

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

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In the Matter of:) Docket No. RCRA-05-2010-0017
)
Sukhjinder S. Virk, Owner)
Virks Gas and Grocery) Proceeding to Assess a Civil Penalty and
Michigan City, Indiana,) Issue a Compliance Order Under Section
) 9006 of the Solid Waste
) Disposal Act, as amended
Respondent.) 42 U.S.C. § 6991e

RESPONDENT'S ANSWER TO COMPLAINT

COMES NOW Respondent, Sukhjinder S. Virk, Owner Virks Gas and Grocery, Michigan City, Indiana (hereinafter "Virk" or "Respondent") by counsel Paul B. Poracky and for his Answer to the U.S. EPA's Complaint, would state as follows:

1. This is an administrative action to assess a civil penalty under Section 9006(d) of the Solid Waste Disposal Act, as amended (SWDA), 42 U.S.C. § 6991e(d), and to issue a compliance order under SWDA Section 9006(a), 42 U.S.C. § 6991e(a).

ANSWER: Respondent admits that the Complaint is an administrative action seeking assessment of a civil penalty and the issuance of a compliance order pursuant to the cited sections in rhetorical paragraph 1.

2. Complainant is, by lawful delegation, the Director, Land and Chemicals Division, United States Environmental Protection Agency (U.S. EPA), Region 5.

ANSWER: Respondent, based upon information and belief, admits the allegations as contained in rhetorical paragraph 2.

3. Respondent is Sukhjinder S. Virk, an individual.

ANSWER: The Respondent admits the allegations as asserted in rhetorical paragraph 3.

Statutory and Regulatory Background

4. Subchapter IX of SWDA, 42 U.S.C. § 6991 et seq., regulates the installation and use of underground storage tanks (USTs), which are defined in Section 9001(1) of SWDA, 42 U.S.C. § 6991(1), and 40 C.F.R. § 280.12.

ANSWER: Respondent admits the allegations as stated in rhetorical paragraph 4.

5. Section 9003 of SEDA, 42 U.S.C. § 6991b, required the Administrator to promulgate release detection, prevention and correction regulations applicable to all owners and operators of USTs. These regulations are codified in 40 C.F.R. Part 280.

ANSWER: Respondent admits the allegations as stated in rhetorical paragraph 5.

6. Under Section 9004 of SWDA, 42 U.S.C. § 6991c, the Administrator of U.S. EPA (the Administrator) may approve a state program to administer the UST program in lieu of the federal program when the Administrator finds that the state program meets certain conditions. Violations of any requirement or standard of a State provision approved under SWDA Section 9004, 42 U.S.C. § 6991c, are subject to the assessment of civil penalties and issuance of compliance orders as provided in Section 9006 of SWDA, 42 U.S.C. § 6991e.

ANSWER: Respondent admits the allegations as stated in rhetorical paragraph 6.

7. Pursuant to Section 9004 of SWDA, 42 U.S.C. § 6991c, the Administrator of U.S. EPA approved the State of Indiana's application to administer a state UST program in lieu of the federal government's program effective August 11, 2006. 71 Fed. Reg. 39213 (July 12, 2006).

The U.S. EPA-approved Indiana regulations are codified at 329 Indiana Administrative Code (IAC) Article 9.

ANSWER: Respondent admits the allegations as stated in rhetorical paragraph 7.

8. Section 9006 of SWDA, 42 U.S.C. § 6991e, authorizes U.S. EPA to initiate an enforcement action against any person found to be in violation of any requirement or standard of a State program approved pursuant to Section 9004 of SWDA, 42 U.S.C. § 6991c.

ANSWER: Respondent admits the allegations as stated in rhetorical paragraph 8.

9. U.S. EPA has provided notice of the issuance of this Administrative Complaint and Compliance Order to the State of Indiana pursuant to SWDA Section 9006(a)(2), 42 U.S.C. § 6991e(a)(2).

ANSWER: Respondent admits the allegations as stated in rhetorical paragraph 9.

