



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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

FEB 27 2014

Ref: ENF - L

SENT VIA CERTIFIED MAIL No. 7009 3410 0000 2598 5003
RETURN RECEIPT REQUESTED

Mr. Mykel Stockton, Registered Agent
Stockton Oil Company
1607 4th Avenue North
Billings, Montana 59101-1522

Re: In the Matter of Stockton Oil Company
Battlefield Express C-Store
Docket No. **RCRA-08-2014-0002**
Complaint and Notice of Opportunity for Hearing

Dear Mr. Stockton:

The U.S. Environmental Protection Agency Region 8 (EPA) is issuing Stockton Oil Company (Stockton Oil), the enclosed Complaint and Notice of Opportunity for Hearing (Complaint) for an alleged underground storage tank (UST) violation at the Battlefield Express C-Store facility (facility) in Crow Agency, Montana. The Complaint is issued pursuant to section 9006 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6991e.

The EPA alleges in the Complaint that Stockton Oil failed as owner and/or operator of the facility to comply with the federal UST regulations codified at 40 C.F.R. Part 280 in violation of section 9003 of RCRA, 42 U.S.C. § 6991b. The Complaint alleges failure to monitor one of the three underground storage tanks at the facility every 30 days during the 12 month time period before the inspection as required by 40 C.F.R. § 280.41(a). The EPA proposes a total penalty of \$16,609 for the violation alleged. This is the same violation that the EPA offered to resolve expeditiously on June 9, 2013, but that Stockton Oil declined.

Stockton Oil has the right to a hearing to contest the factual allegations in the Complaint. If it admits the allegations, or the allegations are found to be true after Stockton Oil has had an opportunity for a hearing, it has the right to contest the penalty proposed in the Complaint. A copy of the EPA's administrative procedures is enclosed. Please note the requirements for an Answer set forth in 40 C.F.R. §§ 22.15 and 22.38. If Stockton Oil wishes to contest the allegations in the Complaint or the penalty proposed in the Complaint, it must file a written Answer within thirty (30) days of receipt of the enclosed Complaint with the EPA Regional Hearing Clerk at the following address:

Ms. Tina Artemis, Regional Hearing Clerk (8RC)
U.S. EPA, Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

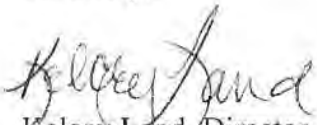
If Stockton Oil does not file an Answer by the applicable deadline, it will have defaulted and each allegation in the Complaint may be deemed to be admitted as true. Stockton Oil will have waived its right to appear in this action for any purpose and will also have waived your right to be notified of any Agency proceedings that occur before a civil penalty may be imposed. Provided that the Complaint is legally sufficient, the presiding officer may then find Stockton Oil liable and assess against it a civil penalty of up to \$11,000 for each tank for each day of violation.

Whether or not Stockton Oil requests a hearing, it may confer informally with the EPA concerning the alleged violation or the amount of the proposed penalty. Stockton Oil has the right to be represented by an attorney at any stage of the proceedings, including any informal discussions with the EPA, but it is not required. A request for an informal conference does not extend the thirty (30) day period for filing Stockton Oil's Answer and/or requesting a hearing.

If Stockton Oil has any questions or desire to schedule an informal conference, the most knowledgeable people on our staff regarding this matter are Francisca Chambus and Amy Swanson. Ms. Chambus is in the Underground Storage Tank Program and can be reached at (303) 312-6782. Ms. Swanson is in the Legal Enforcement Program and can be reached at (303) 312-6906.

We urge your prompt attention to this matter.

Sincerely,



Kelcey Land, Director
RCRA/CERCLA Technical Enforcement Program

Sincerely,



James H. Eppers, REU Supervisory Attorney
Legal Enforcement Program

Enclosures:

Consolidated Rules of Civil Practice, 40 C.F.R. Part 22

Complaint and Notice of Opportunity for Hearing, with Exhibits 1 and 2

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and true copies of the foregoing COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING with Exhibits 1 and 2 were sent and/or hand-carried, as indicated below:

to:

