

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

IN THE MATTER OF:)	Docket No. RCRA-08-2023-0005
)	
Kelly Sorge, Dale Sorge, and Indian Hills, Inc.)	
)	ADMINISTRATIVE
(Indian Hills Resort),)	COMPLIANCE ORDER
)	ON CONSENT
Respondents.)	(40 C.F.R. §§ 22.13(b), 22.37(b))

INTRODUCTION

1. The parties to this proceeding are Kelly and Dale Sorge, and Indian Hills, Inc. (Respondents) and the undersigned U.S. Environmental Protection Agency (EPA) official (Complainant).
2. This proceeding pertains to the Indian Hills Resort (Resort), in Garrison, North Dakota, on the Fort Berthold Indian Reservation.
3. The parties, having agreed settlement of this action is in the public interest, consent to the entry of this Administrative Compliance Order on Consent (Agreement) without adjudication of any issues of law or fact herein, and the Respondents agree to comply with the terms of this Agreement.

JURISDICTIONAL ALLEGATIONS

4. This Agreement is issued under the authority of section 9006 of the Solid Waste Disposal Act (Act), 42 U.S.C. § 6991e.
5. This proceeding is subject to the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits*, under which this proceeding may be resolved by a final order from EPA Region 8’s Regional Judicial Officer ratifying this Agreement. The final order will simultaneously commence and conclude this proceeding. 40 C.F.R. § 22.13(b).

STATUTORY AND REGULATORY BACKGROUND

6. Sections 9001 through 9014 of the Act, 42 U.S.C. §§ 6991 through 6991m, which are sometimes referenced as Subtitle I of the Act, authorize the EPA to regulate the installation and use of underground storage tanks, which are sometimes referred to as USTs.
7. The term “underground storage tank” is defined in section 9001(10) of the Act, 42 U.S.C. § 6991(10) and 40 C.F.R. § 280.12. The definition of “underground storage tank” in 40 C.F.R. § 280.12 includes, with certain exceptions not relevant here, “any one or combination of tanks (including underground pipes connected thereto) that is used to contain an accumulation of regulated substances, and the volume of which (including the volume of underground pipes connected thereto) is 10 percent or more beneath the surface of the ground.”
8. The term “regulated substance” is defined in section 9001(7) of the Act, 42 U.S.C. § 6991(7), and 40 C.F.R. § 280.12 to include “petroleum.”
9. “Petroleum” is defined in section 9001(6) of the Act, 42 U.S.C. § 6991(6), to include “crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute).”
10. According to 40 C.F.R. § 280.12, “Petroleum UST system means an underground storage tank system that contains petroleum or a mixture of petroleum with de minimis quantities of other regulated substances. Such systems include those containing motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.”
11. An “underground storage tank system” or “UST system” is defined in 40 C.F.R. § 280.12 as “an underground storage tank, connected underground piping, underground ancillary equipment, and containment system, if any.”
12. Section 9003(c)(1) of the Act, 42 U.S.C. § 6991b(c)(1), directed the EPA to promulgate regulations setting forth requirements pertaining to USTs, including maintaining a leak detection system, an inventory control system together with tank testing, or a comparable

system or method designed to identify releases in a manner consistent with the protection of human health and the environment. The EPA promulgated such regulations. They are codified at 40 C.F.R. part 280.

13. Pursuant to 40 C.F.R. § 280.41, owners and operators of UST systems are required to provide release detection for tanks and piping.
14. Pursuant to 40 C.F.R. § 280.41(a)(1), tanks installed on or before April 11, 2016, must be monitored for releases at least once every 30 days using one of the methods listed in 40 C.F.R. §§ 280.43(d) through (i).
15. Pursuant to 40 C.F.R. § 280.50(b), owners and operators of UST systems must report unusual operating conditions, such as liquid in the interstitial space of secondarily contained systems, to the implementing agency within 24 hours and follow the procedures in 40 C.F.R. § 280.52.
16. Pursuant to 40 C.F.R. § 280.52, owners and operators must immediately investigate and confirm all suspected releases within 7 days, or another reasonable time period specified by the implementing agency, by conducting a system test, a site check, or another procedure approved by the implementing agency.
17. The requirements of a system test are set forth in 40 C.F.R. § 280.52(a).
18. For purposes of carrying out the UST program on the Fort Berthold Indian Reservation, the EPA is the “implementing agency” as that term is used at 40 C.F.R. § 280.12.
19. Section 9006 of the Act, 42 U.S.C. § 6991e, authorizes the EPA to issue administrative orders directing compliance with the Act and its implementing regulations.

