UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

In the Matter of:	)	
	)	
Joseph Oh	)	
	)	
and	)	**Docket No. RCRA-10-2011-0164**
	)	
Holly Investment, LLC	)	
	)	**Dated: August 3, 2012**
Respondents.	)	

DEFAULT ORDER AND INITIAL DECISION

I. Background and Findings Regarding Default

This proceeding was initiated on September 28, 2011, with the filing of a Complaint, Compliance Order, and Notice of Opportunity for Hearing ("Complaint") by the Director of the Office of Compliance and Enforcement for the United States Environmental Protection Agency Region 10, ("Complainant" or "EPA"), against Joseph Oh and Holly Investment, LLC ("Respondents"). The Complaint alleges that Respondents own and/or operate a facility at which underground storage tanks ("USTs") containing petroleum are installed. The Complaint charges Respondents in five counts with violations of Section 9003 of the Solid Waste Disposal Act as Amended by the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6991b, and the release detection, prevention, and correction regulations codified at 40 C.F.R. Part 280, by failing to have valid automatic tank gauge ("ATG") leak tests conducted on two steel USTs containing petroleum when required, failing to have annual automatic line leak detector ("ALLD") and line tightness testing on two underground fuel lines connected the USTs, failing to install corrosion protection on metal flex connectors connected to the UST systems where required, and not testing the corrosion protection installed on other portions of the UST systems when required. The Complaint proposed a total penalty of $48,079.

On October 27, 2011, Respondent Joseph Oh filed an Answer to the Complaint.[1] In the Answer Mr. Oh stated that he lacked "sufficient knowledge or information to form a belief as to the truth of the statements"in each of the Complaint's numbered paragraphs, and therefore denied

[1] In a Response to an Order Scheduling Hearing, dated March 19, 2012, Respondent Joseph Oh stated that the Answer was submitted also on behalf of Holly Investment, LLC.

all of the factual and legal allegations contained therein. An exception to this was the assertion that Respondents have owned or operated Totem Grocery & Gas ("the facility") since October 13, 2006, which Mr. Oh simply denied. Mr. Oh did request a hearing in the Answer, but did not raise any affirmative defenses or claim that he was unable to pay the proposed penalty. On November 7, 2011, this matter was referred to the EPA's Office of Administrative Law Judges (the "Office") for administrative adjudication. On November 8, 2011, this Office sent each party a letter inviting them to participate in the Alternative Dispute Resolution ("ADR") process offered by the Office. On November 21, 2011 Complainant submitted a response indicating that it was willing to engage in ADR. Respondents did not file any response to the invitation to ADR.

On December 7, 2011, Chief Administrative Law Judge Biro issued a Prehearing Order directing the parties to engage in a settlement conference on or before December 30, 2011, and to prepare and file prehearing exchanges of information. Each party was instructed to include the following with its Prehearing Exchange:

> (A) a list of the names of any witnesses the party intends to call at the hearing, or a statement that no witnesses will be called. The list of witnesses must identify each witness as a fact witness or an expert witness, include a brief narrative summary of their expected testimony, and be accompanied by a curriculum vitae or resume for each expert witness.
>
> (B) copies of all documents, records, and other exhibits the party intends to introduce into evidence. Each document, record, or other exhibit must be identified as "Complainant's" or "Respondent's" exhibit, as appropriate, and be numbered with Arabic numerals (e.g., CX 1 or RX 1).
>
> (C) a statement indicating where the party wants the hearing to be held, and how long the party will need to present its case. See 40 C.F.R. §§ 22.21(d), 22.19(d). The statement must also indicate whether translation services will be necessary in regard to the testimony of any witness(es), and, if so, state the language to be translated.

Prehearing Order dated December 7, 2011, at 2. Additionally, Respondents were instructed to include the following with their Prehearing Exchange:

> (A) a narrative statement, and a copy of any supporting documents, explaining in detail the legal or factual bases for the denials in Paragraphs 2.1 through 2.12, and 3.2 through 3.11, of its Answer;
>
> (B) if Respondent takes the position that the proposed penalty should be reduced or eliminated on any grounds, such as an inability

> to pay, provide a detailed narrative statement explaining the precise factual and legal bases for its position and a copy of any and all documents upon which it intends to rely in support of such position.

