



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10

1200 Sixth Avenue, Suite 900
Seattle, WA 98101-3140

RECEIVED

OFFICE OF
COMPLIANCE AND ENFORCEMENT

APR 11 2011

APR 8 2011

Reply To: OCE-082

U.S. EPA REGION 10
OFFICE OF RESOURCES COUNSEL
FOR SETTLEMENT PURPOSES ONLY
PRIVILEGED AND CONFIDENTIAL

COMMUNICATION – SENT BY CERTIFIED MAIL 7009 2250 0001 6624 1207
RETURN RECEIPT REQUESTED

Joseph Oh, individually and as
Governing Member of Holly Investment, LLC
4905 70th Avenue West
University Place, Washington 98467

Re: Notice of Intent to File Administrative Complaint and Compliance Order for Violations
of Federal Underground Storage Tank (UST) Regulations

Dear Mr. Oh:

The U.S. Environmental Protection Agency (EPA) has documented violations of federal UST regulations issued under Subtitle I of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6991 *et seq.* for failure to perform release detection for tanks and piping and to conduct cathodic protection testing on the piping at Totem Grocery & Gas in Marysville, Washington, within the Tulalip Reservation.

RCRA § 9006(d)(2), as amended by the Debt Collection Improvement Act of 1996, authorizes EPA to assess penalties that can range up to \$16,000 per tank per day for each violation. The purpose of this letter is to inform you that EPA is prepared to initiate an action for civil penalties and correction of these violations. By this letter, we wish to provide you with the opportunity to discuss this matter with EPA prior to the filing of the complaint and compliance order.

In general, EPA favors pre-filing discussions, as they help ensure that we have all relevant information, and can lead to resolution of enforcement matters without resorting to the time and expense of litigation. If we are able to reach a settlement, EPA would not file a complaint and compliance order; instead, we would resolve the case with an administrative consent agreement and final order.

Such settlement must include at a minimum, your agreement to certify current compliance with the UST regulations, to implement procedures to ensure future compliance, and

Attachment 2

to pay an appropriate penalty. Once a consent agreement and final order is signed by all parties, EPA generally issues a press release announcing the settlement.

It is EPA's view that a total penalty of \$40,227 is an appropriate settlement amount to resolve the alleged violations. This amount was determined in accordance with OSWER Directive 9610.12, U.S. EPA Penalty Guidance for Violations of the UST Regulations, dated November 14, 1990, (UST Penalty Guidance). A copy of the UST Penalty Guidance is enclosed. Also enclosed is a copy of an EPA memorandum dated December 29, 2008, entitled "Amendments to EPA's Civil Penalty Policies to Implement the 2008 Civil Monetary Penalty Inflation Adjustment Rule (Effective January 12, 2009)," which modifies the UST Penalty Guidance to take into account inflation. The enclosed document entitled "Description of Violations and Summary of Proposed Penalty" explains how EPA calculated the proposed penalty.

Also enclosed is EPA's Small Business Regulatory Enforcement and Fairness Act (SBREFA) information sheet, which provides information on compliance assistance that may be helpful to you.

If we do not settle within 90 days of initiating negotiations, EPA will either file an administrative complaint and compliance order and the case will be assigned to an administrative law judge, or EPA will refer the matter to the Department of Justice for filing in federal district court. If we do not reach agreement in this matter within the time period allotted for settlement discussions, EPA reserves the right to seek the maximum allowable penalty at law in litigation of this case.

If you wish to schedule a meeting, or if you have any questions, please contact Deborah Hilsman at (206) 553-1810 within 20 days of receipt of this letter. Thank you for your prompt attention to this important matter.

Sincerely,



Peter Contreras, Manager
Ground Water Unit
Office of Compliance and Enforcement

cc: Kurt Nelson, Environmental Manager, The Tulalip Tribes of Washington
Arnie Kim, Registered Agent, Holly Investment, LLC

Enclosures:

1. Description of Violations and Summary of Proposed Penalty
2. UST Penalty Guidance
3. EPA Inflation Memo
4. SBREFA Information Sheet

Description of Violations and Summary of Proposed Penalty

I. Introduction

On September 14, 2009 and July 1, 2010, the U.S. Environmental Protection Agency (EPA) inspected Totem Grocery & Gas service station, located in Marysville, Washington within the Tulalip Reservation. Joseph Oh and his company, Holly Investment, LLC (Respondents), have owned and/or operated Totem Grocery & Gas since October 13, 2006. During the inspections, EPA documented violations of federal underground storage tank (UST) release detection and corrosion protection regulations. Following is a description of the relevant UST regulations, the violations alleged at each facility, and a summary of the proposed penalty.