FINDINGS OF FACT AND VIOLATION

20. The Respondents are Kelly and Dale Sorge, and Indian Hills, Inc. the owners of the Resort.
21. The Respondents are “persons” as defined in section 9001(15) of the Act, 42 U.S.C. § 6991(15).

22. At all times relevant to this proceeding, the Respondents have owned the Resort, at 7276 14th NW, Garrison, North Dakota.
23. The Resort is located within the external boundaries of the Fort Berthold Indian Reservation.
24. The Resort operates seasonally, beginning and ending operations each year on approximately Memorial Day and Labor Day.
25. The Resort includes one double-walled, 2,000-gallon STIP3 UST (the Tank).
26. The Tank was installed on May 2, 1997. Its piping is safe suction, double-walled flexible plastic.
27. The Tank is used to store unleaded gasoline.
28. The gasoline stored in the Tank contains “petroleum” and a “regulated substance” as defined in section 9001, subsections (6) and (7), respectively, of the Act, 42 U.S.C. §§ 6991(6) and (7), respectively, and 40 C.F.R. § 280.12.
29. The Tank is an “underground storage tank” as defined in section 9001(10) of the Act, 42 U.S.C. § 6991(10) and 40 C.F.R. § 280.12.
30. The Tank is part of a “petroleum UST system” as defined in 40 C.F.R. 280.12.
31. The Respondents are owners of a “petroleum UST system.”
32. On August 19, 2020, the EPA conducted a compliance inspection at the Resort.
33. During the inspection, the EPA reviewed manual tank interstice gauging records provided by the Respondents. The records covered seven of the previous 12 months (missing months September-December 2019 and May 2020). The records, and an on-site demonstration of interstice gauging, indicated approximately 2 inches of fuel present in the tank interstice, which is the area between the two walls in a double-walled tank.

34. On or about October 14, 2020, the EPA sent the Respondents an informal notice of noncompliance identifying several areas of noncompliance, including failure to conduct release detection monitoring for the Tank.
35. By June 2021, the Respondents had corrected all of the noncompliance identified in the October 14, 2020, notice except for the release detection monitoring.
36. On January 21, 2022, the EPA issued an Expedited Enforcement Compliance Order & Settlement Agreement (Field Citation) to the Resort for failure to monitor the Tank for releases at least every 30 days. The Field Citation was withdrawn on March 8, 2022, based on discussions with the Respondents and EPA review of the Facility file.
37. The March 8, 2022, Field Citation withdrawal letter from the EPA required that the Respondents conduct a system test pursuant to 40 C.F.R. § 280.52, to verify the integrity of the Tank and ensure the UST system was operating properly due to the presence of liquid in the interstitial space.
38. Following a phone call on or about March 21, 2022, the EPA understood that the Respondents would conduct a system test prior to Memorial Day weekend, May of 2022. That deadline was later extended to July 1, 2022, per a June 7, 2022, email to Kelly Sorge from the EPA.
39. On or about October 21, 2022, the Respondents' contractor was on-site and attempted to perform a system test but could not due to an inability to access the Tank fill riser.
40. On or about October 26, 2022, the Respondents' contractor purportedly returned and completed the system test and partially emptied the interstice. The EPA requested documentation of the system test via email on or about December 8, 2022.
41. On March 30, 2023, the EPA received results from the test conducted on October 26, 2022. The test did not satisfy the requirements of 40 C.F.R. §280.52 because it did not determine whether a leak exists in all portions of the tank that routinely contain product.

