

**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 PREHEARING BRIEF

COMPLAINANT’S PREHEARING BRIEF

CONTENTS

| | |
|---|----|
| I. Introduction | 2 |
| <i>Regulatory Background</i> | 3 |
| II. EPA Will Present Evidence Proving Each Element of Its Prima Facie Case | 4 |
| A. <i>Respondents admit liability for Counts 1-2</i> | 4 |
| B. <i>Respondents admit liability for Counts 3-4</i> | 5 |
| C. <i>Respondents are liable for Counts 5-6</i> | 6 |
| 1. Respondents’ UST systems are new tank systems | 6 |
| 2. Respondents’ new tank systems are subject to performance standards for new UST systems. | 7 |
| 3. Respondents are included among “all owners and operators” | 10 |
| 4. In re Norman C. Mayes supports Complainant’s position | 12 |
| 5. Respondents are liable for violating 40 C.F.R. § 280.20 | 13 |
| 6. Respondents are liable for violating 40 C.F.R. § 280.31 | 14 |
| D. <i>Respondents admit liability for Counts 7-9</i> | 15 |
| III. Conclusion | 16 |

Complainant, the Director of the Office of Compliance and Enforcement of Region 10 of the United States Environmental Protection Agency (EPA), through its undersigned attorneys and pursuant to the Presiding Officer's *Notice of Hearing and Scheduling Order*, dated January 8, 2015, hereby files *Complainant's Prehearing Brief*. In support of this Brief, Complainant states as follows:

I. Introduction

This is a case about long-term mismanagement of three underground storage tank ("UST") systems at a gasoline station, Da Stor at Lillie's Corner. Complainant intends on proving that Respondents have admitted liability on Counts 1 through 4 and 7 through 9 of the Amended Complaint. Counts 1 through 4 alleged failure to conduct release detection for Respondents' underground piping that regularly conveys regulated substances under pressure, in violation of 40 C.F.R. §§ 280.41(b)(1)(i)-(ii) and 280.44(a)-(b). Counts 7 through 9 alleged failure to demonstrate financial responsibility for any of Respondents' three UST systems, in violation of 40 C.F.R. § 280.93. Moreover, Complainant intends on proving that Complainant and Respondents have stipulated to all facts material to the violations alleged in Counts 1 through 4 and 7 through 9. Finally, Complainant intends on proving that Respondents have not contested the proposed penalty for Counts 1 through 4 and 7 through 9.

Complainant will present evidence at hearing as to Respondents' failure to install and maintain corrosion protection for their underground steel piping that regularly conveys regulated substances, in violation of 40 C.F.R. §§ 280.20 and 280.31, from a period of at least May 1, 2009, into February 13, 2013. Complainant will also present evidence showing a penalty of \$24,985 is appropriate for the failure to install and maintain corrosion protection for underground

steel piping that regularly conveys regulated substances, pursuant to the statutory penalty factors and the applicable EPA penalty guidance.

Regulatory Background

The Resource Conservation and Recovery Act (RCRA) directs EPA to “promulgate release detection, prevention, and corrective regulations applicable to all owners and operators of underground storage tanks, as may be necessary to protect human health and the environment.” RCRA § 9003(a), 42 U.S.C. § 6991b(a). Under this authority, EPA has developed regulations governing the installation, operation, maintenance, and closure of underground storage tanks, codified at 40 C.F.R. part 280, and these regulations constitute the “requirement[s] or standard[s] promulgated by [EPA] under section 6991b of this title [RCRA § 9003].” The Environmental Appeals Board (EAB) described the intent behind the UST regulations in the following manner:

The UST regulations are part of a comprehensive regulatory program for USTs implementing Subtitle I of the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. §§ 6901-6992[m]. The UST regulations, authorized by RCRA § 9003, 42 U.S.C. § 6991b. and promulgated in 1988, are designed to prevent, detect, and clean up releases from USTs containing petroleum and other regulated substances. In describing this comprehensive regulatory program, the preamble to the UST regulations emphasized that of the nation’s then 700,000 UST systems, “10 to 30 percent” had “leaked or [were] presently leaking,” constituting an “important threat to the nation’s groundwater resources.” 53 Fed. Reg. 37,082, 37,097 (Sept. 23, 1988). Furthermore, the preamble to the UST regulations identified USTs lacking the types of protective features discussed below as a leading cause of tank failure contributing to this threat. [Citations omitted.]

