

May 31, 2022

VIA HAND DELIVERY

Honorable Kenna M. DeRaimo
Clerk of the West Virginia Environmental
Quality Board
601 57th Street SE
Charleston, West Virginia 25304

RECEIVED

JUN 1 2022

**Environmental Quality
Board**

RE: Appellants' Motion For Stay Of "Order Issued Under The Underground Storage Tank Act West Virginia Code, Chapter 22, Article 17 – Order No.: UST-22-005"

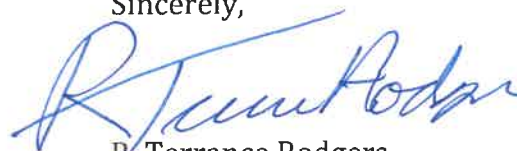
Dear Ms. DeRaimo:

On behalf of J. C. Baker & Son, Inc. and Baker Oil Company, and pursuant to West Virginia Code § 22B-1-7 and 46 CSR § 4-5.5, enclosed for filing with the West Virginia Environmental Quality Board, please find the original and six (6) copies of *Appellants' Motion For Stay Of "Order Issued Under The Underground Storage Act West Virginia Code, Chapter 22, Article 17 – Order No. UST-22-005"* ("Motion").

Also, please find an extra copy of the *Motion*. Please time and/or date stamp this copy and return it to me with the messenger who delivers this correspondence. Thank you in advance for doing so.

If you or any of your staff have any questions whatsoever about the *Motion*, you or they should not hesitate to call me at (304) 720-4217 or email me at trodgers@kaycasto.com.

Sincerely,



R. Terrance Rodgers

RTR/spw
Enclosure



VIA REGULAR U.S. MAIL

cc: Katheryn Emery, P.E. (w/enclosure)

VIA REGULAR U.S. MAIL

cc: Office of Legal Services (w/enclosure)
West Virginia Department of Environmental Protection

WEST VIRGINIA ENVIRONMENTAL QUALITY BOARD
CHARLESTON, WEST VIRGINIA

RECEIVED

JUN 1 2022

Environmental Quality
Board

J.C. BAKER & SON, INC.
and BAKER OIL COMPANY,

Appellants,

v.

Appeal No. 22-03-EQB

KATHERYN EMERY, P.E., DIRECTOR,
DIVISION OF WATER AND WASTE
MANAGEMENT, DEPARTMENT OF
ENVIRONMENTAL PROTECTION,

Appellee.

**APPELLANTS' MOTION FOR STAY OF "ORDER ISSUED
UNDER THE UNDERGROUND STORAGE ACT WEST VIRGINIA
CODE CHAPTER 22, ARTICLE 17, ORDER NO. UST-22-005"**

Come now appellants J. C. Baker & Son, Inc. ("J. C. Baker") and Baker Oil Company ("Baker Oil") (J.C. Baker and Baker Oil are collectively "Appellants"), by their counsel, R. Terrance Rodgers, of Kay Casto & Chaney PLLC, pursuant to W. Va. Code § 22B-1-7 and 46 CSR § 4-5.5, and moves that the West Virginia Environmental Quality Board ("Board") enter an order staying all provisions of the attached *Order Issued Under The Underground Storage Act West Virginia Code Chapter 22, Article 17, Order No. UST-22-005* ("Order").

Appellants have appealed the *Order* on the grounds that they are not the owners of the underground storage tanks ("USTs") which are the subject of the *Order*. Therefore,

the *Order* wrongly requires them to develop and implement a plan of corrective action on the grounds they are owners of the USTs.

The *Order* requires submission of plan of corrective action for thirteen (13) different sites within thirty (30) days of entry of the *Order*.¹ If the *Order* is not stayed, Appellants will be required to not only submit a plan of corrective action for which they have no responsibility, but such submission will require unjustified expenditures of time and money and will unduly interfere with Appellants' business operations as preparation of such plan will divert nearly all of their capacity to perform necessary daily administrative operations, causing an unjust hardship.

Appellants' evidence that will be presented at the evidentiary hearing, and under federal and state law regarding the ownership of the USTs that will be presented to the Board, will demonstrate that Katheryn Emery, P.E., Director, Division of Water and Waste Management, West Virginia Department of Environmental Protection ("Appellee") had no credible evidence demonstrating actual ownership of the USTs in question as required under state and federal law.

More importantly, Appellee has demonstrated there will be no harm by a stay, given that Appellee has taken two decades to process all but one of these leaks to the point of issuing the *Order*. Additional time to allow Appellants' appeal to run its course would be a *de minimis* delay.

¹ Even if Appellants were the owners and liable, neither company is a large enough company to be able to undertake such a monumental task in such a short time. Between them, there is one administrative employee who would have to oversee such an extensive task. For Appellants to comply within (30) thirty days, basic day-to-day administrative operations of Appellants would have to all but cease.

Appellee accepted certain assistance from the Appellants as volunteers in the past, but then sought no further information seeking to identify the true owners of the USTs for years. In fact, Appellee never responded to Appellants communications regarding the 2,000-gallon fuel spill caused by the West Virginia Department of Highways and never sought to have the West Virginia Department of Highways perform the necessary clean-up. Thus, Appellee has further demonstrated that time is not of the essence.

