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EPA--REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	
)	DOCKET NO. RCRA-10-2014-0053
GURINDER BAINS, NABIN JOSHI, and)	
SHORT STOP LLC)	CONSENT AGREEMENT AND
)	FINAL ORDER
Ellensburg, Washington)	
)	
Respondents.)	

I. STATUTORY AUTHORITY

1.1. This Consent Agreement and Final Order (“CAFO”) is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 9006 of the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6991e.

1.2. The Administrator has delegated the authority to issue the Final Order contained in Part V of this CAFO to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Regional Judicial Officer in EPA Region 10.

1.3. Pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c, EPA granted approval to the State of Washington to administer a state underground storage tank (“UST”) program in lieu of the federal UST program (Subtitle I of RCRA, 42 U.S.C. § 6991 *et seq.*)

1.4. The State of Washington's authorized UST program is set forth in the Revised Code of Washington ("RCW") Chapter 90.76 and its implementing regulations are set forth in the Washington Administrative Code ("WAC"), Chapter 173-360.

1.5. EPA has given Washington prior notice of this enforcement action in accordance with Section 9006(a)(2) of RCRA, 42 U.S.C. § 6991e(a)(2).

1.6. Pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e, and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties," 40 C.F.R. Part 22, EPA issues, and Gurinder Bains, Nabin Joshi, and Short Stop LLC ("Respondents") agree to issuance of, the Final Order contained in Part V of this CAFO.

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this CAFO commences this proceeding, which will conclude when the Final Order contained in Part V of this CAFO becomes effective.

2.2. The Director of the Office of Compliance and Enforcement, EPA Region 10 ("Complainant") has been delegated the authority pursuant to Section 9006(d) of RCRA, 42 U.S.C. § 6991e(d), to sign consent agreements between EPA and the party against whom an administrative penalty for violations of RCRA is proposed to be assessed.

2.3. Part III of this CAFO contains a concise statement of the factual and legal basis for the alleged violations of RCRA together with the specific provisions of RCRA and the implementing regulations that Respondents are alleged to have violated.

III. ALLEGATIONS

3.1 Short Stop LLC is a limited liability company registered to do business in the State of Washington. Gurinder Bains and Nabin Joshi are governing persons and members of Short Stop LLC.

3.2 Respondents are each a “person” as that term is defined in WAC 173-360-120.

3.3 Respondents are the “owner(s)” and/or “operator(s)” of “underground storage tank(s)” and “UST system(s)” as those terms are defined in WAC 173-360-120, at Flying B #29 located at 1611 S. Canyon Road, Ellensburg, Washington (the “Facility”).

3.4 The Facility has five tanks, Tanks #1, #2, #3, #4, and #5.

3.5 Tank #1 routinely contains diesel, Tanks #2, #3, and #4 routinely contain petroleum, and Tank #5 is not in use but contains diesel fuel at the time of this Order, to a depth of approximately one inch.

3.6 Diesel and petroleum are “regulated substance(s),” as that term is defined in WAC 173-360-120.

3.7 Tanks #1, #2, #3, #4, and #5 are “underground storage tank(s)” as that term is defined in WAC 173-360-120.

3.8 Tanks #4 and #5 are compartmentalized and make up one “UST system” as that term is defined in WAC 173-360-120. Tanks #1, #2, and #3 are each a single UST system, so there are four UST systems at the Facility.

3.9 The capacity of each of the Facility’s UST systems is greater than 110 gallons.

3.10 Each of the four UST systems was installed at the Facility prior to December 22, 1988 and is an “existing UST system,” as that term is defined in WAC 173-360.

Failure to Conduct Release Detection for USTs

3.11 WAC 173-360-335(2)(a) provides that an owner or operator of an UST system must monitor each tank at least every 30 days to detect releases using the methods described in WAC 173-360-345(6)(e) through (j).

3.12 Respondents failed to conduct monthly release detection monitoring for Tank #1 from at least December 2011 through January 2012 and March 2012; for Tank #2 from at least April through May 2011 and December 2011; for Tank #4 in December 2011 and March 2012, in violation of WAC 173-360-335(2)(a).

Failure to Equip Piping with Corrosion Protection

3.13 WAC 173-360-310(3) requires the owners and operators to upgrade the piping associated with each UST system so that all metal piping that routinely contains regulated substances and is in contact with the ground must have corrosion protection ("CP").

3.14 The piping associated with the four UST systems are fiberglass-reinforced plastic with metal flex connectors at the turbines and dispensers.