Id. at 3. Respondents were ordered to file their Prehearing Exchange no later than February 17, 2012. The Prehearing Order also included the following warning in bold print:

> Respondent is hereby notified that failure to either comply with the prehearing exchange requirement set forth herein, or to state that it is electing only to conduct cross-examination of Complainant's witnesses, can result in the entry of a default judgment against it.

Id. at 4.

On January 5, 2012, Complainant submitted a Status Report, in which Complainant reported that it had "agreed to meet in settlement conference with Respondent Joseph Oh and his business associate and paralegal, Gregory Tift," on four separate occasions, but that shortly before each meeting "Mr. Tift contacted counsel for Complainant requesting that the meeting be postponed because he and/or Mr. Oh were no longer available to meet or needed additional time to prepare for the meeting." Status Report dated January 5, 2012, at 1–2. Complainant stated that it had "not been able to conduct settlement negotiations with Mr. Oh" as ordered because of the repeated cancellations. Complainant also stated that "[a]lmost all" of its contact "with Mr. Oh since the filing of the Complaint" had been through Mr. Tift. *Id.* at 2. Complainant reported that when its case developer contacted Mr. Oh by telephone on December 16, 2011, with regard to a meeting scheduled for December 20, 2011, "Mr. Oh indicated that he would have Mr. Tift contact her," and the "meeting was subsequently cancelled because Mr. Oh was no longer available." *Id.*

On January 26, 2012, Complainant timely filed its Prehearing Exchange and served it on Mr. Oh by certified U.S. Mail, return receipt requested. On January 31, 2012, the undersigned administrative law judge was designated to preside over this proceeding. Complainant's Prehearing Exchange was re-served on Mr. Oh via U.S. First Class Mail and by email on February 13, 2012, after the initial attempt to serve him by certified mail was returned unclaimed.

On March 6, 2012, the undersigned received a Prehearing Exchange from Respondents. The Prehearing Exchange was dated February 28, 2012 and was filed on March 1, 2012, twelve days after it was due to be filed. In the Prehearing Exchange, Respondents did not provide any narrative statement, and therefore failed to comply with a requirement of the Prehearing Order. The Prehearing Exchange listed two witnesses plus an unnamed representative from Northwest Tank and Environmental Services, Inc. ("Northwest Tank"). As to exhibits, the Prehearing Exchange stated that Respondents intend to introduce evidence used by Complainant and that Respondents have "other evidence" to present and that reports from Northwest Tank will be forwarded to Complainant upon receipt. Respondents' Prehearing Exchange at 2. The Prehearing Exchange did not include a statement of where Respondents preferred the hearing to be held, or an estimate of how long their direct case may take at hearing. The Prehearing Exchange did not

indicate any grounds for reducing or eliminating the penalty, or any claim of inability to pay the proposed penalty.

On March 5, 2012, the undersigned received Complainant's Rebuttal Prehearing Exchange, in which Complainant noted that Respondents' Prehearing Exchange was untimely and did not provide the information required by the Prehearing Order.

On March 13, 2012, the undersigned issued an Order Scheduling Hearing ("Hearing Order"). The Hearing Order directed Mr. Oh to file a statement no later than March 23, 2012, clarifying, *inter alia*, where he wished the hearing to be held. The Hearing Order warned:

> Failure of a party to file a timely answer to the complaint may result in a default judgment assessing the proposed penalty. In addition, a party's failure to comply with an order of the Administrative Law Judge may result in a default judgment assessing the full amount of the proposed penalty. 40 C.F.R. § 22.17(a). Respondent's Prehearing Exchange was filed two weeks after the due date. Therefore Respondent Joseph Oh is advised to timely submit [his] statement as directed above to avoid being held in default.

Hearing Order dated March 13, 2012, at 1–2. The Hearing Order then directed the parties to engage in a settlement conference and instructed Complainant to file a status report with regard to such conference no later than March 30, 2012. It also set a series of deadlines for prehearing filings, leading up to a hearing scheduled for June 26, 2012.