II. Federal Release Detection Requirements

A. Release Detection for Petroleum Tanks

40 C.F.R. § 280.41(a) requires owners and operators of petroleum UST systems to monitor tanks at least every 30 days for releases using the methods described in 40 C.F.R. § 280.43. A method listed in 40 C.F.R. § 280.43 is the use of an automatic tank gauge (ATG).

40 C.F.R. § 280.43(d)(1) describes the performance standard for an ATG. It requires that an ATG's automatic product level monitor test be able to detect a 0.2 gallon per hour leak rate from any portion of the tank that routinely contains product. To use this method of release detection, the UST owner/operator must obtain monthly leak test reports from the ATG.

B. Release Detection for Piping (also referred to as Lines)

40 C.F.R. § 280.41(b)(1) requires owners and operators of petroleum UST systems to equip pressurized piping with an automatic line leak detector (ALLD) and have an annual test of the operation of the ALLD conducted in accordance with § 280.44(a). § 280.41(b)(1) also requires the owner/operator to have an annual line tightness test conducted in accordance with § 280.44(b) or have monthly monitoring conducted in accordance with § 280.44(c).

III. General Operating Procedures: Corrosion Protection

40 C.F.R. § 280.31 requires owners and operators of steel UST systems to ensure all corrosion protection systems are operated and maintained to continuously provide corrosion protection to the metal components of that portion of the tank and piping that routinely contain regulated substances and are in contact with the ground. 40 C.F.R. § 280.31(b)(1) requires all UST systems equipped with cathodic protection systems be inspected for proper operation by a qualified cathodic protection tester within 6 months of installation and at least every 3 years thereafter or according to another reasonable timeframe established by the implementing agency.

IV. Violations and Penalty Calculations

A. Release Detection

1. Description of Violations

Totem Grocery & Gas has two USTs which were installed in August 1987. Tank #1 contains unleaded gasoline and can hold 8,000 gallons when full. Tank #2 contains less than ½ inch of product but can hold 10,000 gallons when full. Tank #2 was out of operation at the time of the 2009 and 2010 EPA inspections, but when in operation, it contained gasoline. There are two pressurized lines that are single-walled fiberglass-reinforced plastic. Each line is equipped with an ALLD.

During the September 14, 2009 inspection, the facility representative, John Kim, stated that the facility last used Tank #2 the previous month, August 2009. At the time of this inspection, there was no measuring stick available to verify the amount of fuel that remained in the tank. Mr. Kim indicated that the gasoline was pumped out of Tank #2 until no more could be pumped out, but that a vacuum truck was not used to pump out any residual product. During the July 1, 2010 inspection, a measuring stick was used to determine that there was less than ½ inch of product remaining in Tank #2.

During the inspections on September 14, 2009, and July 1, 2010, the facility representatives indicated the primary release detection method(s) used for the tanks is automatic tank gauging and for the piping ALLDs and line tightness tests (LTTs). The inspectors observed that the ATG equipment used at the facility was an Incon, TS-1000. At each inspection, the inspector requested release detection documentation for the previous 12 months. There were no passing monthly leak test-report slips available from the ATG for Tanks #1 and #2. The monthly leak test report slips for Tanks #1 and #2 were either missing, or indicated the leak tests were aborted, or indicated that the tank had failed the particular leak test. After Tank #2 was taken out of service and emptied to less than one inch of product, release detection was no longer required.

During the September 14, 2009 inspection, the inspectors observed that the last available ALLD and LTT test results for each system were dated August 22, 2006. On November 25, 2009, the facility obtained passing ALLD and LTT test results for both lines and faxed them to EPA in December 2009.

