

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION III

IN RE: )  
 )  
Reynolds Oil Company, Inc. )  
 )  
Respondent. )

Docket No. RCRA-03-2012-0163

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RESPONDENT'S ANSWER TO ADMINISTRATIVE COMPLAINT, COMPLIANCE ORDER, NOTICE OF  
RIGHT TO REQUEST HEARING, AND PROPOSED CIVIL PENALTY

Respondent Reynolds Oil company, Inc., by J. Steven Hunter, counsel, hereby responds  
to the Complaint, Order, Notice, and Penalty in turn.

I. RESPONDENT'S ANSWER TO ADMINISTRATIVE COMPLAINT

A. Admissions

The Respondent admits the allegations of paragraph 1, 2, 3, 5, 8, 11, 12, 16, 18, 21,  
22, 23, 26, 31, 35, 36.

B. Denials

The Respondent denies the allegations of paragraphs 4, 10, 19, 20, and 28. The  
Respondent denies the allegations of paragraph 4 because the Respondent has no knowledge of  
an EPA representative conducting a Compliance Evaluation Inspection. The Respondent does  
have knowledge, however, of certain Compliance Monitoring Inspections in which the  
Respondent satisfactorily passed and which are enclosed.

The Respondent denies allegations of paragraph 10. The Respondent did not receive and  
has no knowledge of Information Requests sent on March 30, 2009, and July 12, 2010.

The Respondent denies the allegations in paragraphs 19 and 20. The K & S Mini Mart  
was closed on November 24, 2008, was reopened on January 19, 2009, and was closed again on  
June 30, 2010. It has been closed since June 30, 2010. Thus, during the relevant times, the K & S

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Mini Mart did not "routinely contain regulated substances." On June 28, 2011, Ruth M. Porter, a UST Program Manager for the WVDEP, sent the Respondent a letter stating, "No deficiencies were noted during the inspection of your facility. You and your staff are to be commended for your commitment to proper operation and maintenance of your facility." This letter appears to indicate that K & S Mini Mart has been properly closed, emptied, and cleaned pursuant to 40 C.F.R. § 280.71. Thus, 40 C.F.R. § 280.31(a) does not apply.

The Respondent denies allegations in paragraph 28. The Respondent employs an electronic tank monitor as the method of leak detection.

***C. Partial Admissions and Denials***

The Respondent admits in part and denies in part the allegations of paragraphs 6, 7, 9, 17, 27, 29, 30, and 32. The Respondent admits in part and denies in part the allegations of paragraphs 6: it is admitted that the K & S Mini Mart contains four USTs as the Administrative Complaint indicates, but it is denied that each UST has routinely contained gasoline. As explained above, the K & S Mini Mart closed in 2008, reopened in 2009, and closed indefinitely in 2010.

The Respondent admits in part and denies in part the allegations of paragraph 7: the Respondent is the owner, not the operator, of the USTs.

The Respondent admits in part and denies in part the allegations of paragraph 9: during "all times relevant hereto," the Facilities were not used to store regulated substances. The K & S Mini Mart was closed on November 24, 2008 and did not contain regulated substances. On January 19, 2009, the K & S Mini Mart was reopened and contained regulated substances. Since June 30, 2010, K & S Mini Mart has been closed and has not contained regulated substances.

However, the USTs referenced in paragraph 5 have not been empty and have contained regulated substances during relevant times.

The Respondent admits in part and denies in part the allegations of paragraph 17: pursuant to 40 C.F.R. § 280.31(a) which is incorporated by WVUSTR § 33-30-2.1, "All corrosion protection systems must be 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" (emphasis added). The Respondents response to paragraphs 19 and 20 expounds on this matter.

The Respondent admits in part and denies in part the allegations of paragraph 27: it is admitted that owners and operators of UST systems must report to the implementing agency within 24 hours of monitoring results from a detection method that indicates a possible release pursuant to 40 C.F.R. § 280.50, but it is denied that exceptions are not relevant.

