



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

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OCT 02 2014

Ref: 8ENF-AT

Honorable Sam Hirsch  
Acting Assistant Attorney General  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 4390  
Ben Franklin Station  
Washington, D.C. 20044-4390

Phillip Brooks, Director  
Air Enforcement Division - Mail Code 2242A  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency Headquarters  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

Re: Request for a Waiver on Limitation of Administrative Actions under Section 113(d)(1)  
of the Clean Air Act, 42 U.S.C. Section 7413(d)(1)

Dear Mr. Hirsch and Mr. Brooks:

This letter is written pursuant to section 113(d)(1) of the Clean Air Act (Act), 42 U.S.C. § 7413(d)(1), concerning limitations on the United States Environmental Protection Agency (EPA) Administrator's authority to issue an administrative order assessing an administrative penalty for violations of the Act and/or its implementing regulations. Section 113(d)(1) of the Act states, in relevant part:

The Administrator's authority under this paragraph shall be limited to matters where the total penalty sought does not exceed \$200,000 [adjusted for inflation to \$295,000 pursuant to 40 C.F.R. part 19 for violations occurring after January 12, 2009] and the first alleged date of violation occurred no more than 12 months prior to the initiation of the administrative action, except where the Administrator and the Attorney General jointly determine that a matter involving a larger penalty amount or longer period of violation is appropriate for administrative penalty action. Any such determination by the Administrator and the Attorney General shall not be subject to judicial review.



The purpose of this letter is to request a waiver of the 12-month statutory limit on the EPA's authority to initiate an administrative action pursuant to section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1). We are requesting a waiver in order to file a combined complaint and consent agreement with Moyle Petroleum Company (Moyle).

The combined complaint and consent agreement would allege violations of the Act and/or its implementing regulations at various gasoline dispensing facilities (GDFs) in South Dakota, Utah, and Wyoming that are owned and or operated by Moyle under its "Common Cents" convenience store chain. Each of the GDFs had a monthly throughput of 100,000 gallons of gasoline or more. The violations, which occurred more than twelve months ago, were submitted to the EPA on May 2, 2013 and February 25, 2014 in the form of self-disclosures from Moyle. The violations are listed in Attachment A to this letter.

The regulations pertinent to this matter are found at 40 C.F.R. Part 63, Subpart CCCCCC, containing the "National Emission Standards for Hazardous Air Pollutants (NESHAPs) for Source Category: Gas Dispensing Facilities." Moyle failed to comply with the following NESHAPs:

1. 40 C.F.R. § 63.11118(b)(1): each owner or operator of a GDF with a monthly throughput of 100,000 gallons of gasoline or more must install a vapor balance system on gasoline storage tanks.
2. 40 C.F.R. § 63.11120(a)(1): each owner or operator of a GDF with a monthly throughput of 100,000 gallons of gasoline or more must conduct an initial compliance demonstration test of a vapor balance system to demonstrate compliance with leak rate and cracking pressure requirements, and conduct follow-up compliance demonstration tests every 3 years thereafter. The owner or operator must also conduct an initial static pressure test of the vapor balance system to demonstrate compliance with static pressure performance requirements, and conduct follow-up static pressure tests every 3 years thereafter.
3. 40 C.F.R. § 63.11124(a)(2): each owner or operator of a GDF with a monthly throughput of 10,000 gallons of gasoline or more must submit a Notification of Compliance Status, signed by a responsible official certifying to its accuracy, to the applicable EPA Regional Office within 60 days of the applicable compliance date. The notification must indicate whether the source has complied with the requirements of Subpart CCCCCC.

The EPA has determined that Moyle has substantially complied with the EPA's policy, *Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations* (Audit Policy), 65 Fed. Reg. 19618 (April 11, 2000). In particular, Moyle certifies that it has brought its facilities into compliance and has submitted the required Notifications of Compliance Status to Region 8.

