

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 6  
DALLAS, TEXAS

FILED  
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REGIONAL HEARING CLERK  
EPA REGION VI

IN THE MATTER OF: ' RCRA-06-2011-5601  
'  
RK DISTRIBUTING, INC. ' ADMINISTRATIVE  
OKLAHOMA CITY, OKLAHOMA ' COMPLAINT  
'  
'  
RESPONDENT ' \_\_\_\_\_

ADMINISTRATIVE COMPLAINT

Complainant, Director of the Multimedia Planning and Permitting Division, U.S. Environmental Protection Agency, Region 6, issues this Administrative Complaint to RK Distributing, Inc., 1001 West Memorial Road, Oklahoma City, Oklahoma 20790.

I. STATEMENT OF AUTHORITY

1. Sections 9006(a) and (c) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA or Act), 42 U.S.C. 6991e(a) and (c), provide that, whenever the Administrator of the Environmental Protection Agency (EPA) determines that any person is in violation of any requirement of subchapter IX relating to the regulation of underground storage tanks (USTs), he may issue an order requiring compliance and assessing a penalty. This Complaint is issued pursuant to the authority vested in the Administrator by Section 9006 of the Act, 42 U.S.C. § 6991(c), and the Consolidated Rules of Practice published at 40 C.F.R Part 22. Such authority has been delegated to the Regional Administrator, EPA Region 6, who has further delegated such authority to the Director of the Multimedia Planning and Permitting Division for the EPA Region 6.

2. At all times relevant to this action and the violations alleged herein (relevant

time period), Section 9006(d)(2)(A) of the Act, 42 U.S.C. 6991e(d)(2)(A), provided that any owner or operator of an underground storage tank (UST) who failed to comply with any requirement or standard promulgated by the Administrator under 6991b of this title shall be subject to civil penalty not to exceed \$10,000 for each tank for each day of violation. Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S. C. § 2461 note, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note, and EPA's Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. § 19.1, *et seq.*, the maximum penalty was increased in 1996 to \$11,000 for each tank for each day of violation occurring after January 1997.<sup>1</sup>

3. This is an action to enforce the requirements and standards of EPA's UST regulations set forth at 40 C.F.R. Part 280. Said regulations were promulgated pursuant to the authority conferred by Section 9003 of the Act, 42 U.S.C. 6991b.

4. Pursuant to Section 9008 of RCRA, 42 U.S.C. § 6991, and 40 C.F.R. Part 281, the Administrator may authorize a state to administer a RCRA UST program in lieu of the federal program when he or she deems the state program to be substantially equivalent to the federal program. When a state obtains such authorization, federally-approved state regulations apply in lieu of the federal RCRA regulations in that state. Federally-approved state RCRA regulations are enforceable by the United States pursuant to Section 9006(a) of RCRA, 42 U.S.C. § 6991(e).

5. The Administrator granted final authorization to Oklahoma to administer a UST program in lieu of the federal program in lieu of the federal program on August 12, 1992, effective October 14, 1992 (557 Fed. Reg. 41874; see also 40 C.F.R. § 282.86), and

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<sup>1</sup> The maximum penalty increased in 2009, but the violation addressed by this complaint occurred prior to the time of revision.

there have been subsequent authorized revisions to the federal program.

6. In Oklahoma, the UST program is managed by the Oklahoma Corporation Commission (OCC), pursuant to the Oklahoma Storage Tank Regulation Act, Okla. Stat. 17 § 301, and the rules and regulations promulgated thereunder at Okla. Admin. Code § 165:25. For ease of reference, the Oklahoma regulations are cited below followed by the applicable federal regulations.

## II. NOTICE TO STATE

7. Notice of this action was given to the State of Oklahoma prior to the issuance of this Complaint pursuant to Section 9006(a)(2) of the Act, 42 U.S.C. 6991e(a)(2).

## III. GENERAL ALLEGATIONS

8. Respondent RK Distributing, Inc. is and was at all times relevant to the violations alleged herein a person as defined by Okla. Stat. Ann. § 303(24) [42 U.S.C. § 6991(5)].

9. During the relevant time period, Respondent was an owner or operator of underground storage tanks, as those terms were defined by Okla. Stat. Ann. §§ 303(22) and (21) [42 U.S.C. §§ 6991(3), (4) and (10) and 40 C.F.R. 280.12], located at the Ethio Mart, 5220 S. I-35, Oklahoma City, Oklahoma, 73129 (Facility).

10. During the relevant time period, Respondent stored and sold gasoline, diesel fuel, and other petroleum products at the Facility.

11. During the relevant time period, the USTs and UST systems at the Facility routinely contained greater than de minimus concentrations of a regulated substance as that term was defined by 17 Okla. Stat. Ann. § 303(28) [42 U.S.C. § 6991(7)].

## IV. VIOLATION

Violation: Failing to Conduct Repairs in Accordance with a Code of Practice Developed by a Nationally Recognized Association or an Independent Test Laboratory.