One of the most important features of the UST regulations is the requirement for UST owners and operators to phase in modern design, construction, and installation standards for the purpose of preventing releases of regulated substances from USTs due to corrosion, overspilling, and overfilling. To this end, the UST regulations require that owners and operators of USTs installed after December 22, 1988, (“new UST systems”) adhere to certain “performance standards.” For “existing UST systems” (those whose installation began before the above date), the regulations require that owners and operators either meet the performance standards for new USTs or upgrade their USTs not later than December 22, 1998. Upgrading can be accomplished by adding to USTs

certain protective features, such as linings for tanks and pipes, corrosion protection, and equipment to prevent overspilling and overfilling.

In re Carroll Oil Company, RCRA (9006) Appeal No. 01-2, 10 EAD 635, 638-39 (EAB 2002).

II. EPA Will Present Evidence Proving Each Element of Its Prima Facie Case

Complainant intends to present evidence for each and every claim alleged in the Amended Complaint, as follows:

A. Respondents admit liability for Counts 1-2

The Joint Set of Stipulated Facts, Exhibits, and Testimony (individually, “Stipulation”) establishes that Respondents are liable for failing to conduct an annual test of the operation of each automatic line leak detector (ALLD), in violation of 40 C.F.R. §§ 280.41(b)(1)(i) and 280.44(a) from at least May 1, 2009, through October 15, 2009; October 16, 2010, through August 1, 2012; August 2, 2013, through August 26, 2013; and August 27, 2014, through October 12, 2014. Joint Set of Stipulated Facts, Exhibits, and Testimony, at I.9.

“Underground piping that conveys regulated substances under pressure must ... [b]e equipped with an automatic line leak detector conducted in accordance with § 280.44(a)” and “[a]n annual test of the operation of the leak detector must be conducted in accordance with the manufacturer’s requirements.” 40 C.F.R. §§ 280.41(b)(1)(i), 280.44(a).

Respondents are the owners and/or operators of three UST systems, in which the UST system piping regularly conveys regulated substances. Answer to Amended Complaint at ¶¶ 1.1, 1.2, and 1.3; Stipulations I.3, I.19. Respondents’ UST systems have two pressurized lines, each of which is in contact with the ground and equipped with an automatic line leak detector (ALLD). Answer to Amended Complaint at ¶¶ 1.1 and 1.4; Stipulations I.17, I.18.

Respondents admit they failed to conduct an annual test of the operation of each ALLD, in violation of 40 C.F.R. §§ 280.41(b)(1)(i) and 280.44(a) from at least May 1, 2009, through October 15, 2009; October 16, 2010, through August 1, 2012; August 2, 2013, through August 26, 2013; and August 27, 2014, through October 12, 2014, as specified in Violation 1, Counts 1-2. Answer to Amended Complaint at ¶ 1.9, Stipulation I.9.

B. Respondents admit liability for Counts 3-4

The Stipulations establish that Respondents are liable for failing to monitor each pressurized line through an annual line tightness test or other approved methods, in violation of 40 C.F.R. §§ 280.41(b)(1)(ii) and 280.44(b) from at least May 1, 2009, through October 15, 2009; October 16, 2010, through August 1, 2012; August 2, 2013, through August 26, 2013; and August 27, 2014, through October 12, 2014, as specified in Violation 1, Counts 3-4. Answer to Amended Complaint at ¶ 1.9, Stipulation I.10.

“Underground piping that conveys regulated substances under pressure must ... [h]ave an annual line tightness test conducted in accordance with § 280.44(b)” or monthly through vapor monitoring, ground-water monitoring, interstitial monitoring, or other approved methods. 40 C.F.R. §§ 280.41(b)(1)(ii), 280.43(e)-(h), 280.44(b)-(c).

Respondents are the owners and/or operators of three UST systems, with two pressurized lines that convey regulated substances under pressure. Answer to Amended Complaint at ¶¶ 1.1 and 1.4, Stipulations I.3, I.17, I.18. Respondents admit they failed to monitor each pressurized line through an annual line tightness test or other approved methods, in violation of 40 C.F.R. §§ 280.41(b)(1)(ii) and 280.44(b) for each pressurized line from at least May 1, 2009, through October 15, 2009, October 16, 2010, through August 1, 2012, August 2, 2013, through

August 26, 2013; and August 27, 2014, through October 12, 2014. *See* Answer to Amended Complaint at ¶ 1.9; Stipulation I.10.