Furthermore, Appellee's authority to regulate or enforce laws regarding USTs will not be harmed. Should Appellee ultimately prevail, Appellee's ability to require the actual owners of the USTs to comply will not be compromised. However, if Appellants ultimately prevail, they will have been forced by a government agency to perform work, with a concomitant expense, egregious inconvenience, and loss of productivity, that the government agency had no right to demand.

WHEREFORE, Appellants request that the Board grant a stay of the *Order* until such time as there is a final resolution of the appeal.

J.C. BAKER & SON, INC.
and BAKER OIL COMPANY,

Appellants,

BY COUNSEL:


R. TERRANCE RODGERS (WVSB #3148)
KAY CASTO & CHANEY PLLC
P. O. Box 2031
Charleston, West Virginia 25327
(304) 720-4217 / Telephone
(304) 345-8909 / Telefax
tr Rodgers@kaycasto.com



west virginia department of environmental protection

Division of Water and Waste Management
601 57th Street SE
Charleston, WV 25304
Phone: 304-926-0470 Fax: 304-926-0488

Harold D. Ward, Cabinet Secretary
dep.wv.gov

April 26, 2022

J. C. Baker & Son, Inc.
601 Elk Street
Gassaway, WV 26624

CERTIFIED RETURN RECEIPT REQUESTED
9489 0090 0027 6402 6081 23

**WV IDENTIFICATION NOS.: 4905543, 0100014,
4905541, 5105713, 2102658, 0800440, 0407923, 5105709,
2006691, 2102661, 3404188, 3405499, and 1108011**

And

Baker Oil Company
P. O. Box 369
Gassaway, WV 26624

Mr. Baker:

Enclosed is Order No. UST-22-005. This Order is issued to J. C. Baker & Son, Inc. and Baker Oil Company by the director of the Division of Water and Waste Management under the authority of Chapter 22, Article 17, Section 15 of the Code of West Virginia. This Order contains notification of the right of appeal under the provisions of Chapter 22, Article 17, Section 18.


Jeremy W. Handy
Chief Inspector

cc: Kathryn Emery, P.E., Director, DWWM (e-mail)
Scott G. Mandirola, Deputy Secretary for External Affairs, WVDEP (e-mail)
Harold D. Ward, Cabinet Secretary, WVDEP (e-mail)
Joseph Sizemore, Assistant Chief Inspector, EE/HW, Tanks (e-mail)
David C. Simmons, Assistant Chief Inspector, EE (e-mail)
Laura McGee, Environmental Resources Program Manager, EE (e-mail)
Cindy Blugerman, Environmental Resources Specialist, EE (e-mail)
Amaris Elliott, Environmental Resources Associate, EE (e-mail)
Ruth M. Porter, Program Manager, EE/Tanks (e-mail)
Melissa McCune, Program Manager, EE/Tanks Corrective Action (e-mail)
Randal Lemons, Environmental Resources Analyst, EE/Tanks Corrective Action (e-mail)
Andrew Dinsmore, US EPA, Region III (e-mail)



west virginia department of environmental protection

Division of Water and Waste Management
601 57th Street SE
Charleston, WV 25304
Phone: 304-926-0470 Fax: 304-926-0488

Harold D. Ward, Cabinet Secretary
dep.wv.gov

**ORDER
ISSUED UNDER THE
UNDERGROUND STORAGE TANK ACT
WEST VIRGINIA CODE, CHAPTER 22, ARTICLE 17**

TO: J. C. Baker & Son, Inc.
601 Elk Street
Gassaway, WV 26624

DATE: April 26, 2022

ORDER NO.: UST-22-005

And

Baker Oil Company
P.O. Box 369
Gassaway, WV 26624

INTRODUCTION

The following findings are made and Order issued to J. C. Baker & Son, Inc. and Baker Oil Company (hereinafter "Baker") pursuant to the authority vested in the Director of the Division of Water and Waste Management under Chapter 22, Article 17, Section 1 et seq. of the Code of West Virginia.

FINDINGS OF FACT

In support of this Order, the Director hereby finds the following:

1. As the owner and/or operator of Underground Storage Tanks (USTs) at the time of releases from the USTs, Baker is the responsible party for confirmed releases at the following thirteen (13) facilities. The USTs at these sites are permanently out of service (POS) and were removed by Baker.
 - a. Linger's Service Station located in Upshur County, WV was issued Leak No. 92-289-L49 on December 14, 1992. The Facility ID is 4905543.
 - b. Paul's Service Station located in Barbour County, WV was issued Leak No. 92-306-L01 on December 12, 1992. The Facility ID is 0100014.
 - c. Coastal Lumber Company located in Upshur County, WV was issued Leak No. 95-021 on February 7, 1995. The Facility ID is 4905541.

Promoting a healthy environment.

