



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8
1595 WYNKOOP STREET
DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

March 24, 2008

Ref: 8ENF-L

SENT VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Rose Marie Davis, Education Line Officer
Turtle Mountain Education Line Office
P.O. Box 30
School Street, Building #16
Belcourt, ND 58315

Dr. Angelita Felix, Acting Deputy Director
Office of the Deputy Director
Bureau of Indian Education
P.O. Box 829
Albuquerque, NM 87103-0829

Kevin Skenandore, Director
Office of the Director
Bureau of Indian Education
1840 C Street NW (MS-3609 MIB)
Washington, DC 20240

Re: In the Matter of Bureau of Indian Education, Bus
Garage, Turtle Mountain Reservation,
Docket No. RCRA-08-2008-0004
Complaint and Notice of Opportunity for Hearing

Dear Ms. Davis, Dr. Felix and Mr. Skenandore:

The enclosed Complaint and Notice of Opportunity for Hearing (Complaint) is being issued to the Bureau of Indian Education (BIE) by the U.S. Environmental Protection Agency Region 8 (EPA) for alleged underground storage tank (UST) violations at the Bus Garage facility located on Fish Lake Road North, in Belcourt, North Dakota, within the exterior boundaries of the Turtle Mountain Indian Reservation. 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 BIE, current facility owner and operator, failed to comply with the federal UST regulations codified at 40 C.F.R. Part 280, subpart D, for two USTs in violation of RCRA § 9003(c), 42 U.S.C. § 6991b(c). Specifically, the Complaint alleges that the facility failed to monitor the tanks every 30 days for leak detection as required by 40 C.F.R. § 280.41(a). EPA proposes a total penalty of \$17,688 for the violation alleged.

With regard to the Complaint and alleged RCRA violation, you have the right to a hearing to contest the factual allegations and/or proposed penalty. 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, BIE must file a written answer and one copy 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 (8RC)
U.S. EPA, Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

If BIE does not file an answer by the applicable deadline, it may be found in default. A default judgement may impose the full penalty proposed in the Complaint.

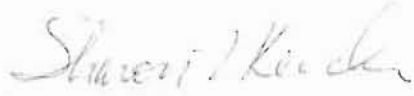
BIE has an opportunity to confer with the Administrator prior to the Complaint becoming final after the administrative proceedings subject to Part 22 have been fully exhausted, including the filing of an appeal with the Environmental Appeals Board (EAB) pursuant to 40 C.F.R. § 22.30. Within thirty (30) days of service of the EAB's final decision, BIE may file a written request with the Administrator seeking an opportunity to confer. This order will become final pursuant to section 6001(b) of RCRA, 42 U.S.C. § 6961(b), if no written request to confer is filed within the designated thirty (30) day period.

Whether or not you request a hearing, you may confer informally with EPA concerning the alleged violations 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 your Answer and/or requesting a hearing.

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 Kercher, Director
Technical Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

Enclosures:

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/ all enclosures:

David Brien, Chairman
Turtle Mountain Band of Chippewas
P.O. Box 900
Belcourt N.D. 58316

Rhonda Azure, Director
Environmental Division
Three Affiliated Tribes
204 W. Main Street
New Town, ND 58763

Don DeCoteau, UST Technician
Environmental Division
Three Affiliated Tribes
204 W. Main Street
New Town, ND 58763

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2008 MAR 29 PM 14:20

IN THE MATTER OF:)	Docket No. RCRA-08-2008-0004
)	
U.S. Department of Interior,)	COMPLAINT AND NOTICE OF
Bureau of Indian Education,)	OPPORTUNITY FOR HEARING
)	
Bus Garage Facility)	
Fish Lake Road North)	
Belcourt, ND 58316)	
Turtle Mountain Reservation)	
)	
Respondent.)	

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. EPA is authorized to issue orders to and assess penalties against federal facilities pursuant to RCRA §§ 6001(b)(1) and 9007, 42 U.S.C. §§ 6961(b)(1) and 6991f.

4. 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 tightness 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.

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

6. EPA is the "implementing agency" as that term is used at 40 C.F.R. § 280.12.

7. The Bureau of Indian Education, a bureau of the United States Department of the Interior, own and/or operate two 10,000 gallon (steel jacketed) double-walled tanks containing diesel fuel located at the BIE Bus Garage Facility (facility), Fish Lake Road North, Belcourt, North Dakota, within the exterior boundaries of the Turtle Mountain Indian Reservation. The tanks were installed in July 1997.

