

SETTLEMENT AGREEMENT

The Wyoming Department of Environmental Quality, Solid and Hazardous Waste Management Division (DEQ) and Mark Wagner (Wagner) d/b/a Wagner and Wagner Chevron, enter into this Settlement Agreement to fully and finally resolve without litigation the violations alleged in Notice of Violation No. 4294-08, dated June 19, 2008. Wagner is the owner and operator of the underground storage tanks located at Wagner and Wagner Chevron, Kemmerer, WY 83101. This underground storage tank facility is registered with the DEQ as facility 0-001014. The Notice of Violation alleges that: 1) Wagner operated two Underground Storage Tanks (USTs) without obtaining a passing result from the Automatic Tank Gauge (ATG) for any month for six (6) months; 2) Wagner operated four USTs for twelve (12) months without conducting inventory control; 3) Wagner uses ATG and IC as the leak detection methods for all four USTs; and 4) No report of a suspected release was made for any of these failures, nor was any investigation done for any of these failures. These acts are violations of the Wyoming Water Quality Rules and Regulations (WWQRR) Chapter 17 Sections 16 (a), 16 (c) and 19 (c).

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, Wagner and the DEQ hereby stipulate and agree as follows:

1. The DEQ is responsible for enforcing the Act and Chapter 17, WWQRR.
2. Wyoming Water Quality Rules and Regulations (WWQRR), Chapter 17, Section 16 (a) states: “(a) *Inventory control*. Inventory control is never acceptable as a leak detection method except when it is combined with another method. Product inventory control (or another test of equivalent performance) shall be conducted monthly to detect a release of at least 1.0 percent (1%) of throughput plus one hundred thirty (130) gallons in the following manner: (i) Inventory volume measurements for regulated substance inputs, withdrawals, and the amount still remaining in the UST shall be recorded each operating day; (ii) The equipment used shall be capable of measuring the depth of regulated substance over the full range of the USTs height to the nearest one-eighth (1/8) of an inch; (iii) The regulated substance inputs shall be reconciled with delivery receipts by measurement of the UST inventory volume before and after delivery; (iv) Deliveries shall be made through a drop tube that extends to within six (6) inches of the Storage Tank bottom; (v) Dispensing of regulated substances shall be metered and recorded within the local standards for meter calibration or an accuracy of six (6) cubic inches for every five (5) gallons of regulated substance withdrawn; and (vi) Water in the bottom of the UST shall be measured to the nearest one-eighth (1/8) of an inch at least once a month. (vii) Owners and/or operators using inventory control may combine this method with tank tightness testing at least every five (5) years until December 22, 2008, or until ten (10) years after the UST itself first met the requirements of Section 6(a), whichever is sooner; (viii) Owners and/or operators using inventory control shall report a suspected release under Section 19(c) of this chapter whenever: (A) The inventory control fails to balance within 1.0 percent (1%) of total throughput plus one hundred thirty (130) gallons for the second consecutive month; (B) More than 20 daily readings are either positive or negative for the second consecutive month; or (C) A graph of the daily over/short readings shows a consistent non-zero trend for two (2) consecutive months.”

WWQRR, Chapter 17, Section 16 (c) states: “(c) *Automatic tank gauging (ATG)*. Equipment for automatic tank gauging that 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) of this section, unless: (A) the regulated substance is placed in the UST in batches of twenty-five (25) gallons or less; (B) the tank is used only to fuel an emergency power

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generator; (C) a passing result is obtained monthly from the Automatic Tank Gauge with the tank at least 85% full; (D) the automatic tank gauge itself reconciles the inventory to the same levels as required by paragraph (a)(i) of this section; or (E) 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.”