On March 19, 2012, Complainant filed a motion requesting that the hearing be rescheduled. Mr. Oh submitted a Response to Order Scheduling Hearing apologizing for filing Respondents' Prehearing Exchange after the deadline, but it did not state any preferred location for the hearing.

On March 29, 2012, Complainant filed a Second Status Report. In the report Complainant stated that Complainant's counsel, Mr. Oh, and Mr. Tift had held a conference call on March 27, 2012, but that the parties were unable to reach a settlement. Complainant stated that Mr. Tift informed Complainant's counsel that "Mr. Oh had recently filed a Chapter 11 bankruptcy petition and asked that Complainant provide him with the EPA financial forms needed to support a claim by Mr. Oh that he is unable to pay the proposed penalty." Second Status Report at 1–2. Complainant stated that it emailed Mr. Oh and Mr. Tift the requested forms on March 29, 2012, asked that the forms be completed and returned to counsel by April 18, 2012, and also provided Mr. Oh with the forms by first class mail.

On April 18, 2012, the undersigned issued an Order Rescheduling Hearing and Prehearing Deadlines ("Rescheduling Order"). The Rescheduling Order directed Complainant to file status reports regarding the status of settlement on or before May 18, 2012, and June 15, 2012. It also

amended certain prehearing filing deadlines, and scheduled the hearing to begin on August 14, 2012, in Seattle, Washington.

On May 17, 2012, Complainant filed a Third Status Report stating that the parties had engaged in very limited contact since March 29, 2012, and had been unable to settle the case. On June 14, 2012, Complainant filed a Fourth Status Report stating that Respondents had "not provided any substantive reply to Complainant's offer to resume settlement negotiations" and that the parties had been in "minimal contact." Fourth Status Report at 1.

On July 3, 2012, Complainant filed a Motion to Compel Discovery or, in the alternative, Motion in Limine ("Motion to Compel"). In the Motion to Compel, Complainant requested that the undersigned issue an order compelling Respondents to file written responses to the Prehearing Order's requirements, specifically, to submit a narrative statement explaining in detail the legal or factual bases for the denials in the Answer, to identify the unnamed representative of Northwest Tank listed as a potential witness, to provide a more detailed narrative of each witnesses's testimony, and to formally indicate whether Respondents intend to claim an inability to pay and to provide copies of any and all documents that Respondents intend to offer in support of that claim. In the alternative, Complainant requested that the undersigned draw an adverse inference finding that Respondents "admit the allegations in paragraphs 2.1 through 2.12 and 3.2 through 3.11 of the Complaint and they do not take the position that the proposed penalty should be reduced or eliminated . . . ." Motion to Compel at 8–9.

On July 9, 2012 the undersigned's staff attorney spoke by telephone with Mr. Tift, who indicated that Respondents would voluntarily provide the information requested in the Motion to Compel and file a response by close of business on July 10, 2012. Respondents did not file any response to the Motion to Compel or provide the requested information as Mr. Tift promised. On July 16, 2012, an Order granting Complainant's Motion to Compel Discovery was issued, in which Respondents were ordered to file and serve the requested items no later than July 23, 2012. The Order noted:

> If Respondents fail to timely submit all of the information listed . . . , they may be deemed to have admitted allegations of violation in the Complaint, they may be precluded from introducing documentation or information into the record in this proceeding, and/or an inference may be drawn that any such information would be adverse to them.

Order on Complainant's Motion to Compel Discovery or, in the Alternative, Motion in Limine, at 6.

To date, Respondents have not filed any response to the Order on Complainant's Motion to Compel Discovery or, in the Alternative, Motion in Limine.

On July 16, 2012, the undersigned's staff attorney sent an email to Mr. Oh, Mr. Tift, and Complainant's counsel, inviting the parties to participate in an informal prehearing teleconference to review the procedures for the hearing scheduled to begin August 14, 2012. The message proposed times that the conference might be held, and invited the parties to respond with their availability. Neither Mr. Oh nor Mr. Tift responded to the invitation. The undersigned's staff attorney sent a second email to Mr. Oh and Mr. Tift on July 20, 2012, advising Mr. Oh that it was in his interest to participate in a prehearing conference and inviting him to contact the staff attorney if he had any questions or concerns. Again, neither Mr. Oh nor Mr. Tift responded to the email invitation.