12. Paragraphs 8-11 above are realleged as if fully set forth in this count

13. At all times relevant to this count, Okla. Admin. Code § 165:25-5-2(1) [40 C.F.R. §§ 280.21(b) and 280.33] required that a tank upgrade with interior lining must be conducted in accordance with a code of practice developed by a nationally recognized association or an independent testing laboratory.

14. At all times relevant to this count, Okla. Admin. Code § 165:25-2-2(2)(D) and (10) [40 C.F.R. §§ 280.21 and 280.33] incorporated codes and standards for interior lining by nationally recognized associations.

15. At all times relevant to this count, nationally recognized standards for tank lining required 125 millimeters, with a minimum of 100 millimeters.<sup>2</sup>

16. During an EPA inspection of the facility on May 26, 2010, Respondent told the EPA inspector that the UST was lining was 12 millimeters. Respondent also provided to the EPA inspector a pamphlet describing the application of liner at this thickness.

17. The lining was installed on August 8, 1998. The UST's only method of leak prevention remained the 12 millimeters of lining until cathodic protection was installed on August 7, 2008.

18. Therefore, Respondent was in violation of Okla. Admin. Code § 165:25-5-2(1) [40 C.F.R. §§ 280.21(b) and 280.33(a)] from August 8, 1998 until August 7, 2008.

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<sup>2</sup> See American Petroleum Institute Publication 1631. "Recommended Practice for the Interior Lining of Existing Steel Underground Storage Tanks" and National Leak Prevention Association Standard 631, "Spill Prevention Minimum 10 Year Life Extension of Existing Steel Underground Tanks by Lining Without the Addition of Cathodic Protection"

## V. PROPOSED CIVIL PENALTY

19. Pursuant to Section 9006(c) of the Act, 42 U. S. C. § 6991e(c), Complainant proposes to assess a civil penalty of *\$11,580.00* against Respondent for the violations alleged in this Complaint. The calculation of this amount is based on (a) the factors identified in Section 9006(c) of the Act, 42 U.S.C. § 6991e(c), namely, the seriousness of the violations, any good faith efforts of Respondent to comply with the applicable requirements and (b) the factors identified in EPA's Penalty Guidance for Violations of UST Regulations, namely, economic benefit, if any, the extent of Respondent's deviation from legal requirements, the potential for harm to human health and the environment resulting from the alleged violations, the degree of Respondent's cooperation with the Oklahoma Corporation Commission and EPA, the degree of Respondent's willfulness or negligence, Respondent's history of noncompliance, if any, and the actual or potential impact that a release, if one were to occur, would have on the local environment and public health.

20. Attached as Attachment A and incorporated herein by reference is the penalty calculation sheet for the violation.

21. Payment of a penalty shall be made by mailing a cashier's check or certified check payable to the Treasurer of the United States within 30 days of the effective date of this document to the following address:

Regional Hearing Clerk (6C)  
U. S. EPA Region 6  
Fines and Penalties  
Cincinatti Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

The docket number appearing in the caption on the first page of this Complaint should be

typed or clearly written on the check to ensure proper credit.

22. Respondent shall send simultaneous notices of a penalty payment, including copies of the cashier's check or certified check, to:

Willie Kelley (6PD-U)  
U. S. EPA Region 6  
Suite 1200  
1445 Ross Avenue  
Dallas, Texas 75202-2733

#### VI. NOTICE OF OPPORTUNITY FOR HEARING

23. If Respondent contests any material fact upon which this Complaint is based, contends that the amount of the proposed penalty is inappropriate or contends that he is entitled to judgment as a matter of law, Respondent must file a written answer to this Complaint with the Regional Hearing Clerk for EPA Region 6 not later than thirty days after service of this Complaint on Respondent. The Regional Hearing Clerk's address is U.S. Environmental Protection Agency, Suite 1200 (6RC-D), 1445 Ross Avenue, Dallas, Texas 75202-2733.

24. The answer shall clearly and directly admit, deny or explain each of the factual allegations set forth in this Complaint with regard to which Respondent has knowledge. Where the Respondent has no knowledge of a particular factual allegation and so states, the allegation is deemed denied. The failure of Respondent to admit, deny or explain any material factual allegation in the Complaint constitutes an admission of the allegation.

25. The answer shall also state (a) the circumstances or arguments which are alleged to constitute the grounds of defense, (b) the facts which Respondent disputes; (c) the basis for opposing any proposed relief and (d) whether a hearing is requested. A hearing on the issues raised by this Complaint and answer shall be held upon request of

the Respondent in the answer.

26. If requested, a hearing will be conducted in accordance with the provisions of the Administrative Procedures Act, 5 U. S. C. § 552, *et seq.*, and the Consolidated Rules of Practice set forth at 40 C. F. R. Part 22. Respondent may retain counsel to represent it at a hearing.

