

**In the Matter of Stockton Oil Company**  
**Docket No. RCRA-08-2014-0002**  
**Penalty Statement**

The U.S. Environmental Protection Agency Region 8 (EPA) filed a Complaint and Notice of Opportunity for Hearing (Complaint) In the Matter of Stockton Oil Company on February 27, 2014, citing alleged noncompliance with the Resource Conservation and Recovery Act (RCRA) Subtitle I, 42 U.S.C. § 6991, *et seq.*, and the underground storage tank (UST) regulations set forth at 40 C.F.R. part 280. The noncompliance was observed at the Battlefield Express Center Facility (Facility) owned and operated by Respondent Stockton Oil Company (Respondent) located at the junction of Highway 212 and Interstate 90 in Crow Agency, Montana, during an UST inspection conducted by EPA on April 10, 2013.

The Complaint proposes a penalty of \$16,609 based on the Respondent's alleged failure to monitor one of three of its UST systems every 30 days for the 12 month period May 2012 through April 30, 2013, in violation of section 9003(c) of RCRA, 42 U.S.C. 6991b(c) and 40 C.F.R. § 280.41(a). On July 17, 2014, EPA revised the penalty proposed by giving the Respondent a 25 percent gravity reduction based on unique factors, reducing the total penalty currently proposed by the EPA to \$14,613.

For background purposes, Respondent owns and operates three 10,000 gallon fiberglass reinforced plastic double-walled tanks at the Facility. Two of the tanks are compartmentalized, including one compartmentalized tank that contains 6,000 gallons of diesel #2 (Tank 3-1), and 4,000 gallons of dyed diesel (Tank 3-2). The Respondent uses a Gilbarco EMC ATG with continuous statistical leak detection automatic tank gauging (ATG) system as a method of leak detection for the tanks. The Respondent also uses interstitial monitoring as a second method of leak detection for the tanks.

At the time of the inspection, the Respondent produced records of monthly tank leak detection results, tank inventory, and sensor status. Tank 3-2 did not have any passing continuous statistical leak detection tank tests or show interstitial monitoring for the 12 month period May 2012 through April 2013. The Respondent subsequently submitted tank leak testing results to the EPA on April 26, 2013, demonstrating that the ATG had been repaired and Tank 3-2 had been returned to compliance with the leak detection requirements as of April 23, 2013.

Based on the inspection, EPA determined that the Respondent failed to monitor Tank 3-2 every 30 days for the 12 month period May 2012 through April 2013. Section 9006(d)(2)(C) of RCRA, 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 occurring after January 12, 2009, through December 6, 2013, for noncompliance with any requirement or standard promulgated by the Administrator under section 9003 of RCRA, 42 U.S.C. §6991b. The statutory factors for assessing a penalty include the seriousness of the violation(s) and good faith efforts to comply with the applicable requirements. 42 U.S.C. § 6991e(c). Section 9006(e) of RCRA, 42 U.S.C. § 6991e(e), further provides that an owner or operator's compliance history and any other factor the Administrator considers appropriate may be considered in determining the amount of a civil penalty under section 9006(d) of RCRA, 42 U.S.C. § 6991e(d).

To fairly and consistently apply the statutory factors set forth in sections 9006(e) and (e) of RCRA, 42 U.S.C. §§ 6991e(c) and (e), to each case, the EPA adopted the U.S. EPA Penalty Guidance for Violations of UST Regulations (UST Penalty Guidance) in November 1990. This document, referenced in Complainant's Prehearing Exchange as Complainant's Exhibit 6, assists in applying the statutory factors absent a specific formula in the statute for calculating penalties.

The UST Penalty Guidance includes both a gravity and economic benefit component. Gravity is a monetary value reflective of the seriousness of the violations and the population at risk. Matrix values for categories including cooperation/noncooperation, willfulness/negligence, history of noncompliance and other unique factors may be assessed, resulting in upward and/or downward adjustments to the initial gravity component of the penalty.

The EPA cited the Potential for Harm and Extent of Deviation as Major for the Respondent's violation of 40 C.F.R. § 280.41(a) consistent with the UST Penalty Guidance. The UST Penalty Guidance provides that a Respondent's degree of Cooperation (or Noncooperation) in response to an enforcement action can result in an initial gravity adjustment upwards by as much as 50 percent and downwards by as much as 25 percent. In order to qualify for a reduced Cooperation matrix value, a Respondent must demonstrate cooperative behavior by going above and beyond what is minimally required to comply with the requirements that are closely related to the initial harm addressed. Because compliance is expected with the regulation, the UST Penalty Guidance provides that no downward adjustment may be made just by coming into compliance. In this case, the Cooperation matrix value was adjusted upward by 25 percent because the Respondent was unwilling to resolve the noncompliance by accepting the EPA's expedited settlement offer. In addition, the Respondent's prior violation of the UST requirements at the same facility resulting in a similar enforcement action warranted the 25 percent upward adjustment based on noncooperation.

Willfulness, which takes into account the Respondent's culpability and intentions in committing the violation, similarly resulted in an upward gravity adjustment of 25 percent in this case. Consistent with the UST Penalty Guidance, the increase is appropriate given that the Respondent knew of the legal requirement from the EPA's prior enforcement action. Further,

the Respondent had total control over the equipment and should have known that one or both of its leak detection methods was not operating if they had checked the data generated by the equipment for exactly that purpose.

The gravity component further was increased by 50 percent based on the Respondent's history of noncompliance at the same Facility. These upward adjustments to the gravity component of the penalty calculation are consistent with the UST Penalty Guidance.

The Days of Noncompliance Multiplier was calculated at 2.5 based on almost one year or 357 days of noncompliance in accordance with the UST Penalty Guidance. The Environmental Sensitivity Multiplier was set at 1.5 since the Facility is in Indian country, consistent with standard operating procedures. Unlike the initial penalty calculation, the revised penalty calculation prepared on July 17, 2014, to facilitate settlement discussions included a downward adjustment of 25 percent based on unique factors. Combined, these factors resulted in a total gravity based component of \$13,978.

The EPA calculated economic benefit at \$634 based on the delayed costs associated with conducting SIR tests for one tank at \$50 per month for 12 months. This is the cost the Respondent would have incurred had it performed the required monthly monitoring. It is important to recoup these costs to eliminate any savings enjoyed by the Respondent for not complying with the regulations.

The revised gravity and economic benefit components calculated in accordance with the Penalty Policy totaled \$14,613. There was no reduction to the proposed penalty amount based on ability to pay absent any communication from the Respondent claiming an inability to pay. The penalty calculation worksheet outlining the above-referenced calculation was prepared by Francisca Chambus and is included in the Prehearing Exchange as Complainant's Exhibit 7.