

**BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:

EDWARD AND THERESA WASHINES,
DA STOR AT LILLIE'S CORNER

Wapato, Washington

Respondents.

DOCKET NO. RCRA-10-2014-0100

**RESPONDENT'S PREHEARING
EXCHANGE**

INTRODUCTION

Pursuant to the Administrative Law Judge's Order dated September 9, 2014, Respondents E. Arlen Washines and Da Stor at Lillie's Corner ("Respondents") hereby submit the following Prehearing Exchange. Respondent Theresa Washines died on July 8, 2014.

1.A WITNESSES

Respondents intend to call E. Arlen Washines as a witness at hearing. The witness will primarily provide factual information regarding how the Respondents acquired ownership of the facility, and the history of operation of the facility before September 13, 2006.

1.B DOCUMENTS AND EXHIBITS

Copies of the following documents and exhibits Respondents intend to introduce into evidence in support of their denials and affirmative defenses are numbered and attached hereto:

- RX-1** Declaration of Thomas Zeilman re: Exhibits

- RX-2** EPA Reg. 10 letter of July 8, 2013 to Thomas Zeilman (response to FOIA request)

- RX-3** EPA Reg. 10 Underground Storage Tank Inspection Report (June 23, 1994)
- RX-4** EPA Reg. 10 Underground Storage Tank Inspection Report (April 20, 1995)
- RX-5** EPA Reg. 10 letter of May 22, 1995 to Dustin Ramsey (Notice of Violation)
- RX-6** Underground Storage Tank Inspection Form (October 29, 1997)
- RX-7** EPA Reg. 10 UST Site Data-Existing (undated)
- RX-8** EPA USTRAC Facility Summary (November 7, 2005)
- RX-9** BIA letter of May 20, 2010 to Theresa Washines (responding to design information re construction of facilities)
- RX-10** BIA letter of December 27, 2012 to EPA (replying to EPA: OCE-082, RCRA Section 9005 Information Request)

1.C LOCATION OF HEARING AND ESTIMATED DURATION OF PRESENTATION OF RESPONDENTS' DEFENSES

Respondents concur with the proposal by Complainant Region 10 (hereinafter "Region") of Yakima, Washington as the location for the hearing. However, Respondents do not concur with the Region's recommendation that the hearing be held in Seattle if scheduled during the winter months. Respondents' witness Mr. Washines is still being treated for health issues resulting from back surgery last winter, and traveling during winter weather would not be convenient for him. If the Cascade Mountain passes close during snow events he would not be able to afford air travel to Seattle for a hearing.

Respondents estimate that it will take less than a day to present their affirmative defenses.

2.A FACTUAL AND LEGAL BASES FOR RESPONDENT'S DENIAL OF COMPLAINANT'S ALLEGATIONS AND ASSERTED AFFIRMATIVE DEFENSES

In accordance with the Presiding Officer's instructions and 40 CFR § 22.19(a), Respondents set forth in this section a brief narrative statement of the factual and legal bases for their denials of the Region's allegations and their affirmative defenses.

i. Violation 2, Count 5: 40 CFR § 280.20(b)(2)

Respondents' underground storage tanks are not "new tank systems" under 40 CFR Subpart B, and are not subject to penalties for not installing corrosion protection systems on the syphon piping at issue.

The Region alleges that the underground storage tanks owned and operated by the Respondents are "new tank systems" that subject them to 40 CFR § 280(b)(2), which requires installation of corrosion protection systems for all piping. Complaint, ¶ 3.6. The Region argues that "Respondents' tanks satisfy each element of the definition of "new tank system," and that the Respondents "are within the group of 'all owners and operators of new UST systems.'" Complainant's Prehearing Exchange at 7-9. However, a plain reading of the UST regulations and their context show that the Region's interpretation as applied to the facts of this matter is not correct. Even if the regulations are found to be ambiguous, the Region's interpretation defies logic and is therefore not reasonable, and should be rejected by the Presiding Officer.

Any analysis of this issue begins with the plain language of the regulation. *In re John P. Vidiksis*, TSCA Appeal No. 07-02, 14 E.A.D. 333, 338 (EAB 2009). The definition of "new tank system" reads as follows: "New tank system means a tank system that *will be used* to contain an accumulation of regulated substances and for which installation has commenced after December 22, 1988." 40 CFR § 280.12 (italics added for emphasis). Note that instead of including or adding the words "is used" or "was used," the definition only employs a future

tense, meaning that a “new tank system” is one that has not yet been used to contain regulated substances. A natural reading of this definition is that it refers to tanks that are in the process of initial installation by owners or operators.

This plain meaning is bolstered by the regulation’s context. The term “new tank system” is only present in Subpart B of the rules, which govern design, construction, and installation of USTs; it is used to distinguish future installation of tank systems after December 22, 1988, from those that were already installed prior to that date (and for which “upgrades” are necessary for compliance). In the “General Operating Requirements” of Subpart C, this distinction disappears because there is a logical assumption that “all UST systems” means those that were already installed or upgraded under Subpart B. *See, e.g.*, 40 CFR § 280.31. In other words, it is not necessary to include the words “new” or “existing” when referring to tank systems in Subpart C because those qualifiers only refer to the requirements for the systems’ *initial* installation or upgrade under Subpart B. Performance standards are then assumed to be in place for all systems unless the owners or operators failed to comply with the requirements when they originally installed or upgraded them.

The Environmental Appeals Board agrees with this interpretation, and has explained the difference between initial installations and upgrades:

“New” UST systems, whose installation commenced or will commence after December 22, 1988, must incorporate protective technologies *at the time of installation*, while “existing” UST systems, whose installation commenced on or before December 22, 1988, were required to be upgraded by December 22, 1988, to incorporate all technological precautions needed to prevent, detect, and correct accidental releases of regulated substances, or, if not upgraded, permanently closed.

In re Euclid of Virginia, Inc., 13 E.A.D. 616, 624 (EAB 2008) (italics added for emphasis); see also *In re Norman C. Mayes*, 12 E.A.D. 54, 57 (EAB 2005). The language that Congress enacted regarding UST performance standards in RCRA also confirms this intent: “The

Administrator shall...issue performance standards for underground storage tanks *brought into use* on or after the effective date of such standards.” 42 U.S.C. § 6991b(e).

The EPA guidance document that the Region has included in its list of exhibits also bears out the temporal element of the definition. Clearly directed towards the owners of USTs, the document (entitled “Musts for USTs”) repeatedly emphasizes that initial installation is the critical compliance point. See, e.g., Exhibit CX-35 at 4 (time when owner of new system must “act” is “at installation”); see also at 6 (“You must meet four requirements when you install a new UST system”). Note that the installation requirement includes corrosion protection (“CP”).

Based on this interpretation of “new tank systems,” the only logical construction of the term “all owners and operators” in 40 CFR § 280.20 is “all owners and operators *who install tank systems*.” There is no requirement anywhere that owners or operators must retrofit the tank systems with the required performance standards if a previous owner or operator failed to install them in the first place. Although the term “upgrade” is defined as including “addition or retrofit,” the only owners or operators required to upgrade their systems are those owning tanks installed before December 22, 1988 (and they must do so by December 22, 1998).

Although the Region argues that 40 CFR § 280.20 “repeatedly” references the entire lifetime of the tank systems as being the point of compliance for UST performance standards, the language cited by the Region does not support this contention. The CP operation and maintenance (“O & M”) requirements of 40 CFR § 280.31 are provided as the sole means of ensuring that the performance standards installed under 40 CFR § 280.20 are still effective – there is no requirement that owners or operators take any other action to make sure the systems are in compliance. Language in § 280.20 stating that the performance standards are required in order to prevent releases “as long as the UST system is used” simply means that the EPA has determined that those standards are the only ones that will achieve that objective. Despite what

the Region argues, it does not mean that all owners and operators must somehow go beyond the precise operation, testing, inspection, repair, and recordkeeping requirements of Subparts C and D in order to be in compliance with the standards of Subpart B.¹ The first sentence of 40 CFR § 280.31 makes the point better than anything: “All owners and operators of steel UST systems with corrosion protection must comply *with the following requirements* to ensure that releases due to corrosion are prevented for as long as the UST system is used to store regulated substances.” 40 CFR § 280.31 (italics added for emphasis).

The Region also cites the closure requirements of Subpart G (specifically 40 CFR § 280.70(c) to illustrate its position that all owners and operators have to somehow make sure that performance standards are still in place aside from the O & M provisions. However, the Region fails to note that the same section requires UST owners to continue O & M for corrosion protection while the system is temporarily closed, which is of course how substandard CP systems would be discovered for purposes of any required permanent closure. 40 CFR § 280.70(a). There are no other requirements other than those listed in subsection (a).