C. Respondents are liable for Counts 5-6

Complainant will present evidence at hearing proving Respondents are liable for failing to meet the requirement that “piping that routinely contains regulated substances and is in contact with the ground must be properly designed, constructed, and protected from corrosion in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory,” in violation of 40 C.F.R. § 280.20, from at least May 1, 2009, through February 13, 2013. 40 C.F.R. § 280.20, 280.20(b).

Complainant will also present evidence at hearing proving Respondents are liable for failing to ensure that “[a]ll corrosion protection systems [were] 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,” in violation of 40 C.F.R. § 280.31, from at least May 1, 2009, through February 13, 2013. 40 C.F.R. § 280.31, 280.31(a).

1. Respondents’ UST systems are new tank systems, as “new tank system” is defined in 40 C.F.R. § 280.12.

A new tank system is “a tank system that will be used to contain an accumulation of regulated substances and for which installation has commenced after December 22, 1988.” 40 C.F.R. § 280.12. This definition contains three components: (a) “a tank system” (b) “that will be used to contain an accumulation of regulated substances” and (c) “for which installation has commenced after December 22, 1988.”

Respondents' three UST systems meet all three components of the definition of a "new tank system." Respondents are the owners and/or operators of three "tank systems" which are "used to contain an accumulation of regulated substances." Answer to Amended Complaint at ¶ 1.1, 1.2, 1.3; Stipulations I.3, I.7, I.8. Installation of Respondents' tank systems occurred in 1990, which is after December 22, 1988. Answer to Amended Complaint at ¶ 1.2, Stipulation I.5. Therefore, Respondents do not dispute any of the three components used to define a new tank system in 40 C.F.R. § 280.12. For these reasons, pursuant to the definition in 40 C.F.R. § 280.12 and as a matter of law, Respondents' UST systems are "new tank systems."

2. Respondents' new tank systems are subject to the performance standards for new UST systems in 40 C.F.R. § 280.20.

A plain reading of 40 C.F.R. § 280.20 confirms that Respondents' tank systems remain subject to the performance standards for new UST systems. The first sentence of 40 C.F.R. § 280.20 states:

In order to prevent releases due to structural failure, corrosion, or spills and overfills for as long as the UST system is used to store regulated substances, all owners and operators of new UST systems must meet the following requirements.

This sentence identifies the purpose of the regulation, who is regulated, and what is required; the performance standards for new UST systems are designed to (1) prevent structural failure and corrosion throughout the operational life¹ of the new UST system, apply to (2) all owners and operators of new UST systems, who (3) must meet those performance standards.

All owners and operators of new UST systems must meet the performance standards for new UST systems contained within 40 C.F.R. § 280.20. Respondents allege that because the

¹ "Operational life refers to the period beginning when installation of the tank system has commenced until the time the tank system is properly closed under Subpart G." 40 C.F.R. § 280.12.

Respondents did not design, construct, or install their new tank systems, the performance standards for new tank systems within 40 C.F.R. § 280.20 do not apply to their tank systems. Answer to Amended Complaint at ¶¶ 1.3, 1.10. Whether Respondents designed, constructed, or installed their new UST systems are not relevant considerations as to whether the performance standards for new UST systems apply to Respondents' new UST systems.

Respondents argue that the performance standards for new tank systems only regulate owners and operators of new tank systems until the design, construction and installation of the new tank system is complete. On the contrary, the first sentence of 40 C.F.R. § 280.20 clearly states that the performance standards apply “for as long as the UST system is used to store regulated substances.” Accepting Respondents' contention that the performance standards do not apply to subsequent owners would necessarily entail ignoring the explicit purpose of the standards to apply “as long as the UST system” is operational.

Moreover, the regulation explicitly includes the term “protected” in the requirement that piping must be “properly designed, constructed, and protected from corrosion” 40 C.F.R. 280.20(b). The term “protected” only has meaning if the requirement extends beyond the point of installation. Holding otherwise would lead to the absurd result that corrosion protection on piping is only required at the moment of installation.

Furthermore, Respondents' interpretation ignores the fact that 40 C.F.R. § 280.20 contains requirements that can only be satisfied *after* the new tank system has been placed into service. All owners and operators of new UST systems are required to meet the spill and overflow prevention requirements in 40 C.F.R. § 280.20(c). One of the ways in which an owner or operator can meet the spill and overflow prevention requirements is by controlling how the operator can fill the UST, as specified in 40 C.F.R. § 280.20(c)(2)(ii). This makes it clear that

40 C.F.R. § 280.20(c)(2)(ii) is an *operational* standard that regulates the activity of owners and operators of new UST systems during the operational life of the new UST system, and shows how 40 C.F.R. § 280.20 must continue to have regulatory effect on owners and operators after the design, construction, and installation of a new UST system is complete.