The Respondent admits in part and denies in part the allegations of paragraphs 29 and 30. According to 40 C.F.R. § 280.45, "The results of any sampling, testing, or monitoring must be maintained for at least 1 year." For reasons set forth below and pursuant to said code section, the Respondent did not keep the records relevant to these allegations. As such, the Respondent can neither confirm nor deny the allegations of paragraphs 29 and 30, especially the alleged time. The Respondent can confirm that before K & S closed indefinitely, the electronic tank monitor did not operate when the tank was nearly empty. Thus, while the release detection testing for one of the K & S Mini Mart's 8,000 gallon USTs *may* have indicated a "fail" in March and April of 2008, it did not indicate a possible release, but rather, the testing indicated that the tank was not adequately full of "regulated substance." Moreover, the electronic tank monitor was not defective. It is known in the industry that USTs low on fuel can mislead detection methods such

as an electronic tank monitor. In response to the monitor's misleading reading, the Respondent filled the tank as soon as it was possible to do so in order to get a proper reading.<sup>1</sup> Thereafter, the electronic tank monitor showed no signs of leakage, and any indication of a "fail" was abated. Months later, the K & S Mini Mart was closed as explained above.

The Respondent admits in part and denies in part the allegations of paragraph 32: it is admitted that UST systems must be monitored at least every 30 days for releases using one of the methods listed in 40 C.F.R. § 280.43(d)-(h) pursuant to 40 C.F.R. § 280.41(a), but it is denied that the exceptions are not relevant.

#### ***D. Abstentions***

The Respondent can neither confirm nor deny allegations contained in paragraphs 13, 14, 15, 24, and 25. The Respondent is in the process of verifying said allegations. The Respondent can neither confirm nor deny allegations in paragraphs 33, 34, 37, 38 because the Respondent no longer possesses records from 2008, 2009, and 2010. According to 40 C.F.R. § 280.45, "The results . . . must be maintained for at least 1 year." The Respondent has acted in compliance with 40 C.F.R. § 280.45 and no longer possesses records from the years of the alleged dates.

## **II. RESPONDENT'S ANSWER TO COMPLIANCE ORDER**

The Respondent has complied with the requirements of paragraphs 39, 40, 41, 42, 43, 44. The K & S Mini Mart has been closed since June 30, 2011, and has been in compliance at least since June 28, 2011, according to a letter of Compliance Monitoring Inspection issued by the WVDEP through Ruth M. Porter. According to a similar letter issued to the Handy Place by the

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<sup>1</sup> Gas prices in March and April of 2008 soared, and players in the petroleum industry, such as the Respondent, suffered. *Average gas prices—April 14, 2008*, CONSUMERREPORTS.ORG (Apr. 14, 2008, 7:26 PM), <http://news.consumerreports.org/cars/2008/04/average-gas-pri.html> (reporting that "gas prices continue to soar higher). Thus, the Respondent's USTs were not as full as normal, which caused the electronic tank monitor to give an abnormal reading.

WVDEP through Christopher M. Gatens and Ruth M. Porter, the Handy Place has been in compliance on September 23, 2011, and January 30, 2012. The Handy Place records indicate that it continues to comply. The Handy Place has had CSLD chips installed into the tank gauges pursuant to 40 C.F.R. §§ 280.40(a) and 280.43. The installation is evidenced by a WVDEP UST Inspection Checklist signed by Michael W. Young and dated September 13, 2011. It is assumed that the EPA has notice through the WVDEP, who has notice of the facilities' compliance, inferably, from the aforementioned letters of compliance. Therefore, according the WVDEP, the K & S Mini Mart and the Handy Place are currently in compliance with the regulations presented in the Administrative Complaint.

Insofar as the Respondent is found not to be in compliance with the respective regulations, the Respondent seeks to inquire information on, or advice about, compliance with such statutes and regulations as provided in § 213 of the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA") as the Respondent has been deemed to qualify as a "small business" under the SBREFA. The purpose of the SBREFA is "to make Federal regulators more accountable for their enforcement actions by providing small entities with a meaningful opportunity for redress of excessive enforcement activities." Likewise, the Respondent requests an extension of time to comply with the Order if the Respondent is still found not to be in compliance after the appropriate agencies evaluate this Answer.