Even if the Region in reply argues that the definition of “new tank system” is somehow ambiguous and should be construed liberally in its favor, the interpretation the Region offers is not reasonable, for three reasons. First, both the O & M provisions for corrosion protection in 40 CFR § 280.31 and the release detection requirements in Subpart D appear to be the exclusive methods that owners and operators are required to employ to prevent releases from tanks. Any claim that UST owners should “read between the lines” in 40 CFR § 280.20 and employ other methods beyond those enumerated in the regulations is simply not credible.

¹ “Repair” is defined as “to restore a tank or UST system component that has caused a release of product from the UST system.” 40 CFR § 280.12; see also 40 CFR § 280.33 (requirements for repairs). The Region has not alleged that Respondents failed to repair their UST system.

Second, as a practical matter, to avoid the possibility of future penalties under that section all successive owners and operators of tank systems would need to immediately excavate their newly acquired USTs in order to make sure the performance standards were installed correctly. This could not possibly have been the intent of EPA when the regulations were promulgated. Finally, at facilities where the original owner had a history of EPA inspections and non-compliance, it is not reasonable to assess penalties against a successive owner for substandard UST installations that should have been disclosed by the owner or discovered by the Region.

Turning to the facts alleged in the Complaint, the Respondents have denied that the USTs at the Da Stor facility are “new tank systems.” Answer and Request for Hearing (“Answer”), ¶ 1.4. Respondents also deny that they have violated the requirements of 40 CFR § 280.20(b)(2) for the steel siphon line on the tank system. Answer, ¶ 1.13. These denials are supported by evidence in the Region’s own exhibits. Respondent’s tank system was originally installed in 1990 by a previous lessee of the facility named Robert E. “Red” Ramsey. CX-8. As such, Mr. Ramsey was an “operator of a new tank system.” The Respondents did not acquire control of, or begin operating the USTs until after 2005.² CX-9. Therefore, because the Respondents did not actually install the tanks, they are not “owners or operators of a new tank system.” As a result, any facts that the Region brings forward to prove that the Respondents failed to install a corrosion protection system on the steel siphon line from at least May 1, 2009, through February 13, 2013, are not relevant to any violation of 40 CFR § 280.20(b)(2). Quite simply, the owners or operators who install the tank systems are responsible for complying with the regulations for meeting performance standards in that particular section,

² At the hearing the Respondents will show that the facility is located on Indian land owned in trust by the United States. The U.S. is therefore an “owner” subject to the UST regulations. Respondent Theresa Washines was an owner of a beneficiary interest in the facility under regulations administered by the U.S. Department of the Interior. Upon her death the heirs of her estate acquired this interest, to be determined in probate proceedings.

and any further requirements to excavate USTs in order to retrofit CP systems on USTs after initial installation do not exist anywhere in the regulations.

As a result, the Presiding Officer should find as a mixed issue of fact and law that Respondents are not “owners or operators of new tank systems,” and conclude thereby that the Respondents have not violated 40 CFR § 280.20(b)(2) as alleged in the Complaint. Count 5 of the Complaint should therefore be dismissed by the Presiding Officer.

ii. Violation 2, Count 6: 40 CFR § 280.31(a)

The requirements of 40 CFR § 280.31(a) did not apply to the Respondents or the USTs until February 13, 2013, when the Respondents installed a corrosion protection system for the steel siphon line piping.

The Region alleges that the Respondents violated the O & M requirements for CP during a period of time when they had not conducted any testing for CP on the steel siphon line piping (“siphon line”) connecting Tank #1 and Tank #2. Complaint, ¶¶ 3.19-3.22; ¶ 3.24. Respondents have admitted that the siphon line is bare steel. Answer, ¶ 1.3. Respondents have also admitted all of the allegations regarding failure to test the siphon line, but also asserted in response that they did not conduct the tests because the Region never made a conclusive determination that the siphon line piping was galvanized steel requiring CP. Answer, ¶ 1.10. In addition, Respondents also asserted in response that the previous operator reported to EPA that the piping was fiberglass or flexible plastic, and the Region’s inspections of the USTs over several years after 1994 produced no evidence that the siphon line was galvanized steel. Answer, ¶ 1.9. Respondents are arguing as an affirmative defense that the requirements of 40 CFR § 280.31(a) did not apply to the Respondents or the USTs until February 13, 2013, when the Respondents installed a corrosion protection system for the steel siphon line.

Under the plain language of the regulation, O & M requirements are only applicable to

“all corrosion protection systems.” 40 CFR § 280.31(a). Logically, this would be assumed to mean *existing* CP systems; such a system can only be operated and maintained for steel piping on a tank system if such a system has been already been installed pursuant to 40 CFR § 280.20(b). The Region has alleged and admitted that the Respondents in 2006 did actually test the CP systems that were in place on the USTs, but only failed to test the siphon line, for which there was no such system in place (as it was later confirmed by the Region). Because there was no CP for the steel siphon line during the period before upgrading on February 13, 2013, the Respondents could not have tested the line for CP during the period alleged in the Complaint.

Nevertheless, the Region argues that the Respondents violated the O & M requirements, asserting only that they are included as “all owners and operators of steel UST systems with corrosion protection.” Complainant’s Prehearing Exchange at 10. However, the Region’s sole reliance on the fact that the USTs are STiP3 tanks with a pre-engineered CP system does not help the Region’s case. If a tank has a built-in system for corrosion protection, there should be a presumption that testing that system automatically meets the requirements of the regulation. The Region has admitted that the Respondents in fact did this, but are also arguing that the siphon line should also have been tested despite the fact that it is outside the pre-engineered CP for those STiP3 tanks. Like the alleged violations of performance standards in Count 5, the Region’s position forces owners and operators to “read between the lines” and go beyond what is specifically required in the regulations.

In reply the Region will probably cite its inspection reports and correspondence with the Respondents showing that a 2006 inspection of the facility raised suspicions that the siphon line was made of bare steel. See, e.g., CX-3 through CX-7. In this regard the Region may take the position that the Respondents were on notice as of the date of that inspection that the siphon line required a CP system, and that the Respondents failed to excavate the UTSs and

install the anode as soon as the inspection report was completed. CX-3 at 4. However, the story is not as simple as the Region would likely tell it.

Through a FOIA request the Respondents received documents from the Region showing that the facility had been inspected numerous times when Mr. Ramsey was the operator during the 1990s, and none of the Region's inspectors caught the fact that the siphon line was bare steel. RX-3 through RX-8. One inspection report from 1995 included photos of the tanks, and none of the notes on the photos indicates any concern with a bare steel siphon line. RX-4. In its correspondence the Region showed no concern to Mr. Ramsey about any unprotected piping. RX-5. Both the UST notification and inspection reports indicate only that the piping is "doubled walled."³ CX-8 at 3; RX-4 at 1. On some of the reports the initial "P" is used to describe the piping material, which may stand for either "plastic" or "pressurized" (as opposed to "S" for steel). See, e.g., RX-6. One can only conclude from these reports that neither Mr. Ramsey nor the Region ever checked the original UST installation information from 1990 to make sure the siphon was not required to have a CP system. Although it is possible that Mr. Ramsey simply forgot that the line was bare steel, it is also possible that he tried to conceal this fact once he learned that he would have to excavate the USTs to install an anode.

In any case the September 2006 inspection finally began to raise suspicions that the siphon line piping was not as Ramsey or prior inspections had reported. This was almost sixteen years after the USTs were installed. By then the tanks were in the hands of the Respondents, who were also not aware that the siphon was bare steel. Correspondence with the

³ Note that on one of the inspections reports (e.g., RX-4), question marks were scribbled next to the piping information, which may indicate that the information could not be confirmed or was questionable. Nevertheless there is no record that the issue was ever addressed by the inspectors.

Bureau of Indian Affairs (BIA) indicates quite clearly that the Region had no conclusive information regarding the piping material, and was requesting relevant information to make a final regulatory determination on CP requirements. CX-19; CX-20. However, BIA could find nothing in its records and communicated that to the Region in May 2010. RX-10. After another inspection in June 2012, the Region finally began to conclude that the line was indeed made of steel and was not protected; the inspectors took photos of the USTs similar to those made in 1995 (but with obviously different analytical results). However, the true nature of the piping material was only finally revealed when the Respondents excavated the USTs and retrofitted the line with a CP anode in February 2013.