The EPA considers these violations suitable for administrative action because there is little to no gravity, due to the applicability of the self-audit policy, and no need for injunctive relief. The total proposed penalty, calculated pursuant to the Clean Air Act Stationary Source Civil Penalty Policy, would not exceed \$200,000 even absent a pre-filing settlement.



Please let us know as soon as possible if you will grant a waiver from the statutory limitation on administrative actions for these violations. If you need additional information, please contact Adam Eisele of our technical enforcement program at (303) 312-6838, or Linda Kato, the enforcement attorney assigned to this matter, at (303) 312-6852.

Sincerely,



Suzanne J. Bohan  
Acting Assistant Regional Administrator  
Office of Enforcement, Compliance and  
Environmental Justice

Enclosure

cc: Bob Brook, DOJ-EES  
Adam Eisele, 8ENF-AT  
Linda Kato, 8ENF-L



## ATTACHMENT A

STORE NAME/ADDRESS	STORE OPENING DATE	DESCRIPTION OF POSSIBLE EPA VIOLATION	DATE POSSIBLE EPA VIOLATION WAS DISCOVERED	CORRECTIVE ACTION TAKEN
Common Cents 1909 LaCrosse Street Rapid City, SD 57701	June 1984	Late Installation and Test of Vapor Balance System.	March 1, 2013	Vapor Balance System Installed February 14, 2011 Tested November 29, 2011
		Failure to file Initial Notification/ Notification of Compliance Report following installation and testing of Vapor Balance System.	March 1, 2013	May 3, 2013
Common Cents 2808 Sheridan Lake Road Rapid City, SD 57702	October 1981	Late Installation and Test of Vapor Balance System.	March 1, 2013	Vapor Balance System Installed February 15, 2011 Tested December 16, 2011
		Failure to file Initial Notification/ Notification of Compliance Report following installation and testing of Vapor Balance System.	March 1, 2013	May 3, 2013
Common Cents 2660 Mt. Rushmore Road Rapid City, SD 57701	October 1996	Late Installation and Test of Vapor Balance System.	March 1, 2013	Vapor Balance System Installed February 17, 2011 Tested November 16, 2011
		Failure to file Initial Notification/ Notification of Compliance Report following installation and testing of Vapor Balance System.	March 1, 2013	May 3, 2013
Common Cents 546 W. Jackson Spearfish, SD 57783	July 1986	Late Installation and Test of Vapor Balance System.	March 1, 2013	May 3, 2013
		Failure to file Initial Notification/ Notification of Compliance Report following installation and testing of Vapor Balance System.	March 1, 2013	To be done June 23, 2013.
Common Cents 1907 South Douglas Hwy Gillette, WY 82716	October 1986	Late Installation and Test of Vapor Balance System.	March 1, 2013	Vapor Balance System Installed March 10, 2011 Tested May 9, 2012
		Failure to file Initial Notification/ Notification of Compliance Report following installation and testing of Vapor Balance System.	March 1, 2013	May 3, 2013
Common Cents 2617 North Main Sheridan, WY 82801	October 1995	Late Installation and Test of Vapor Balance System.	March 1, 2013	Vapor Balance System Installed March 3, 2011 Tested October 4, 2012
		Failure to file Initial Notification/ Notification of Compliance Report following installation and testing of Vapor Balance System.	March 1, 2013	May 3, 2013
Common Cents 632 North Poplar Street Casper, WY 82601	April 1999	Late Installation and Test of Vapor Balance System.	March 1, 2013	Vapor Balance System Installed March 1, 2011 Tested October 4, 2012 Found issues, next test scheduled May 2013.
		Failure to file Initial Notification/ Notification of Compliance Report following installation and testing of Vapor Balance System.	March 1, 2013	May 3, 2013
Common Cents 60 SE Wyoming Blvd Casper, WY 82609	November 1988	Late Installation and Test of Vapor Balance System.	March 1, 2013	Vapor Balance System Installed March 16, 2011 Tested October 5, 2012
		Failure to file Initial Notification/ Notification of Compliance Report following installation and testing of Vapor Balance System.	March 1, 2013	May 3, 2013
Common Cents 3601 W. Yellowstone Mills, WY 82644	1984	Late Installation and Test of Vapor Balance System.	March 1, 2013	Vapor Balance System Installed March 14, 2011 Tested April 4, 2013
		Failure to file Initial Notification/ Notification of Compliance Report following installation and testing of Vapor Balance System.	March 1, 2013	May 3, 2013