On July 20, 2012, the deadline for filing stipulations, Complainant submitted a Response to the Deadline for Filing Joint Set of Stipulated Facts, Exhibits and Testimony, stating that Complainant's counsel had sent an email on July 13, 2012[2] to both Mr. Oh and Mr. Tift with proposed stipulations of fact and law, reminding them of the July 20 deadline for stipulations. Complainant stated further that Respondents did not respond to the email, and that Complainant's counsel contacted Mr. Oh on July 18, 2012 to ask if he had questions about the document of July 13th, upon which Mr. Oh said that he would contact Mr. Tift to call Complainant's counsel. Complainant stated in the Response to the Deadline that its counsel contacted Mr. Tift later that day and left him a voicemail message, but that neither Mr. Tift nor Mr. Oh had contacted Complainant as of July 20, 2012.

On July 24, 2012, the undersigned issued a Notice of Hearing Location and Order Scheduling Prehearing Conference ("Prehearing Conference Order"). The Prehearing Conference Order ordered the parties to appear telephonically for a prehearing conference at 9:00 a.m. Pacific Time, 12:00 p.m. Eastern Time, on August 2, 2012. It also contained the following warnings:

> The Rules of Practice that govern this proceeding provide at 40 C.F.R. § 22.17 that **"[a] party may be found to be in default: . . . upon failure to appear at a conference," and that "[d]efault by respondent constitutes . . . an admission of all facts alleged in the complaint" and a decision by default ordering the respondent to pay the penalty proposed in the complaint may be issued without a hearing.**
>
> **RESPONDENTS ARE HEREBY ADVISED THAT FAILURE TO CALL IN TO THE PREHEARING CONFERENCE ON THE DATE AND TIME SPECIFIED MAY RESULT IN A DECISION BY DEFAULT BEING ENTERED AGAINST THEM.**
>
> **If either party does not intend to attend the prehearing conference, or has**

[2]Complainant identified the year as 2013. This is understood to be a typographical error, and it is presumed that the message was sent in 2012.

> **good cause for not attending the prehearing conference as scheduled, it shall notify the undersigned at the earliest possible moment . . . .**

Prehearing Conference Order at 2.

On August 2, 2012, Respondents failed to appear for the prehearing conference telephonically as ordered. At 9:06 a.m. Pacific Time, 12:06 p.m. Eastern Time, the undersigned's staff attorney contacted Mr. Oh at his phone number of record and left a voicemail message informing Mr. Oh that he should have received an order directing him to appear at the conference, providing him instructions on how to participate in the conference, advising him that if he did not appear at the conference within eight minutes the conference would proceed without him, and warning him that failure to appear at the conference could cause a default to be entered against him. The undersigned's staff attorney called Mr. Oh again at 9:15 a.m. Pacific Time, 12:15 p.m. Eastern Time, and left a message advising Mr. Oh that the conference would proceed without him, and that a default could be entered against him if he failed to appear telephonically before the conference was concluded. The conference ended at 10:08 a.m. Pacific Time, 1:08 p.m. Eastern Time, without Mr. Oh having made an appearance.

On August 3, 2012, Complainant filed a "Motion for Default Order or, in the Alternative, Motion in Limine" ("Motion"). The Motion requests that Respondents be held liable for the violations alleged in the Complaint, that the penalty proposed in the Complaint be imposed on Respondents, and that a compliance order be issued consistent with the Compliance Order proposed in the Complaint. In the alternative, Complainant renews its Motion in Limine filed on June 29, 2012., requesting that an adverse inference be drawn from Respondents' failure to provide information as ordered and preclude them from relying on any such information at the hearing. The Motion states that Complainant's counsel sent an email message notifying Mr. Oh and Mr. Tift of the intent to file the Motion, and that Mr. Tift indicated that he did not believe that Mr. Oh would oppose the Motion.