The likely outcome of this factual scenario is that the Region will argue that Respondents somehow had a duty to 1) investigate whether there were sufficient corrosion protection systems for the siphon line and 2) upgrade the USTs to provide CP for that piping. However, as the Respondents have indicated *supra*, this position should be rejected by the Presiding Officer. The provisions of 40 CFR § 280.31(b) are the exclusive requirements for operation and maintenance of USTs by owners or operators, and the Region cannot add any more without promulgating additional rules. Also as indicated *supra*, these USTs are not subject to any more requirements under Subpart B of the regulations. See § 2.A.i, *supra*. Although the Respondents understand the risk to the environment that can be caused by a lack of cathodic protection, and ultimately did take action to correct it, the issue here is whether they should be penalized for the period of time when there was substantial uncertainty about the siphon line's material construction. Considering the glaring failures of both the previous operator and the Region itself in discovering this critical fact, the answer should be "No."

As a result, the Presiding officer should find that the Respondents did not violate the requirements of 40 CFR § 280.31(a), and dismiss Count 6 of the Complaint.

2.B RESPONSE TO METHODOLOGY FOR PENALTY CALCULATIONS

i. Violation 1, Counts 1-2 and 3-4

Respondents do not dispute the Region's penalty calculation for these counts.

ii. Violation 2, Count 5

Respondents deny, contest and dispute the entire amount of the penalty calculated by the Region in Count 5 for allegations of "failure to equip corrosion protection for steel piping that routinely contains regulated substances and is in contact with the ground from at least May 1, 2009 through February 13, 2103 as required by 40 CFR § 280.20." Respondents deny that any violation of such regulation occurred and argue, based on the affirmative defense in § 2.A.i, that there should be no penalty imposed.

iii. Violation 2, Count 6

Respondents deny, contest and dispute the entire amount of the penalty calculated by the Region for alleged violations in Count 6 for allegations of "failure to properly maintain corrosion protection for steel piping that routinely contain regulated substances and is in contact with the ground from at least May 1, 2009 through February 13, 2103 as required by 40 CFR § 280.31(a)." Respondents deny that any violation of such regulation occurred and argue, based on its affirmative defense in § 2.A.ii, that there should be no penalty imposed.

iv. Violation 3, Counts 7-9

Respondents do not dispute the Region's penalty calculation for these counts.

v. The Region's Total Proposed Penalty

Based on the Respondent's affirmative defenses, the total penalty imposed by the Region for the Respondent's alleged violations should be \$38,309.00.

Respondent's counsel may be contacted by phone at (509) 575-1500, by fax at (509) 575-1227, by email at tzeilman@qwestoffice.net, or by mail at 402 E. Yakima Avenue, Suite 710, P.O. Box 34, Yakima, WA 98907.

RESPECTFULLY SUBMITTED this 14th day of November, 2014.



THOMAS ZEILMAN WSBA # 28470

Attorney for Respondents

**BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:

EDWARD AND THERESA WASHINES,
DA STOR AT LILLIE'S CORNER

Wapato, Washington

Respondents.

DOCKET NO. RCRA-10-2014-0100

**RESPONDENT'S INITIAL
PREHEARING EXCHANGE**

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RX-1

**BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:

EDWARD AND THERESA WASHINES,
DA STOR AT LILLIE'S CORNER

Wapato, Washington

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DOCKET NO. RCRA-10-2014-0100

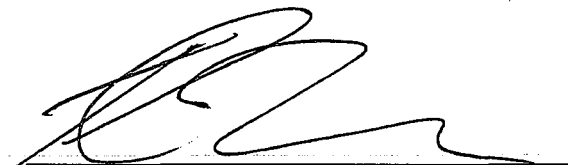
**DECLARATION OF THOMAS
ZEILMAN RE: EXHIBITS**

I, Thomas Zeilman, declare as follows:

1. I am the attorney of record representing the Respondents Edward Arlen Washines and Da Stor at Lillie's Corner in this matter.
2. On May 28, 2013, I sent a letter to the Environmental Protection Agency (EPA) Region10 requesting copies of documents pursuant to the Freedom of Information Act (FOIA).
3. On July 9, 2013, I received copies of documents from EPA Region 10 responsive to that FOIA request via electronic mail.
4. Exhibits RX-2 through RX-8 are copies of documents I received in response to the May 28, 2013 FOIA request.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 14th day of November, 2014.


THOMAS ZEILMAN WSBA # 28470

RX-2



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10

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

OFFICE OF
COMPLIANCE AND ENFORCEMENT

JUL 18 2013

Reply to: OCE-184

Tom Zeilman
Law Offices of Thomas Zeilman
402 E. Yakima Avenue, Suite 710
P.O. Box 34
Yakima, WA 98907

Re: Request No. EPA-R10-2013-007146

Dear Mr. Zeilman:

This letter responds to your Freedom of Information Act (FOIA) request received by the U.S. Environmental Protection Agency (EPA) on June 6, 2012. You requested all documents and records related to Robert Ramsey, dba Eagle Stop & Save, Inc. (50 W. Wapato Road, Wapato, WA) and Yakima Indian Petroleum, Inc. (same address), from 1990 to April 2003. The records should include a letter dated July 26, 2002, from Mike Shepherd of EPA Region 10 to Richard Beams of the Bureau of Indian Affairs regarding an EPA site visit to the "Eagle Stop & Save" service station at that same location. You also requested agency records from 1992 regarding removal of an underground tank or tanks at that location.

The responsive records are available to you, on your online account. Enclosed is a list of documents that were redacted from mandatory disclosure by virtue of the exemptions at 5 U.S.C. § 552 (b) (6). Exemption (6) of FOIA allows withholding "of all information about individuals in personnel, medical and similar files, the disclosure of which would constitute a clear unwarranted invasion of personal privacy."

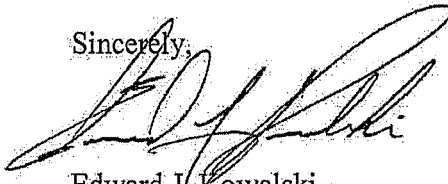
You may appeal this partial denial to the National Freedom of Information Officer, U.S. EPA, FOIA and Privacy Branch, 1200 Pennsylvania Avenue, N.W. (2822T), Washington, DC 20460 (U.S. Postal Service Only), FAX: (202) 566-2147, E-mail: hq.foia@epa.gov. Only items mailed through the United States Postal Service may be delivered to 1200 Pennsylvania Avenue, NW. If you are submitting your appeal via hand delivery, courier service or overnight delivery, you must address your correspondence to 1301 Constitution Avenue, N.W., Room 6416J, Washington, DC 20004. Your appeal must be made in writing, and it must be submitted no later than 30 calendar days from the date of this letter. The Agency will not consider appeals received after the 30 calendar day limit. The appeal letter should include the FOIA number listed above. For quickest possible handling, the appeal letter and its envelope should be marked "Freedom of Information Act Appeal."

The cost to produce your request is \$60.05 (approximately 1.25 hours of search and review time at \$28 per hour and 167 copies at \$0.15 per page). Per your email received on June 20, 2013, you have given your assurance of payment up to \$60.05. Enclosed is a bill and payment instructions. Send your payment to U.S. EPA, FOIA and Miscellaneous Payments, Cincinnati Finance Center,

P.O. Box 979078, St. Louis, MO 63197-9000. To pay by debit or credit card, visit www.pay.gov/paygov/.

If you have any questions regarding this FOIA response, please contact Stacey Erickson, Office of Compliance and Enforcement's FOIA Coordinator, at (206) 553-1380 or by email at erickson.stacey@epa.gov. This concludes the EPA Region 10 partial denial response to FOIA request number EPA-R10-2013-007146.

Sincerely,



Edward J. Kowalski
Director

Enclosures

Freedom of Information Act Request Number EPA-R10-2013-007146
List of Redacted documents

Records Redacted	Basis for Denial	Applicable FOIA Exemption
October 13, 2004, Lease/Permit Application – Credit Verification	Personal privacy	5 U.S.C § 552 (b) (6)
July 9, 2008, US Dept of the Interior Bureau of Indian Affairs, Tract/Owner/Address/Interest	Personal privacy	5 U.S.C § 552 (b) (6)
September 26, 1989, US Dept of the Interior Bureau of Indian Affairs Lease	Personal privacy	5 U.S.C § 552 (b) (6)

RX-3

**UNDERGROUND STORAGE TANK
INSPECTION REPORT**
U.S. Environmental Protection Agency
Region 10

DATE 6/23/94
State WASH
County PACIMA
Reservation CRAMA

FACILITY NAME FAKE STOP + STORE
Address 50 W. WAPATO RD.
City WAPATO State WA ZIP 98951
Phone (509) 877-7122

FACILITY ID # 4-260115
OPERATOR Harvey Davis Jr.
Title Mgr. + VP
Owner Robert Ramsay

Special Directions to Facility SW Cor. Intersect Hwy. 97 + W. Wapato Rd.
Prior Arrangements (if any) _____
Operator's Representative(s) at Inspection 6/22 call to (message left) Dustin Ramsay / 6/23 7:30p Call to Harvey at Store

Tank #:	1	2	3	4	5	6
Capacity	12,000	12,000	12,000			
Date Installed	1990	→	→			
Status	ACTIVE	→	→			
Date Closed	-	-	-			
Product	GAS	→	→			
Material	STEEL	→	→			
Corrosion Prot.	XXXX					
Leak Detect.	ATG. - TDEL GTM 2000					
Spill Protect.	✓	✓	✓			
Overfill Prot.	?	?	?			
Piping Type	Pressure	→	→			
P. Material	2X					
P. Leak Detect.	(?)					

