the first compartment of the first tank.

3.16 An ATG had been installed at AMA #2.

3.17 Respondents' representative indicated that the ATG and inventory control are used as a release detection method for the tanks at AMA #2.

3.18 At the time of the inspection of AMA #2, the piping to the first compartment of the first tank and the piping to the second and third tanks were equipped with ALLDs.

3.19 At the time of the inspection of AMA #2, the piping to the second compartment of the first tank did not have an ALLD.

3.20 Respondents did not have valid ATG leak tests conducted on the tanks at AMA #2, from at least October 28, 2008 through October 27, 2009.

3.21 Because the tanks had been installed in 1995 and did not require upgrading, Respondents could no longer use inventory control as a release detection method for the tanks at AMA #2.

3.22 Respondents did not have ALLD testing, line tightness testing, or monthly monitoring conducted on the piping at AMA #2 anytime between October 28, 2008 and October 27, 2009.

3.23 **Count 3:** Respondents failed to meet the release detection requirements for tanks at the AMA #2 from at least October 28, 2008 through October 27, 2009, in violation of Section 9003 of RCRA, 42 U.S.C. § 6991b, and 40 C.F.R. § 280.41(a).

3.24 **Count 4:** Respondents failed to meet the release detection requirements for piping at the AMA #2 from at least October 28, 2008 through October 27, 2009, in violation of Section 9003 of RCRA, 42 U.S.C. § 6991b, and 40 C.F.R. § 280.41(b).

AMA Mini Mart #3

3.25 On October 27, 2009, EPA inspected AMA Mini Mart #3 (“AMA #3”).

3.26 An ATG had been installed at AMA #3.

3.27 Respondents representative indicated that the ATG and inventory control are used as a release detection method for the tank at AMA #3.

3.28 At the time of the inspection of AMA #3, the piping connected to the two compartments of the tank were each equipped with an ALLD.

3.29 Respondents did not have valid ATG leak tests conducted on the tank at AMA #3, from at least October 28, 2008 through October 27, 2009.

3.30 The inventory control records provided reflect that AMA #3 was not recording the inventory volume measurements for regulated substance inputs, withdrawals, and the amount still remaining in each compartment of the tank for each operating day as required by 40 C.F.R. § 280.43(a).

3.31 Respondents did not have ALLD testing, line tightness testing, or monthly monitoring conducted on the piping at AMA #3 anytime between October 28, 2008 and October 27, 2009.

3.32 **Count 5:** Respondents failed to meet the release detection requirements for tanks at the AMA #3 from at least October 28, 2008 through October 27, 2009, in violation of Section 9003 of RCRA, 42 U.S.C. § 6991b, and 40 C.F.R. § 280.41(a).

3.33 **Count 6:** Respondents failed to meet the release detection requirements for piping at the AMA #3 from at least October 28, 2008 through October 27, 2009, in violation of Section 9003 of RCRA, 42 U.S.C. § 6991b, and 40 C.F.R. § 280.41(b).

IV. COMPLIANCE ORDER

4.1 Based on the foregoing findings, Respondents are hereby ordered to take the following actions:

a. Within fourteen (14) days of the date this Order becomes a Final Order, Respondents shall submit to EPA a report on the status of the UST systems at AMA Mini Mart #1, #2 and #3. For each facility, this report must include the following:

1. A list of the USTs that are currently being used;
2. A list of any USTs that are temporarily closed along with an indication of the amount of regulated substances remaining in each temporarily-closed UST, and documentation that the vent lines for each temporarily-closed UST are open and functioning; the lines, pumps, manways, and ancillary equipment are capped and secured; and financial responsibility has been maintained.