- d. Hamrick Service Station located in Webster County, WV was issued Leak No. 93-034 on February 5, 1993. The Facility ID is 5105713.
- e. W. J. Princes Store located in Lewis County, WV was issued Leak No. 93-378 on December 8, 1993. The Facility ID is 2102658.
- f. Sample's Service Station located in Clay County, WV was issued Leak No. 92-074-L08 on April 7, 1992. The Facility ID is 0800440.
- g. Steve White Service Station located in Braxton County, WV was issued Leak No. 91-036-L04 on June 17, 1991. The Facility ID is 0407923.
- h. Coastal Lumber Company located in Webster County, WV was issued Leak No. 91-075-L51 on August 20, 1991. The Facility ID is 5105709.
- i. Clendenin Service Station located in Kanawha County, WV was issued Leak No. 91-008-L20 on February 28, 1991. The Facility ID is 2006691.
- j. Point C Mart located in Lewis County, WV was issued Leak No. 94-035 on March 1, 1994. The Facility ID is 2102661.
- k. Young's Service Station located in Nicholas County, WV was issued Leak No. 94-066 on April 13, 1994. The Facility ID is 3404188.
- l. C Adam Toney Tire located in Nicholas County, WV was issued Leak No. 94-056 on March 30, 1994. The Facility ID is 3405499.
- m. Glenville Sunoco located in Gilmer County, WV was issued Leak No. 17-034 on October 11, 2017. The Facility ID is 1108011.

Leak No. 92-289-L49-Linger's Service Station

- 2. An April 1, 1986 UST notification form shows the USTs as currently in use (CIU) and the UST owner as J. C. Baker & Sons, Inc. The notification form was signed by Michael C. Baker.
- 3. A May 23, 1990 letter from Baker Oil Company indicated the purchase of several USTs from J. C. Baker & Sons. The enclosed UST notification form showed the USTs as CIU and the UST owner as Baker Oil Company. The notification from was signed by Michael C. Baker.
- 4. On December 14, 1992, West Virginia Department of Environmental Protection (WVDEP) personnel were notified of a release at Linger's Service Station. In response to the release, WVDEP issued a Confirmed Release Notice to Comply (CRNC) to Baker, which assigned Leak No. 92-289-L49 to the release and required that a Site Assessment be performed.
- 5. A March 10, 1993 UST notification shows the USTs as permanently out of service (POS) and the UST owner as Baker Oil Company. The notification was signed by Michael C. Baker.
- 6. On April 27, 1995, Order USTA-193-94 became effective. The Order required Baker, as the owner of the USTs, to implement corrective action in accordance with Code of Federal Regulations 40CFR280.
- 7. On February 11, 2008, WVDEP sent a Review of Confirmed Release (RCR) to Baker, which required submittal of a Corrective Action Plan (CAP) on or before April 15, 2008. Baker failed to submit the CAP.

8. On July 15, 2015, Baker's consultant provided a remediation schedule, progress update, and request for extension.
9. On October 14, 2015, WVDEP provided an extension to Baker, which required the performance of a Site Assessment and submittal of a Supplemental Site Assessment Report on or before September 30, 2016. Baker failed to submit the SSAR.
10. On April 12, 2018, WVDEP sent an RCR to Baker, which required submittal of a Supplemental Site Assessment by June 11, 2018. Baker failed to submit the required report.
11. On March 26, 2019, WVDEP sent an RCR to Baker, which required the submittal of a Site Assessment Work Plan (SAWP) by April 26, 2019. Baker failed to submit the SAWP.
12. On May 3, 2019, WVDEP personnel reviewed the facility file. During the review, the following violation of the Code of Federal Regulations was observed and documented:
 - a. 40CFR280.65(a) - Baker failed to appropriately conduct investigations of the release, the site, and the surrounding area possibly affected by the release, as per the requirements of 280.65(a)(1) through 280.65(a)(5).

As a result of this violation, Notice of Violation (NOV) No. 2019-01452 was issued to Baker.

13. On June 4, 2021, WVDEP personnel reviewed the facility file. During the review, the following violation of the Code of Federal Regulations was observed and documented:
 - a. 40CFR280.65(a) - Baker failed to appropriately conduct investigations of the release, the site, and the surrounding area possibly affected by the release, as per the requirements of 280.65(a)(1) through 280.65(a)(5).

As a result of this violation, Inspection of Violation (IOV) No. 2019-01452 was issued to Baker.

Leak No. 92-306-L01 Paul's Service Station

14. An April 25, 1986 UST notification form shows the USTs as CIU and the UST owner as J. C. Baker & Sons, Inc. The notification form was signed by Michael C. Baker.
15. On December 12, 1992, WVDEP personnel were notified of a release at Paul's Service Station. In response to the release, WVDEP issued a CRNC to Baker, which assigned Leak No. 92-306-L01 to the release and required that a Site Assessment be performed.
16. A February 5, 1993 UST notification form shows the USTs as POS and the UST owner as Baker Oil Company. The notification form was signed by Michael C. Baker.
17. On June 8, 2011, WVDEP sent an RCR to Baker, which required submittal of a CAP on or before August 30, 2011. Baker failed to submit the CAP

18. On July 15, 2015, Baker's consultant provided a remediation schedule, progress update, and request for extension.
19. On October 14, 2015, WVDEP provided an extension to Baker, which required the performance of a Site Assessment and submittal of an SAR and CAP on or before December 31, 2016. Baker failed to submit the SAR or CAP.
20. On March 26, 2019, WVDEP sent an RCR to Baker, which required submittal of a SAWP by April 26, 2019. Baker failed to submit the SAWP.
21. On May 3, 2019, WVDEP personnel reviewed the facility file. During the review, the following violation of the Code of Federal Regulations was observed and documented:
 - a. 40CFR280.65(a) - Baker failed to appropriately conduct investigations of the release, the site, and the surrounding area possibly affected by the release, as per the requirements of 280.65(a)(1) through 280.65(a)(5).

