

From: Bob Lucht
To: douglcook@hotmail.com
Date: 11/17/2006 4:22 PM
Subject: All American Fuels 0-002774
Attachments: 3936-06 SETTLEMENT AGREEMENT.pdf

Attached is a draft settlement agreement for Docket Number 3936-06. This is a negotiation instrument. You can propose alternate language, or some kind of a Supplemental Environmental Project if you want, in lieu of part of the penalty. The terms are negotiable at this time. I need to know who will sign the document for All American Fuels and what their title is for the final document. Once we have negotiated the language, I will have two copies signed by our Administrator and Director and send them both to you for signature. When they have been signed by All American, return one to us with a penalty check and keep the other.

Robert F. Lucht, P.E. & P.G.
Storage Tank Program
Solid and Hazardous Waste Management Division
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perform inventory control in conjunction with the automatic tank gauge for the entire months of December, 2005, through July, 2006; 2) All American Fuels disabled, or allowed someone else to disable, the overfill device from one of the tanks sometime before August 9, 2006. 3) All American Fuels shut down the cathodic protection system on this site when it failed a test in November, 2005. 4) All American Fuels failed to repair the impressed current system when it failed on or about November 7, 2005. 5) All American Fuels failed to check the rectifier every sixty (60) days as required. 6) All American Fuels failed to register the tanks on July 1, 2006 as required by law. 7) All American Fuels failed to function test the automatic line leak detectors when those tests were due on August, 5, 2005. 8) All American Fuels also failed to report and investigate a suspected release when inventory control failed to balance. These acts are violations of the Wyoming Water Quality Rules and Regulations (WWQRR), Chapter 17, Sections 6(c)(i)(B), 11(a) and (c), 14(g)(i) 16 (c)(i) & (ii), and 19(c). Failing to register the tanks is a violation of W.S. 35-11-1419(a).

W.S. 35-11-901(a)(ii) authorizes the DEQ to negotiate a stipulated settlement, including payment of a penalty, in lieu of litigation. To that end, All American Fuels and the DEQ hereby stipulate and agree as follows:

1. The DEQ is responsible for enforcing the Act and Chapter 17, WWQRR.

WWQRR, Chapter 17, Section 16 (c)(i) and (ii), states: “(c) Automatic tank gauging (ATG). Equipment for automatic tank gauging which tests for the loss of a regulated substance shall detect a 0.2 gallon per hour leak rate from any portion of the tank that routinely contains a regulated substance. Owners and/or operators using automatic tank gauging shall also: (i) conduct inventory control in conformance with paragraph (a)(i) of this section, unless: (A) the regulated substance is placed in the UST in batches of twenty five (25) gallons or less; (B) a passing result is obtained monthly from the automatic tank gauge with the tank at least 85% full; (C) the automatic tank gauge itself reconciles the inventory to the same levels as required by paragraph (a)(i) of this section; or (D) a method of equivalent performance to inventory control is also used. (ii) report a suspected release and follow the requirements of Section 19(c) of this chapter whenever: (A) Any calendar month goes by when a passing result cannot be obtained from the ATG sometime during the month; or (B) A pattern becomes evident that the ATG produces a failing result whenever the level of a regulated substance in the tank is high, even if passing results can be obtained when the level is low. (C) Inventory control fails for the second consecutive month.”

WWQRR, Chapter 17, Section 6(c)(i)(B), states: “(i) Except as provided in Section 6 (c) (ii), to prevent spilling and overfilling associated with regulated substance transfer to the UST system, owners and/or operators shall use the following spill and overfill prevention equipment: (B) Overfill prevention equipment that will: (I) Automatically shut off flow into the tank when the tank is no more than ninety-five percent (95%) full...”

WWQRR, Chapter 17, Section 11(c), states: “Storage tank systems with impressed current CP systems shall also be inspected by the owner and/or operator every sixty (60) days to ensure the equipment is running properly. The owner and/or operator shall make a record of these inspections, including the date of the inspection, the voltage reading on the rectifier, the amperage reading on the rectifier, and the hour reading on a properly connected hour meter showing how long the system has operated since the last inspection. The owner and/or operator shall compare those readings to the readings determined to be correct during the last inspection

also been internally lined, as long as steel tanks or connected piping exist on that site. This does not preclude replacement of parts of the CP system which have become defective.”

Wyoming Statute (WS) 35-11-1419 (a), states: “ On or before July 1 of each year either the owner or operator of a tank shall register the tank with the department on forms developed and furnished by the department. The registration form shall be submitted under oath or affirmation....”

WWQRR, Chapter 17 Section 14 (g) (i), states: “Pressurized piping systems shall: (B) Be equipped with an automatic line leak detector in accordance with the following: Methods which alert the owner and/or operator to the presence of a leak by restricting or shutting off the flow of regulated substances through piping or triggering an audible or visual alarm, may be used only if they detect leaks of three (3) gallons per hour at ten (10) pounds per square inch line pressure within one (1) hour. An annual test of the operation of the leak detector shall be conducted. Manufacturers are required to recommend procedures to be used for testing their own equipment, but all automatic line leak detectors shall be tested annually. No manufacturer shall recommend that its equipment not be tested nor interfere with the testing of its equipment in any way. In addition all underground pressurized piping shall: (1) have an annual line tightness test.”

