

**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

**COMPLAINANT'S UNOPPOSED
MOTION TO AMEND COMPLAINANT'S
INITIAL PREHEARING EXCHANGE**

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Pursuant to Rules 22.16 and 22.19(f) of the Consolidated Rules of Practice, Complainant respectfully requests leave to amend Complainant's Initial Prehearing Exchange. 40 C.F.R. §§ 22.16, 22.19(f). "A party who has made [a prehearing information exchange] ... shall promptly supplement or correct the exchange when the party learns that the information exchanged or response provided is incomplete, inaccurate or outdated, and the additional or corrective information has not otherwise been disclosed to the other party pursuant to this section." 40 C.F.R. § 22.19(f).

In accordance with the Prehearing Order, dated August 26, 2014, Complainant's Initial Prehearing Exchange was filed on October 23, 2014. Directives 2(B) and 2(C) of the Prehearing Order directed that Complainant's Initial Prehearing Exchange was to include "all factual information and supporting documentation relevant to the assessment of a penalty ..." and

“a detailed explanation of the factors considered and methodology utilized in calculating the amount of the proposed penalty, in accordance with the penalty factors and policies referenced in the Proposed Civil Penalty section of the Complaint.” These items were included within Complainant’s Initial Prehearing Exchange, and accurately reflect the Complaint at the time Complainant’s Initial Prehearing Exchange was filed.

Complainant filed an Amended Complaint on February 12, 2015, to address additional periods of noncompliance that occurred after the original Complaint was filed. In conformance with the “U.S. EPA Penalty Guidance for Violations of UST Regulations,” Complainant’s proposed penalty was adjusted within the Amended Complaint to include those additional periods of violation.

As a result of including additional periods of violation in the Amended Complaint, some of the penalty descriptions and proposed penalty within Complainant’s Initial Prehearing Exchange, at Sections 2.B and 2.C and at Exhibit C-38, no longer accurately reflect the penalty descriptions and proposed penalty within the Amended Complaint. Complainant respectfully requests leave to update Sections 2.B, 2.C and Exhibit C-38 within the Complainant’s Initial Prehearing Exchange. The purpose of the amendment would be to amend the periods of violation and the calculation of the proposed penalty, so that those portions of Complainant’s Initial Prehearing Exchange correspond to the Amended Complaint.

Complainant also respectfully requests leave to correct a typographic error for Exhibit CX-41 in Section 1.B and the Table of Contents for Volume 2 of 2 of Complainant’s Initial Prehearing Exchange, where the date for the document should be shown as April 23, 2012, not August 23, 2012.

Prior to filing this Motion, the undersigned Complainant's Counsel contacted the opposing party as to the amendment discussed herein, and Respondents' Counsel stated that he does not oppose the relief sought herein.

Complainant's Counsel may be contacted by phone at (206) 553-2723, by email at bellovary.chris@epa.gov, or by mail at Christopher W. Bellovary, EPA Region 10, 1200 Sixth Avenue, Suite 900, Mail Stop ORC-158, Seattle, Washington 98101.

Respectfully submitted this 18th day of February, 2015.


Christopher W. Bellovary
COUNSEL FOR COMPLAINANT
U.S. Environmental Protection Agency, Region 10