



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

1595 Wynkoop Street
DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

October 30, 2008

Ref: ENF - L

SENT VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Faye and Monroe Kraft
Timber Lake Service
824 Main Street
Timber Lake, SD 57656

Re: In the Matter of Timber Lake Service
Docket No. **RCRA-08-2009-0001**
Complaint and Notice of Opportunity for Hearing

Dear Mr. and Mrs. Kraft:

The U.S. Environmental Protection Agency Region 8 (EPA) is issuing the enclosed Complaint and Notice of Opportunity for Hearing (Complaint) for alleged underground storage tank (UST) violations at the Timber Lake Service facility (facility) in Timber Lake, South Dakota. The Complaint is issued pursuant to section 9006 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6991e.

EPA alleges in the Complaint that you failed to comply with the federal UST regulations codified at 40 C.F.R. Part 280 for four USTs located at the facility in violation of RCRA § 9003, 42 U.S.C. § 6991b. Specifically, the Complaint alleges that you failed to monitor the tanks every thirty (30) days as required by 40 C.F.R. § 280.41(a). At the time of the UST inspection conducted by EPA on June 10, 2008, no valid leak detection records were available for the period June 2007 through May 2008. According to the facility operator at the time of the inspection, the automatic tank gauge wiring was not working. EPA issued this facility a field citation in 2005 for the same violation. EPA proposes a total penalty of \$24,736 for the violation alleged.

You have the right to a hearing to contest the factual allegations in the Complaint. If you admit the allegations, or the allegations are found to be true after you have had an opportunity for a hearing, you have the right to contest the penalty proposed in the Complaint. A copy of EPA's administrative procedures is enclosed for your review. Please note the requirements for an Answer set forth in 40 C.F.R. §§ 22.15 and 22.38. If you wish to contest the allegations in the Complaint or the penalty proposed in the Complaint, you must file a written Answer within thirty (30) days of receipt of the enclosed Complaint with the EPA Regional Hearing Clerk at the following address:

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

If you do not file an Answer by the applicable deadline, you will have defaulted and the allegation in the Complaint may be deemed to be admitted as true. You will have waived your right to appear in this action for any purpose and will also have waived your right to be notified of any Agency proceedings that occur before a civil penalty may be imposed. Provided that the Complaint is legally sufficient, the presiding officer may then find you liable and assess against you a civil penalty of up to \$11,000 for each tank for each day of violation.

Whether or not you request a hearing, you may confer informally with EPA concerning the alleged violation or the amount of the proposed penalty. You have the right to be represented by an attorney at any stage of the proceedings, including any informal discussions with EPA, but it is not required. A request for an informal conference does not extend the thirty (30) day period for filing an Answer and/or requesting a hearing.

In the event that you are financially unable to pay the proposed penalty amount, you may assert an Ability to Pay claim and submit the following financial information for a determination whether the penalty should be reduced based on its expected economic impact. To determine whether a legitimate ability to pay claim exists, you must submit the last three years of complete and signed U.S. Federal Income Tax Returns Form 1040 submitted to the Internal Revenue Service (IRS), including all schedules and attachments. You also must complete and return to EPA the enclosed "Individual Ability to Pay Claim" questionnaire and IRS Form 4506-T "Request for Transcript of Tax Return." IRS Form 4506-T authorizes EPA to request information from the IRS regarding your federal income tax returns. To assist you in submitting the requisite Ability to Pay information, a summary sheet entitled "Request for Financial Information from Individuals/Sole Proprietorships" is enclosed. In the event that EPA determines that a valid Ability to Pay claim exists, EPA will revise its proposed penalty amount accordingly. It is in your best interest to fully complete the enclosed questionnaire and provide the requested information to EPA as soon as possible.

If you have any questions, the most knowledgeable people on my staff regarding this matter are Amy Swanson and Francisca Chambus. Ms. Swanson is in our Legal Enforcement Program and can be reached at (303) 312-6906. Ms. Chambus is in our Underground Storage Tank Program and can be reached at (303) 312-6782.

We urge your prompt attention to this matter.

