

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR**

IN THE MATTER OF:)	Docket No. RCRA-08-2014-0002
)	
Stockton Oil Company, Inc.,)	
)	
Battlefield Express Center Facility)	
Junction Hwy 212 and I-90)	
Crow Agency, MT 59022)	
EPA ID Number 2020002)	
)	
Respondent.)	

COMPLAINANT’S PREHEARING EXCHANGE

Complainant, the United States Environmental Protection Agency, Region 8 (EPA), files this COMPLAINANT’S PREHEARING EXCHANGE pursuant to 40 C.F.R. § 22.19(a), and the Administrative Law Judge’s the PREHEARING ORDER of May 15, 2014, and ORDER ON JOINT MOTION FOR EXTENSION OF TIME TO FILE PREHEARING EXCHANGES dated June 26, 2014.

I. WITNESSES

The Complainant may call the following witnesses to testify:

1. Ms. Francisca Chambus, Underground Storage Tank Coordinator
U.S. EPA Region 8, Underground Storage Tank Program
1595 Wynkoop Street
Denver, Colorado 80202-1129

Ms. Chambus is employed as the Underground Storage Tank (UST) Coordinator with the Office of Partnerships and Regulatory Assistance, U.S. EPA Region 8. In this capacity, Ms. Chambus oversees UST inspections conducted by other UST inspectors and develops UST enforcement actions. Ms. Chambus routinely reviews draft inspection reports and findings

prepared by her colleagues and provides input on determining whether and how to pursue formal enforcement based on the specific UST violation(s). Ms. Chambus is authorized to issue field citations for minor noncompliance and is assigned to cases warranting formal enforcement. Ms. Chambus participates in monthly UST enforcement workgroup calls and is considered by her colleagues and the regulated community as an expert on UST regulations and enforcement.

As the custodian of the Stockton Oil Company enforcement file, Ms. Chambus may testify generally regarding RCRA subtitle I and the implementing UST regulations contained in 40 C.F.R. part 280. Ms. Chambus also is prepared to testify regarding the enforcement process and methodology for calculating penalties for UST violations in accordance with the statutory factors set forth in sections 9006(c) and (e) of RCRA, 42 U.S.C. 6991e(c) and (e), and the U.S. EPA Penalty Guidance for Violations of UST Regulations (OSWER Directive 9610.12) (UST Penalty Guidance).

Ms. Chambus will discuss specific to this case her role in determining and/or defining the regulatory violations identified at the Facility as a result of the April 10, 2013 inspection. She also will testify about the written and verbal communications she or other UST Program staff had with the facility representatives following the inspection including, but not limited to, conversations concerning the field citation initially offered by the EPA to resolve the noncompliance.

Ms. Chambus will testify regarding the original and revised penalty proposed in the Complaint. She will testify about the methodology used, statutory factors considered and UST Penalty Guidance applied to calculate a total penalty of \$16,609 for the violations alleged. She will also discuss the reason for the reduced proposed penalty amount of \$14,613. Ms. Chambus

will establish through testimony the basis for admitting into evidence Complainant's Exhibits 1 through 8. Complainant intends to call Ms. Chambus as an expert witness.

2. Mr. Gary Wang, Environmental Engineer
U.S. EPA Region 8, Underground Storage Tank Program
1595 Wynkoop Street
Denver, Colorado 80202-1129

Mr. Wang is employed as an Environmental Engineer with the Office of Partnerships and Regulatory Assistance, U.S. EPA Region 8. He has been employed in this capacity for four years. Mr. Wang has four principle duties: 1) he oversees state and tribal UST grants; 2) he provides compliance assistance and direct implementation support for Leaking USTs (LUSTs) in Indian country. This support includes overseeing site remediation investigations and assisting with making corrective action and remedial decisions at LUST release sites. 3) Mr. Wang provides compliance assistance to state, tribal and local UST programs by accompanying their inspectors on non-federal lead inspections. 4) Mr. Wang conducts lead inspections at facilities similar to Stockton Oil Company's Battlefield C Express Store where the EPA has not delegated the UST program to a state or tribe and maintains direct implementation authority.

With regard to the fourth duty referenced above, Mr. Wang's responsibilities include, in part, notifying the facility of a planned inspection, conducting the inspection to determine compliance with RCRA subtitle I and 40 C.F.R. part 280, drafting the resulting inspection report, and initiating appropriate follow-up with the facility to address any noncompliance identified. This may include formal enforcement and/or informal compliance assistance until the facility returns to compliance. In performing his inspection duties, Mr. Wang regularly makes compliance determinations and discusses the violations with the facility representative(s). He

informs the facility representative of the documentation he plans to review as part of his discussion, reviews both physical equipment and monitoring data on site at the time of inspection, and discusses any additional information the facility needs to submit to demonstrate UST compliance.