II. Discussion and Conclusions Regarding Default

Despite clear and abundant warnings of the consequences of failure to comply, Respondents failed to comply with the Order on Complainant's Motion to Compel Discovery or, in the Alternative, Motion in Limine, failed to fully or timely comply with the Prehearing Order issued on December 7, 2011, and failed to appear at the prehearing conference. Furthermore, Respondents have demonstrated a pattern of delay and disengagement in this proceeding.

Section 22.17(a) of the Consolidated Rules of Practice provides that:

> A party may be found to be in default: . . . upon failure to comply with the information exchange requirements of § 22.19(a) or an order of the Presiding Officer; or upon failure to appear at a conference or hearing. Default by respondent constitutes, for purposes of the pending proceeding only, an admission of all facts

> alleged in the Complaint and a waiver of respondent's right to contest such factual allegations. . . .

Section 22.17(c) of the Consolidated Rules of Practice provides that:

> When the Presiding Officer finds that default has occurred, he shall issue a default order against the defaulting party as to any or all parts of the proceeding unless the record shows good cause why a default order should not be issued. If the order resolves all outstanding issues and claims in the proceeding, it shall constitute the initial decision under these Consolidated Rules of Practice. The relief proposed in the complaint or motion for default shall be ordered unless the requested relief is clearly inconsistent with the record of the proceeding or the Act. . . .

Accordingly, for the reasons listed above, Respondents are hereby found to be in default. In accordance with Rule 22.17(a), this constitutes an admission of the facts alleged in the Complaint and grounds for assessment of the penalty of $48,079 proposed therein.

III. Complainant's Motion to Supplement Prehearing Exchange

On July 30, 2012, Complainant filed a Motion to Supplement Prehearing Exchange, in which it requests permission to add six documents to its list of potential exhibits. The documents include invoices from Northwest Tank and Environmental Services, Inc., third party evaluation of automatic UST gauging system for monthly monitoring, EPA's UST Penalty Guidance, and a summary of the alleged violations and proposed penalty. The Motion indicates that Complainant intends to provide testimony about the exhibits at the hearing.

Although this matter is being resolved herein on a decision by default rather than a hearing, the proposed exhibits support Complainant's prima facie case and proposed penalty calculation. It is therefore appropriate to grant Complainant's Motion to Supplement Prehearing Exchange.

IV. Findings of Fact and Conclusions of Law

The following Findings of Fact and Conclusions of Law are based upon the Complaint, Answer, and Prehearing Exchanges filed in this case.

1. The Complainant is the Director of the Office of Compliance and Enforcement, United States Environmental Protection Agency, Region 10.

2. The Respondents are Joseph Oh and Holly Investment, LLC, a limited liability company

registered to do business in the State of Washington. Joseph Oh is the governing member of Holly Investment, LLC. Respondents are "persons" as defined in RCRA Section 9001(5).

3. Since at least October 13, 2006, Respondents have owned and/or operated Totem Grocery & Gas (the "facility"), located at 105 Marine Drive NE, Marysville, Washington, 98271, which is within the external boundary of the Tulalip Indian Reservation.

4. Two underground storage tanks ("USTs"), Tank # 1 and Tank # 2, constructed of cathodically protected steel, known as STI-P3 tanks, were installed at the facility in August 1987. Tank # 1 has a capacity of 8,000 gallons and contains unleaded gasoline, and Tank # 2 has a capacity of 10,000 and when in operation contained gasoline.

5. The UST piping at the facility consists of two pressurized lines, which are single walled and constructed of fiberglass-reinforced plastic, except that each line has metal flex connectors in contact with the ground where the line connects at the dispenser and at the turbine sump. Each line is equipped with an automatic line leak detector ("ALLD").

6. Respondents are "owners" and/or "operators" of "underground storage tanks" as defined in Section 9001 of RCRA, who are required to meet release detection requirements for petroleum UST systems.

7. During inspections by EPA on September 14, 2009 and July 1, 2010, Respondents' representatives indicated that an ATG is used as the release detection method for tanks at the facility.

