

**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
SUPPLEMENTAL MOTION FOR LEAVE
TO AMEND THE COMPLAINT:
ATTACHMENT 1**

ATTACHMENT 1: PROPOSED AMENDED COMPLAINT

The Proposed Amended Complaint follows this page.

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**[PROPOSED] AMENDED
COMPLAINT, COMPLIANCE
ORDER, AND NOTICE OF
OPPORTUNITY FOR HEARING**

I. PRELIMINARY STATEMENT

1.1. This Amended Complaint, Compliance Order, and Notice of Opportunity for Hearing ("Amended Complaint") is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 9006(a) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6991e(a), and 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, 40 C.F.R. Part 22.

1.2. The EPA Administrator has delegated the authority to issue complaints and compliance orders in Section 9006(a) of RCRA, 42 U.S.C. § 6991e(a), to the Regional Administrator for EPA Region 10, who in turn has delegated the authority to the Director of the Office of Compliance and Enforcement, EPA Region 10 ("Complainant").

1.3. EPA Region 10 directly implements the RCRA Subtitle I program within the external boundary of the Yakama Indian Reservation.

1.4. Respondents are Edward Arlen Washines, Theresa Washines and Da Stor at

Lillie's Corner (collectively referred to as "Respondents").

II. GENERAL ALLEGATIONS

3.1. Respondents Edward Arlen Washines and Theresa Washines are individuals and therefore "persons" within the meaning of the Act. RCRA § 9001(5), 42 U.S.C. § 6991(5); 40 C.F.R. § 280.12.

3.2. Respondent Da Stor at Lillie's Corner is a commercial entity organized under the laws of the Confederated Tribes and Bands of the Yakama Nation and therefore a "person" within the meaning of the Act. RCRA § 9001(5), 42 U.S.C. § 6991(5); 40 C.F.R. § 280.12.

3.3. Since at least May 1, 2009, Respondents have owned and operated Da Stor at Lillie's Corner (the "Facility"), a gasoline service station located at 50 West Wapato Road in Wapato, Washington, which is within the external boundary of the Yakama Indian Reservation.

3.3.1. The Facility is located on Yakama Allotment 1136.

3.3.2. The U.S. Department of the Interior holds the title for Yakama Allotment 1136 in trust, which it leases to Respondents.

3.4. At all times relevant to this Amended Complaint, Respondents were, and are, the owners and/or operators of the three underground storage tanks (USTs) at the Facility. RCRA § 9001, 42 U.S.C. § 6991; 40 C.F.R. § 280.12.

3.4.1. Tank #1 is a single wall, steel tank that has routinely contained gasoline and has an estimated capacity of 12,000 gallons.

3.4.2. Tank #2 is a single wall, steel tank that has routinely contained gasoline and has an estimated capacity of 12,000 gallons.

3.4.3. Tank #3 is a single wall, steel tank that has routinely contained gasoline and has an estimated capacity of 12,000 gallons.

3.5. Each of the three USTs at the Facility is used to store petroleum, which is a

regulated substance. RCRA § 9001(6)-(7), 42 U.S.C. § 6991(6)-(7); 40 C.F.R. § 280.12.

3.6. Each of the three USTs at the Facility was installed in 1990, used to contain petroleum, and is a “new tank system” for purposes of the UST regulations. 40 C.F.R. § 280.12.

3.7. The UST piping (also referred to as a “line” or “lines”) at the Facility consists of a siphon (“suction”) line and two pressurized lines; each line is in contact with the ground.

3.7.1. The siphon line is constructed of bare steel, and serves to manifold Tank #1 and Tank #2.

3.7.2. The pressurized lines are constructed of fiberglass-reinforced plastic.

3.7.3. Pressurized Line #1 services Tank #1 and Tank #2

3.7.4. Pressurized Line #2 services Tank #3.

3.8. Each pressurized line is equipped with an automatic line leak detector (“ALLD”).

3.8.1. ALLD #1 is equipped on Pressurized Line #1.

3.8.2. ALLD #2 is equipped on Pressurized Line #2.

3.9. As owners and operators of steel UST systems which lack impressed current cathodic protection, Respondents are required to meet all of the following requirements:

3.9.1. Respondents must ensure that all 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.

3.9.2. Respondents must ensure all corrosion protection systems are operated and maintained to continuously provide corrosion protection to the metal components of that portion of the UST and piping that routinely contain regulated substances and are in contact with the ground. 40 C.F.R. § 280.31(a).