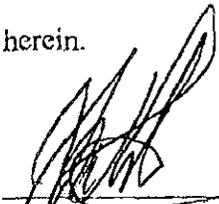
The Respondent has enclosed records indicating compliance pursuant to paragraphs 45, 46, 47, and 48.

### **III. RESPONDENT'S ANSWER TO NOTICE OF RIGHT TO REQUEST A HEARING**

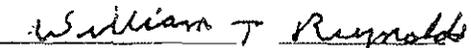
The Respondent requests a hearing to demonstrate compliance with the regulations presented in the Administrative Complaint and to contest any proposed civil penalty.

#### IV. RESPONDENT'S ANSWER TO PROPOSED CIVIL PENALTY

The Respondent's compliance with the regulations contained in the Administrative renders the proposed civil penalty unnecessary. Inasmuch as the Respondent has yet to comply with certain regulations, the Respondent has demonstrated a good faith effort to comply with the applicable requirements. The Respondent has complied with the requirements and has closed the K & S Mini Mart pursuant to regulations. In a letter from Ruth M. Porter sent on June 28, 2011, the WVDEP informed the Respondent that "[n]o deficiencies were noted during the inspection of [K & S Mini Mart]." Furthermore, the letter indicated that the Respondent should be "commended for . . . commitment to proper operation and maintenance." At the Handy Place, the Respondent has upgraded release detection methods pursuant to applicable requirements. Compliance is indicated in a letter sent from Christopher M. Gatens of WVDEP on January 30, 2012. It states, "No deficiencies were noted during the inspection of your facility." Additionally, a letter sent from Ruth M. Porter of WVDEP on September 23, 2011 indicates compliance. It states, "No deficiencies were noted during the inspection of your facility. You and your staff are to be commended for your commitment to proper operation and maintenance of your facility." As the letters indicate, the Respondent is currently in compliance with applicable requirements and should be commended rather than be penalized. The applicable documents are enclosed herein.

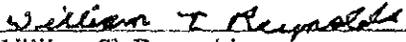
  
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J. Steven Hunter  
Steve Hunter Associates, I.c.  
Counsel for Respondent  
209 North Court Street  
Lewisburg, WV 24901  
(304) 645-4622  
West Virginia State Bar No. 1826

**Reynolds Oil Company, Inc.**  
By Counsel:

  
Respondent William T. Reynolds  
President of Reynolds Oil Company, Inc.

## COMPLIANCE ORDER CERTIFICATION

I certify that the information contained in or accompanying this Compliance Order Certification is true, accurate, and complete. As to the identified portions of this Compliance Order Certification for which I cannot personally verify their accuracy, I certify under penalty of law that this Compliance Order Certification and all attachment were prepared in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

  
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William T. Reynolds  
President of Reynolds Oil Company, Inc.

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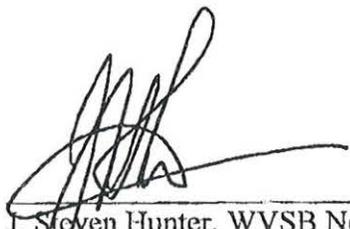
CERTIFICATE OF SERVICE

I, J. Steven Hunter, counsel for Respondent Reynolds Oil Company, Inc., hereby certify that the foregoing RESPONDENT'S ANSWER TO ADMINISTRATIVE COMPLAINT, COMPLIANCE ORDER, NOTICE OF RIGHT TO REQUEST HEARING, AND PROPOSED CIVIL PENALTY has been served upon counsel of record and applicable agencies as indicated below by mailing a true copy thereof in the U.S. Mail, postage prepaid, on this the 12 day of June, 2012.

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Sr. Assistant Regional Counsel  
U.S. EPA - Region III  
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Philadelphia, PA 19103-2029

Ruth M. Porter  
UST Program Manager  
WV Department of Environmental Protection  
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Charleston, WV 25304

Clark Conover  
RCRA Compliance and Enforcement Branch (3LC70)  
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Wheeling, West Virginia 26003-2995



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