8. During the September 14, 2009 inspection, Respondent's representative indicated that Tank # 1 was currently in use but that Tank # 2 had not been used since the prior month, August 2009.

9. Respondents did not have valid ATG leak tests conducted on Tank # 1 from at least September 13, 2008 through August 16, 2011. Therefore, Respondents failed to meet the release detection requirements for Tank # 1 from at least September 13, 2008 through August 16, 2011, in violation of Section 9003 of RCRA, 42 U.S.C. 6991b, and 40 C.F.R. § 280.41(a), as alleged in Count 1 of the Complaint.

10. Respondents did not have valid ATG leak tests conducted on Tank # 2 from at least September 13, 2008 through August 13, 2009. Therefore, Respondents failed to meet the release detection requirements for Tank # 1 from at least September 13, 2008 through August 13, 2009, in violation of Section 9003 of RCRA, 42 U.S.C. 6991b, and 40 C.F.R. § 280.41(a), as alleged in Count 2 of the Complaint.

11. Respondents did not have annual ALLD and line tightness testing for Line # 1 at the facility from at least August 23, 2007 through November 24, 2009 and November 25,

2010 through August 15, 2011, in violation of Section 9003 of RCRA, 42 U.S.C. 6991b, and 40 C.F.R. § 280.41(b), as alleged in Count 3 of the Complaint.

12. Respondents did not have annual ALLD and line tightness testing for Line # 2 at the facility from at least August 23, 2007 through August 13, 2009, in violation of Section 9003 of RCRA, 42 U.S.C. 6991b, and 40 C.F.R. § 280.41(b), as alleged in Count 4 of the Complaint.

13. Since they became owners and/or operators of the facility on October 13, 2006, Respondents have never installed corrosion protection on the metal flex connectors on the section of piping at the turbine sumps for Tanks #1 and #2. Respondents also did not test the corrosion protection installed on the metal flex connectors on the section of piping at the dispensers for Tanks #1 and #2 until October 15, 2010. Therefore, Respondents failed to meet the corrosion protection for the piping at Tanks # 1 and # 2 from at least October 13, 2006 through at least August 16, 2011, in violation of Section 9003 of RCRA, 42 U.S.C. 6991b, and 40 C.F.R. § 280.31(b)(1), as alleged in Count 5 of the Complaint.

V. Determination of Penalty

14. Section 22.17(c) of the Consolidated Rules of Practice provides in pertinent part that upon issuing a default "[t]he relief proposed in the complaint . . . shall be ordered unless the requested relief is clearly inconsistent with the record of the proceeding or the Act." 40 C.F.R.§ 22.17(c).

15. Section 9006(d)(2) of RCRA authorizes the assessment of a civil penalty of up to $10,000 for each tank for each day of violation. Pursuant to the Debt Collection Improvement Act, the regulations in 40 C.F.R. Part 19 raise the statutory maximum for violations occurring March 15, 2004 through January 12, 2009 to $11,000 for each day of violation, and to $16,000 for each day of violation for violations occurring after that date.

16. EPA has issued guidelines for penalties under RCRA entitled "U.S. EPA Penalty Guidance for Violations of UST Requirements."

17. I find persuasive the rationale for the calculation of the assessed penalty set forth in the Complaint and Exhibit 39 of Complainant's Prehearing Exchange, and such rationale is hereby incorporated by reference into this Order. Exhibit 39 recalculates the $48,079 penalty proposed in the Complaint to a penalty of $48,078.

18. For Respondents' violations of Section 9003 of RCRA as alleged in the Complaint, a penalty of $48,078 is the appropriate civil penalty to be assessed against Respondents. The penalty of $48,078 is neither clearly inconsistent with the record of the proceeding nor clearly inconsistent with the Act.