42. On April 26, 2023, the EPA conducted a routine compliance inspection at the Resort and measured approximately 2 inches of fuel present in the tank interstice.
43. The Respondents' failure to properly investigate an unusual operating condition by conducting a system test within the time period specified by the EPA, constitutes a violation of 40 C.F.R. § 280.52.
44. Each failure to provide proper release detection for the Tank every 30 days, from August 2019 to present, constitutes a separate violation of 40 C.F.R. § 280.41.

COMPLIANCE ORDER

Based on the foregoing Findings of Fact and Violation, and pursuant to section 9006(a) of the Act, 42 U.S.C. § 9661e(a), the Respondents agree and are hereby ORDERED to perform the following:

45. Prior to the beginning of the 2023 operating season but no later than May 26, 2023, the Respondents must identify and implement a proper release detection method for the Tank, and monitor the Tank for releases at least every 30 days as required by 40 C.F.R. § 280.41(a). If Respondents elect to use interstitial monitoring to conduct release detection pursuant to 40 C.F.R. § 280.43(g), they must make all reasonable efforts to remove the 2 inches of fuel in the interstitial space and document all attempts to do so, as well as document the final fuel level, if any, in the interstice. Respondents shall maintain records of release detection and provide them to the EPA upon request.
46. Prior to the beginning of the 2023 operating season but no later than May 26, 2023, the Respondents must conduct a system test to determine whether: i) a leak exists in that portion of the tank that routinely contains product; or ii) a breach of either wall of the secondary containment has occurred.
47. The Respondents must complete maintenance and repairs as needed in order to conduct compliant release detection, including, but not limited to, any needed repairs resulting from the

system tests. The Respondents shall provide any testing, repair, and maintenance records to the EPA prior to the start of the 2023 operating season but no later than May 26, 2023.

48. The Respondents must submit all forms, reports, and other information required under this Agreement to:

Marta Grabowski, Environmental Engineer
U.S. EPA Region 8
MC 8ENF RO-O
1595 Wynkoop Street
Denver, Colorado 80202-1129
Email: grabowski.marta@epa.gov

49. The Respondents shall provide a copy of this Agreement to any contractors whose duties include maintaining or fueling the Tank.

OTHER TERMS AND CONDITIONS

50. For the purpose of this proceeding, the Respondents admit the jurisdictional allegations in paragraphs 4 and 5, above; neither admits nor denies the factual allegations in this Agreement; consents to the issuance of the compliance order in paragraphs 45 through 49, above; and waives any right to contest the allegations in this Agreement and to appeal any final order approving this Agreement.
51. Any failure by the Respondents to implement all requirements of this Agreement in full and in the manner and time period required shall be deemed a violation of this Agreement.
52. Nothing in this Agreement constitutes a waiver, suspension or modification of the requirements of the Act or the rules and regulations promulgated thereunder, which remain in full force and effect. Issuance of this Agreement is not an election by the EPA to forgo any civil or administrative action otherwise authorized under the law.
53. Section 9006(d)(1) of the Act, 42 U.S.C. § 6991e(d)(1), provides, in relevant part, that any owner or an UST who fails to comply with any requirement or standard promulgated by the EPA Administrator under section 6991b of the Act, 42 U.S.C. § 9003, shall be liable for a civil

penalty not to exceed \$10,000 for each tank for each day of violation. This amount has been adjusted for inflation by 40 C.F.R. § 19.4 to \$28,304, for violations occurring after November 2, 2015, where penalties are assessed on or after January 6, 2023.

- 54. This Agreement does not relieve the Respondents of any responsibilities or liabilities established pursuant to any applicable local, tribal or federal law.
- 55. This Agreement binds the Respondents, their officers, directors, operators, managers, and employees.
- 56. The individual executing this Agreement on behalf of the Respondents certifies to his or her authority to execute this Agreement and legally bind the Respondents to the terms of this Agreement.

EFFECTIVE DATE

- 57. This Agreement shall become effective upon the signature of a final order by the Regional Judicial Officer or Regional Administrator of EPA Region 8 ratifying this Agreement. This Agreement shall remain in effect for a period of three years following the issuance of the final order.

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

Date May 19, 2023

By: _____
Janice Pearson, Manager
RCRA & OPA Enforcement Branch
Complainant

RESPONDENT

Date: 5/9/23

By: _____