3. A list of any USTs that have been permanently closed since October, 2009 along with documentation that the closure was performed in accordance with 40 C.F.R. § 280.71, including copies of any site assessments conducted;
4. Identification of the release detection method(s) currently being used for the tanks and the piping at each facility.
 - b. Respondents shall conduct release detection in accordance with 40 C.F.R. § 280.41(a) for all tanks at AMA #1, #2 and #3 that contain more than one inch of regulated substances.
 - c. Within fourteen (14) days of the date this Order becomes a Final Order, Respondents shall submit to EPA copies of all monthly monitoring test results for each tank at AMA #1, #2 and #3 for the past twelve (12) consecutive months.
 - d. Respondents shall continue to submit the monthly monitoring test results referenced in subparagraph c. above to EPA every thirty (30) days for a period of six (6) months.
 - e. Respondents shall conduct release detection in accordance with 40 C.F.R. § 280.41(b) for the piping at AMA #1, #2 and #3 for the tanks that contain more than one inch of regulated substances.

f. Within fourteen (14) days of the date this Order becomes a Final Order, Respondents shall submit to EPA copies of the last completed line tightness tests and the last ALLD test results for the piping at AMA #1, #2, and #3.

g. Respondents shall submit to EPA copies of all line tightness tests and ALLD test results for the piping at AMA #1, #2, and #3 for the calendar year following the date that this Order becomes a Final Order. Respondent shall submit these test results to EPA within forty-five (45) days of having each test conducted.

4.2 The information requested in this Order is not subject to the Paperwork Reduction Act of 1980, 44 U.S.C. § 3501 *et seq.*

4.3 Respondent shall submit any information required by this Order to:

Katherine Griffith, Compliance Officer
U.S. Environmental Protection Agency, Region 10
Office of Compliance and Enforcement
1200 Sixth Avenue, Suite 900
Mail Stop: OCE-082
Seattle, Washington 98101
griffith.katherine@epa.gov

4.4 Section 9006(d)(2) of RCRA, 42 U.S.C. § 6991e(d)(2), authorizes the assessment of a civil penalty of up to \$10,000 for each tank for each day of violation. Pursuant to the Debt Collection Improvement Act of 1996, and the regulations promulgated thereunder codified at 40 C.F.R. Part 19, for violations occurring after March 15, 2004 through January 12, 2009, the statutory maximum penalty for each tank for each day of violation has

been raised to \$11,000 and for violations occurring after January 12, 2009, the statutory maximum penalty for each tank for each day of violation has been raised to \$16,000.

4.5 Based upon the facts alleged in this Complaint and taking into account the seriousness of the violations and any good faith efforts by Respondents to comply with the applicable requirements, Complainant proposes an assessment of penalties for the violations cited in Section III of this Complaint, as provided by Section 9006(d)(2) of RCRA, 42 U.S.C. § 6991e(2), in the amount of **Seventy-Two Thousand Eight Hundred and Thirty-Three dollars (\$72,833)**. This penalty was calculated in accordance with the November 1990 “U.S. EPA Penalty Guidance for Violations of UST Requirements” (“UST Penalty Policy”), a copy of which accompanies this Complaint. An explanation of the penalty calculation is provided in Attachment 1 to this Complaint.

4.6 After this Order becomes a Final Order, if Respondents fail to pay any penalty assessed in the Final Order or comply with the requirements of the Compliance Order within the time specified in Paragraph 4.1 above, EPA may seek an assessment of penalties of up to \$37,500 for each day of continued noncompliance, in addition to any other penalties that may be assessed for past or ongoing violations, in accordance with Section 9006(a)(3) of RCRA, 42 U.S.C. § 6991e(a)(3), and 40 CFR Part 19.

4.7 This Order shall be effective on the date that a Final Order is issued or the date that this Order becomes a Final Order by default pursuant to RCRA § 9006(b), 42 U.S.C. § 6991e(b). In accordance with 40 C.F.R. § 22.37(b), this Order (including the assessment of

the civil penalty) shall automatically become a Final Order unless, no later than thirty (30) days after this Order is served, Respondents request a hearing pursuant to 40 C.F.R. § 22.15.