#### VIII. DEFAULT ORDER

27. If Respondent fails to file an answer within thirty days after the date of service of this Complaint, Respondent may be found to be in default pursuant to 40 C. F. R. § 22.17. For the purposes of this action, a default by Respondent constitutes an admission of all facts alleged in this Complaint and a waiver of Respondent's right to a hearing under 40 C. F. R. § 22.15 concerning such factual allegations. The proposed penalty will become due and payable by Respondent without further proceedings sixty days after issuance of a Final Order upon default. Upon issuance of the Final Order upon default, Respondent will be required to immediately comply with the Compliance Order set forth in this Complaint.

#### IX. SETTLEMENT CONFERENCE

28. Whether or not Respondent requests a hearing, he may confer with Complainant concerning settlement. EPA encourages settlement consistent with the provisions and objectives of the Act and the applicable regulations. A request for a settlement conference does not extend the 30-day period during which the written answer and a request for hearing must be filed. The settlement conference procedures may be pursued as an alternative to and simultaneous with formal hearing procedures. Respondent may be represented at a settlement conference by an attorney.

PENALTY CALCULATION SHEETS  
 RK Distributing, Oklahoma City, Oklahoma

Count 1: Failure to meet upgrading of existing UST systems according to 280.21 (b)(1) install internal lining on one tank according to requirements of 280.33. Section 280.33 goes on to state: "Repairs to UST systems must be properly conducted in accordance with a code of practice developed by a nationally recognized association or an independent testing laboratory. NOTE: API 1631 or NLP 631 for Interior Lining. Subpart C 280.33 (a)

- |    |   |                                 |
|----|---|---------------------------------|
| 1. | Number of facilities or lines/tanks:  | <b>1 tank</b>                   |
| 2. | Gravity based penalty from matrix:<br>Major deviation from program/ Moderate potential for harm to environment. | <b>\$970 (from Exhibit 4.A)</b> |
| 3. | Total violator specific adjustments:  | <b>\$960</b> * See note below   |
|    | Degree of cooperation or non-cooperation  | 33% x no.2                      |
|    | Degree of willfulness or negligence   | 33% x no.2                      |
|    | History of non-compliance   | 33% x no.2                      |
|    | Other unique factors  | 0% x no.2                       |

Owner was advised in 2007 inspection leak detection system needed to be changed. Several violations were found in 2007 inspection including inadequate leak detection records.

- |    |                                       |            |
|----|---------------------------------------|------------|
| 4. | Environmental sensitivity multiplier: | <b>1.5</b> |
|    | Low                                   | 1.0        |
|    | Moderate                              | 1.5        |
|    | High                                  | 2.0        |

- |    |   |            |
|----|---|------------|
| 5. | Days of non-compliance multiplier:                              | <b>5.0</b> |
|    | (1/28/06 to 08/08/08 > 365 days ) <i>Stat. Limit of 5 years</i> |            |
|    | 0-90  | 1.0        |
|    | 91-180  | 1.5        |
|    | 181-270   | 2.0        |
|    | 271-365   | 2.5        |

Each additional 6 months or fraction thereof-add 0.5

6. Economic benefit:

None because the cost of the inadequate lining was the same as others charged to install an adequate lining.

Avoided costs	0
Delayed costs	0

Calculation:

no.1 x [(no.2 +/- no.3) x no.4 x no.5 + No.6] = penalty

1x [(\$970 + \$960) x 1.5 x 4 + 0] = \$12,546

{1930.30 x 1.5} x 4 = \$11,580

Proposed penalty for Count 1

**\$11,580.00**

**\*Note** The number, \$960.30, was calculated by multiplying the violator specific adjustment of \$320.10 by three. EPA recognizes three different violator specific adjustments for this count.



29. Any settlement reached by the parties will be set forth in a Consent Agreement and Final Order, signed by the Regional Judicial Officer, EPA Region 6, in accordance with 40 C. F. R. § 22.18. The issuance of a Final Order will constitute a waiver by Respondent of his right to request a hearing on any matter agreed to in the Consent Agreement.

Issued



JAN 18 2011

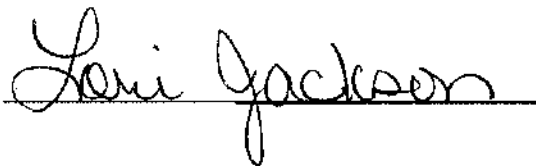
Carl E. Edlund, P. E.  
Director  
Multimedia Planning and  
Permitting Division

CERTIFICATE OF SERVICE

I hereby certify that the original and one copy of the foregoing Complaint concerning RK Distributing, Docket No. RCRA-06-2011-5601 was filed with the Regional Hearing Clerk, EPA Region 6, Dallas, Texas, and a true and correct copy of such Complaint was placed in the United States mail, postage prepaid, certified mail, return receipt requested, on this 21<sup>st</sup> day of January, 2011, addressed to the following:

CERTIFIED MAIL – RETURN RECEIPT REQUESTED: 7007 1490 0000 3069 0828

R K Distributing, Inc.  
Attn: Mr. Steve Hanska  
1001 West Memorial Road  
Oklahoma, City, Oklahoma 20790

A handwritten signature in cursive script that reads "Lori Jackson". The signature is written in black ink and is positioned above a solid horizontal line.