Sincerely,



Sharon L. Kercher, Director
RCRA/CERCLA Technical Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

Enclosures:

Individual Ability to Pay Claim Financial Data Request Form
Request for Financial Information from Individuals/Sole Proprietorships
IRS Form 4506-T
Consolidated Rules of Civil Practice, 40 C.F.R. Part 22
Complaint and Notice of Opportunity for Hearing, with Exhibits 1 and 2

cc w/ Complaint and cover letter:

Joseph Brings Plenty, Chairman, Cheyenne River Sioux Tribe
David D. Nelson, Environmental Director, Cheyenne River Sioux Tribe

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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IN THE MATTER OF:)	Docket No. RCRA-08-2009-0001
)	
Faye and Monroe Kraft,)	COMPLAINT AND NOTICE OF
)	OPPORTUNITY FOR HEARING
Timber Lake Service Facility)	
824 Main Street)	
Timber Lake, SD 57656)	
EPA ID Number 4020017)	
)	
Respondents.)	

AUTHORITY

This is a civil administrative action issued under the authority vested in the Administrator of the Environmental Protection Agency (EPA) by section 9006 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6991e. The Administrator has properly delegated this authority to the undersigned EPA officials. This proceeding is governed by 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 (Consolidated Rules) set forth at 40 C.F.R. Part 22, a copy of which is enclosed.

GENERAL ALLEGATIONS

1. Subtitle I of RCRA, RCRA §§ 9001 - 9010, 42 U.S.C. §§ 6991 - 6991i, authorizes EPA to regulate the installation and use of “underground storage tanks” (“USTs” or “tanks”) which contain “regulated substances.”

2. EPA has jurisdiction over this matter pursuant to RCRA § 9006, 42 U.S.C. § 6991e.

3. Section 9003(c)(1) of RCRA, 42 U.S.C. § 6991b(c)(1), authorizes EPA to promulgate regulations setting forth requirements for 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. EPA has promulgated such regulations at 40 C.F.R. Part 280, subpart D.

4. Petroleum, and any fraction thereof, is a regulated substance as defined at RCRA § 9001(2), 42 U.S.C. § 6991(2).

5. EPA is the “implementing agency” as that term is used at 40 C.F.R. § 280.12.

6. Respondents Faye and Monroe Kraft (“Respondents” or “the Krafts”) own and/or operate four 2,000 gallon STIP3 underground storage tanks at the Timber Lake Service facility (facility), located at 824 Main Street, Timber Lake, South Dakota, within the exterior boundaries of the Cheyenne River Sioux Indian Reservation. One tank contains 10% ethanol gasoline, a second tank contains unleaded gasoline, a third tank contains clear diesel, and a fourth tank contains clear dyed diesel. All four tanks were installed in 1989.

7. Respondents own and/or operate the facility, including the tanks, as a for-profit gas station and convenience store. The Respondents are “persons” as defined

by section 9001(5) of RCRA, 42 U.S.C. § 6991(5).

8. Respondents are "operators" within the respective meanings of RCRA § 9001(3), 42 U.S.C. § 6991(3), and 40 C.F.R. § 280.12, of an "underground storage tank system" (UST system) as defined by RCRA § 9001(10), 42 U.S.C. § 6991(10), and 40 C.F.R. § 280.12.

9. Respondents' UST systems meet the performance standards for new USTs described in 40 C.F.R. § 280.20.

10. Respondents were provided advance notice of a planned UST inspection at the facility by an EPA representative on June 4, 2008. Chris Guzzetti of EPA phoned the facility owner/operator and representative Monroe Kraft and informed him that an inspection would be taking place on June 10, 2008. The facility representative was provided a list of documents that needed to be available on site for the inspection, including but not limited to the last 12-months of leak detection records.

11. On June 10, 2008, EPA inspector Chris Guzzetti (the inspector), accompanied by Darla Waibel (EPA) and Tom McClure (federally-credentialed Confederated Salish and Kootenai UST Coordinator training as tribal UST inspector), arrived at the facility to conduct an inspection to determine compliance with RCRA Subtitle I and the EPA regulations relating to USTs.