COMMENTS / FINDINGS: Owner's sm there earlier, wanted to discuss smelly / need to contact him (office) for LD, FR, + CP records
Followup meeting 6/24/94: met w/ owner's sm Dustin Ramsay - explained UST Program, esp. need for LD, CP, + FR records; " to investigate + respond w/ info.

EXPEDITED ENFORCEMENT ORDER ISSUED?
YES NO
CITATION # _____ TOTAL FINE \$ _____

MATERIALS GIVEN OUT several

EPA POST-INSPECTION NOTES call Dustin:

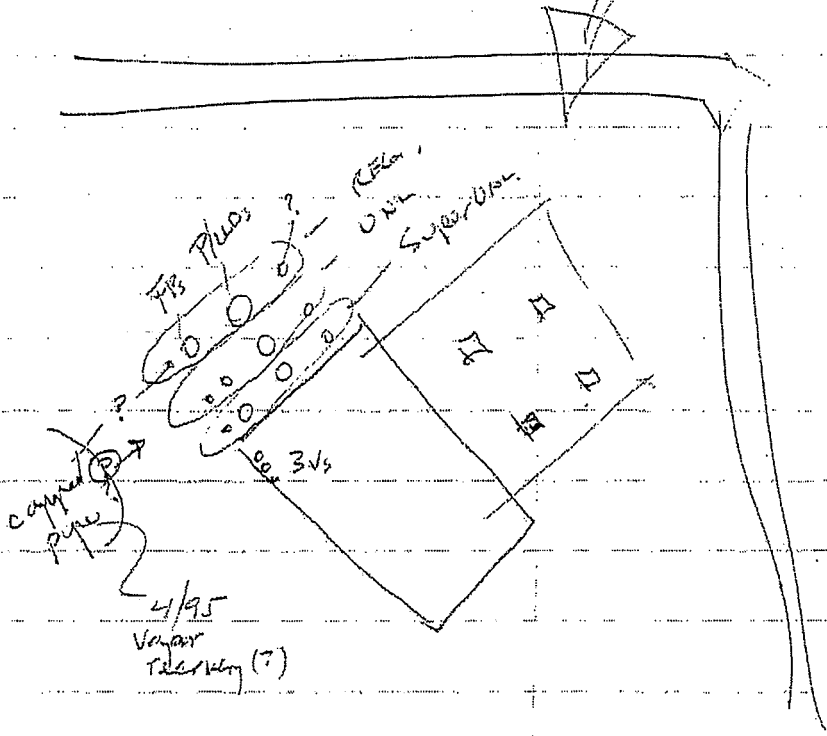
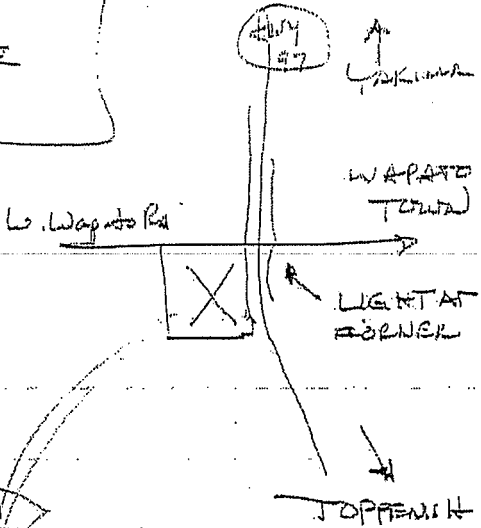
CONTINUATION SHEET USED? YES NO

INSPECTOR Graff Keeler

Office Location Seattle R10 RX3 1

4-26-018
FAGLE ~~TRUCK~~
STOP ISSUE

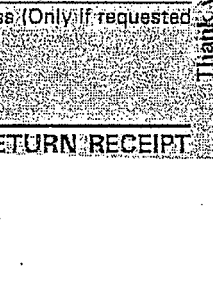
6/22/94
Gr. Keeler
2-3 pm



* vents - uncapped

* Need to follow up w owner on LD, CP, + FR Records

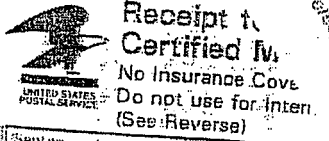
Your RETURN ADDRESS completed on the reverse side.

SENDER: Complete items 1 and/or 2 for additional services. Complete items 3 and 4a & b. Print your name and address on the reverse of this form so that we can return this card to you. Attach this form to the front of the mailpiece, or on the back if space does not permit. Write "Return Receipt Requested" on the mailpiece below the article number. The Return Receipt will show to whom the article was delivered and the date delivered.		I also wish to receive the following services (for an extra fee): 1. <input type="checkbox"/> Addressee's Address 2. <input type="checkbox"/> Restricted Delivery Consult postmaster for fee.	
3. Article Addressed to: Dustin Ramsey, Vice President Eagle Stop & Save, Inc. 402 E. Yakima Ave., #510 Yakima, WA 98901		4a. Article Number: Z 048 711 443	
		4b. Service Type: <input type="checkbox"/> Registered <input type="checkbox"/> Insured <input checked="" type="checkbox"/> Certified <input type="checkbox"/> COD <input type="checkbox"/> Express Mail <input type="checkbox"/> Return Receipt for Merchandise	
		7. Date of Delivery: 5/26	
5. Signature (Addressee) 		8. Addressee's Address (Only if requested and fee is paid)	
6. Signature (Agent)			

Thank you for using Return Receipt Service.

PS Form 3811, December 1991 U.S. GPO: 1993-352-714 DOMESTIC RETURN RECEIPT

Z 0



Send to Dustin Ramsey	
Street and No. 402 E. Yakima Ave., #510	
P.O., State and ZIP Code Yakima, WA 98901	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	
Return Receipt Showing to Whom, Date, and Addressee's Address	
TOTAL Postage & Fees	\$
Postmark or Date	

RX-4

**UNDERGROUND STORAGE TANK
INSPECTION REPORT**
U.S. Environmental Protection Agency
Region 10

DATE 4/20/95
State WASH.
County WAKIMA
Reservation WAKAMA

FACILITY NAME EAGLE STOP + SAVE, INC. OPERATOR MARTIN LOWERY FACILITY ID # 9-260115
Address 50 WEST WAPATO RD. Title Site Manager
City WAPATO State WA ZIP 98951 Owner Red Ramsey (Robert)
Phone (509) 877-7122
Special Directions to Facility SW Corner Wapato Rd & Hwy. 97
Prior Arrangements (if any) Call to Dustin Ramsey (4/17/95 AM)
Operator's Representative(s) at Inspection Marilyn Lowery, Cecil Corippo (gas manager)
Tank #: 1 2 3 4 5 6

Capacity	12,000	12,000	12,000			
Date Installed	3/16/1990	3/1990	3/1990			
Status	ACTIVE	ACTIVE	ACTIVE			
Date Closed	-	-	-			
Product	GAS	GAS	GAS			
Material	Sti P3					
Corrosion Prot.	CP test 11/4/94			-458 mV, -1076 mV, -1139 mV		(all OK)
Leak Detect.	ATG Tidel GTM-2000					
Spill Protect.	✓	✓	✓			
Overfill Prot.	?	?	?	probably		
Piping Type	Pressure					
P. Material	Dbl. Wall'd Piping (?)					
P. Leak Detect.	? acid			no known acid tests interstitial probe/alarm eye. Visible.		

COMMENTS / FINDINGS ATG down Dec. + Nov, 94 / Oct. 94 readings (tests) showed passes & inflow & leaks — Jan — April 95 tests all good! / No (FR) records @ station — access unavailable today / Red Ramsey (owner, father of Dustin R.) there to ask why I was there, etc.