Accordingly, Joseph Oh and Holly Investment, LLC (Respondents) failed to meet the tank release detection requirements of 40 C.F.R. § 280.41(a) for Tank #1 from at least September 13, 2008 through July 1, 2010 and for Tank #2 from at least September 13, 2008 through August 13, 2009. Respondents also failed to meet the piping release detection requirements of 40 C.F.R. § 280.41(b) for Line #1 from at least August 23, 2007 – November 24, 2009 and for Line #2 from at least August 23, 2007 – August 13, 2009.

2. Proposed Penalty (Counts 1 – 4)

COUNT 1: Failure to conduct tank release detection as required by 40 C.F.R. § 280.41(a) for Tank #1 from at least September 13, 2008 - July 1, 2010

Gravity Component Calculation (Count 1)

Matrix Value (MV) = \$1,930 [\$1,930 per tank (major/major) for violations that occurred after March 15, 2004 through January 12, 2009]

\$2,130 [\$2,130 per tank (major/major) for violations that occurred after January 12, 2009]

Violator Specific Adjustments (VSA) = 1.0*

Environmental Sensitivity (ES) = 1.0**

Days of Noncompliance Multiplier (DNM) = 3.5 (657 days)

First Period = 09/13/2008 – 01/12/2009 = 122 days = 1.5 DNM

Second Period = 01/13/09 – 07/01/2010 = 535 days = 3.5 DNM – 1.5 DNM = 2.0 DNM

Gravity Component = MV x VSA x ES x DNM

\$1,930 x 1.0 x 1.0 x 1.5 = \$2,895 (rounded)

\$2,130 x 1.0 x 1.0 x 2.0 = \$4,260 (rounded)

\$7,155

* For purposes of this pre-filing calculation, no adjustments were made to the VSA.

** ES has not been determined and no adjustment will be made for it at this time.

Economic Benefit Component Calculation (Count 1)

The economic benefit component for this calculation represents the economic advantage that has been gained by avoiding expenditures to maintain a functional release detection method at this facility. For purposes of this pre-filing calculation, economic benefit was not calculated for this violation because of insufficient information concerning the cause of the violation.

Total Penalty for Count 1 = Gravity Component + Economic Benefit = \$7,155

COUNT 2: Failure to conduct tank release detection as required by 40 C.F.R. § 280.41(a) for Tank #2 from at least September 13, 2008 – August 13, 2009

Gravity Component Calculation (Count 2)

Matrix Value (MV) = \$1,930 [\$1,930 per tank (major/major) for violations that occurred after March 15, 2004 through January 12, 2009]

\$2,130 [\$2,130 per tank (major/major) for violations that occurred after January 12, 2009]

Violator Specific Adjustments (VSA) = 1.0*

Environmental Sensitivity (ES) = 1.0**

Days of Noncompliance Multiplier (DNM) = 2.5 (335 days)

First Period = 09/13/2008 – 01/12/2009 = 122 days = 1.5 DNM

Second Period = 01/13/09 – 08/13/2009 = 213 days = 2.5 DNM – 1.5 DNM = 1.0 DNM

Gravity Component = MV x VSA x ES x DNM

\$1,930 x 1.0 x 1.0 x 1.5 = \$2,895 (rounded)

\$2,130 x 1.0 x 1.0 x 1.0 = \$2,130 (rounded)

\$5,025

* For purposes of this pre-filing calculation, no adjustments were made to the VSA.

** ES has not been determined and no adjustment will be made for it at this time.

Economic Benefit Component Calculation (Count 2)

See explanation in Count 1.

Total Penalty for Count 2= Gravity Component + Economic Benefit = \$5,025

COUNT 3: Failure to conduct piping release detection as required by 40 C.F.R. § 280.41(b) for Line #1 from at least August 23, 2007 – November 24, 2009

Gravity Component Calculation (Count 3)

Matrix Value (MV) = \$1,930 [\$1,930 per line (major/major) for violations that occurred after March 15, 2004 through January 12, 2009]

\$2,130 [\$2,130 per line (major/major) for violations that occurred after January 12, 2009]

Violator Specific Adjustments (VSA) = 1.00*

Environmental Sensitivity (ES) = 1.0**

Days of Noncompliance Multiplier (DNM) = 4.0 (824 days)

First Period = 08/23/07 – 01/12/2009 = 508 days = 3.0 DNM

Second Period = 01/13/09 – 11/24/09 = 316 days = 4.0 DNM – 3.0 DNM = 1.0 DNM

Gravity Component = MV x VSA x ES x DNM

\$1,930 x 1.00 x 1.0 x 3.0 = \$5,790 (rounded)

\$2,130 x 1.00 x 1.0 x 1.0 = \$2,130 (rounded)

\$7,920

* For purposes of this pre-filing calculation, no adjustments were made to the VSA.