3.9.3. Respondents must have a qualified cathodic protection tester inspect all

corrosion protection systems for proper operation within six months of installation and at least every three years thereafter. 40 C.F.R. § 280.31(b).

3.9.4. Respondents must maintain records of the operation of the cathodic protection, including at least the last two inspections by a qualified cathodic protection tester. 40 C.F.R. §§ 280.31(d), 280.34(b)(2).

3.10. The EPA has not established any alternative time frame for testing cathodic protection systems. 40 C.F.R. § 280.31(b)(1).

3.11. As owners and operators of petroleum USTs, Respondents are required to meet all of the following requirements:

3.11.1. Respondents must monitor USTs for releases either through inventory control, manual or automatic tank gauging, tank tightness testing, vapor monitoring, ground-water monitoring, interstitial monitoring, or other approved methods. 40 C.F.R. §§ 280.41(a), 280.43.

3.11.2. Respondents must equip each pressurized line with an ALLD and test the operation of each ALLD annually. 40 C.F.R. §§ 280.41(b)(1)(i), 280.44(a).

3.11.3. Respondents must monitor each pressurized line, either annually with a line tightness test (“LTT”) 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).

3.11.4. Respondents 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 USTs. RCRA § 9003(d), 42 U.S.C. § 6991b(d); 40 C.F.R. §§ 280.93-.103.

3.11.5. Respondents must maintain records of any sampling, testing, or

monitoring for at least one year, except for the results of tank tightness testing, which must be retained until the next test is conducted. 40 C.F.R. § 280.45(b).

3.11.6. Respondents must maintain evidence of all financial assurance mechanisms used to demonstrate financial responsibility. 40 C.F.R. § 280.111.

3.12. An owner or operator of an UST is required to furnish information with regard to such UST upon request by any duly designated representative of the EPA. RCRA § 9005(a), 42 U.S.C. § 6991d(a); 40 C.F.R. § 280.34.

III. VIOLATIONS

Violation 1: Failure to Conduct Release Detection for Piping

3.13. On September 21, 2009, the EPA inspected the Facility and requested records of the prior testing on both of Respondents' ALLDs, and records of the prior LTT or pipe monitoring on both of Respondents' pressurized lines.

3.13.1. Respondents' records indicated that the last successful testing conducted on their ALLDs occurred on October 6, 2006.

3.13.2. Respondents' records indicated that the last successful LTT conducted on their pressurized lines occurred on October 6, 2006.

3.14. On June 14, 2012, the EPA inspected the Facility and requested records of the prior testing on both of Respondents' ALLDs, and records of the prior LTT or pipe monitoring on both of Respondents' pressurized lines.

3.14.1. On June 14, 2012, Respondents' records indicated that the last successful testing conducted on their ALLDs occurred on October 16, 2009.

3.14.2. On June 14, 2012, Respondents' records indicated that the last successful LTT conducted on their pressurized lines occurred on October 16, 2009.

3.15. On August 2, 2012, Respondents successfully tested their ALLDs and

successfully conducted LTTs on their pressurized lines.

3.16. After August 2, 2012, Respondents' next successful tests of their ALLDs and LTTs on their pressurized lines occurred on August 27, 2013 and October 13, 2014.

3.17. **Violation 1, Counts 1-2:** Respondents' acts or omissions in failing to conduct an annual test of the operation of each ALLD, as alleged in Paragraphs 3.14 through 3.16 for each ALLD, violated 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.

3.18. **Violation 1, Counts 3-4:** Respondents' acts or omissions in failing to monitor each pressurized line, as alleged in Paragraphs 3.14 through 3.16, violated 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.

Violation 2: Failure to Properly Install and Maintain Corrosion Protection for Steel Piping

3.19. On September 13 and 21, 2006, the EPA inspected the Facility, and informed Respondents that the piping for the siphon line appeared to be galvanized steel and lacked cathodic protection.