EXPEDITED ENFORCEMENT ORDER ISSUED?
YES ___ NO ___ (5) Could be appropriate

MATERIALS GIVEN OUT
to Marilyn: 1998, MUSTS, Bulletin

CITATION # _____ TOTAL FINE \$ _____

EPA POST-INSPECTION NOTES need proof of FR / monthly LD records? (5)
monthly tests (in past 12 mos. at Oct 94 1-4/95, / ? in interstitial piping — no probe visible / certainly no pipe LD records

CONTINUATION SHEET USED? YES ___ NO ___ (5)

INSPECTOR Geoff Keeler Office Location Seattle KO RX-4 1

4-260115



ATG

Turbine
WELL
P-P-7's

12K
ONLINE
GPS

FX



FR

Eagle
4-260115
4/20/95
G. Keeler



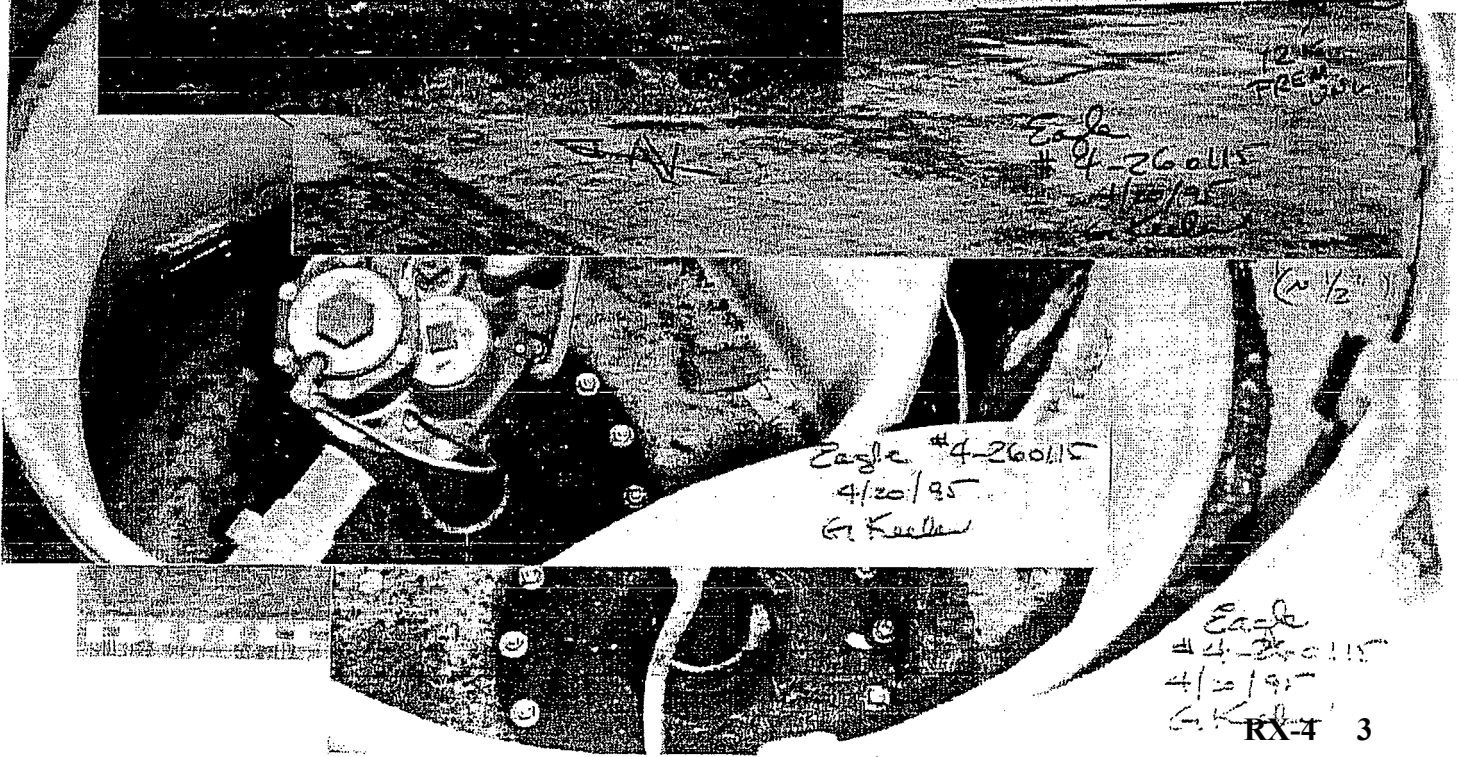
Vapor
Pump
D.F. Prot.



12K
ONLINE

12K
ONLINE

Eagle
4-260115
4/20/95
G. Keeler



Eagle #4-260115
4/20/95
G. Keeler

(1/2)

Eagle
4-260115
4/20/95
G. Keeler
RX-4 3

27

Yak. Topp.

Abby
77



12K REG.