3.15 Respondents failed to equip the metal flex connectors in contact with the ground at the dispenser associated with Tank #1 and in the turbine sump associated with Tank #4 from at least November 25, 2009 through April 30, 2014, in violation of WAC 173-360-310(3).

3.16 Respondents violated WAC 173-360-335(2)(a) and WAC 173-360-310(3).

3.17 Under Section 9006(d) of RCRA, 42 U.S.C. § 6991e(d), and 40 C.F.R. Part 19, EPA may assess a civil penalty of not more than \$16,000 per tank for each day of violation, issue an order requiring compliance, or both.

IV. CONSENT AGREEMENT

4.1. Respondents admit the jurisdictional allegations of this CAFO.

4.2. Respondents neither admit nor deny the specific factual allegations contained in this CAFO.

4.3. Respondents agree that this settlement will be considered prior history of noncompliance under RCRA for five years following the date of this CAFO for purposes of calculating penalty amounts in future enforcement actions.

4.4. As required by Section 9006(c) of RCRA, 42 U.S.C. § 6991e(c), EPA has taken into account the seriousness of the violation and any good faith efforts to comply with applicable requirements. After considering these factors, EPA has determined and Respondents agree that an appropriate penalty to settle this action is \$11,222.

4.5. Respondents agree to pay the total civil penalty set forth in Paragraph 4.4 within 30 days of the effective date of the Final Order contained in Part V of this CAFO, and to undertake the actions specified in the Final Order.

4.6. Payment under this CAFO may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier's check or certified check must be payable to the order of "Treasurer, United States of America" and delivered to the following address:

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

Respondents must note on the check the title and docket number of this action.

4.7. Respondents must serve photocopies of the check, or proof of other payment method, described in Paragraph 4.6 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-158
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101

Katherine Griffith, Compliance Officer
U.S. Environmental Protection Agency
Region 10, Mail Stop OCE-082
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101

4.8. If Respondents fail to pay the penalty assessed by this CAFO in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. If such a failure to pay occurs, Respondents may be subject to a civil action to collect any unpaid penalties, together with interest, handling charges, and nonpayment penalties, as set forth below. In any collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

4.9. If Respondents fail to pay any portion of the penalty assessed by this CAFO in full by its due date, Respondents shall also be responsible for payment of the following amounts:

4.9.1. Interest. Pursuant to 31 U.S.C. § 3717(a)(1), any unpaid portion of the assessed penalty shall bear interest at the rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621 from the effective date of the Final Order contained herein, provided, however, that no interest shall be payable on any portion of the assessed penalty that is paid within 30 days of the effective date of the Final Order contained herein.

4.9.2. Handling Charge. Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of \$15 shall be paid if any portion of the assessed penalty is more than 30 days past due.

4.9.3. Nonpayment Penalty. Pursuant to 31 U.S.C. § 3717(e)(2), a nonpayment penalty of 6% per annum shall be paid on any portion of the assessed penalty that is more than 90 days past due, which nonpayment shall be calculated as of the date the underlying penalty first becomes past due.

4.10. Under Section 9006(a)(3) of RCRA, 42 U.S.C. § 6991e(a)(3), a failure to take corrective action within the time specified in the Final Order may subject Respondents to additional civil penalties for each day of continued noncompliance.

4.11. The penalty described in Paragraph 4.4, including any additional costs incurred under Paragraphs 4.9 and 4.10, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.12. The undersigned representatives of Respondents certify that he or she is authorized to enter into the terms and conditions of this CAFO and to bind Respondents to this document.

4.13. The undersigned representatives of Respondents also certify that, as of the date of Respondents' signature of this CAFO, Respondents have corrected the violations alleged in Part III.

4.14. Except as described in Paragraphs 4.9 and 4.10, each party shall bear its own costs and attorneys fees in bringing or defending this action.

4.15. Respondents expressly waive any right to contest the allegations and waive any right to appeal the Final Order set forth in Part V.

4.16. Respondents waive any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondents may have with respect to any issue of fact or law set forth in this CAFO, including any right of judicial review under Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.