3.20. Respondents conducted a cathodic protection test on the USTs in October 2006, but did not conduct a cathodic protection test on the steel siphon line.

3.21. On January 30, 2013, Respondents conducted a cathodic protection test on the siphon line and determined that the steel pipe lacked adequate cathodic protection.

3.22. On February 13, 2013, Respondents installed a sacrificial anode to provide cathodic protection for the siphon line.

3.23. **Violation 2, Count 5:** Respondents' acts or omissions, as alleged in Paragraphs 3.19 and 3.22 for the steel siphon line, constitute a violation by Respondents of 40 C.F.R. § 280.20 from at least May 1, 2009 through February 13, 2013.

3.24. **Violation 2, Count 6:** Respondents' acts or omissions, as alleged in Paragraphs 3.20 through 3.22 for the steel siphon line, constitute a violation by Respondents of 40 C.F.R. § 280.31 from at least May 1, 2009 through February 13, 2013.

Violation 3: Failure to Maintain Financial Responsibility

3.25. From a period of at least May 1, 2009 through April 22, 2010, Respondents failed to demonstrate financial responsibility for any of the three UST systems, by any of the methods set forth in 40 C.F.R. §§ 280.95 through 280.103.

3.26. From a period of April 24, 2011 through April 22, 2012, Respondents failed to demonstrate financial responsibility for any of the three UST systems, by any of the methods set forth in 40 C.F.R. §§ 280.95 through 280.103.

3.27. From a period of April 24, 2013 through May 1, 2013, Respondents failed to demonstrate financial responsibility for any of the three UST systems, by any of the methods set forth in 40 C.F.R. §§ 280.95 through 280.103.

3.28. From a period of May 2, 2014 through at least December 2, 2014, Respondents failed to demonstrate financial responsibility for any of the three UST systems, by any of the methods set forth in 40 C.F.R. §§ 280.95 through 280.103

3.29. **Violation 3, Counts 7-9:** Respondents' acts or omissions, as alleged in Paragraphs 3.25 through 3.28 for each UST system, constitute a violation by Respondents of 40 C.F.R. § 280.93.

IV. COMPLIANCE ORDER

Compliance Tasks

4.1. Based on the foregoing findings, Respondents are hereby ordered to take the following actions:

4.1.1. Respondents shall conduct ALLD tests and LTTs in July or August 2014, and shall conduct ALLD tests and LTTs in July or August 2015. The first set of tests shall be conducted no later than August 27, 2014, and the second set of tests shall be conducted no later than one year after the first set of tests. Respondents shall submit copies of the test reports to the EPA within 30 calendar days of completion of each test.

4.1.2. Respondents shall submit copies of the financial assurance used to satisfy 40 C.F.R. Part 280, Subpart H within 30 days of the renewable period beginning in May 2014 and within 30 days of the of the renewable period beginning in May 2015.

4.1.3. Annual ALLD/LTT test reports and documentation of financial assurance required under this order shall be submitted to Katherine Griffith, EPA Compliance Officer, at the following addresses.

Katherine Griffith, Compliance Officer
U.S. Environmental Protection Agency
Region 10, MS OCE-082
1200 Sixth Avenue, Suite 900
Seattle, WA 98101
Tel: 206-553-2901
Email: griffith.katherine@epa.gov

4.1.4. Informational copies of documents submitted to EPA under subparagraph 4.1.3 shall be provided to:

Yakama Nation Environmental Management Program
P.O. Box 151
Toppenish, WA 98948

4.1.5. Upon request by either EPA or the Yakama Nation, Respondents shall provide the requestor access to all records and documentation related to the conditions at the Facility and to all results and data pertaining to the UST systems under this Order.

Penalties

4.2. Section 9006(d)(2) of RCRA, 42 U.S.C. § 6991e(d)(2), 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 of 1996, and the regulations promulgated thereunder codified at 40 C.F.R. Part 19 for violations occurring after January 12, 2009 through December 6, 2013, as well as after December 6, 2013, the statutory maximum penalty was raised to \$16,000 for each tank for each day of violation.