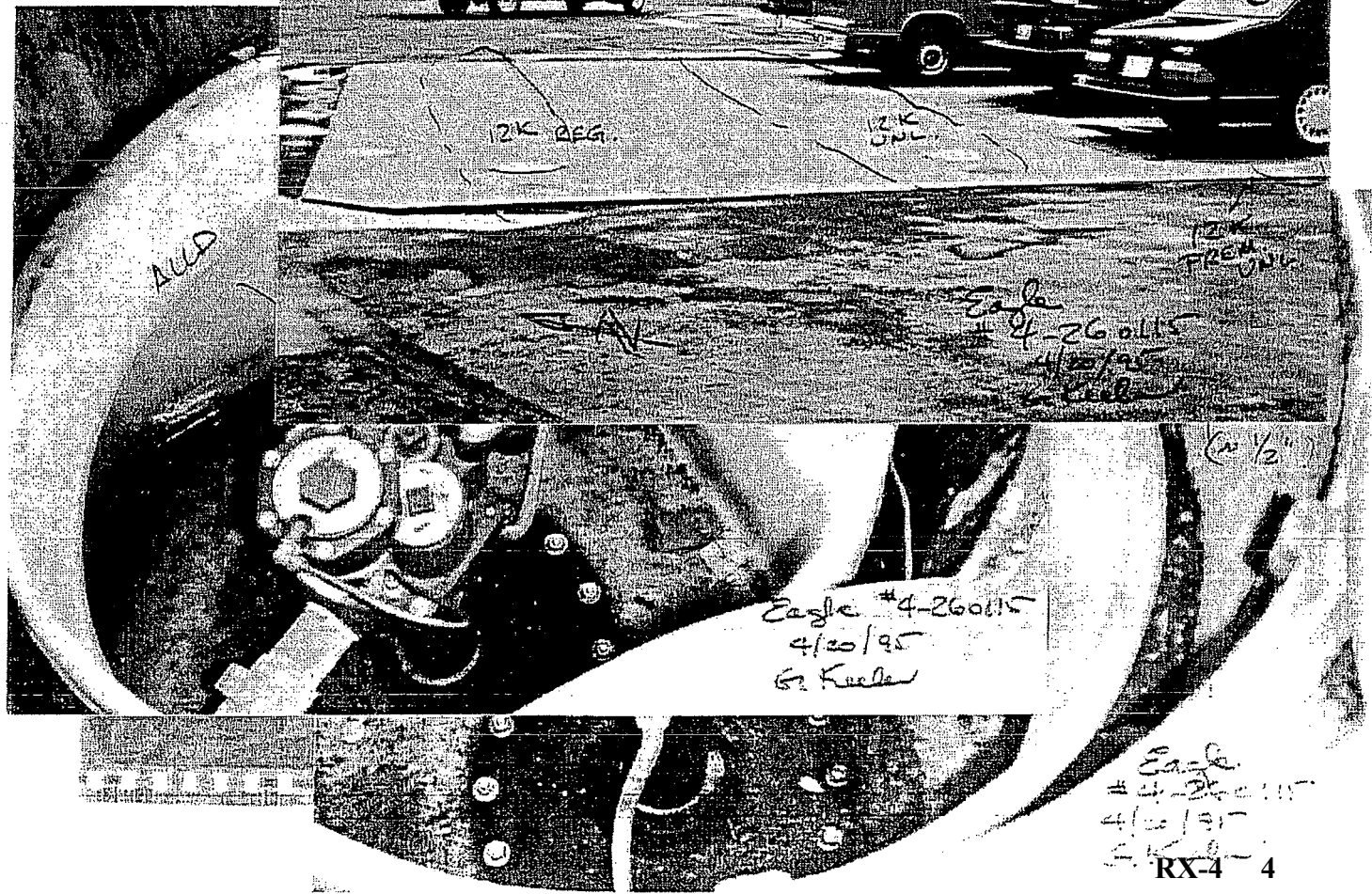
12K

ALCO

12K
FRESH

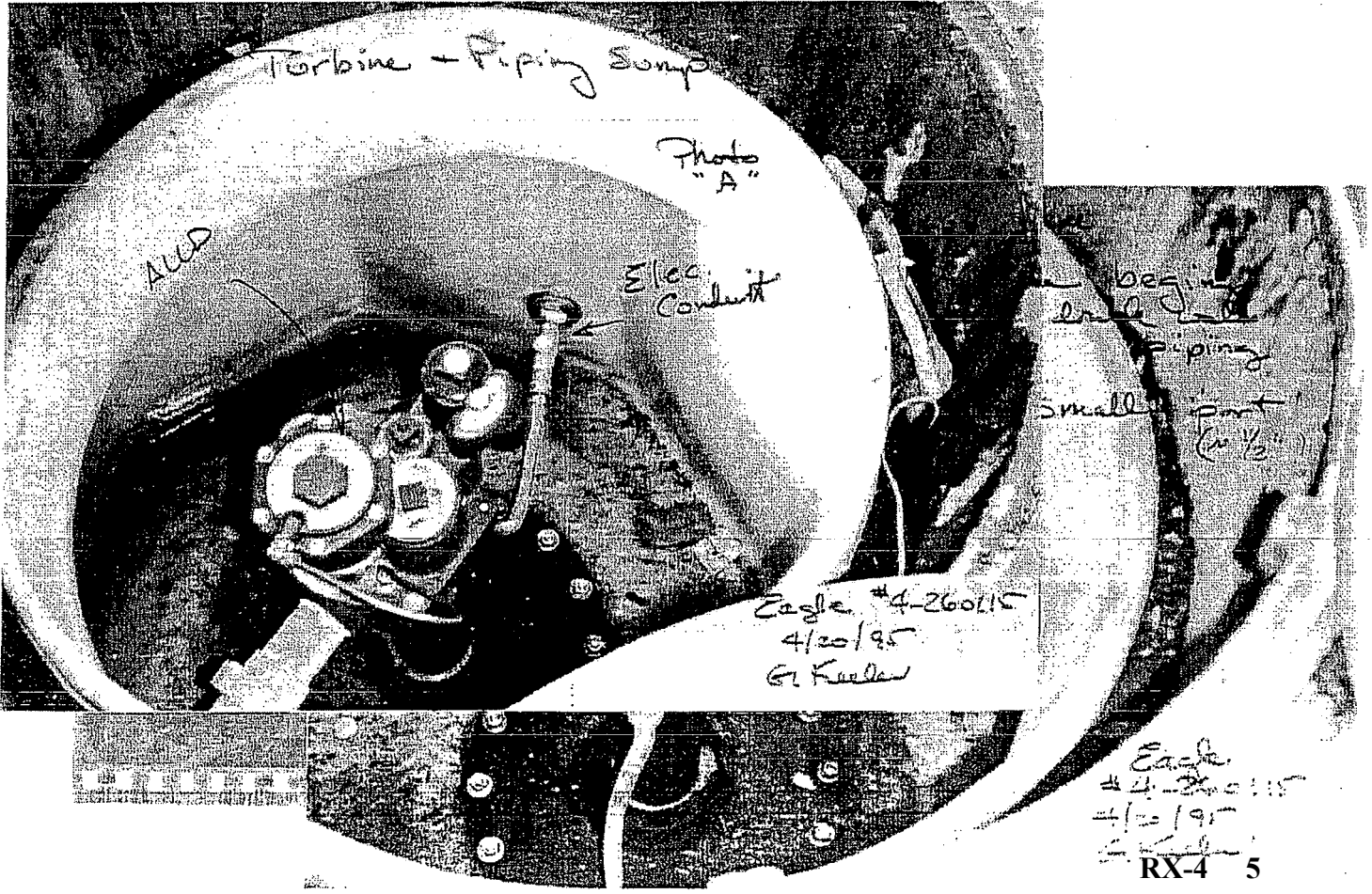
EAGLE

Eagle #4-260115
4/20/95



Eagle #4-260115
4/20/95
S. Keeler

Eagle
#4-260115
4/20/95
S. Keeler
RX-4 4



Turbine - Piping Sump

Photo "A"

ALWD

Elec. Conduit

begin end of piping smaller part (1/2")

Eagle #4-260115
4/20/95
G. Kessler

Eagle
#4-260115
4/20/95
G. Kessler
RX-4 5

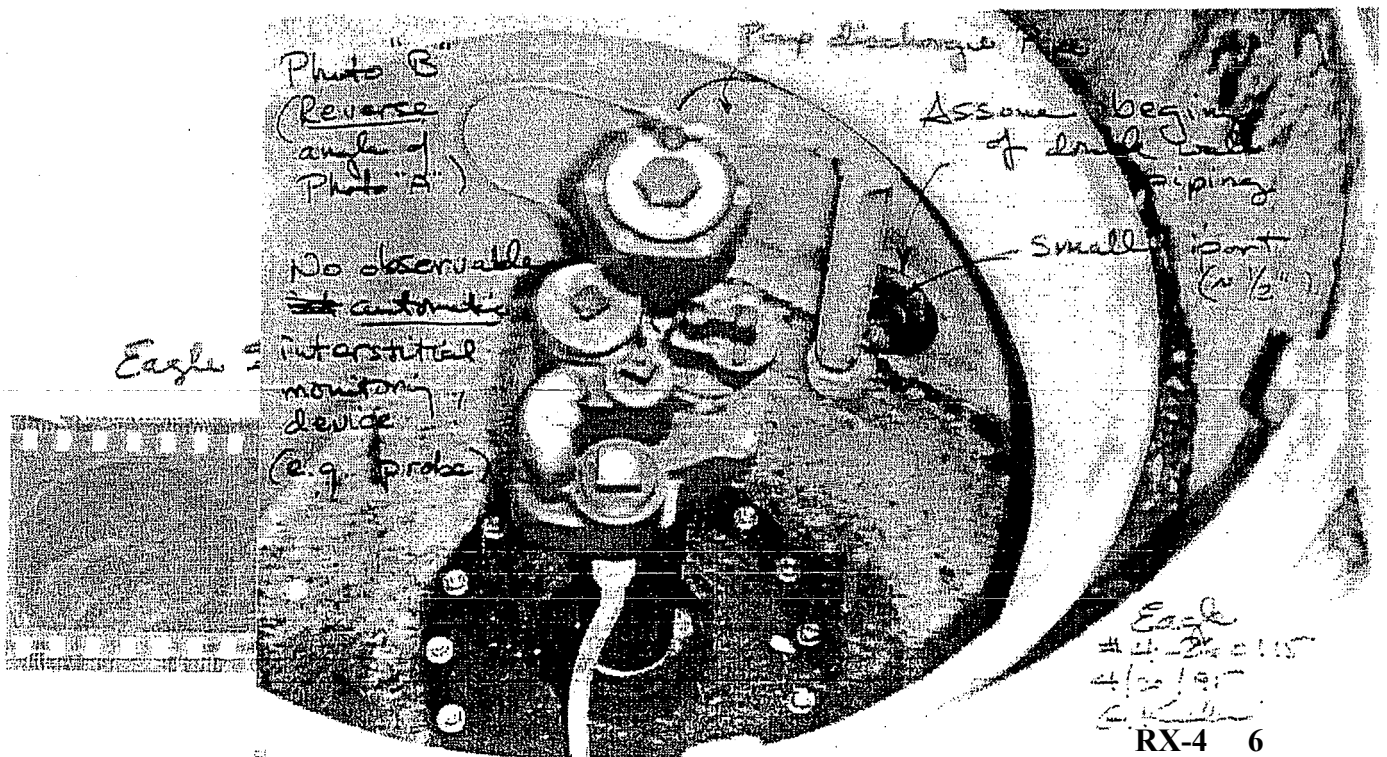


Photo "B"
(Reverse
angle of
Photo "A")

No observable
~~at~~ automatic

Eagle = interstitial
monitoring
device
(e.g. probe)

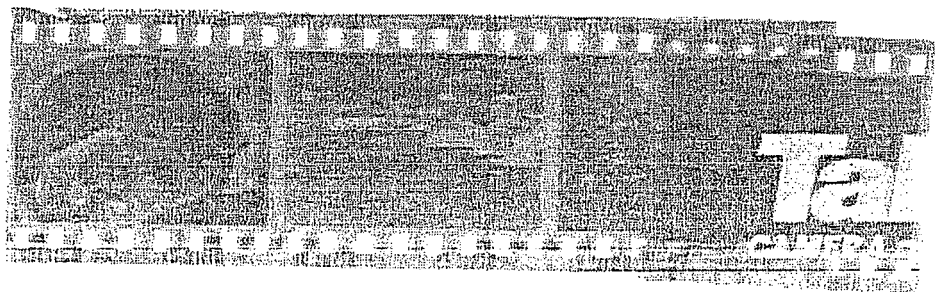
Pump discharge pipe

Assume beginning
of small well
piping

Small port
($\approx 1/8"$)

Eagle
#4 - 20 x 115
4/20/97
C. K. ...