4.17. The provisions of this CAFO shall bind Respondents and their agents, servants, employees, successors, and assigns.

4.18. The above provisions are STIPULATED AND AGREED upon by Respondents and EPA Region 10.

DATED:

7/25/2014

FOR RESPONDENT:

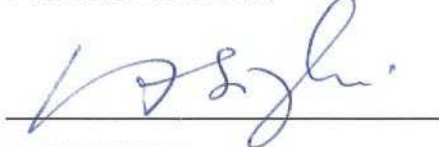


GURINDER BAINS

DATED:

7/25/14

FOR RESPONDENT:

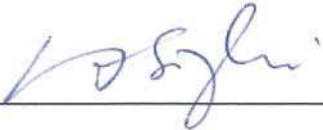


NABIN JOSHI

DATED:

7/25/14

FOR RESPONDENT:



NABIN JOSHI, AGENT and GOVERNING MEMBER
SHORT STOP LLC

DATED:

8/5/2014

FOR COMPLAINANT:



EDWARD J. KOWALSKI, Director
Office of Compliance and Enforcement
EPA Region 10

V. FINAL ORDER

5.1. The terms of the foregoing Parts I-IV are ratified and incorporated by reference into this Final Order. Respondents are ordered to comply with the terms of settlement.

5.2. Based on the findings contained in the Consent Agreement, Respondents are also ordered to comply with the following requirement pursuant to Section 9006(a)(1) of RCRA, 42 U.S.C. § 6991e(a)(1).

5.2.1. Respondents have an existing obligation, under WAC 173-360-310(3), to maintain the metal flex connectors at the dispenser associated with Tank #1 and in the turbine sump associated with Tank #4 from contact with the ground.

5.2.2. Respondents have an existing obligation, under WAC 173-360-335(2)(a), to monitor each of their USTs at least every 30 days for release detection. Respondents shall immediately comply with the release detection requirements in WAC 173-360-335(2)(a) for the USTs at the Facility.

5.2.3. Respondents shall provide documentation of compliance with the release detection requirements in WAC 173-360-335(2)(a) for the USTs at the Facility within 30 days of the effective date of this Final Order and every 45 days thereafter for six months. This will include submittal of all statistical inventory reconciliation (SIR) reports to EPA for Tanks #1, #2, #3 and #4 which were completed during each time period. Removal of a UST from the ground will eliminate the requirement for further testing of that UST under this subparagraph, but any SIR reports from prior tests must still be submitted to EPA.

5.2.4. Respondents shall provide documentation of compliance with the release detection requirements in WAC 173-360-350(3)(a) for the piping associated with the USTs at the Facility within 30 days of the effective date of this Final Order.

5.2.5. Respondents shall provide compliance documentation required to the following address:

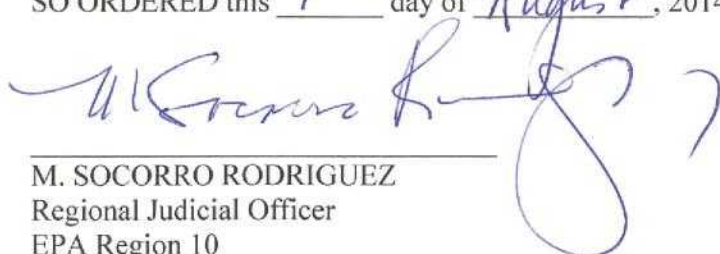
Katherine Griffith, Compliance Officer
U.S. Environmental Protection Agency
Region 10, Mail Stop OCE-082
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101

5.3. This CAFO constitutes a settlement by EPA of all claims for civil penalties under RCRA for the violations alleged in Part III. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This CAFO does not waive, extinguish, or otherwise affect Respondents' obligations to comply with all applicable provisions of RCRA and regulations promulgated or permits issued thereunder.

5.4. Notification of this action has been given to the Washington State Department of Ecology pursuant to Section 9006(a)(2) of RCRA, 42 U.S.C. § 6991e(a)(2).

5.5. This Final Order shall become effective upon filing.

SO ORDERED this 7th day of August, 2014.



M. SOCORRO RODRIGUEZ
Regional Judicial Officer
EPA Region 10

Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of: Gurinder Bains, Nabin Joshi, and Short Stop LLC, Docket No.: RCRA-10-2014-0053**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

The undersigned certifies that a true and correct copy of the document was delivered to:

Christopher Bellovary, Esquire
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-158
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101

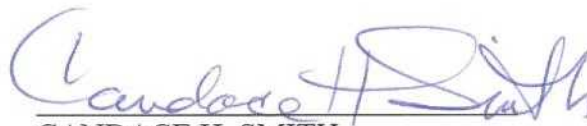
Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt to:

Gurinder Bains
765 S Thorp Highway
Ellensburg, Washington 98926

Nabin Joshi
2108 W Clearview Drive
Ellensburg, Washington 98926

Nabin Joshi, Registered Agent
Short Stop LLC
1307 N Dolarway Road
Ellensburg, WA 98926

DATED this 11th day of Aug., 2014.


CANDACE H. SMITH
Regional Hearing Clerk
EPA Region 10