As a result of this violation, NOV, No. 2019-01449 was issued to Baker.

22. On June 4, 2021, WVDEP personnel reviewed the facility file. During the review, the following violation of the Code of Federal Regulations was observed and documented:
 - a. 40CFR 280.65(a) - Baker failed to appropriately conduct investigations of the release, the site, and the surrounding area possibly affected by the release, as per the requirements of 280.65(a)(1) through 280.65(a)(5).

As a result of this violation, IOV No. 2019-01449 was issued to Baker.

Leak No. 95-021 Coastal Lumber Company: Buckhannon

23. A May 1, 1986 UST notification form shows the USTs as CIU and the UST owner as J. C. Baker & Sons, Inc. The notification form was signed by Michael C. Baker.
24. A May 23, 1990 letter from Baker Oil Company indicated the purchase of several USTs from J. C. Baker & Sons. The enclosed UST notification form showed the USTs as CIU and the UST owner as Baker Oil Company. The notification form was signed by Michael C. Baker.
25. On May 6, 1992 and August 11, 1992, WVDEP personnel received UST closure requests.
26. On February 7, 1995, WVDEP personnel were notified of a release at Coastal Lumber Company. In response to the release, WVDEP issued a CRNC to Baker, which assigned Leak No. 95-021 to the release and required that a Site Assessment be performed.
27. On June 8, 2011, WVDEP sent an RCR to Baker, which required submittal of a CAP on or before August 30, 2011. Baker failed to submit the CAP.
28. On July 15, 2015, Baker's consultant provided a remediation schedule, progress update, and request for extension.

29. On October 14, 2015, WVDEP provided an extension to Baker, which required the performance of a Site Assessment and submittal of an SAR on or before December 31, 2016. Baker failed to submit the SAR.
30. On March 12, 2018, WVDEP sent an RCR to Baker, which required the submittal of a Supplemental SAR by May 11, 2018. Baker failed to submit the Supplemental SAR.
31. On May 17, 2018, WVDEP personnel reviewed the facility file. During the review, the following violation of the Code of Federal Regulations was observed and documented:
 - a. 40CFR280.34 - Baker failed to cooperate with requests for document submission, testing, and/or monitoring.

As a result of this violation, NOV No. 1805-3400 was issued to Baker.

32. On January 31, 2019, WVDEP personnel reviewed the facility file. During the review, the following violation of the Code of Federal Regulations was observed and documented:
 - a. 40CFR 280.65(a) - Baker failed to appropriately conduct investigations of the release, the site, and the surrounding area possibly affected by the release, as per the requirements of 280.65(a)(1) through 280.65(a)(5).

As a result of this violation, NOV No. 2019-00483 was issued to Baker.

33. On March 26, 2019; May 3, 2019; and June 4, 2021; WVDEP personnel reviewed the facility file. During the reviews, the following violation of the Code of Federal Regulations was observed and documented:
 - a. 40CFR280.65(a) - Baker failed to appropriately conduct investigations of the release, the site, and the surrounding area possibly affected by the release, as per the requirements of 280.65(a)(1) through 280.65(a)(5).

As a result of this violation, IOV No. 2019-00483 was issued to Baker.

Leak No. 93-034 Hamrick Service Station

34. An April 23, 1986 UST notification form shows the USTs as CIU and the UST owner as J. C. Baker & Sons, Inc. The notification form was signed by Michael C. Baker.
35. On February 11, 1993, WVDEP personnel were notified of a release at Hamrick Service Station. In response to the release, WVDEP issued a CRNC to Baker, which assigned Leak No. 93-034 to the release and required that a Site Assessment be performed.
36. An April 30, 1993 UST notification form shows the USTs as POS and the UST owner as Baker Oil Company. The notification form was signed by Michael C. Baker.
37. On March 24 1997, a consent order issued to Baker Oil Company by the Environmental Protection Agency became effective. The consent order identifies Baker Oil Company as the respondent and responsible for applicable UST compliance activities.

38. On April 21, 2008, WVDEP sent an RCR to Baker, which required submittal of a Groundwater Monitoring Report (GMR) on or before May 21, 2008. Baker failed to submit the GMR.
39. On July 15, 2015, Baker's consultant provided a remediation schedule, progress update, and request for extension.
40. On October 14, 2015, WVDEP provided an extension to Baker, which required the performance of a Site Assessment and submittal of a SAR on or before June 30, 2016. Baker failed to submit the SAR.
41. On August 8, 2018, WVDEP sent an RCR to Baker, which required the submittal of an Initial Site Characterization Report (ISCR) by October 2, 2018. Baker failed to submit the ISCR.
42. On November 11, 2018, WVDEP personnel reviewed the facility file. During the review, the following violations of the Code of Federal Regulations were observed and documented:
 - a. 40CFR280.65(a) - Baker failed to appropriately conduct investigations of the release, the site, and the surrounding area possibly affected by the release, as per the requirements of 280.65(a)(1) through 280.65(a)(5).
 - b. 40CFR280.63(b) - Baker failed to submit a report on initial site characterization that met the minimum requirements of 280.63(a)(1) through 280.63(a)(4).

As a result of these violations, NOV Nos. 1811-3808 and 1811-3809 were issued to Baker.