Eagle Stop - Save #4-260115 4/20/95



RX-5



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue
Seattle, Washington 98101

Reply to
Attn. of: WD-133

May 22, 1995

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Dustin Ramsey, Vice President
Eagle Stop & Save, Inc.
402 E. Yakima Ave., Suite 510
Yakima, Washington 98901

Re: **NOTICE OF VIOLATION**
Underground Storage Tank (UST) Facility (#4-260115)
Yakama Indian Reservation, Washington

Mr. Ramsey:

This letter is a followup to my inspection of the subject UST facility on April 20, 1995. At this inspection, Marilyn Lowery and Cecil Compo of your organization were present and were very helpful.

The more pertinent observations from this inspection are as follows:

- ▶ The monthly leak detection method used for the USTs is an automatic tank gauge (ATG). From a review of the ATG records, it appears that release detection testing was satisfied for October 1994 and for the period of January through April 1995; but that the ATG system was inoperable during November through December 1994. (Records for this and similar monthly piping leak detection must be retained for the past 12 months. If operation problems occur in any of the leak detection equipment, repairs of such systems must be made in a timely manner.)
- ▶ The USTs were "Sti-P3" tanks, and their corrosion protection systems had been tested in December 4, 1994 with successful results. (The required testing of the cathodic protection must be done within three years of the last test date.)
- ▶ The release detection system for the pressurized underground piping appears to be the use of double-walled piping with interstitial monitoring; however, it was not known how monthly interstitial checks were made and recorded, if at all.
- ▶ The required use of automatic line leak detectors was also noted; however, an annual test of operation of these units did not appear to have been done.
- ▶ No proof of financial responsibility for operation of the UST systems was available. It was not known whether these records are just located elsewhere, or if such a mechanism does not exist. (The common mechanism used to satisfy this requirement is an insurance policy.)

Given the above, Eagle Stop & Save, Inc. is hereby directed to bring the subject facility into compliance with the appropriate federal regulations (Title 40 C.F.R. Part 280) for the three UST systems not

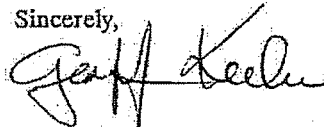
later than July 15, 1995. As evidence of compliance, please submit to me the following documentation not later than July 31, 1995:

1. Copies of the ATG leak detection testing records for the months of May through July 1995. The minimum requirement is a single successful tank tightness test per tank per month (reference 40 CFR §280.41 (a)).
2. Certification by a qualified installer/tester, of the equipment (if any), and procedures used for the required monthly interstitial monitoring (reference 40 CFR §280.41 (b)).
3. Certification by a qualified tester of the successful testing of the facility's three automatic line leak detector units (reference 40 CFR §280.44 (a)).
4. A copy of the financial responsibility mechanism used for this facility (reference 40 CFR §280 Subpart H).

No penalty or fine is being assessed at this time; however, failure to comply with the above requirements may result in formal enforcement proceedings initiated by the EPA. Penalties in such cases can be as high as \$10,000 per day of non-compliance.

If you have any questions, please do not hesitate to contact me at (206) 553-1089, or at (800) 424-4372, ext. 1089. Some EPA literature on approved release detection systems ("Musts for USTs") was given to Ms. Lowery at the inspection; and a copy of the federal regulations regarding leak detection, a brochure entitled "Dollars and Sense," and a flyer on Washington state's re-insurance program are also enclosed for your reference.

Sincerely,



Geoff Keeler
Compliance Officer

Enclosures (2)

cc: Jannine Jennings, Environmental Protection Program, Yakama Indian Nation
Marilyn Lowery, Manager, Eagle Stop & Save, Inc., Wapato

RX-6

4-260115

UNDERGROUND STORAGE TANK INSPECTION FORM

Facility # 4-260115 Facility name Ecole Step & Save Operator/Owner Dustin Ramsey
 Address 50 W. Wapato Rd Facility phone # (509) 877-7122
 City Wapato State WA Zip 98951
 Representative during inspection M GPS reading _____
 Inspector Parula Harris Date 10/29/19

Tank #	1	2	3	4	5	6
Tank size (gallons)	12,000	12,000	12,000			
MIG date inst/cld	01/10/06	01/10/06	01/10/06			
Insurance	Yes					
Product						
Material tank/pipe	CP-100					
Cor. Prot. Method	Cathodic PRT					
Leak det. TANK IC + 111 monthly	ATG					
PIPING SA* ALLD ALTT	P	P	P			
Spill Prevent		✓	✓			
Overfill Prevent	✓	✓	✓			

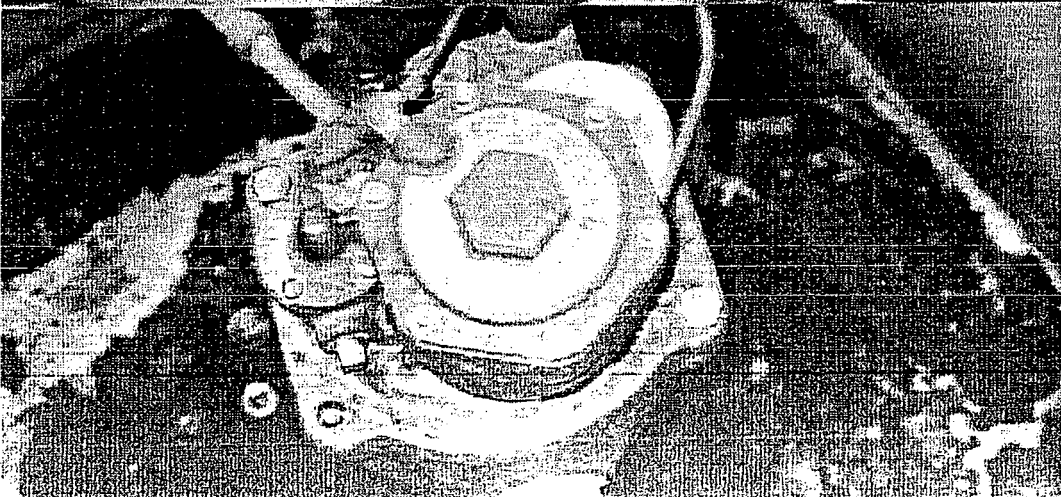
Comments: We checked LD records. ATG print-outs for tanks 1, 2, & 3.

ALLD test OK, ALTT - OK, CP-TEST - OKAY, FR - OKAY.
The dispensers were checked for calibration - not necessary but a good idea. Facility in full compliance.

Enforcement Action: No enforcement action taken.

Preinspection Notes:

Exxon Stop & Go



RX-7

UST SITE DATA-EXISTING
 Environmental Protection Agency
 Region 10

Facility ID: 4260115 Current Site Inspection Appointment: _____
 Contact Name(s): Dustin Ransay
 Facility Name: Eagle Step + Save
 Address: 50 W. Wapato Rd.
 City: Wapato State: _____ ZIP: _____ Phone: 509-872-7122
 Owner Name: _____ Operator Name: _____
 Owner Address: _____
 City: _____ State: _____ ZIP: _____ Phone: _____
 Comments: _____

Tank #	1	2	3	4	5	6
Product						
Capacity	<u>12,000</u>	—	—			
Installed						
Closed						
T- Material	<u>CPS/DW</u>	—	—			
T- OP	<input checked="" type="checkbox"/>	—	—			
T- RD	<u>ATG</u>	—	—			
P- Type	<u>P</u>	—	—			
P- Material	<u>CPS/DW</u>	—	—			
P- OP	<input checked="" type="checkbox"/>	—	—			
P- RD	<u>ALLD/LT</u>	—	—			
Spill Dev.	<input checked="" type="checkbox"/>	—	—			
Ovrfl Dev.	<input checked="" type="checkbox"/>	—	—			
Fin. Resp.	<input checked="" type="checkbox"/>	—	—			

PREVIOUS INSPECTIONS

Insp. Date	Inspector	Non-Compliance Items	FC #	Penalty	FNNC #
<u>10/29/77</u>	<u>Harris</u>	<u>(In Compliance)</u>			

Questions to ask: _____

RX-8



Facility = 4260115

USTRAC Facility Summary

Owner Name and Address: E. Arlen & Theresa Washines P. O. Box 100 Wapato WA 98951

Facility ID	Location Name	Location Street Address	Location City State	Zip	County	Tribe	SOC	C&E Status	LUST
4260115	Da Star at Lillie's Corner	50 W WAPATO RD	Wapato, WA	98951	Yakima	Yakama	NA	Closed	NA