General Allegations

10. Respondent, Sukhjinder S. Virk, is a “person”, as defined in 329 IAC 9-1-35.2 [40 C.F.R. § 280.12].

ANSWER: Respondent admits the allegations as stated in rhetorical paragraph 10.

11. Respondent is the owner of the Virks Gas and Grocery facility, Facility I.D. # 11687, at 702 IN Highway 212. Michigan City, Indiana.

ANSWER: Respondent admits the allegations as stated in rhetorical paragraph 11.

12. There are three 8,000 gallon underground tanks at the Virks Gas and Grocery facility for holding gasoline. All three are made of fiberglass and have fiberglass piping.

ANSWER: Respondent admits the allegations as stated in rhetorical paragraph 12.

13. The three 8,000 gallon tanks at the Virks Gas and Grocery facility are “underground storage tanks”, as defined in 42 U.S.C. § 6991(10) and 329 IAC 9-1-47.1 [40 C.F.R. § 280.12].

ANSWER: Respondent admits the allegations as stated in rhetorical paragraph 13.

14. The three 8,000 gallon tanks at the Virks Gas and Grocery facility, along with their connected underground piping, underground ancillary equipment, and containment system (if any) constitute UST systems, as defined in 329 IAC 9-1-49 [40 C.F.R. § 280.12].

ANSWER: Respondent admits the allegations as stated in rhetorical paragraph 14.

15. The three 8,000 gallon tanks at the Virks Gas and Grocery facility, along with their connected underground piping, underground ancillary equipment, and containment system (if any) constitute petroleum UST systems, as defined by 329 IAC 9-1-36 [40 C.F.R. § 280.12].

ANSWER: Respondent admits the allegations as stated in rhetorical paragraph 15.

16. Respondent is the owner, as defined in 329 IAC 9-1-35.1 [40 C.F.R. § 280.12], of the three underground storage tanks, their connected underground piping, underground ancillary equipment and containment system (if any) at the Virks Gas and Grocery facility.

ANSWER: Respondent admits the allegations as stated in rhetorical paragraph 16.

17. The Indiana Department of Environmental Management (IDEM) inspected the Virks Gas and Grocery facility on July 9, 2008.

ANSWER: Respondent admits the allegations as stated in rhetorical paragraph 17.

18. U.S. EPA conducted compliance inspections at the Virks Gas and Grocery facility on October 14, 2008 and again on December 9, 2008.

ANSWER: Respondent admits the allegations as stated in rhetorical paragraph 18.

19. Pursuant to Section 9006 of SWDA, 42 U.S.C. § 6991e, and based on the information alleged in this Complaint, Respondent violated State requirements approved pursuant to Section 9004 of SWDA, 42 U.S.C. § 6991c.

ANSWER: The Respondent denies the allegations as stated in rhetorical paragraph 19.

Count 1

20. Paragraphs 1 through 19 of this Complaint are re-alleged and incorporated here by reference.

ANSWER: Respondent hereby reincorporates his answers to paragraphs 1 through 19 of the Complaint as if fully set forth herein.

21. 329 IAC 9-7-1(a)(1) [40 C.F.R. § 280.40(a)(1)] requires owners and operators of UST systems to provide a release detection method capable of detecting a release from a tank or

piping that routinely contains product. 329 IAC 9-7-2 [40 C.F.R. § 280.41] includes additional release detection requirements applicable to petroleum UST systems.

ANSWER: Respondent admits the allegations as stated in rhetorical paragraph 21.

22. All three of the tanks that the Virks Gas and Grocery facility were connected to an automatic tank gauging system that is designed to detect releases from all three of the underground storage tanks and associated piping. At not time relevant to this Complaint has there been any other method for detecting releases from the tanks or associated piping in use at the Virks Gas and Grocery facility that met the requirements of 329 IAC 9-7-1(a)(1) and 329 IAC 9-7-2 [40 C.F.R. §§ 280.40(a) and 280.41].

ANSWER: Respondent admits the allegations as stated in rhetorical paragraph 22.