43. On June 2, 2021, WVDEP sent an RCR to Baker, which required submittal of a Site Investigation Report by June 30, 2021. Subsequently, Baker requested a forty-five (45) day extension, which was granted until August 16, 2021. However, Baker failed to submit the required report.
44. On August 22, 2021, WVDEP personnel reviewed the facility file. During the review, the following violation of the Code of Federal Regulations was observed and documented:
 - a. 40CFR280.65(a) - Baker failed to appropriately conduct investigations of the release, the site and the surrounding area possibly affected by the release as per requirements of 280.65(a)(1) through 280.65(a)(5).

As a result of this violation, IOV No. 2018-00094 was issued to Baker.

Leak No. 93-378 W J Prince's Store

45. An April 21, 1986 UST notification form shows the USTs as CIU and the UST owner as J. C. Baker & Sons, Inc. The notification form was signed by Michael C. Baker.
46. A May 23, 1990 letter from Baker Oil Company indicated the purchase of several USTs from J. C. Baker & Sons. The enclosed UST notification form showed the USTs as CIU

and the UST owner as Baker Oil Company. The notification form was signed by Michael C. Baker.

47. On December 8, 1993, WVDEP personnel were notified of a release at W J Prince's Store. In response to the release, WVDEP issued a CRNC, which assigned Leak No. 93-378 to the release and required that a Site Assessment be performed.
48. A February 2, 1994 UST notification form shows the USTs as POS and the UST owner as Baker Oil Company. The notification form was signed by Michael C. Baker.
49. On July 15, 2015, Baker's consultant provided a remediation schedule, progress update, and request for extension.
50. On October 14, 2015, WVDEP provided an extension to Baker, which required the performance of a Site Assessment and submittal of an SAR on or before December 31, 2016. Baker failed to submit the SAR.
51. On March 26, 2019, WVDEP sent an RCR to Baker, which required submittal of a SAWP by April 26, 2019. Baker failed to submit the SAWP.
52. On May 3, 2019, WVDEP personnel reviewed the facility file. During the review, the following violation of the Code of Federal Regulations was observed and documented:
 - a. 40CFR280.65(a) - Baker failed to appropriately conduct investigations of the release, the site, and the surrounding area possibly affected by the release, as per the requirements of 280.65(a)(1) through 280.65(a)(5).

As a result of this violation, NOV No. 2019-01450 was issued to Baker.

53. On June 4, 2021, WVDEP personnel reviewed the facility file. During the review, the following violation of the Code of Federal Regulations was observed and documented:
 - a. 40CFR280.65(a) - Baker failed to appropriately conduct investigations of the release, the site, and the surrounding area possibly affected by the release, as per the requirements of 280.65(a)(1) through 280.65(a)(5).

As a result of this violation, IOV No. 2019-01450 was issued to Baker.

Leak No. 92-074-L08-Sample's Service Station

54. An April 17, 1986 UST notification form shows the USTs as CIU and the UST owner as J. C. Baker & Sons, Inc. The notification form was signed by Michael C. Baker.
55. A May 23, 1990 letter from Baker Oil Company indicated the purchase of several USTs from J. C. Baker & Sons. The enclosed UST notification form showed the USTs as CIU and the UST owner as Baker Oil Company. The notification form was signed by Michael C. Baker.
56. On April 7, 1992, WVDEP personnel were notified of a release at Sample's Service Station. In response to the release, WVDEP issued a CRNC to Baker, which assigned Leak No. 92-074-L08 to the release and required that a Site Assessment be performed.

57. A May 5, 1992 UST notification form shows the USTs as POS and the UST owner as J.C. Baker & Son, Inc. The notification form was signed by Michael C. Baker.
58. On October 24, 2002, WVDEP sent an RCR to Baker, which required submittal of an SAR on or before December 23, 2002. Baker failed to submit the SAR.
59. On July 15, 2015, Baker's consultant provided a remediation schedule, progress update, and request for extension.
60. On October 14, 2015, WVDEP provided an extension to Baker, which required the performance of a Site Assessment and submittal of a Supplemental SAR on or before June 30, 2016. Baker failed to submit the SAR.
61. On June 2, 2021, WVDEP sent an RCR to Baker, which required submittal of a Site Investigation Report (SIR) by June 30, 2021. Baker requested a forty-five (45) day extension, which was granted until August 16, 2021. Baker failed to submit the required report.
62. On August 22, 2021, WVDEP personnel reviewed the facility file. During the review, the following violation of the Code of Federal Regulations was observed and documented:
 - a. 40CFR280.65(a) - Baker failed to appropriately conduct investigations of the release, the site, and the surrounding area possibly affected by the release, as per the requirements of 280.65(a)(1) through 280.65(a)(5).

As a result of this violation, NOV, No. 2021-01437 was issued to Baker.