The requirements of 40 C.F.R. § 280.20 are clearly intended to apply to operations of the UST system and are not merely demonstrative requirements for when a UST system is brought into service. As an example of the ongoing requirements, owners and operators of steel UST systems are required to maintain records of the operation and maintenance of the corrosion protection systems. 40 C.F.R. § 280.31. For new UST systems using cathodic protection, those records reference 40 C.F.R. 280.20, as cathodic protection systems are explicitly maintained for demonstrating compliance with the cathodic protection standards in 40 C.F.R. § 280.20(a)-(b). 40 C.F.R. § 280.31(d). Similarly, the temporary closure regulations require all owners or operators of any new UST system in temporary closure for more than 12 months to permanently close that UST system if it no longer meets the performance standards in 40 C.F.R. § 280.20. 40 C.F.R. § 280.70(c). Each of these examples, 40 C.F.R. §§ 280.20(c)(2)(ii), 280.31(d) and 280.70(c), serve to conclusively establish that the performance standards in 40 C.F.R. § 280.20 remain in effect during the operational life of the UST system.

The plain language of 40 C.F.R. § 280.20 as well as the context of the performance standards within 40 C.F.R. part 280 show that, as a matter of law, 40 C.F.R. § 280.20 continues to have effect after design, construction, and installation of a UST system is complete, and commands the holding that Respondents' new tank systems are subject to the performance standards for new UST systems within 40 C.F.R. § 280.20.

3. Respondents are included among “all owners and operators” for purposes of the performance standards for new UST systems in 40 C.F.R. § 280.20.

As owners and/or operators of new tank systems, Respondents are required to ensure their new tank systems meet the performance standards for new UST systems. The first sentence in 40 C.F.R. § 280.20 states:

In order to prevent releases due to structural failure, corrosion, or spills and overfills for as long as the UST system is used to store regulated substances, *all owners and operators* of new UST systems must meet the following requirements. (emphasis added)

In plain language, 40 C.F.R. § 280.20 states that the performance standards for new UST systems (1) are designed to prevent structural failure and corrosion throughout the entire operational life of the UST, and (2) apply to *all* owners and operators of new UST systems. Thus, in order to effectuate the plain meaning of 40 C.F.R. § 280.20, both the original owner and all subsequent owners of new USTs must be bound by the performance standards.

To hold otherwise would not only vitiate the purpose of the entire section, but ignore the key phrase: “all owners and operators.” It is axiomatic that every part of a law or regulation is presumed to have some effect and should not be treated as meaningless unless absolutely necessary. *See United States v. Menasche*, 348 U.S. 528, 538-39 (1955). Respondents’ asserted interpretation would violate this canon of statutory interpretation.

Congress required EPA to “promulgate release detection, prevention, and correction regulations applicable to all owners and operators of underground storage tanks, as may be necessary to protect human health and the environment.” RCRA § 9003(a) of RCRA, 42 U.S.C. § 6991b(a). All owners and operators of UST systems covered by RCRA Subtitle I are regulated under 40 C.F.R. part 280. Pursuant to Section 9003(b) of RCRA, 42 U.S.C. § 6991b(b), the UST regulations in 40 C.F.R. part 280 distinguish between new tank systems and

existing tank systems, but this distinction is only relevant for determining to which set of performance standards the owners and operators must adhere, not whether owners and operators of UST systems are subject to regulation at all. *See* 40 C.F.R. §§ 280.20, 280.21.

The EAB's decision in *In re Carroll Oil Company* reinforces the plain reading of 40 C.F.R. § 280.20. Specifically, the EAB stated that the performance standards are "one of the most important features of the UST regulations." *In re Carroll Oil Company*, RCRA (9006) Appeal No. 01-02, 10 EAD 635, 638-39 (EAB 2002). The EAB went on to state that in order to implement the performance standards, the "UST regulations require that owners and operators of USTs installed after December 22, 1988, ('new UST systems') adhere to certain 'performance standards.'" *Id.* at 639. The EAB's reading of 40 C.F.R. § 280.20 indicates that the performance standards bind the owners and operators of new UST systems, not merely that a new UST system must meet the performance standards upon installation. Therefore, as a matter of law, the performance standards for new UST systems in 40 C.F.R. § 280.20 apply to Respondents' new UST systems.