4.3. Respondents are liable for civil penalties of up to \$16,000 for each tank for each day during which their violations occurred. RCRA § 9006(d)(2), 42 U.S.C. § 6991e(d)(2); 40 C.F.R. Part 19.

4.4. Based upon the facts alleged in this Amended Complaint and taking into account the seriousness of the violations, any good faith efforts by Respondents to comply with the applicable requirements, and Respondents' compliance history, Complainant proposes an assessment of penalties for the violations cited in Section III of this Order, as provided by Section 9006(d)(2) of RCRA, 42 U.S.C. § 6991e(d)(2), in the amount of \$64,823. This penalty was calculated in accordance with the November 1990 "U.S. EPA Penalty Guidance for Violations of UST Requirements," as amended on April 6, 2010, a copy of which accompanied the original Complaint, Compliance Order, and Notice of Opportunity for Hearing ("Original Complaint"), and may be found in Complainant's Initial Prehearing Exchange, at Exhibit CX-36. The proposed penalty is briefly described as follows:

Count 1: Proposed penalty for failure to test ALLD #1 from:

- (1.1) at least May 1, 2009 through October 15, 2009,
- (1.2) October 16, 2010 through August 1, 2012, and
- (1.3) August 2, 2013 through August 26, 2013, and
- (1.4) August 27, 2014 through October 12, 2014, as required by 40 C.F.R.

§§ 280.41(b)(1)(i) and 280.44(a): \$5,284;

Count 2: Proposed penalty for failure to test ALLD #2 from:

- (2.1) at least May 1, 2009 through October 15, 2009,
- (2.2) October 16, 2010 through August 1, 2012, and
- (2.3) August 2, 2013 through August 26, 2013, and
- (2.4) August 27, 2014 through October 12, 2014, as required by 40 C.F.R.

§§ 280.41(b)(1)(i) and 280.44(a): \$5,284;

Count 3: Proposed penalty for failure to monitor Pressurized Line #1 from:

- (3.1) at least May 1, 2009 through October 15, 2009,
- (3.2) October 16, 2010 through August 1, 2012, and
- (3.3) August 2, 2013 through August 26, 2013, and
- (3.4) August 27, 2014 through October 12, 2014, as required by 40 C.F.R.

§§ 280.41(b)(1)(ii) and 280.44(b): \$5,284;

Count 4: Proposed penalty for failure to monitor Pressurized Line #2 from:

- (4.1) at least May 1, 2009 through October 15, 2009,
- (4.2) October 16, 2010 through August 1, 2012, and
- (4.3) August 2, 2013 through August 26, 2013, and
- (4.4) August 27, 2014 through October 12, 2014, as required by 40 C.F.R.

§§ 280.41(b)(1)(ii) and 280.44(b): \$5,284;

Count 5: Proposed penalty for failure to equip corrosion protection for steel piping that routinely contain regulated substances and is in contact with the ground from at least May 1, 2009 through February 13, 2013, as required by 40 C.F.R. § 280.20: \$10,267;

Count 6: Proposed penalty for failure to properly maintain corrosion protection for steel piping that routinely contain regulated substances and is in contact with the ground from at least May 1, 2009 through February 13, 2013, as required by 40 C.F.R. § 280.31(a): \$14,718;

Counts 7-9: Proposed penalty for failure to maintain financial responsibility for Tank #1, Tank #2, and Tank #3 for the 12 month period from of at least May 1, 2009 through April 22, 2010, for the 12 month period from April 24, 2011 through April 22, 2012, and for the one week period from April 24, 2013 through May 1, 2013, and for the six month period from May 2, 2014 through at least December 2, 2014, as required by 40 C.F.R. § 280.93: \$18,702;

4.5. After this Order becomes a Final Order, if Respondents fail to pay any penalty assessed in the Final Order, or fail to comply with any requirement of this Order, Respondents shall be liable for a civil penalty of up to \$37,500 for each day of continued noncompliance. RCRA § 9006(a), 42 U.S.C. § 6991e(a), 40 C.F.R. Part 19.