Leak No. 91-036-L04 -Steve White Service Station

63. On June 17, 1991, WVDEP personnel were notified of a release at Steve White Service Station. In response to the release, WVDEP issued a CRNC to Baker, which assigned Leak No. 91-036-L04 to the release and required that Tank Closure and Site Assessment be performed.
64. On November 19, 1991, WVDEP issued Order No. USTA-116-91, which required that Baker pay past due fees and submit a Closure Report and SAR on or before January 18, 1992. Baker subsequently submitted the required documents.
65. A March 15, 1992 UST notification form shows the USTs as POS and the UST owner as J.C. Baker & Son, Inc. The notification form was signed by Michael C. Baker.
66. On March 31, 1992, WVDEP sent an RCR to Baker, which required an additional SAR on or before May 29, 1992. Baker failed to submit the additional SAR.
67. On October 17, 2013, WVDEP responded to Baker's plan to move forward systematically in regard to the remaining leaking UST sites and required submittal of a full site investigation by March 31, 2014.
68. On July 15, 2015, Baker's consultant provided a remediation schedule, progress update, and request for extension.

69. On October 14, 2015, WVDEP provided an extension to Baker, which required the performance of a Site Assessment and submittal of Supplemental SAR on or before December 31, 2016. Baker failed to submit the SAR.
70. On June 2, 2021, WVDEP sent an RCR to Baker, which required submittal of a Site Investigation Report by June 30, 2021. Baker requested a forty-five (45) day extension, which was granted until August 16, 2021. Baker failed to submit the required report.
71. On August 22, 2021, WVDEP personnel reviewed the facility file. During the review, the following violation of the Code of Federal Regulations was observed and documented:
 - a. 40CFR280.65(a) - Baker failed to appropriately conduct investigations of the release, the site, and the surrounding area possibly affected by the release, as per the requirements of 280.65(a)(1) through 280.65(a)(5).

As a result of this violation, NOV No. 2021-01436 was issued to Baker.

Leak No. 91-075-L51-Coastal Lumber Company; Hackers Valley

72. An April 15, 1986 UST notification form shows the USTs as CIU and the UST owner as J. C. Baker & Sons, Inc. The notification form was signed by Michael C. Baker.
73. A May 23, 1990 letter from Baker Oil Company indicated the purchase of several USTs from J. C. Baker & Sons. The enclosed UST notification form showed the USTs as CIU and the UST owner as Baker Oil Company. The notification form was signed by Michael C. Baker.
74. On August 20, 1991, WVDEP personnel were notified of a release at Coastal Lumber Company. In response to the release, WVDEP issued a CRNC to Baker, which assigned Leak No. 91-075-L51 to the release and required that a Site Assessment be performed.
75. On July 15, 2015, Baker's consultant provided a remediation schedule, progress update, and request for extension.
76. On October 14, 2015, WVDEP provided an extension to Baker, which required the performance of a Site Assessment and submittal of a Supplemental SAR on or before March 31, 2016. Baker failed to submit the SAR.
77. On August 3, 2018, WVDEP sent an RCR to Baker, which required the submittal of an ISCR by October 2, 2018. Baker failed to submit the ISCR.
78. On November 14, 2018, WVDEP personnel reviewed the facility file. During the review, the following violations of the Code of Federal Regulations were observed and documented:
 - a. 40CFR280.65(a) - Baker failed to appropriately conduct investigations of the release, the site, and the surrounding area possibly affected by the release, as per the requirements of 280.65(a)(1) through 280.65(a)(5).
 - b. 40CFR280.63(b) - Baker failed to submit a report on initial site characterization that met the minimum requirements of 280.63(a)(1) through 280.63(a)(4).

As a result of these violations, NOV Nos. 1811-3806 and 1811-3807 were issued to Baker.

79. On June 2, 2021, WVDEP sent an RCR to Baker, which required submittal of a Site Investigation Report by June 30, 2021. Baker requested a forty-five (45) day extension, which was granted until August 16, 2021. Baker failed to submit the required report.
80. On August 22, 2021, WVDEP personnel reviewed the facility file. During the review, the following violation of the Code of Federal Regulations was observed and documented:
 - a. 40CFR280.65(a) - Baker failed to appropriately conduct investigations of the release, the site, and the surrounding area possibly affected by the release, as per the requirements of 280.65(a)(1) through 280.65(a)(5).

As a result of this violation, NOV No. 2018-00095 was issued to Baker.

Leak No. 91-008-L20-Clendenin Service Station

81. A June 9, 1989 UST notification form shows the USTs as CIU and the UST owner as J. C. Baker & Sons, Inc. The notification form was signed by Mike Baker.
82. On February 28, 1991, WVDEP personnel were notified of a release at Clendenin Service Station. In response to the release, WVDEP issued a CRNC to Baker, which assigned Leak No. 91-008-L20 to the release and required that a Site Assessment be performed.
83. On October 24, 2002, WVDEP sent an RCR to Baker, which required submittal of an SAR on or before December 23, 2002. Baker failed to submit the report.
84. On March 26, 2003, WVDEP sent a Notice of Non-Compliance for failure to submit the SAR. The Notice required submittal of the report on or before April 25, 2003. Baker failed to submit the report.
85. On July 15, 2015, Baker's consultant provided a remediation schedule, progress update, and request for extension.
86. On October 14, 2015, WVDEP provided an extension to Baker, which required the performance of a Site Assessment and submittal of a Supplemental SAR on or before December 31, 2015. Baker failed to submit the SAR.
87. On June 2, 2021, WVDEP sent an RCR to Baker, which required submittal of an SIR by June 30, 2021. Baker requested a forty-five (45) day extension, which was granted until August 16, 2021. Baker failed to submit the required report.
88. On August 22, 2021, WVDEP personnel reviewed the facility file. During the review, the following violation of the Code of Federal Regulations was observed and documented:
 - a. 40CFR280.65(a) - Baker failed to appropriately conduct investigations of the release, the site, and the surrounding area possibly affected by the release, as per the requirements of 280.65(a)(1) through 280.65(a)(5).