** ES has not been determined and no adjustment will be made for it at this time.

Economic Benefit Component Calculation (Count 3)

The economic benefit component for this calculation represents the economic advantage that Respondents gained by avoiding operation and maintenance expenditures to conduct the 2007 and 2008 annual line tightness and automatic line leak detector tests.

On March 7, 2011, EPA received a quote from SME Solutions of \$150 per line for the cost of a line tightness test and an automatic line leak detector test. Therefore, an avoided expenditure amount of \$300 was used to calculate the costs Respondents avoided as result of their noncompliance for Line #1's 2007 and 2008 tests.

Avoided Expenditures (AE) = \$300

Interest (I) = 8.7%

Number of Days (Days) = 824

Marginal Tax Rate (MTR) = 15%

Avoided Costs = $(AE + \frac{AE \times I \times \text{Days}}{365}) \times (1 - \text{MTR}) =$
 $(\$300 + \frac{\$300 \times .087 \times 824}{365}) \times (1 - .15) = \305 (rounded)

Total Penalty for Count 3 = Gravity Component + Economic Benefit = \$8,225

COUNT 4: Failure to conduct piping release detection as required by 40 C.F.R. § 280.41(b) for Line #2 from at least August 23, 2007 – August 13, 2009

Gravity Component Calculation (Count 4)

Matrix Value (MV) = \$1,930 [\$1,930 per line (major/major) for violations that occurred after March 15, 2004 through January 12, 2009]

\$2,130 [\$2,130 per line (major/major) for violations that occurred after January 12, 2009]

Violator Specific Adjustments (VSA) = 1.00*

Environmental Sensitivity (ES) = 1.0**

Days of Noncompliance Multiplier (DNM) = 3.5 (721 days)

First Period = 08/23/07 – 01/12/2009 = 508 days = 3.0 DNM

Second Period = 01/13/09 – 08/13/2009 = 213 days = 3.5 DNM – 3.0 DNM = 0.5 DNM

Gravity Component = MV x VSA x ES x DNM

$$\begin{array}{rcl}
 \$1,930 \times 1.00 \times 1.0 \times 3.0 & = & \$5,790 \text{ (rounded)} \\
 \$2,130 \times 1.00 \times 1.0 \times 0.5 & = & \underline{\$1,065} \text{ (rounded)} \\
 & & \underline{\$6,855}
 \end{array}$$

* For purposes of this pre-filing calculation, no adjustments were made to the VSA.

** ES has not been determined and no adjustment will be made for it at this time.

Economic Benefit Component Calculation (Count 4)

The economic benefit component for this calculation represents the economic advantage that Respondents gained by avoiding operation and maintenance expenditures to conduct the 2007 and 2008 annual line tightness and automatic line leak detector tests.

On March 7, 2011, EPA received a quote from SME Solutions of \$150 per line to conduct a line tightness test and an automatic line leak detector test. Therefore, an avoided expenditure amount of \$300 was used to calculate the costs Respondents avoided as result of their noncompliance for Line #2's 2007 and 2008 tests.

Avoided Expenditures (AE) = \$300

Interest (I) = 8.7%

Number of Days (Days) = 721

Marginal Tax Rate (MTR) = 15%

$$\begin{aligned}
 \text{Avoided Costs} &= (\text{AE} + \frac{\text{AE} \times \text{I} \times \text{Days}}{365}) \times (1 - \text{MTR}) = \\
 &(\$300 + \frac{\$300 \times .087 \times 721}{365}) \times (1 - .15) = \$299 \text{ (rounded)}
 \end{aligned}$$

Total Penalty for Count 4= Gravity Component + Economic Benefit = \$7,154

Total Proposed Penalty for Release Detection Violations (Counts 1 – 4) = \$27,559