8. Respondent is a "person" as defined by section 1004(14) of RCRA, 42 U.S.C. § 6903(15).

9. Respondent is an "owner" and/or "operator" within the respective meanings of RCRA §§ 9001(3) and (4), 42 U.S.C. §§ 6991(3) and (4), 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.

10. Respondent's UST systems meet the performance standards for new USTs described in 40 C.F.R. § 280.20.

11. Respondent was provided advance notice of a planned UST inspection at the facility by an EPA representative on June 11, 2007, at least four working days prior to the inspection. A 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.

12. On June 19, 2007, EPA inspector Christopher Guzzetti (the inspector), accompanied by Don DeCoteau, Turtle Mountain Band of Chippewa UST Coordinator, conducted an inspection at the facility with the consent of a facility representative, to determine compliance with RCRA Subtitle I and the EPA regulations relating to USTs.

13. The facility representative stated that interstitial monitoring is used to conduct monthly leak detection.

14. According to the facility's log books reviewed at the time of inspection, the interstice on both tanks had not been checked for June through August, 2006, and November 2006 through April 2007, during the 12 month period prior to the date of inspection.

15. Because the piping is European safe suction, leak detection on the piping is not required.

16. Cathodic protection testing is not required at the facility because the tanks are jacketed steel and the piping is flexible plastic.

17. The facility uses self insurance for its financial responsibility mechanism.

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

19. Previous UST noncompliance at this facility, while owned and/or operated by the Bureau of Indian Affairs, was addressed in a formal settlement agreement filed in 2001.

20. 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.

21. 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, Respondent is liable for civil penalties up to \$11,000 per day per tank during which the violation continues.

22. Paragraphs 1 through 21 are incorporated by reference in each of the counts listed below.

COUNT 1
Failure to monitor every 30 days

23. 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.

24. For the period including the date of the inspection and 12 months prior (June 2006), monthly leak detection monitoring records were unavailable for the tanks for June through August, 2006, and November 2006 through April 2007.

25. Respondent's failure to monitor the tanks every 30 days for leak detection beginning June 2006, 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 prescribed by statute, i.e., the seriousness of the violations and any good faith efforts by Respondent to comply with the applicable requirements, Complainant proposes to assess a civil penalty of \$17,688 as follows:

COUNT	VIOLATION	PROPOSED PENALTY
Count 1	Failure to monitor tanks every 30 days, 40 C.F.R. § 280.41(a)	\$17,688

TOTAL PROPOSED PENALTY: \$17,688

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 I). 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 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 payment is made within thirty (30) calendar days of receipt of this Complaint, then no Answer need be filed. For more time for payment, Respondents may file a statement agreeing to pay the penalty within thirty (30) days of receipt of the Complaint, 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:

EPA Region 8 (Regional Hearing Clerk)
Mellon Bank
P.O. Box 360859M
Pittsburgh, PA 15251

A copy of the check must be mailed simultaneously to:

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

Payment of the penalty in this manner shall constitute consent by Respondents to the assessment of the proposed penalty and a waiver of Respondents' right 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 this 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 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 St., Denver, Colorado 80202-1129, and a copy must be sent to the enforcement attorney listed below.

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 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.

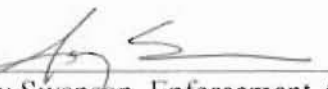
Date: 3/20/2008

By: 
David J. Janik, Director
Legal Enforcement Program

Date: 19 March 2008

By: 
Sharon L. Kercher, Director
Technical Enforcement Program

Date: 3/20/08

By: 
Amy Swanson, Enforcement Attorney
U.S. EPA, Region 8
1595 Wynkoop St. (8ENF-L)
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:

Rose Marie Davis, Education Line Officer
Turtle Mountain Education Line Office
P.O. Box 30
School Street, Building #16
Belcourt, ND 58316

Dr. Angelita Felix, Acting Deputy Director
Office of the Deputy Director
Bureau of Indian Education
P.O. Box 829
Albuquerque, NM 87103-0829

Kevin Skenandore, Director
Office of the Director
Bureau of Indian Education
1840 C Street NW (MS-3609 MIB)
Washington, DC 20240

Date: March 24, 2008

By: Judith M. McTernan