As a result of this violation, NOV No. 2021-01172 was issued to Baker.

Leak No. 94-035, Point C Mart

89. An April 10, 1986 UST notification form shows the USTs as CIU and the UST owner as J. C. Baker & Sons, Inc. The notification form was signed by Michael C. Baker.
90. On March 1, 1994, WVDEP personnel were notified of a release at Point C Mart. In response to the release, WVDEP issued a CRNC to Baker, which assigned Leak No. 94-035 to the release and required that a Site Assessment be performed.
100. An August 11, 1995 UST notification form shows the USTs as POS and the UST owner as Baker Oil Company. The notification form was signed by Michael C. Baker.
101. On July 15, 2015, Baker's consultant provided a remediation schedule, progress update, and request for extension.
102. On October 14, 2015, WVDEP provided an extension to Baker, which required the performance of Free Product Recovery, Site Assessment, and submittal of an SAR on or before December 31, 2015. Baker failed to submit the SAR.
103. On May 17, 2018, WVDEP sent an RCR to Baker, which required the submittal of a Supplemental SAR by July 16, 2018. Baker failed to submit the Supplemental SAR.
104. On January 31, 2019 and March 15, 2019, WVDEP personnel reviewed the facility file. During the reviews, the following violation of the Code of Federal Regulations was observed and documented:
 - a. 40CFR280.65(a) - Baker failed to appropriately conduct investigations of the release, the site, and the surrounding area possibly affected by the release, as per the requirements of 280.65(a)(1) through 280.65(a)(5).

As a result of this violation, NOV No. 2019-00484 was issued to Baker.

105. On April 26, 2019, WVDEP personnel received an SAR for the site. As a result, IOV No. 2019-00484 was issued to Baker, which abated NOV No. 2019-00484.
106. On May 2, 2019, WVDEP sent an RCR to Baker, which required submittal of a GMR and/or a CAP by July 26, 2019. Baker failed to submit the required report or CAP.
107. On June 2, 2021, WVDEP sent an RCR to Baker, which required submittal of a Site Investigation Report by June 30, 2021. Baker requested a forty-five (45) day extension, which was granted until August 16, 2021. Baker failed to submit the required report.
108. On August 22, 2021, WVDEP personnel reviewed the facility file. During the review, the following violation of the Code of Federal Regulations was observed and documented:

- a. 40CFR280.65(a) - Baker failed to appropriately conduct investigations of the release, the site, and the surrounding area possibly affected by the release, as per the requirements of 280.65(a)(1) through 280.65(a)(5).

As a result of this violation, NOV No. 2019-00484 was issued to Baker.

Leak No. 94-066-Young's Service Station

109. An April 12, 1986 UST notification form shows the USTs as CIU and the UST owner as J. C. Baker & Sons, Inc. The notification form was signed by Michael C. Baker.
110. An April 10, 1987 UST notification form shows the USTs as CIU and the UST owner as J. C. Baker & Sons, Inc. The notification form was signed by Michael C. Baker.
111. A May 23, 1990 letter from Baker Oil Company indicated the purchase of several USTs from J. C. Baker & Sons. The enclosed UST notification form showed the USTs as CIU and the UST owner as Baker Oil Company. The notification form was signed by Michael C. Baker.
112. An October 25, 1991 UST notification form shows the USTs as CIU and the UST owner as Baker Oil Company. The notification form was signed by Michael C. Baker.
113. On April 13, 1994, WVDEP personnel were notified of a release at Young's Service Station. In response to the release, WVDEP issued a CRNC to Baker, which assigned Leak No. 94-066 to the release and required that a Site Assessment be performed.
114. On July 15, 2015, Baker's consultant provided a remediation schedule, progress update, and request for extension
115. On October 14, 2015, WVDEP provided an extension to Baker, which required the performance of a Site Assessment and submittal of a Supplemental SAR on or before March 31, 2016. Baker failed to submit the SAR.
116. On June 2, 2021, WVDEP sent an RCR to Baker, which required submittal of a Site Investigation Report by June 30, 2021. Baker requested a forty-five (45) day extension, which was granted until August 16, 2021. Baker failed to submit the required report.
117. On August 22, 2021, WVDEP personnel reviewed the facility file. During the review, the following violation of the Code of Federal Regulations was observed and documented:
 - a. 40CFR280.65(a) - Baker failed to appropriately conduct investigations of the release, the site, and the surrounding area possibly affected by the release, as per the requirements of 280.65(a)(1) through 280.65(a)(5).

As a result of this violation, NOV No. 2021-01438 was issued to Baker.

Leak No. 94-056-C Adam Tonev Tire

118. A June 28, 1993 UST notification form shows two (2) USTs as CIU and one (1) UST as POS and the UST owner as J.C. Baker & Sons, Inc. The notification form was signed by Michael C. Baker.