Despite the express language of 40 C.F.R. § 280.20, Respondents allege the performance standards for new UST systems are only enforceable against the owners and operators who originally designed, constructed, or installed the UST system, and do not apply to any subsequent owners or operators. Answer to Amended Complaint at ¶ 3.1. Respondents' assertion conflicts with the express language of 40 C.F.R. § 280.20. As previously established, it is clear that the performance standards for new tank systems within 40 C.F.R. § 280.20 continue to apply to all owners and operators throughout the operational life of the UST system, and are not limited to the period of design, construction, and installation.

For the reasons stated above, Respondents are within the group of “all owners and operators of new UST systems” that must meet the requirements of 40 C.F.R. § 280.20.

4. In re Norman C. Mayes supports Complainant’s position that the performance standards in 40 C.F.R. § 280.20 apply to Respondents’ tank systems.

Respondents rely upon *in re Norman C. Mayes*, 12 E.A.D. 54 (2005), at 55, to support the assertion that 40 C.F.R. § 280.20 can only be enforced against the people who designed, constructed, or installed Respondents’ tank systems, because any protective technologies required under 40 C.F.R. § 280.20 must be incorporated at the time of installation.² Answer to Amended Complaint at ¶ 3.1. That reliance is misplaced. It is erroneous to state that the EAB indicated that the obligations of 40 C.F.R. § 280.20 were limited to the time of installation. The EAB’s statement on the obligations of owners at the time of installation³ is silent about the obligations of owners after installation.

Indeed, in *in re Norman C. Mayes*, the Board found that the notification and release detection requirements of the UST regulations were *continuing* obligations. *In re Norman C. Mayes*, at 73. The EAB concluded that the notification requirement found in 40 C.F.R. § 280.22 is a continuing obligation because the requirement is “central to the entire UST program.” *Id.* at 70. The notification requirements and the performance standards for new UST systems are located in the same subpart of the UST regulations. 40 C.F.R. part 280, subpart B. Therefore, as the notification requirements are continuing obligations, the tank performance standards should

² It is worth noting that the statements of the EAB that Respondents rely upon are *dicta*. No violation of the performance standards for new UST systems specified in 40 C.F.R. § 280.20 was alleged, and all of the USTs in the *Mayes* case were existing UST systems, installed before the UST regulations came into effect.

³ In *Mayes*, the EAB stated the obligation at the time of installation as “[n]ew’ UST systems, whose installation commenced or will commence after December 22, 1988, must incorporate protective technologies at the time of installation.”

also be construed as continuing obligations.

When EPA first issued the UST regulations, the agency stated that the tanks of most concern are unprotected steel USTs. *Underground Storage Tanks; Technical Requirements*, 53 Fed. Reg. 37,082, 37,083 (Sept. 23, 1988). The primary mechanism for accounting for the dangers these steel USTs present is through mandatory performance standards. *Id.* at 37098-37107 (determining that the majority of releases are caused by corrosion of the tank and piping and that providing adequate corrosion protection would nearly eliminate the problem of leaking USTs). Therefore, the EAB's decision in *in re Norman C. Mayes* must control this case; just as the notification requirements of 40 C.F.R. § 280.22 are continuing obligations, the tank performance standards of 40 C.F.R. § 280.20 are also continuing obligations.

5. Respondents are liable for violating 40 C.F.R. § 280.20.

“All owners and operators of new UST systems” with “piping that routinely contains regulated substances and is in contact with the ground must be properly designed, constructed, and protected from corrosion in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory.” 40 C.F.R. §§ 280.20, 280.20(b).

As explained in detail above, Respondents are the owners and operators of new UST systems. Answer to Amended Complaint at ¶¶ 1.1, 1.2; Stipulation I.5. Respondents' UST systems contains regulated substances. Answer to Amended Complaint at ¶ 1.2, Stipulations I.7, I.8. The piping for Respondents' UST systems consists of two pressurized lines and one steel siphon line. Answer to Amended Complaint at ¶ 1.4, Stipulations I.18, I.20. Respondents' steel siphon line is in contact with the ground. Answer to Amended Complaint at ¶ 1.3, 1.4; Stipulations I.17, I.20. A cathodic protection test conducted on the steel siphon line in early 2013 determined that the steel pipe lacked adequate cathodic protection. Answer to Amended

Complaint at ¶ 1.12, Stipulation I.25. Respondents first installed cathodic protection for the siphon line on February 13, 2013. Answer to Amended Complaint at ¶ 1.13, Stipulation I.27.