Mr. Mykel Stockton, Registered Agent
Stockton Oil Company, Inc.
1607 4th Avenue North
Billings, Montana 59101-1522
By Certified Mail, Return Receipt Requested
No. 7009 3410 0000 2598 5003
(One copy, with a copy of 40 C.F.R. part 22)

and

Tina Artemis, Region 8 Hearing Clerk
United States Environmental Protection Agency, Region 8
1595 Wynkoop Street
Denver, Colorado 80202-1129
By Hand Delivery
(Original and one copy, without full 40 C.F.R. part 22, 1st page only)

Date: February 27, 2014

By: Dayle Aldinger
Dayle Aldinger

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2014 FEB 27 PM 4: 04

EPA REGION VIII
REG. CLERK

In the Matter of:)
)
Stockton Oil Company)
)
Battlefield Express C-Store)
Junction Hwy 212 and I-90)
Crow Agency, MI 59022)
EPA ID Number 2020002)
)
Respondent.)

Docket No. RCRA-08-2014-0002

**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 sections 9001 - 9010, 42 U.S.C. §§ 6991 - 6991i, authorizes EPA to regulate the installation and use of "underground storage tanks" ("USTs" or "tanks") which contain regulated substances as defined by section 9001(2) of RCRA, 42 U.S.C. § 6991(2).
2. EPA has jurisdiction over this matter pursuant to RCRA section 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 section 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 Stockton Oil Company (Respondent) owns and operates three 10,000 gallon fiberglass reinforced plastic double-walled tanks at the Battlefield Express C-Store Facility (Facility), located at the junction of Highway 212 and I-90 in Crow Agency, Montana, on the Crow Indian Reservation. All three tanks were installed in February 2000. The single 10,000 gallon tank (Tank 1) contains unleaded gasoline. Two of the tanks are compartmentalized. One compartmentalized tank contains 6,000 gallons of plus (Tank 2-1) and 4,000 gallons of premium unleaded gasoline (Tank 2-2). The other compartmentalized tank contains 6,000 gallons of diesel #2 (Tank 3-1), and 4,000 gallons of dyed diesel (Tank 3-2).

7. The Respondent owns and/or operates the Facility, including the tanks, as a for-profit gas station and convenience store.

8. The Respondent is a “person” as defined by section 9001(5) of RCRA, 42 U.S.C. § 6991(5).

9. Respondent is an "operator" within the respective meanings of section 9001(3) of RCRA, 42 U.S.C. § 6991(3), and 40 C.F.R. § 280.12, of an "underground storage tank system" (UST system) as defined by section 9001(10) of RCRA, 42 U.S.C. § 6991(10), and 40 C.F.R. § 280.12.

10. Respondent's UST systems meet the performance standards for new USTs described in 40 C.F.R. § 280.20.

11. The EPA phoned and spoke with a Facility representative on March 28, 2013, informing her of the Facility's planned inspection date of April 10, 2013, and confirming her availability.

12. On April 10, 2013, EPA inspector Gary Wang (the inspector) inspected the Facility to determine its compliance with RCRA Subtitle I and the EPA regulations relating to USTs.

13. A Facility representative was present at the time of and consented to the inspection.

14. At the time of the inspection, the Respondent confirmed that the piping is double-walled Environ Geoflex and a pressurized system.

15. 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.

16. The Respondent also uses interstitial monitoring as a method of leak detection for the tanks.

17. At the time of the inspection, the Respondent produced records of monthly tank leak detection results, tank inventory, and sensor status.

18. Neither the ATG printouts nor interstitial monitoring records showed leak detection results for Tank 3-2 for the previous 12 months.

19. At the conclusion of the inspection, the inspector informed the Respondent that the Facility was out of compliance and explained the violations and what was necessary to return the Facility to compliance with the UST regulations.

20. The Respondent submitted tank leak testing results to the EPA on April 26, 2013, verifying that the ATG had been repaired and Tank 3-2 had been returned to compliance with the leak detection requirements.

21. The EPA issued the Respondent an Expedited Enforcement Compliance Order and Settlement Agreement (field citation) on June 9, 2013, proposing to resolve the leak detection violation for a penalty of \$1,050.

22. The EPA withdrew its field citation offer in a letter dated July 28, 2013, and notified the Respondent that it would proceed with formal enforcement to resolve the past violation.

23. The EPA extended the field citation compliance date until September 22, 2013, based on a telephone conversation with the Respondent on August 22, 2013.

24. The Respondent notified the EPA that it would not pay the penalty proposed in the field citation on September 23, 2013.

25. 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 occurring after January 12, 2009, through December 6, 2013.

