



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

1595 Wynkoop Street  
DENVER, CO 80202-1129  
Phone 800-227-8917  
<http://www.epa.gov/region08>

July 6, 2007

Ref: 8RC

Bonnie Frazer, Registered Agent  
United Food Store, Inc.  
900 Schofield Lane  
Farmington, NM 87401

Re: Correction of Docket Number in the  
Matter of United Special, Inc., Complaint  
and Notice of Opportunity for Hearing

Dear Ms. Frazer:

On June 29, 2007, the Environmental Protection Agency filed a Complaint and Notice of Opportunity for Hearing in the matter of United Special, Inc. The original docket number issued was SDWA-08-2007-0063. This is to inform you that the docket number should read **RCRA-08-2007-0002**.

Enclosed is a corrected copy of the front page of the original Complaint. Please note this change of the docket number and any correspondence referencing this matter use the docket number **RCRA-08-2007-0002**.

If you have any questions please feel free to contact me at 303-312-6765.

Sincerely,

A handwritten signature in cursive script that reads "Tina Artemis".

Tina Artemis  
Paralegal/Regional Hearing Clerk

Enclosure

cc: Brenda Morris

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

2007 JUN 29 AM 10:57

RCRA-08-2007-0002

Docket No. ~~SDWA-08-2007-0063~~ *ama*

IN THE MATTER OF: )

United Special, Inc. )  
900 Schofield Lane )  
Farmington, NM 87401 )

d/b/a )

7-2-11 Store #41 )  
435 Goddard Ave. )  
Ignacio, CO 81137 )

(EPA ID Number: 1010006) )

Respondents )

**COMPLAINT AND NOTICE OF  
OPPORTUNITY FOR HEARING**

**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" which contain "regulated substances."
2. EPA has jurisdiction over this matter pursuant to RCRA § 9006, 42 U.S.C. § 6991e.
3. 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 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.

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

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

6. Respondent owns and/or operates the following tanks at the 7-2-11 Store #41 facility ("facility"), located at 435 Goddard Avenue, Ignacio, CO, within the exterior boundaries of the Southern Ute Indian Reservation:

Tank 1: a 6,000 gal. steel tank containing premium unleaded gasoline installed in 1983;

Tank 2: a 6,000 gal. steel tank containing unleaded gasoline installed in 1983;

Tank 3: a 6,000 gal. steel tank containing diesel installed in 1983; and

Tank 4: a 6,000 gal. fiberglass reinforced plastic (FRP) tank containing unleaded gasoline installed in 1999.

7. Respondent, United Special, Inc., incorporated in New Mexico and doing business in Colorado as 7-2-11 Store #41, is a "person" as defined by section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and an "owner" or "operator" within the respective meanings of RCRA §§ 9001 (B)(3) and (4), 42 U.S.C. §§ 6991 (B)(3) and (4), and 40 C.F.R. § 280.12, of four "petroleum underground storage tank systems" ("USTs" or "tanks") as defined by RCRA § 9001(B) (10), 42 U.S.C. § 6991(B)(10), and 40 C.F.R. § 280.12.

8. In accordance with 40 C.F.R. § 280.41, 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).

10. Pursuant to 40 C.F.R. § 280.40(a), all UST system owners and operators must provide a method or a combination of methods of release detection that can detect a release from any portion of the tank and the underground piping; that is installed, calibrated, operated, and maintained in accordance with the manufacturer's instructions; and that meets the performance standards in 40 C.F.R. § 280.43 or 40 C.F.R. § 280.44.

11. Respondent was provided advance notice of a planned UST inspection at the facility by an EPA representative at least four working days prior to the inspection. Facility Manager Theresa Price 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 7, 2006, EPA inspector Francisca Chambus ("the inspector"), and Ethan Hinkley, Southern Ute Tribe Environmental Director, a representative from the Southern Ute Tribe, conducted an inspection at the facility with the consent of the Manager, Ms. Price, to determine compliance with RCRA Subtitle I and the EPA regulations relating to USTs.

13. The facility uses an automatic tank gauge (ATG) known as the Veeder Root TLS-350 as the method of leak detection.

14. At the time of the inspection, the facility representative produced the tank leak detection records.

15. The monthly monitoring records for Tank 1 (premium unleaded) indicated that Tank 1 displayed a "fail" on July 28 and 29, 2005, January 4, 2006, and February 19, 2006.

16. The monthly monitoring records for Tank 2 (unleaded gasoline) indicated that Tank 2 displayed a "fail" on July 28, 30, and 31, 2005, January 2 and 4, 2006, February 8, 2006, March 4 and 23, 2006, April 7, 2006, and two documented "fails" in April 2006, and May 2006.

17. The monthly monitoring records for Tank 3 (diesel) indicated that Tank 3 displayed a "fail" on July 6, 2005, February 19, 2006, March 4, 2006, and one documented "fail" in April 2006.

18. The monthly monitoring records for Tank 4 (unleaded) indicated that Tank 4 displayed a "fail" on July 30, 2005.

19. The monthly records show that a valid leak detection test was not run on Tank 2 in October 2005, November 2005, and December 2005.