3. Wagner owns and operates tanks located at Wagner and Wagner Chevron, Kemmerer, Wyoming and registered with the DEQ, as facility 0-001014. During an inspection conducted June 4, 2008 it was discovered that Wagner did not have passing ATG results for tanks three and four for November 2007 through April 2008. During that same inspection it was discovered that Wagner was not conducting inventory control for any of the tanks. No suspected releases were ever reported or investigated.
4. Since receiving the Notice of Violation No. 4294-08 on or about June 22, 2008, Wagner has corrected the cited violations.
5. Wagner agrees to pay a total of Twenty Four Thousand Dollars (\$24,000.00) to the Solid and Hazardous Waste Division as a stipulated penalty for the cited violations. Payment of One Thousand Five Hundred Dollars (\$1,500.00) shall be made within 30 days after execution of this Settlement Agreement. Payment shall be made 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, Casper, WY 82002.
6. Twenty Two Thousand Five Hundred Dollars (\$22,500.00) of this penalty is stayed pending full compliance with Chapter 17 for one (1) year 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 January 1 of each year.
 - b. 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. At this facility, automatic tank gauging (ATG) and inventory control (IC) are the current methods of tank leak detection. This means that Wagner must obtain a passing ATG result for each tank for each month. This also means that Wagner must perform IC in accordance with Chapter 17, Section 17 and on forms provided by the department. Inventory control can be done manually or by computer and the department will provide Wagner with one copy of the proper form for whichever method he chooses to use. Records of all of these tests shall also be maintained by Wagner for three (3) years.
 - c. Provide an Operator’s Annual Inspection (OAI) of this facility no later than June 1 of each year. The OAI includes: having a functional test of the Automatic Line Leak Detectors (ALLD) on the pressurized lines; pressure testing all of the lines at 150% of operating pressure; performing a physical inspection of the entire facility and documenting that inspection fully with

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photographs; repairing any and all leaks discovered during the physical inspection; and submitting the results of the ALLD test, the line pressure test, and the results of the previous twelve (12) months ATG and inventory control records to the department. Records of these tests shall be maintained by Wagner for three (3) years.

e. In the event that the ATG fails to produce a passing result for any tank for any calendar month, or the IC shows a failure for two consecutive months, a suspected release is indicated, as defined by Chapter 17, Section 16. Wagner agrees to immediately report a suspected release and follow all procedures called for in Chapter 17, Section 19(c) and Section 20. This report must be made as soon as Wagner is aware of the situation, but in no case later than twenty (20) calendar days after the end of each month.

f. If these tanks are removed, notification of 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 January 1 of each year.

If Wagner complies fully with Chapter 17 for one (1) year from the date of this Settlement Agreement, then Twenty Two Thousand Five Hundred Dollars (\$22,500.00) of this penalty shall be forgiven.

7. Wagner's full compliance with the terms of this Settlement Agreement shall constitute satisfaction for all claims by the DEQ against Wagner based on the violations alleged in Notice of Violation No. 4294-08. Contingent upon Wagner's compliance with the terms of this Settlement Agreement, the DEQ will refrain from taking further enforcement action against Wagner for these particular violations.
8. Wagner 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. 4294-08 in the event that Wagner fail to fulfill their obligations under this Settlement Agreement.
9. This Settlement Agreement shall be admissible by either party without objection by the other party in any subsequent action between these parties.
10. Each party shall bear its own attorney fees and costs, if any, incurred through the date this Settlement Agreement is signed by both parties.
11. This Settlement Agreement is binding upon Wagner and all of its successors and assigns, and upon the DEQ.

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- 12. 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.
- 13. The persons signing this Settlement Agreement certify that they are duly authorized to bind their respective parties to this Settlement Agreement.

FOR WAGNER AND WAGNER CHEVRON:

Mark Wagner
Mark Wagner, Owner

12/23/08
Date

FOR THE WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY:

John V. Corra
John V. Corra,
Director

8/13/08
Date

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

13 Aug 08
Date

Check # 40395 drawn on the Bank of the West in the amount of \$1,500⁰⁰ (Fifteen Hundred Dollars) was received with this document.

Mark Wagner