4.6. This Order shall be effective on the date that a Final Order is issued or the date that this Order becomes a Final Order by default pursuant to RCRA Section 9006(b), 42 U.S.C. § 6991e(b). In accordance with 40 C.F.R. § 22.37(b), this Order (including the assessment of the civil penalty) shall automatically become a Final Order unless, no later than 30 days after this Order is served, Respondents request a hearing pursuant to 40 C.F.R. § 22.15.

V. OPPORTUNITY TO REQUEST A HEARING AND FILE ANSWER

5.1. Under Section 9006(b) of RCRA, 42 U.S.C. § 6991e(b), and 40 C.F.R. § 22.15, Respondents have a right to request a hearing on the issues raised in this Order. Any such hearing would be conducted in accordance with 40 C.F.R. Part 22 (“Part 22 rules”). A copy of

the Part 22 rules accompanied the Original Complaint. A request for a hearing was incorporated in a written answer filed with the Regional Hearing Clerk within 30 days of service of the Complaint. In their answer(s), Respondents may contest any material fact contained in the Complaint. Respondents may also contest the appropriateness of the proposed penalty or compliance actions required by the Order. The answer shall directly admit, deny, or explain each of the factual allegations contained in the Complaint and shall state: (1) the circumstances or arguments alleged to constitute the grounds of defense; (2) the facts that Respondents intend to place at issue; and (3) whether a hearing is requested. Where Respondents have no knowledge as to a particular factual allegation and so state, the allegation is deemed denied. Any failure of Respondents to admit, deny, or explain any material fact contained in the Complaint will constitute an admission of that allegation.

Respondents' answer(s) must be sent to:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-158
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101

Tel: 206-553-6524
Email: smith.candace@epa.gov

5.2. Pursuant to 40 C.F.R. § 22.37(b) the Compliance Order shall automatically become a Final Order unless, no later than 30 days after the Complaint is served, Respondents request a hearing pursuant to 40 C.F.R. § 22.15.

5.3. Payment under this Order may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: http://www.epa.gov/ocfo/finservices/payment_instructions.htm. Payments made by a cashier's check or certified check must be payable to the order of "Treasurer, United States of America"

and delivered to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, Missouri 63197-9000

Respondents must note on the check the title and docket number of this action.

5.4. If Respondents fail to pay any portion of the penalty assessed by this Order by its due date, the entire unpaid balance of the penalty and accrued interest shall become immediately due and owing. Such a failure may also subject Respondents to an administrative action to collect payment under the federal Debt Collection Act of 1982, as amended, or to a civil action to collect the assessed penalty plus interest, handling charges, and nonpayment penalties as set forth below:

5.4.1. Interest. Any unpaid portion of the assessed penalty shall bear interest at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the Final Order contained herein, provided, however, that no interest shall be payable on any portion of the assessed penalty that is paid within 30 days of the effective date of the Final Order contained herein.

5.4.2. Handling Charge. Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of \$15 shall be paid if any portion of the assessed penalty is more than 30 days past due.

5.4.3. Nonpayment Penalty. Pursuant to 31 U.S.C. § 3717(e)(2), a nonpayment penalty of 6% per annum shall be paid on portion of the assessed penalty that is more than 90 days past due, which nonpayment shall be calculated as of the date the underlying penalty first becomes past due.

5.5. All penalties and charges paid pursuant to this Final Order are administrative

civil penalties assessed by the EPA and shall not be deductible for federal tax purposes. 26

U.S.C § 162(f).

5.6. Respondents must serve copies of any submitted payments, as described above in

Paragraph 5.3, to the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-158
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101

Katherine Griffith, Compliance Officer
U.S. Environmental Protection Agency
Region 10, Mail Stop OCE-082
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101

FOR COMPLAINANT, U.S. ENVIRONMENTAL PROTECTION AGENCY:


EDWARD J. KOWALSKI, Director
Office of Compliance and Enforcement
EPA Region 10

Dated: 2/2/2015

PARTY DESIGNATED TO RECEIVE SERVICE ON BEHALF OF THE COMPLAINANT:

Chris Bellovary, Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 10, MS ORC-158
1200 Sixth Avenue, Suite 900
Seattle, WA 98101
Tel: 206-553-2723
Email: bellovary.chris@epa.gov