20. The monthly records show that a valid leak detection test was not run on Tank 3 in October 2005.

21. The monthly records show that a valid leak detection test was not run on Tank 4 in December 2005, January 2006, February 2006, March 2006, and April 2006.

22. 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. A "Violation and Compliance Identification" form signed by the Inspector was left with the facility representative.

23. 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.

24. 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 occurs.

25. Paragraphs 1 through 24 are incorporated by reference in each of the counts listed below as if fully recited herein.

**COUNT 1**  
**Failure to Report a Suspected Release**

26. Pursuant to 40 C.F.R. § 280.50, Respondent is required to notify the implementing agency within 24 hours if the ATG system indicates that a release may have occurred.

27. Respondent's ATG system indicated that a release may have occurred on the following tanks on or about the specified dates:

- a.) Tank 1: January 4, 2006 and February 19, 2006;
- b.) Tank 2: July 30, 2005, July 31, 2005, January 2, and 4, 2006, February 8, 2006, March 4, 2006, March 23, 2006, April 7, 2006, and two other documented "fails" in April 2006, and May 2006; and
- c.) Tank 3: July 6, 2005, February 19, 2006, and March 4, 2006.

28. Respondent's failure to report a suspected release from the facility to the implementing agency within 24 hours of receiving monitoring results for Tanks 1, 2, and 3

as referenced in paragraph 27, above, constitutes fifteen violations of section 9003(c)(1) of RCRA, 42 U.S.C. § 6991b(c) and 40 C.F.R. §280.50.

**COUNT 2**  
**Failure to Investigate a Suspected Release**

29. 40 C.F.R. §280.52(a) and (b) requires Respondent to immediately investigate and confirm all suspected releases of regulated substances requiring reporting under 40 C.F.R. §280.50 within seven days (or another reasonable time period specified by the implementing agency) by testing the system and performing a site check.

30. Respondent was notified by their ATG system at the facility that the following tanks received a failed result on or about the dates specified below:

- a.) Tank 1: January 4, 2006 and February 19, 2006;
- b.) Tank 2: July 30, 2005, July 31, 2005, January 2, 2006, January 4, 2006, February 8, 2006, March 4, 2006, March 23, 2006, April 7, 2006, and two other documented “fails” in April 2006, and May 2006; and
- c.) Tank 3: July 6, 2005, February 19, 2006, and March 4, 2006.

31. Respondent did not investigate and confirm the suspected releases on Tanks 1, 2, and 3 referenced in paragraph 30, above, within seven days and did not obtain another time period to investigate the suspected release from the implementing agency.

32. Respondent’s failure to investigate and to confirm the suspected releases identified in paragraph 30, above, from Tanks 1, 2, and 3 within seven days by testing the system or performing a site check or obtaining approval for an alternative method constitutes fifteen violations of 40 C.F.R. §280.52.

**Count 3**  
**Failure to perform leak detection**

33. 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.

34. Respondent's monthly monitoring records show that a valid leak detection test was not conducted on Tank 2 for the months of October 2005, November 2005, and December 2005; on Tank 3 for the month of October 2005, and on Tank 4 for the months of December 2005 through April, 2006.

35. Respondent's failure to provide release detection using one of the methods listed in 40 C.F.R. § 280.43 (d) through (h) that meets the general requirements in 40 C.F.R. § 280.40 for Tanks 2, 3, and 4 during the months specified in paragraph 34 at the facility constitutes nine violations of 40 C.F.R. § 280.41(a).

### **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 \$20,250 as follows:

<u>COUNT</u>	<u>VIOLATION</u>	<u>PROPOSED PENALTY</u>
Count 1	Failure to monitor for leak detection every 30 days 40 C.F.R. § 280.50	\$6,750
Count 2	Failure to investigate a suspected release 40 C.F.R. § 280.52	\$5,625
Count 3	Failure to report a suspected release 40 C.F.R. §280.41(a)	<u>\$7,875</u>
<b>TOTAL PROPOSED PENALTY:</b>		<b>\$20,250</b>

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 1). 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 Respondent does 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, Respondent 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:

Brenda L. Morris, Enforcement Attorney  
Legal Enforcement Program  
U.S. EPA Region 8 (8ENF-L)  
1595 Wynkoop St.  
Denver, Colorado 80202-1129

Payment of the penalty in this manner shall constitute consent by Respondent to the assessment of the proposed penalty and a waiver of Respondent's 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: 6/29/07

By: David Ralle for  
David J. Janik, Acting Director  
Matthew Cohn, Acting Supervisory Attorney  
Legal Enforcement Program

Date: 6/29/07

By: Sharon L. Kercher for  
Sharon L. Kercher, Director  
Technical Enforcement Program

Date: 6/29/07

By: Brenda Morris  
Brenda Morris, Enforcement Attorney  
U.S. EPA, Region 8  
1595 Wynkoop St. (8ENF-L)  
Denver, CO 80202-1129  
Telephone: 303/312-6891  
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 St., Denver, Colorado, and that a true copy of the same was mailed by certified mail to:

Bonnie Frazer, Registered Agent  
United Food Store, Inc.  
900 Schofield Lane  
Farmington, NM 87401

July 2, 2007  
Date

Judith M. McTernan  
Signature