B. Corrosion Protection

1. Description of Violation

During the September 14, 2009 and July 1, 2010 inspections of Totem Grocery & Gas, the EPA inspectors observed that both tanks are STI-P3 tanks. A STI-P3 tank is a steel tank manufactured to meet standards set by the Steel Tank Institute to protect the tank from external corrosion. Tanks that meet these standards have: 1) a protective dielectric coating, 2) dielectric bushings which isolate the tank from the piping, and 3) cathodic protection using galvanic (sacrificial) anodes. During the EPA inspections, the inspectors also observed that, although the lines were constructed of fiberglass reinforced plastic, each line had a metal flex connector in contact with the ground where the line connected at the dispenser and at the turbine sump. In March 2003, sacrificial anodes were installed and tested at each of the four dispensers to provide cathodic protection for the metal flex connectors on each line. The cathodic protection system for the two tanks was tested in 2006 and 2009, but the anodes at the dispensers were not tested.

Subsequently, the anodes at the dispensers were tested on October 15, 2010. The metal flex connector at each turbine sump has never been equipped with cathodic protection.

Accordingly, Respondents failed to meet the corrosion protection requirement of 40 C.F.R. § 280.31(b)(1) for the piping lines to Tanks #1 and #2 from October 13, 2006 (when Respondents took ownership) through the present (for purposes of this calculation, March 18, 2011).

2. Proposed Penalty

COUNT 5: Failure to provide cathodic protection as required by 40 C.F.R. § 280.31(b)(1)

Gravity Component Calculation (Count 5)

Matrix Value (MV) = \$1,940 [\$970 per line (major/moderate) for violations that occurred after March 15, 2004 through January 12, 2009]

\$2,120 [\$1,060 per line (major/moderate) for violations that occurred after January 12, 2009]

Violator Specific Adjustments (VSA) = 1.0*

Environmental Sensitivity (ES) = 1.0**

Days of Noncompliance Multiplier (DNM) = 6.0 (1617 days)

First Period = 10/13/06 – 01/12/2009 = 822 days = 3.5 DNM

Second Period = 01/13/09 – 03/18/11 = 795 days = 6.0 DNM – 3.5 DNM = 2.5 DNM

Gravity Component = MV x VSA x ES x DNM

\$1,940 x 1.0 x 1.0 x 3.5 = \$6,790 (rounded)

\$2,120 x 1.0 x 1.0 x 2.5 = \$5,300 (rounded)

\$12,090

* For purposes of this pre-filing calculation, no adjustments were made to the VSA.

** ES has not been determined and no adjustment will be made for it at this time.

Economic Benefit Component Calculation (Count 5)

The economic benefit component for this calculation represents the economic advantage that has been gained by delaying capital expenditures to install and maintain cathodic protection on the lines at the turbine sump where the metal flex connectors are in contact with the ground. Economic benefit also includes the advantage gained by avoiding expenditures to conduct cathodic protection testing on each line at the dispenser and turbine sumps.

On March 7, 2011, EPA received a quote from Norton Corrosion of \$1500 to install two anodes at each turbine sump and conduct the cathodic protection test. Therefore, a delayed expenditure amount of \$1500 was used to calculate the costs Respondents gained as result of their noncompliance. Norton Corrosion informed EPA that there is no additional cost to conduct cathodic protection testing on the lines at the same time testing is conducted on the tanks. Therefore, EPA only calculated the delayed economic benefit from failing to install corrosion protection on the lines at the turbine sump.

Delayed Expenditures (DE) = \$1,500

Interest (I) = 8.7%

Number of Days (Days) = 1617

Delayed Costs = $(\text{DE} \times \text{I} \times \text{Days} / 365) =$
 $(\$1,500 \times .087 \times 1617 / 365) = \578 (rounded)

Total Penalty for Count 5= Gravity Component + Economic Benefit = \$12,668

Total Proposed Penalty for Corrosion Protection (Counts 5) = \$12,668

V. Total Proposed Penalty for All Violations

Total Proposed Penalty Calculation for Release Detection	\$27,559
Total Proposed Penalty for Corrosion Protection	\$12,668
Total Proposed Penalty Calculated	<u>\$40,227</u>