Prior to February 14, 2013, Respondents failed to ensure the metal piping of their new UST system was properly designed, constructed, and protected from corrosion in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory. Answer to Amended Complaint at ¶ 1.12, Stipulations I.25, I.26.

There is no genuine issue of material fact as to the applicable regulations in this matter or Respondents' liability. Respondents are liable for failing to equip corrosion protection for steel piping that routinely contain regulated substances and is in contact with the ground, in violation of 40 C.F.R. § 280.20, from at least May 1, 2009, through February 13, 2013, as specified in Violation 2, Count 5.

6. Respondents are liable for violating 40 C.F.R. § 280.31.

“All owners and operators of new UST systems with corrosion protection must” ensure that “[a]ll corrosion protection systems [are] 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.” 40 C.F.R. §§ 280.31, 280.31(a).

Respondents are the owners and operators of steel UST systems which lack impressed current cathodic protection. Stipulations I.3, I.4, I.16. Respondents' steel UST systems are sti-P3[®] tanks, which is a cathodic protection system present when the tanks were installed. CX-12, CX-13; Stipulations I.14, I.15. Respondents retrofitted the existing cathodic protection system to include the siphon line when Respondents installed a sacrificial anode to provide cathodic

protection for the siphon line on February 13, 2013. Answer to Amended Complaint at ¶ 1.13, CX-13, Stipulation I.27.

Respondents are the owners and/or operators of steel UST systems with corrosion protection systems. Prior to February 13, 2013, Respondents failed to operate and maintain their corrosion protection systems 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. Respondents came into compliance with 40 C.F.R. § 280.31 on February 13, 2013, when Respondents retrofitted the existing cathodic protection system to include the siphon line.

There is no genuine issue of material fact as to the applicable regulations in this matter or Respondents' liability. Respondents are liable for failing to properly operate and maintain corrosion protection for steel piping that routinely contain regulated substances and is in contact with the ground, in violation of 40 C.F.R. § 280.31, from at least May 1, 2009, through February 13, 2013, as specified in Violation 2, Count 6.

D. Respondents admit liability for Counts 7-9

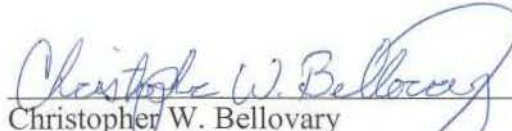
“Owners or operators of petroleum underground storage tanks must demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks. 40 C.F.R. § 280.93(a). The Stipulations establish that Respondents are liable for failing to demonstrate financial responsibility for any of their UST systems, in violation of 40 C.F.R. § 280.93, from at least May 1, 2009, through April 22, 2010, April 24, 2011, through April 22, 2012; April 24, 2013, through May 1, 2013; and May 2, 2014, through January 13, 2015. Stipulation I.11.

Respondents are the owners and/or operators of three UST systems. Answer to Amended Complaint at ¶ 1.1, 1.2; Stipulation I.3. Respondents admit they failed to demonstrate financial responsibility for any of their UST systems, in violation of 40 C.F.R. § 280.93 from at least May 1, 2009, through April 22, 2010, April 24, 2011, through April 22, 2012; and April 24, 2013, through May 1, 2013, as specified in Violation 3, Counts 7-9. Answer to Amended Complaint at ¶ 3.29, Stipulation I.11. Respondents also admit they failed to demonstrate financial responsibility for any of their UST systems, in violation of 40 C.F.R. § 280.93 from May 2, 2014, through January 13, 2015. Stipulation I.11.

III. Conclusion

In conclusion, Complainant will present evidence demonstrating that Respondents are liable for each violation of RCRA alleged in the *Amended Complaint*, and will show that the proposed penalty of \$64,823 is both warranted and appropriate under the facts and circumstances of this case.

Respectfully submitted this 13th day of March, 2015.



Christopher W. Bellovary
COUNSEL FOR COMPLAINANT

U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, Suite 900, Mail Stop ORC-158
Seattle, Washington 98101
Email: bellovary.chris@epa.gov
Phone: 206-553-2723



Brett S. Dugan
COUNSEL FOR COMPLAINANT

U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, Suite 900, Mail Stop ORC-158
Seattle, Washington 98101
Email: dugan.brett@epa.gov
Phone: 206-553-8562