12. The UST inspection was conducted with the consent of the facility representative.

13. At the time of the inspection, the facility representative confirmed that the fiberglass reinforced plastic piping was European style "safe" suction.

14. At the time of the inspection, the facility representative stated that the Respondents had discontinued the use of automatic tank gauging (ATG) as the method of monthly leak detection for the tanks at the facility.

15. Leak detection records were not available for the 12-month period June 1, 2007, through May 31, 2008.

16. At the time of the inspection, the facility representative stated that since the last UST inspection on June 8, 2005, Respondents had monitored the product inventory every 24 hours as a method of leak detection.

17. At the conclusion of the inspection, the inspector informed the facility representative that the facility was out of compliance and explained the violation. The inspector completed a "Notice of Inspection" form which was signed by and left with the facility operator.

18. Section 9006(d)(2) of RCRA, 42 U.S.C. § 6991e(d)(2), states in pertinent part that any owner or operator of an UST who fails to comply with any requirement or standard promulgated by the Administrator under section 6991b of this title shall be subject to a civil penalty not to exceed \$11,000 for each tank for each day of violation.

19. As alleged herein and pursuant to section 9006(d)(2) of RCRA, 42 U.S.C. § 6991e(d)(2), and 40 C.F.R. § 19.4, Respondents are liable for civil penalties up to \$11,000 per day per tank for the period during which the violation continues.

20. Paragraphs 1 through 19 are incorporated by reference in the count listed below.

COUNT 1
Failure to monitor tanks at least every 30 days

21. In accordance with 40 C.F.R. § 280.41(a), owners and operators of petroleum UST systems must provide release detection for tanks by monitoring tanks for releases at least every 30 days using one of the methods listed in 40 C.F.R. § 280.43(d) through (h) that meet the general requirements in 40 C.F.R. § 280.40, except that UST systems that meet the performance standards in § 280.20 or § 280.21, and the monthly inventory control requirements in § 280.43(a) or (b), may use tank tightness testing until December 22, 1998, or until 10 years after the tank is installed or upgraded under 40 C.F.R. § 280.21(b), whichever is later.

22. For the period including the date of the inspection and 12 months prior, monthly leak detection monitoring records were unavailable for the tanks for June 1, 2007, through May 31, 2008.

23. Respondents' failure to monitor the tanks every 30 days for leak detection using a valid means of leak detection beginning June 1, 2007, constitutes a violation of 40 C.F.R. § 280.41(a) and section 9003(c) of RCRA, 42 U.S.C. § 6991b(c).

PROPOSED CIVIL PENALTY

RCRA § 9006(d)(2)(C), 42 U.S.C. § 6991e(d)(2)(C), authorizes the assessment of a civil penalty of up to \$11,000 for each UST for each day of violation. Based upon the facts alleged in this Complaint and taking into account the factors set forth in RCRA § 9006(c), 42 U.S.C. § 6991(c), i.e., the seriousness of the violations and any good faith efforts by Respondents to comply with the applicable requirements, Complainant proposes to assess a civil penalty of **\$24,736** as follows:

COUNT	VIOLATION	PROPOSED PENALTY
Count 1	Failure to monitor tanks at least every 30 days for tanks 1, 2, 3 and 4, 40 C.F.R. § 280.41(a)	\$24,736

The proposed civil administrative penalty above has been calculated in accordance with the U.S. EPA Penalty Guidance for Violations of UST Regulations (November 1990) (Exhibit 1). This policy is used by EPA to provide a rational and consistent application of the statutory factors to the facts and circumstances of a specific case. The Penalty Calculation Worksheets for the alleged RCRA UST violation in support of the assessment of civil penalties proposed in this Complaint are attached hereto (Exhibit 2).