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<u>STORE NAME/ADDRESS</u>	<u>STORE OPENING DATE</u>	<u>DESCRIPTION OF POSSIBLE EPA VIOLATION</u>	<u>DATE POSSIBLE EPA VIOLATION WAS DISCOVERED</u>	<u>CORRECTIVE ACTION TAKEN</u>
Common Cents #252 412 N 500 W Bountiful, UT 84010	1999	Late 3-Year Test of Vapor Balance System.	May 27, 2013	November 26, 2013
		Failure to file Notification of Compliance Report following 3-Year Test of Vapor Balance System.	May 27, 2013	February 26, 2014
Common Cents #253 3503 S Wall Avenue Ogden, UT 84401	2000	Late 3-Year Test of Vapor Balance System.	May 27, 2013	December 31, 2013
		Failure to file Notification of Compliance Report following 3-Year Test of Vapor Balance System.	May 27, 2013	February 26, 2014
Common Cents #254 13561 S 200 W Draper, UT 84020	2004	Late 3-Year Test of Vapor Balance System.	May 27, 2013	September 9, 2013
		Failure to file Notification of Compliance Report following 3-Year Test of Vapor Balance System.	May 27, 2013	February 26, 2014
Common Cents #255 1395 W 1600 N Orem, UT 84057	2000	Late 3-Year Test of Vapor Balance System.	May 27, 2013	November 25, 2013
		Failure to file Notification of Compliance Report following 3-Year Test of Vapor Balance System.	May 27, 2013	February 26, 2014
Common Cents #256 776 N Rudwood Road Salt Lake City, UT 84116	2001	Late 3-Year Test of Vapor Balance System.	May 27, 2013	June 7, 2013
		Failure to file Notification of Compliance Report following 3-Year Test of Vapor Balance System.	May 27, 2013	February 26, 2014
Common Cents #259 1838 W 5600 S Roy, UT 84067	2001	Late 3-Year Test of Vapor Balance System.	May 27, 2013	November 5, 2013
		Failure to file Notification of Compliance Report following 3-Year Test of Vapor Balance System.	May 27, 2013	February 26, 2014
Common Cents #261 986 S Main Street Bingham City, UT 84302	November 15, 2010	Late 3-Year Test of Vapor Balance System.	May 27, 2013	October 22, 2013
		Failure to file Notification of Compliance Report following 3-Year Test of Vapor Balance System.	May 27, 2013	February 26, 2014
Common Cents #263 907 N Washington Blvd Harmsville, UT 84404	November 15, 2010	Late 3-Year Test of Vapor Balance System.	May 27, 2013	October 22, 2013
		Failure to file Notification of Compliance Report following 3-Year Test of Vapor Balance System.	May 27, 2013	February 26, 2014
Common Cents #264 855 N Main Layton, UT 84041	November 15, 2010	Late 3-Year Test of Vapor Balance System.	May 27, 2013	October 22, 2013
		Failure to file Notification of Compliance Report following 3-Year Test of Vapor Balance System.	May 27, 2013	February 26, 2014
Common Cents #265 1905 S Hwy 89-91 Logan, UT 84321	November 15, 2010	Late 3-Year Test of Vapor Balance System.	May 27, 2013	November 5, 2013
		Failure to file Notification of Compliance Report following 3-Year Test of Vapor Balance System.	May 27, 2013	February 26, 2014
Common Cents #266 1184 Wall Avenue Ogden, UT 84041	November 15, 2010	Late 3-Year Test of Vapor Balance System.	May 27, 2013	October 22, 2013
		Failure to file Notification of Compliance Report following 3-Year Test of Vapor Balance System.	May 27, 2013	February 26, 2014