2. All American Fuels owns and operates underground storage tank (UST) facility number 0-002774. This facility is located at 225 Front Street, Big Piney, Wyoming. All American Fuels purchased this facility in June 2005; however, they were the operator of the facility prior to that date. The facility has two 12,000 gallon and two 8,000 gallon steel tanks that were installed in 1985. The pressurized lines connected to the tanks are single wall fiberglass reinforced plastic. All American Fuels uses automatic tank gauging (ATG) and inventory control (IC) as its monthly UST leak detection methods. All American Fuels uses butterfly valves in the drop tubes to prevent overfills.

A routine inspection was conducted on August 9, 2006, at this facility. The only leak detection records available during that inspection were passing ATG records for July 2005 through August 2006. All American Fuels was not performing inventory control as required. There were extreme “overages” and “shortages” for the unleaded tank and the premium tank inventory control records due to the “blender dispensers.” Corrections should have been made to these records after the first month these numbers exceeded the allowable limits.

One of the tank overfill prevention devices was disabled by inserting a broken tank gauging stick in the fill tube to prevent that device from closing when the tank is full.

Personnel were not checking the cathodic protection (CP) rectifier every 60 days and had not done so since November 7, 2005. Site personnel also stated the CP system had been shut down in November 2005. The employee had turned the system back on prior to the inspection. According to the hour meter reading on the rectifier, the rectifier had been turned off for a total of 252 days.

An annual registration for fiscal year 2007 was not submitted to the department. This registration form was sent to All American Fuels at the same time as the invoice for annual fees.

The line leak detectors were function tested and line tightness testing was performed on August 5, 2004. Both of these tests were required to be repeated no later than August 5, 2005. These tests were not done again until October 17, 2005, 73 days late.

violations. Payment of ten thousand dollars (\$10,000.00) after execution of this Settlement Agreement. Payment shall be by check made payable to the Wyoming Department of Environmental Quality and addressed to the Wyoming Department of Environmental Quality, Attention: Robert Lucht, Herschler Building, 4th Floor West Wing, 122 W. 25th Street, Cheyenne, WY 82002.

5. Twenty Thousand Dollars (\$20,000.00) of this penalty is stayed pending full compliance with Chapter 17 for three (3) years from the date of this Settlement Agreement. For purposes of this Settlement Agreement only, full compliance means:
 - a. Payment in full of all storage tank fees no later than July 1 of each year;
 - b. Registration of these tanks every year no later than July 1 and every time there is a change in status of these tanks as required by statute;
 - c. Performance of any one of the tank leak detection methods found in Chapter 17, Section 16 within thirty days of the date of this settlement agreement and again every thirty days thereafter. This means that Automatic Tank Gauging records are to be maintained for every tank for every month. In addition, All American Fuels shall perform inventory control in accordance with Chapter 17, Section 16(a). Records of all of these tests shall be maintained by All American Fuels for three (3) years;
 - d. Providing an Operator's Annual Inspection (OAI) of this facility no later than September 30 of each year. The OAI includes: Having a functional test of the Automatic Line Leak Detectors on the pressurized lines no later than September 30, 2006 and every year thereafter no later than September 30. Records of these tests shall be maintained by All American Fuels for three (3) years;
 - e. In the event that any month passes without a passing result on the automatic tank gauge for each compartment of each tank, this indicates that a release may have occurred, as defined by Chapter 17, Section 16. All American Fuels agrees to immediately report a suspected release and follow all procedures in Chapter 17, Section 19(c) and Section 20;
 - f. In the event that any two consecutive months pass with the inventory control failing for any compartment for any tank, this also indicates that a release may have occurred, as defined by Chapter 17, Section 16. All American Fuels agrees to immediately report a suspected release and follow all procedures in Chapter 17, Section 19(c) and Section 20;
 - g. If these tanks are removed, notification to the department and inspection by the department, as required by statute. If, as a result of the removal, the site is a contaminated site, payment of all contaminated site fees by July 1 of each year; and
 - h. All American Fuels agrees to maintain butterfly valves in operable condition in every drop tube in every tank.

penalty shall be forgiven.

6. All American Fuels' full compliance with the terms of this Settlement Agreement shall constitute satisfaction for all claims by the DEQ against All American Fuels based on the violations alleged in Notice of Violation No. 3936-06. Contingent upon All American Fuels' compliance with the terms of this Settlement Agreement, the DEQ will refrain from taking further enforcement action against All American Fuels for these particular violations.
7. All American Fuels waives any statute of limitations which may apply to an enforcement action by the DEQ involving the specific matters described in Notice of Violation No. 3936-06 in the event that All American Fuels fails to fulfill its obligations under this Settlement Agreement.
8. This Settlement Agreement shall be admissible by either party without objection by the other party in any subsequent action between these parties.
9. Each party shall bear its own attorney fees and costs, if any, incurred through the date this Settlement Agreement is signed by both parties.
10. This Settlement Agreement is binding upon All American Fuels and all of its successors and assigns, and upon the DEQ.
11. Nothing in this Settlement Agreement supersedes any provision found in any Wyoming State law, or any regulation issued by the Department of Environmental Quality or any federal law or regulation.

Geri Winters / Doug Cook
Title??

Date

FOR THE WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY:

John V. Corra,
Director

Date

LeRoy C. Feusner, PE, BCEE
Administrator
Solid and Hazardous Waste Management Division

Date