ORDER

1. Complainant's Motion for Default is hereby **GRANTED**. Respondents are hereby found in **DEFAULT.**

2. Complainant's Motion to Supplement Prehearing Exchange, dated July 30, 2012, is **GRANTED.**

3. Respondents are assessed a civil administrative penalty, jointly and severally, in the amount of **$ 48,078**.

4. Payment of the full amount of this civil penalty shall be made within thirty (30) days after this Initial Decision becomes a final order under 40 C.F.R. § 22.27(c), as provided below. Payment shall be made by submitting a certified or cashier's check in the amount of $48,078, payable to "Treasurer, United States of America," and mailed to:

    U.S. Environmental Protection Agency

    Fines and Penalties
    Cincinnati Finance Center
    P.O. Box 979077
    St. Louis, MO 63197-9000

    Respondents shall note on the check the title and docket number of this case.

4. Respondents must serve a copy of the check on the Regional Hearing Clerk, identifying the subject case and EPA docket number as well as Respondents' name and address, to the following address:

    Candace Smith, Regional Hearing Clerk
    U.S. EPA Region X
    1200 Sixth Avenue, ORC-158
    Seattle, Washington, 98101

5. If Respondents fail to pay the penalty within the prescribed statutory period after entry of this Order, interest on the penalty may be assessed. *See,* 31 U.S.C. § 3717; 40 C.F.R. § 13.11.

6. Pursuant to 40 C.F.R. §22.27(c), this Initial Decision shall become a final order forty-five (45) days after its service upon the parties and without further proceedings unless (1) a party moves to reopen the hearing within twenty (20) days after service of this Initial Decision, pursuant to 40 C.F.R. § 22.28(a); (2) an appeal to the Environmental Appeals Board is taken within thirty (30) days after this Initial Decision is served upon the parties; or (3) the Environmental Appeals Board elects, upon its own initiative, to review this Initial Decision, pursuant to 40 C.F.R. § 22.30(b).

7. Respondents shall comply with the attached Compliance Order.

M. Lisa Buschmann
Administrative Law Judge

COMPLIANCE ORDER

Respondents are hereby ordered to take the following actions:

1. Within fourteen (14) days of the date this Order becomes a Final Order, Respondents shall submit to EPA documentation that Tank #2 is in proper temporary closure by verifying that the regulated substances have been removed; the vent lines for Tank #2 are open and functioning; the lines, pumps, manways, and ancillary equipment are capped and secured; and financial responsibility is being maintained.

2. Respondents shall immediately conduct release detection in accordance with 40 C.F.R. § 280.41 (a) for all tanks at the facility that contain more than one inch of regulated substances.

3. Within fourteen (14) days of the date this Order becomes a Final Order, Respondents shall submit to EPA copies of all release detection monthly monitoring test results obtained for the tanks at the facility for the past twelve (12) consecutive months.

4. Respondents shall continue to submit the monthly monitoring test results referenced in paragraph 3 above to EPA every thirty (30) days for a period of six (6) months.

5. Respondents shall immediately conduct release detection in accordance with 40 C.F.R. § 280.41 (b) for the piping connected to any tank at the facility that contains more than one inch of regulated substances.

6. Respondents shall conduct the 2012 annual line tightness test and ALLD test of the piping at the facility by August 2012 for any tank that has not been permanently closed, and submit a copy of the test results to EPA within forty-five (45) days of having each test conducted.

7. Within fourteen (14) days of the dated this Order becomes a Final Order, Respondents shall equip the lines at the turbine sumps with cathodic protection in accordance with 40 C.F.R. § 280.31 for the piping at the facility for any tank that has not been permanently

closed, and submit a copy of the installation report from a qualified cathodic protection installer within fourteen (14) days of completion of the installation. Respondents shall complete a test on the cathodic protection system by a qualified cathodic protection tester at the turbine sumps within six (6) months of the installation and submit to EPA copies of the results within fourteen (14) days of the test.

8. Respondents shall provide a copy of financial responsibility documentation within fourteen (14) days of renewing their insurance policy in November 2011.

9. Respondent shall submit any information required by this Order to:

Katherine Griffith, Compliance Officer
U.S. Environmental Protection Agency, Region 10
Office of Compliance and Enforcement
1200 Sixth Avenue, Suite 900
Mailstop: OCE-082
Seattle, Washington 98101
Griffith. Katherine@epa.gov