TERMS OF PAYMENT

If the Respondents do not contest the findings and penalty proposal set forth above, this action may be resolved by paying the proposed penalty in full. If such

In the Matter of Faye and Monroe Kraft,
Timber Lake Service,
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payment is made within thirty (30) calendar days of receipt of this Complaint, then no Answer need be filed. For more time for payment, within thirty (30) days of receipt of the Complaint the Respondents may file a statement agreeing to pay the penalty, and then pay the money within sixty (60) days of such receipt. Payment is to be made by sending a certified or cashier's check payable to "Treasurer, United States of America," to:

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

A copy of the check must be mailed simultaneously to:

Amy Swanson, Senior Attorney
Legal Enforcement Program (8ENF-L)
U.S. EPA Region 8
1595 Wynkoop Street
Denver, Colorado 80202-1129

Payment of the penalty in this manner shall constitute consent by the Respondents to the assessment of the proposed penalty and a waiver of Respondents' rights to a hearing on this matter.

OPPORTUNITY TO REQUEST A HEARING

As provided in RCRA § 9006(b), 42 U.S.C. § 6991e(b), a respondent has the right to request a public hearing within thirty (30) calendar days after the Complaint is served. If you (1) contest the factual claims made in this Complaint; (2) wish to contest the appropriateness of the proposed penalty; or (3) assert that you are entitled to judgment as

In the Matter of Faye and Monroe Kraft,
Timber Lake Service,
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a matter of law, you must file a written Answer in accordance with 40 C.F.R §§ 22.15 and 22.37 within thirty (30) calendar days after this Complaint is received. Your Answer must (1) clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint; (2) state all facts and circumstances, if any, which constitute grounds for defense; (3) state the facts intended to be placed at issue; and (4) specifically request an administrative hearing, if desired. The denial of any material fact or the raising of any affirmative defense in your Answer shall be construed as a request for a hearing. Failure to deny any of the factual allegations in this Complaint constitutes an admission of the undenied allegations.

The Answer and one copy must be sent to the EPA Region 8 Regional Hearing Clerk (8RC), 1595 Wynkoop Street, Denver, Colorado 80202-1129, and a copy must be sent to the attorney named above in the "Terms of Payment" section.

IF YOU FAIL TO REQUEST A HEARING, YOU MAY WAIVE YOUR RIGHT TO FORMALLY CONTEST ANY OF THE ALLEGATIONS SET FORTH IN THE COMPLAINT.

IF YOU FAIL TO FILE A WRITTEN ANSWER WITHIN THE 30 CALENDAR DAY TIME LIMIT, A DEFAULT JUDGMENT MAY BE ENTERED PURSUANT TO 40 C.F.R § 22.17. THIS JUDGMENT MAY IMPOSE THE PENALTY PROPOSED IN THE COMPLAINT.

SETTLEMENT CONFERENCE

EPA encourages the exploration of settlement possibilities through an informal settlement conference. Please note that a request for, scheduling of, or participation in a settlement conference does not extend the period for filing an Answer and request for

In the Matter of Faye and Monroe Kraft,
Timber Lake Service,
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hearing as set forth above. The settlement process, however, may be pursued simultaneously with the administrative litigation procedures found in 40 C.F.R. Part 22. If a settlement can be reached, its terms shall be expressed in a written consent agreement, signed by the parties and incorporated into a final order signed by the regional judicial officer. A request for a settlement conference or any questions that you may have regarding this Complaint should be directed to the attorney listed below.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8,
Complainant.

Date: 10/30/08

By: Matthew D. Cohn
Michael T. Risner, Director
Matthew D. Cohn, Supervisory Attorney
Legal Enforcement Program

Date: 27 October 2008

By: Sharon L. Kercher
Sharon L. Kercher, Director
RCRA/CERCLA Technical Enforcement
Program

Date: 10.30.08

By: Amy Swanson
Amy Swanson, Enforcement Attorney
U.S. EPA, Region 8
1595 Wynkoop St. (8ENF-I.)
Denver, CO 80202-1129
Telephone: 303/312-6906
Facsimile: 303/312-6953

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and one copy of the COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING with Exhibits 1 and 2 were hand-carried to the Regional Hearing Clerk, EPA, Region 8, 1595 Wynkoop Street, Denver, Colorado, and that a true copy of the same was mailed by certified mail to:

Faye and Monroe Kraft
Timber Lake Service
824 Main Street
Timber Lake, SD 57656

Date: 11/3/08

By: Judith M. McTernan