V. OPPORTUNITY TO REQUEST A HEARING AND FILE ANSWER

5.1 Under Section 9006(b) of RCRA, 42 U.S.C. § 6991e(b), and 40 C.F.R. § 22.15, Respondents have a right to request a hearing on the issues raised in this Order. Any such hearing would be conducted in accordance with 40 C.F.R. Part 22 (“Part 22 rules”). A copy of the Part 22 rules accompanies this Complaint. A request for a hearing must be incorporated in a written answer filed with the Regional Hearing Clerk within thirty (30) days of service of this Order. In their answer(s), Respondents may contest any material fact contained in the Order. Respondents may also contest the appropriateness of the proposed penalty or compliance actions required by the Order. The answer shall directly admit, deny, or explain each of the factual allegations contained in the Order and shall state: (1) the circumstances or arguments alleged to constitute the grounds of defense; (2) the facts that Respondents intend to place at issue; and (3) whether a hearing is requested. Where Respondents have no knowledge as to a particular factual allegation and so state, the allegation is deemed denied. Any failure of Respondents to admit, deny, or explain any material fact contained in the Order will constitute an admission of that allegation.

Respondents’ answer(s) must be sent to:

Carol Kennedy, Regional Hearing Clerk
U.S. Environmental Protection Agency Region 10
1200 Sixth Ave., Suite 900
Mail Stop: ORC-158
Seattle, WA 98101
Tel: 206-553-0242
kennedy.carol@epa.gov

5.2 Pursuant to 40 C.F.R. § 22.37(b) this Compliance Order shall automatically become a Final Order unless, no later than thirty (30) days after the Order is served, Respondents request a hearing pursuant to 40 C.F.R. § 22.15.

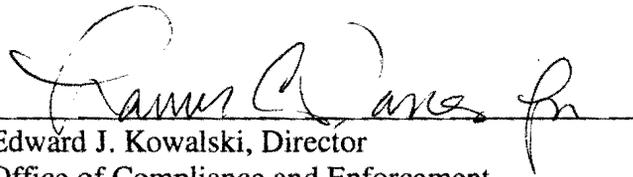
5.3 Pursuant to 40 C.F.R. § 22.31(c), Respondents must pay the full amount of any penalty assessed in a Final Order within 30 days after the effective date of the Final Order, unless otherwise ordered. Payment must be made by sending a cashier's or certified check payable to the "Treasurer, United States of America" and must be delivered to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Respondents shall note on the check the title and docket number of this case. Respondents may also make the penalty payment by wire transfer or credit card in accordance with instructions which can be provided by EPA upon request. Respondents must serve a copy of the check or other instrument of payment on the Regional Hearing Clerk at the address

indicated in paragraph 5.1 above and on the EPA Compliance Officer at the address indicated in paragraph 4.3 above.

FOR COMPLAINANT U.S. ENVIRONMENTAL PROTECTION AGENCY:



Edward J. Kowalski, Director
Office of Compliance and Enforcement
EPA Region 10

Dated: 3/3/11

PARTY DESIGNATED TO RECEIVE SERVICE ON BEHALF OF THE COMPLAINANT:

Deborah E. Hilsman, Assistant Regional Counsel
EPA Region 10
1200 Sixth Ave., Suite 900
Mail Stop: ORC-158
Seattle, WA 98101
Tel: 206-553-1810
Hilsman.deborah@epa.gov

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BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	
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)	
ANESTI AUDEH)	Docket No. RCRA-10-2011-0053
)	COMPLAINT, COMPLIANCE
and AMA MINI MART, INC.)	ORDER AND NOTICE OF
)	OPPORTUNITY FOR HEARING
Respondents)	
_____)	

CERTIFICATE OF SERVICE

I hereby certify that the originals of the Complaint, Compliance Order, and Notice of Opportunity for Hearing, Docket Number RCRA-10-2011-0053 and Attachment 1 – Penalty Calculation Summary, and one true and correct copy have been filed with the Region 10 Hearing Clerk at:

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

I also certify that true and correct copies of the Complaint and Attachment 1 (with accompanying copies of the Consolidated Rules of Practice) were sent by Certified Mail, Return Receipt Requested, to:

Anesti Audeh, President
AMA Mini Mart, Inc.
522 South Sixth Street
Klamath Falls, OR 97601

Vickie Baker, Registered Agent for
AMA Mini Mart, Inc.
5624 Delaware Avenue
Klamath Falls, OR 97603

3 Mar 2011

DATE

Janet Sison

NAME

US EPA ORC 158

TITLE