23. At the time of the IDEM inspection that took place on July 9, 2008 at the Virks Gas and Grocery facility, the automatic tank gauging system was malfunctioning and did not provide a method for detecting releases.

ANSWER: The Respondent would admit that on July 9, 2008 there was a problem with the automatic tank gauging system and its correct functioning.

24. At the time of the U.S. EPA inspection that took place on October 14, 2008, the automatic tank gauging system at the Virks Gas and Grocery facility was still malfunctioning and did not provide a method for detecting releases.

ANSWER: The Respondent would admit that on October 14, 2008 there was a problem with the automatic tank gauging system and its correct functioning.

25. On October 14, 2008, U.S. EPA issued the facility a Field Citation for inadequate operation or maintenance of automatic tank gauging.

ANSWER: Respondent admits the allegations as stated in rhetorical paragraph 25.

26. At the time of the U.S. EPA inspection that took place on December 9, 2009, the automatic tank gauging system at the Virk's Gas and Grocery facility was still malfunctioning and did not provide a method for detecting releases.

ANSWER: The Respondent would admit that on December 9, 2008 there was a problem with the automatic tank gauging system and its correct functioning.

27. On February 5, 2009, U.S. EPA withdrew the Field Citation due to Respondent's failure to comply within 30 days.

ANSWER: Respondent admits the allegations as stated in rhetorical paragraph 27.

28. Respondent's failure to provide a release detection method capable of detecting a release from tank or piping that routinely contains product at the Virks Gas and Grocery facility violates 329 IAC 9-7-1(a)(1) and 329 IAC 9-7-2 [40 C.F.R. §§ 280.40(a)(1) and 280.41], and is subject to the assessment of civil penalties and issuance of compliance orders as provided in Section 9006 of SWDA, 42 U.S.C. §6991e.

ANSWER: The Respondent, based upon information and belief, would state that the leak detection equipment was malfunctioning on the aforementioned date of July 9, 2008, October 14, 2008 and December 9, 2008, however, based upon tank tightness testing and information as conveyed by Respondent's tenant, the Respondent verily believes that the equipment was otherwise capable of detecting releases from the tank or piping, and asserts that there were no releases.

WHEREFORE, the Respondent, Sukhjinder S. Virk, Owner of Virks Gas and Grocery, Michigan City, Indiana, respectfully request that this matter be set for hearing on issues for adjudicatory purposes and considerations of the appropriateness of the suggested monetary penalty amount.

Respectfully submitted,

KORANSKY, BOUWER & PORACKY, P.C.

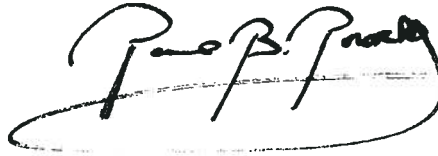
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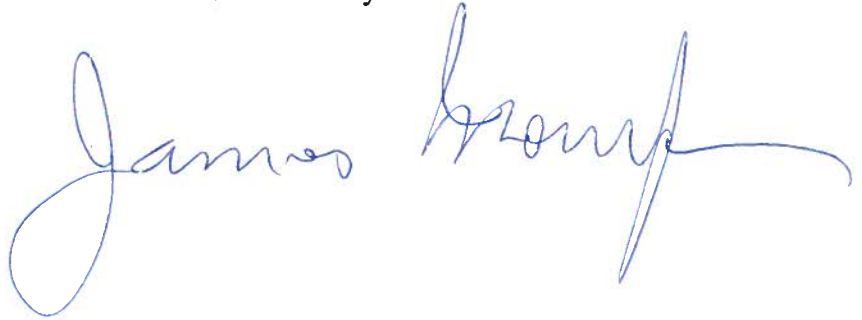
Certificate of Service

I certify that on the 13TH day of August, 2010, the original of *Respondent's Answer to Complaint* was hand filed with the Regional Hearing Clerk by James Thompson, and that file stamped copies of the Answer were served upon each party or attorney of record herein by hand delivery by James Thompson.

KORANSKY, BOUWER & PORACKY, P.C.



By: _____
Paul B. Poracky



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