Financial Responsibility

Type	Issuer	Policy Number	Effective Date Start	Effective Date End

Contacts

Contact Name:	Address:	City State Zip:	Phone:	Fax:	Email:
RAMSEY, DUSTIN	402 E YAKIMA AVE	Yakima WA 98901	(509) 452-1510		

Tank Summary

Tank ID	Status	Installed	Closed	Product	Capacity	Tank Material / Sec. Mat.		Piping Material / Sec. Mat. / Type		Over / Spill / CP			
1	Currently in Use	03/01/90		Gasoline	12,000	Cathodically Protected Steel	Double-Walled	Flexible Plastic	Double-Walled	Pressurized	Yes	Yes	Yes
2	Currently in Use	03/01/90		Gasoline	12,000	Cathodically Protected Steel	Double-Walled	Flexible Plastic	Double-Walled	Pressurized	Yes	Yes	Yes
3	Currently in Use	03/01/90		Gasoline	12,000	Cathodically Protected Steel	Double-Walled	Flexible Plastic	Double-Walled	Pressurized	Yes	Yes	Yes

Facility Actions

Inspection Date	Inspector	Action	SOC	C & E Status	SOC UST Status	Last Due Date	Closed Date	Number of Violations	Outstanding Violations
06/23/94	Geoff Keeler	Verbal Warning	Not Applicable	Closed	NA		10/29/1997	1	0
04/20/95	Geoff Keeler	Notice of Inspection	Not Applicable	Closed	NA	7/31/1995	10/29/1997	4	0
10/29/97	Pamela Harris	None	Not Applicable	Closed	NA			0	0

Lust Events

Monday, November 07, 2005

Copyright 2005 US Environmental Protection Agency

Page 1 of 2

RX-8 1



Facility = 4260115

Inspection Date LUST Status

Manager

Last Milestone

Last Closed Date

USTRAC Facility Summary

Facility General Comments

Source	Date	Comments
Ownership Xfr	11/07/05	Ownership Transfer: EAGLE STOP & SAVE INC Transferred from Eagle Stop & Save, Inc. to E. Arlen & Theresa Washines on 11/7/2005

RX-9



United States Department of the Interior
Bureau of Indian Affairs
Yakama Agency
P.O. Box 632
Toppenish, WA 98948



IN REPLY REFER TO:
Allotment 1136 service station design

20 May 2010

Ms. Theresa Washines
Da Store at Lillie's Corner
P.O. Box 100
Wapato, WA 98951

Recent 10-24-2010 sign
P.O. Box 1512
Toppenish, WA 98948

Dear Ms. Washines:

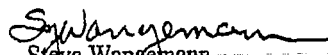
I have searched for design information pertaining to the construction of the facilities you are interested in. You indicated in your correspondence to the Superintendent, dated May 10, 2010 that, Mr. Johnny Yallup told you that these documents do exist and are in my department. I want to assure you that we have done a complete search of the files in the Natural Resource Program, which included the Engineering files, Lease files, and Individual Allotment files. We have actually been looking for this information since April of 2007, when the first letter was sent to the BIA-Northwest Regional Office with a request for funding to pay for the clean-up costs you incurred when the diesel island containment system was constructed.

In July of 2008 the US-Environmental Protection Agency also requested this design information. We found no design information in our files, but we sent what we could find (attached). In addition I spoke with Mr. Kip Ramsey, in an effort to find his brother Red Ramsey, in hopes that he would have the design information. I also sent an individual to Mr. Ramsey's the last known address. Mr. Red Ramsey could not be found. On April 14, 2010 I sent Mr. Arlen Washines an email indicating that I had searched the files in the Natural Resource Branch and that nothing pertaining to design information could be found.

The information you are looking for should have been filed with the lease in the YN-Realty office, which was still a BIA function at the time the lease was established. To date, no design information has been found in the files maintained in that office.

In summary, I would like to help you, but we do not have the information you are looking for.

Sincerely,


Steve Wangemann
Acting Deputy Superintendent

1. Tract Owner Address Report
2. Boundary Survey Map (Ramsey 8/89)
3. Boundary Survey Map (4/23/62) with reference to Kelly Oil lease # 14-20-511-257
4. 2005 Photobase Map of allotment 1136
5. Robert Ramsey's Business Lease (9/11/89)
6. Washines' Business Lease (10/14/2004)
7. Eagle Stop N Save memo (8/18/92) reference to removal of Kelly Oil facility
8. Request for Real Estate Appraisal (4/18/89) with reference to existing facility prior to Ramsey lease

RX-10

COPY



United States Department of the Interior
Bureau of Indian Affairs
Yakama Agency
P.O. Box 632
Toppenish, WA 98948



December 27, 2012

Mr. Edward J. Kowalski, Director
U.S. Environmental Protection Agency
Region 10
Office of Compliance and Enforcement
1200 Sixth Avenue
Suite 900
Seattle, WA 98101-3140

Mr. Dennis McLerran
Regional Administrator
U.S. Environmental Protection Agency
1200 6th Avenue
Suite 900
Seattle, WA 98101-3140

RE: Da Stor at Lillie's Corner, 50 West Wapato Road, Wapato, WA
In reply to EPA: OCE-082, RCRA Section 9005 Information Request

Dear Sirs:

I am writing this letter on behalf of Mr. and Mrs. Arlen Washines. Both individuals are enrolled members of the Yakama Nation and operators of Da Stor at Lillie's Corner. The Bureau of Indian Affairs has been trying to assist Mr. and Mrs. Washines in complying with your request for information, pertaining to the buried tanks and piping at this site. I am aware that the original notification form and the information the BIA submitted to EPA in 2008, were deficient in that it this information did not provide proof of the type of underground tanks and conveyance pipes that have been installed at the site. The BIA-Yakama Agency staff conducted an extensive search for this information in 2008. I believe that the past lease holder, Mr. Robert E. Ramsey may have the plans you have been requesting. However, Mr. Ramsey did not respond to our request for information in 2008 and he has not been forth coming with any information to Mr. Washines.

As a result, Mr. Ramsey, and the fact that EPA never attempted to obtain this same information from Mr. Ramsey during his tenure on the property, from 1989 to January of 2003, have put Mr. Washines in a difficult situation, with respect to the enforcement action Mr. Kowalski proposed in his December 10, 2012 correspondence (attached). I would like to suggest that EPA may still be able to get a response from Mr. Ramsey, if your Enforcement Office focused its correspondence efforts on him directly. If Mr. Ramsey cannot produce the original plans, he may be able to provide an invoice for the tanks and/or the name of the contractor that installed

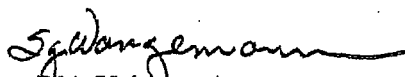
them. The address of record that we have on file for Mr. Robert E. Ramsey is 2109 South 96th Avenue, Yakima, Washington, 98903.

I would also like to request that the BIA, EPA, and the Yakama Nation Environmental Management Program work together in developing a second alternative in the event that a request for this information from Mr. Ramsey fails. Imposing penalties on Mr. and Mrs. Washines for information that they do not have will not accomplish what is needed in this situation. In the end, a final alternative may require Mr. Washines to excavate portions of his facility in order to provide the required information. However, imposing fines on him, at this time, would certainly hamper his financial ability to accomplish this alternative. We would also want a plan that would cause the least amount of disturbance in order to provide the requested information.

It should also be noted that Mr. Ramsey left this facility under less than amicable conditions in that he failed to pay a large portion of his gas tax to State of Washington. Since Mrs. Washines is a part owner of the trust allotment occupied by the service station, the Washines decided to operate it themselves in order to maintain a flow of trust income from this facility. They also demonstrated their desire to operate this facility in a manner consistent with federal regulations and environmentally safe practices, in that they initially invested over \$20,000 in improving the diesel island, on the west side of the service station.

In summary, I have a responsibility to respectfully petition your office for an alternative to the imposition of fines, because of the fact that this is trust property and the service station operators are enrolled members of the Yakama Nation. My intent is not to interfere with your ability to enforce federal regulations, but rather to seek a solution that accomplishes compliance without destroying the ability of Mr. and Mrs. Washines to derive income from this trust property. I will be available to meet with Ms. Katherine Griffith, Mr. & Mrs. Washines, and the Yakama Nation Environmental Management Program, at your convenience, in my office here at the Yakama Agency in Toppenish. Please ask Ms. Griffith or the appropriate EPA technical specialist to contact Mr. Rocco Clark, BIA-Yakama Agency, Environmental Coordinator, at 509-865-2255 ext. 4195 to set up a meeting, if you think it would help us move forward on this issue.

Sincerely,


BIA-Yakama Agency
Superintendent Acting

CC: Elizabeth Sanchez, YN-Environmental Management Program
Mr. Arlen Washines