26. 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, the Respondent is liable for civil penalties up to \$11,000 per day per tank during which the violation continues.

27. Paragraphs 1 through 26 are incorporated by reference in each of the counts listed below.

COUNT 1
Failure to monitor tanks every 30 days

28. Pursuant to 40 C.F.R. § 280.41(a), tanks must be monitored every 30 days for releases using one of the methods listed in 40 C.F.R. § 280.43(d) through (h).

29. Respondent uses a combination of ATG and interstitial monitoring as the method of leak detection for the tanks at the Facility.

30. Tank 3-2 does not have any passing continuous statistical leak detection tank tests or show interstitial monitoring for the 12 month period May 2012 through April 2013.

31. The Respondent's failure to monitor Tank 3-2 every 30 days for the 12 month period May 2012 through April 2013 constitutes a violation of section 9003(c) of RCRA, 42 U.S.C. § 6991b(c), and 40 C.F.R. § 280.41(a).

PROPOSED CIVIL PENALTY

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. 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 the Respondent to comply with the applicable requirements, Complainant proposes to assess a civil penalty of **\$16,609** as follows:

COUNT	VIOLATION	PROPOSED PENALTY
Count 1	Failure to monitor tanks every 30 days, 40 C.F.R. § 280.41(a)	\$16,609

TOTAL PROPOSED PENALTY: \$16,609

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 the Respondent does not contest the findings and penalty proposal set out above, this action may be resolved by paying the proposed penalty in full pursuant to 40 C.F.R. § 22.18. If such payment is made within 30 calendar days of receipt of this Complaint, no Answer need be filed. For more time for payment, the Respondent may file a statement agreeing to pay the penalty within 30 days of receipt of the Complaint, then pay the money within 60 days of such receipt. Payment shall be made by remitting a cashier's or certified check for the amount, including the name and docket number of the case, payable to the "Environmental Protection Agency" to:

**US checks by regular
US postal service mail:**

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

**Federal Express, Airborne,
Or other commercial carrier:**

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

Wire transfers:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York NY 10045
Field Tag 4200 of the Fedwire message should read "D
68010727 Environmental Protection Agency "

Online Payment:

WWW.PAY.GOV
Enter sfo 1.1 in the search field

A copy of the check or wire transfer shall be simultaneously sent to:

Amy Swanson, Enforcement Attorney
U.S. EPA Region 8 (8ENF-L)
1595 Wynkoop Street
Denver, CO 80202-1129

Payment of the penalty in this manner does not relieve the Respondent of its obligation to comply with the requirements of the statute and regulations. Payment of the penalty in this manner shall constitute consent by the Respondent to the assessment of the proposed penalty and a waiver of the Respondent's right to a hearing on this matter.

OPPORTUNITY TO REQUEST A HEARING

As provided in RCRA, you have the right to a public hearing to contest this Complaint. If you 1) contest the factual claims made in this Complaint; 2) contest the appropriateness of the proposed penalty; and/or 3) assert that you are entitled to judgment as a matter of law, you must file a written Answer in accordance with sections 22.15 and 22.38 of the Consolidated Rules within 30 calendar days after receipt of this Complaint. Your Answer must 1) clearly and directly

admit, deny, or explain each of the factual allegations contained in the Complaint with regard to which you have knowledge; 2) state circumstances or arguments which are alleged to constitute grounds for defense; 3) state the facts you dispute; 4) state the basis for opposing the proposed relief; and 5) specifically request an administrative hearing, if desired. Failure to admit, deny or explain any material factual allegation in this Complaint will constitute an admission of the allegation.

The Answer and one copy must be sent to:

Tina Artemis, Regional Hearing Clerk
U.S. EPA Region 8 (8RC)
1595 Wynkoop Street
Denver, Colorado 80202-1129

and a copy must be sent to the following attorney:

Amy Swanson, Enforcement Attorney
U.S. EPA Region 8 (8ENF-L)
1595 Wynkoop Street
Denver, CO 80202-1129

IF YOU FAIL TO REQUEST A HEARING, YOU WILL WAIVE YOUR RIGHT TO FORMALLY CONTEST ANY OF THE ALLEGATIONS SET FORTH IN THE COMPLAINT.