Mr. Wang is authorized to issue field citations or recommend their issuance for minor, violations by first-time violators. Alternatively, Mr. Wang has the authority to recommend formal enforcement to his management for more egregious or recurring violations.

Mr. Wang, if called to testify, will discuss the condition of the Facility and the type, nature and extent of UST violations he observed during his inspection on April 10, 2013. Mr. Wang also may testify regarding the UST inspection report he prepared for the Battlefield Express C-Store, his communications with Facility representatives, and authenticate any photographs he took of the Facility during the inspection. Mr. Wang also will testify regarding any post-inspection verbal or written communications he had with Facility representatives. Mr. Wang will establish, through testimony, the basis for admitting into evidence Complainant's Exhibit 9. Complainant intends to call Mr. Wang as a fact witness.

II. COMPLAINANT'S EXHIBIT LIST

- CX 1 US EPA Enforcement Narrative for Battlefield C Store, Inspection date April 10, 2013.
- CX 2 US EPA Region 8 Expedited Enforcement Compliance Order & Settlement Agreement, Battlefield Express Center Facility, EPA Facility ID Number 2020002, June 6, 2013.
- CX 3 Letter from Janice A. Pearson, EPA, to Mykel Stockton, Stockton Oil Company, regarding Expedited Enforcement Compliance Order & Settlement Agreement, Battlefield Express Center Facility, EPA Facility ID Number 2020002, July 29, 2013.
- CX 4 Facsimile from Becky Wilson, Battlefield Express Center Facility Manager, to Gary Wang, EPA, April 26, 2013.

- CX 5 EPA Record of Communication prepared by Francisca Chambus documenting phone conversation with Michelle Stockton of Stockton Oil Company, September 23, 2013.
- CX 6 U.S. EPA Penalty Guidance for Violations of UST Regulations (OSWER Directive 9610.12), November 1990.
- CX 7 EPA Penalty Calculation Worksheet, Stockton Oil, dated October 24, 2013.
- CX 8 EPA Penalty Statement.
- CX 9 US EPA Underground Storage Tank Inspection Report, Battlefield Express C-Store, dated April 10, 2013, (with attached Site Photos, Notice of Inspection, Violation and Compliance Identification Form; ATG Tank Leak Test Results; UST Inspection Notes; Conversation Record for Scheduled UST Inspection).

III. PROPOSED HEARING LOCATION

Complainant estimates that it will take one day to put on its case in chief. Complainant requests that the hearing be held in a suitable, neutral courtroom facility in Billings, Montana. Complainant does not require any translation services.

IV. PENALTY STATEMENT

The Prehearing Order requests as part of Complainant's Initial Prehearing Exchange that Complainant submit all factual information and supporting documentation relevant to the assessment of a penalty. Complainant also is ordered to submit a detailed explanation of the factors considered and methodology utilized in calculating the amount of the proposed penalty in accordance with the statutory penalty factors and any policies or guidance relied on by Complainant. The single policy used by Complainant in calculating the proposed penalty is U.S. EPA Penalty Guidance for Violations of UST Regulations, November 1990 (OSWER Directive 9610.12), referenced above and included herein as "CX 6."


V. RESERVATIONS

Complainant reserves the right to move for additional discovery pursuant to 40 C.F.R. § 22.19(e) and supplement its prehearing exchange thereafter if warranted to include evidence deemed relevant and probative by the presiding officer. Complainant also reserves the right to add witnesses to rebut Respondent's case, to call as a hostile witness any witness endorsed or noticed by Respondent, to subpoena any witnesses who is an employee, agent or contractor of the Respondent or is endorsed or noticed by Respondent and to cross-examine any witnesses examined by Respondent at any time.

Respectfully submitted,

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

Date: 8/22/2014

By: 
Amy Swanson, Senior Enforcement Attorney
Legal Enforcement Program
EPA Region 8
1595 Wynkoop Street (8ENF-L)
Denver, Colorado, 80202-1129
Telephone No: (303) 312-6906

CERTIFICATE OF SERVICE

The undersigned certifies that on August 22, 2014, the foregoing COMPLAINANT'S PREHEARING EXCHANGE was sent this day in the following manner to the addresses listed below.

Original and one copy by email to:

Sybil Anderson, Headquarters Hearing Clerk
Office of Administrative Law Judges (Mail Code 1900R)
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460
OALJfiling@epa.gov

Copy by regular mail to:

Mykel Stockton, President
Stockton Oil Company
1607 4th Avenue North
P.O. Box 1756
Billings, MT 59103-1522

On Monday, August 25, 2014, copies of the same were filed with the Office of Administrative Law Judge using the OALJ E-Filing System based on the August 11, 2014, memorandum replacing the prior electronic filing system used above effective August 14, 2014.

Date: 8/25/2014

By: 