IF YOU FAIL TO FILE A WRITTEN ANSWER OR PAY THE PROPOSED PENALTY 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

The EPA encourages settlement of a proceeding at any time if the settlement is consistent with the provisions and objectives of RCRA and applicable regulations and is willing to explore this possibility in an informal settlement conference. If you or your attorney, if you choose to be represented by one, have any questions or wish to have an informal settlement conference with

EPA, please call Amy Swanson at (303) 312-6906. 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 out above. The settlement process, however, may be pursued simultaneously with the administrative litigation procedures found in the Consolidated Rules. If a settlement can be reached, its terms must be expressed in a written consent agreement, signed by the parties and incorporated into a final order signed by the Regional Judicial Officer.

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8,
Complainant.**

Date: Feb 21, 2014

By: David Rozelle for JHE
James H. Eppers, REU Supervisory Attorney
Legal Enforcement Program
Office of Enforcement, Compliance,
and Environmental Justice
U.S. EPA Region 8
1595 Wynkoop St.
Denver, Colorado 80202-1129

Date: 2/25/14

By: Kelcey Land
Kelcey Land, Director
RCRA/CERCLA Technical Enforcement Program
Office of Enforcement, Compliance,
and Environmental Justice
U.S. EPA Region 8
1595 Wynkoop St.
Denver, Colorado 80202-1129

§21.13

approve or disapprove the State issued statement, in accordance with the requirements of §21.5.

(2) The Regional Administrator will periodically review State program performance. In the event of State program deficiencies the Regional Administrator will notify the State of such deficiencies.

(3) During that period that any State's program is classified as deficient, statements issued by a State shall also be sent to the Regional Administrator for review. The Regional Administrator shall notify the State, the applicant, and the SBA of any determination subsequently made, in accordance with §21.5, on any such statement.

(i) If within 60 days after notice of such deficiencies has been provided, the State has not taken corrective efforts, and if the deficiencies significantly affect the conduct of the program, the Regional Administrator, after sufficient notice has been provided to the Regional Director of SBA, shall withdraw the approval of the State program.

(ii) Any State whose program is withdrawn and whose deficiencies have been corrected may later reapply as provided in §21.12(a).

(g) Funds appropriated under section 106 of the Act may be utilized by a State agency authorized to receive such funds in conducting this program.

§21.13 Effect of certification upon authority to enforce applicable standards.

The certification by EPA or a State for SBA Loan purposes in no way constitutes a determination by EPA or the State that the facilities certified (a) will be constructed within the time specified by an applicable standard or (b) will be constructed and installed in accordance with the plans and specifications submitted in the application, will be operated and maintained properly, or will be applied to process wastes which are the same as described in the application. The certification in no way constitutes a waiver by EPA or a State of its authority to take appropriate enforcement action against the owner or operator of such facilities for violations of an applicable standard.

PART 22—CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENT OF CIVIL PENALTIES AND THE REVOCATION/TERMINATION OR SUSPENSION OF PERMITS

Subpart A—General

- Sec. 22.1 Scope of this part. 22.2 Use of number and gender. 22.3 Definitions. 22.4 Powers and duties of the Environmental Appeals Board, Regional Judicial Officer and Presiding Officer; disqualification, withdrawal, and reassignment. 22.5 Filing, service, and form of all filed documents; business confidentiality claims. 22.6 Filing and service of rulings, orders and decisions. 22.7 Computation and extension of time. 22.8 Ex parte discussion of proceeding. 22.9 Examination of documents filed.

Subpart B—Parties and Appearances

- 22.10 Appearances. 22.11 Intervention and non-party briefs. 22.12 Consolidation and severance.

Subpart C—Prehearing Procedures

- 22.13 Commencement of a proceeding. 22.14 Complaint. 22.15 Answer to the complaint. 22.16 Motions. 22.17 Default. 22.18 Quick resolution; settlement; alternative dispute resolution. 22.19 Prehearing information exchange; prehearing conference; other discovery. 22.20 Accelerated decision; decision to dismiss.

Subpart D—Hearing Procedures

- 22.21 Assignment of Presiding Officer; scheduling the hearing. 22.22 Evidence. 22.23 Objections and offers of proof. 22.24 Burden of presentation; burden of persuasion; preponderance of the evidence standard. 22.25 Filing the transcript. 22.26 Proposed findings, conclusions, and order.

Subpart E—Initial Decision and Motion to Reopen a Hearing

- 22.27 Initial decision. 22.28 Motion to reopen a hearing.