119. On March 30, 1994, WVDEP personnel were notified of a release at C Adam Toney Tire. In response to the release, WVDEP issued a CRNC to Baker, which assigned Leak No. 94-056 to the release and required that a Site Assessment be performed.
120. On July 15, 2015, Baker's consultant provided a remediation schedule, progress update, and request for extension.
121. On October 14, 2015, WVDEP provided an extension to Baker, which required the performance of Groundwater Monitoring and submittal of a GMR on or before June 30, 2016. Baker did submit the GMR.
122. On October 22, 2020, WVDEP sent an RCR to Baker, which required submittal of a GMR by November 30, 2020. Baker replied that the site had been transferred to Go-Mart but did not provide documentation of the transfer.
123. On June 2, 2021 and September 22, 2021, WVDEP personnel reviewed the facility file. During the reviews, the following violation of the Code of Federal Regulations was observed and documented:
 - a. 40CFR280.65(a) - Baker failed to appropriately conduct investigations of the release, the site, and the surrounding area possibly affected by the release, as per the requirements of 280.65(a)(1) through 280.65(a)(5).

As a result of this violation, NOV No. 2021-00871 was issued to Baker.

Leak No. 17-034- Glenville Sunoco

124. A December 2, 1991 UST notification form shows seven (7) USTs as CIU and the UST owner as J.C. Baker & Sons, Inc. The notification form was signed by Michael C. Baker.
125. On October 11, 2017, WVDEP personnel were notified of a release at Glenville Sunoco. In response to the release, WVDEP issued a CRNC to J C Baker & Sons, which assigned Leak No. 17-034 to the release and required that a Site Assessment be performed.
126. On May 21, 2018, WVDEP personnel reviewed the facility file and determined that two (2) extensions had been granted to Baker to perform the Site Assessment, which had not been completed. During the review, the following violation of the Code of Federal Regulations was observed and documented:
 - a. 40CFR280.65(a) - Baker failed to appropriately conduct investigations of the release, the site, and the surrounding area possibly affected by the release, as per the requirements of 280.65(a)(1) through 280.65(a)(5).

As a result of this violation, NOV No. 1805-3601 was issued to Baker.

127. On November 2, 2018, Baker submitted a Site Assessment Report.
128. On February 28, 2019, WVDEP sent an RCR to Baker, which required submittal of an additional Supplemental SIR by April 15, 2019. Baker submitted the Supplemental SIR on September 9, 2019.

129. On September 20, 2019, WVDEP sent an RCR to Baker, which required quarterly monitoring at the site. Subsequent quarterly monitoring reports were received on December 9, 2019; February 10, 2020; May 29, 2020; and September 8, 2020.
130. An August 20, 2020 UST closure authorization was issued to J C Baker & Son, Inc. to permanently close four (4) USTs at the site
131. On December 20, 2021, WVDEP sent an RCR to Baker, which required submittal of an additional Supplemental SIR by April 1, 2022.
132. On January 20, 2022, a meeting was held between WVDEP and Baker. During the meeting, Baker representatives stated that Baker was not responsible for remediation at twelve (12) of the thirteen (13) leak sites, because it was not and had never been the owner and/or operator of the USTs. Furthermore, the representatives stated that Baker had registered the USTs only to comply with initial UST registration requirements and to gain access to the properties. In response, WVDEP stated that, based upon an extensive review of the files, Baker was the owner of the USTs and is the responsible party for each of the thirteen (13) releases.
133. On January 25, 2022, WVDEP sent an email to Baker, which summarized the aforementioned January 20, 2022 meeting and requested that Baker provide a Plan of Corrective Action (POCA) to address the open leak sites.
134. On February 24, 2022, Baker's representative responded to WVDEP via email indicating that the USTs had been registered in an effort to be a good corporate citizen, and Baker did not register the USTs because it was the owner or operator.

ORDER FOR COMPLIANCE

And now, this day of April 26, 2022, Baker is hereby ORDERED by the Director as follows:

1. Baker shall immediately take measures to initiate compliance with all pertinent laws and rules.
2. Within thirty (30) days of the effective date of this Order, Baker shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for remedial activities on how and when Baker will achieve compliance with all pertinent laws and rules. The plan of corrective action shall make reference to WV Leak ID Nos. 92-289-L49, 92-306-L01, 95-021, 93-034, 93-378, 92-074-L08, 91-036-L04, 91-075-L51, 91-008-L20, 94-035, 94-066, 94-056, and 17-034, and Order No. UST-22-005. The plan of corrective action shall be submitted to:

**Chief Inspector
Environmental Enforcement - Mail Code #031328
WVDEP
601 57th Street SE
Charleston, WV 25304**

Upon approval, the plan of corrective action and schedule shall be incorporated into and become part of this Order, as if fully set forth herein. Failure to submit an approvable plan of corrective action and schedule or failure to adhere to the approved schedule is a violation of this Order.

OTHER PROVISIONS

1. Compliance with the terms and conditions of this Order shall not in any way be construed as relieving Baker of the obligation to comply with any applicable law, permit, other order, or any other requirement otherwise applicable. Violations of the terms and conditions of this Order may subject Baker to additional enforcement action in accordance with the applicable law.
2. The provisions of this Order are severable and should a court or board of competent jurisdiction declare any provisions to be invalid or unenforceable, all other provisions shall remain in full force and effect.
3. This Order is binding on Baker, its successors and assigns.
4. This Order shall terminate upon Baker's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.

RIGHT OF APPEAL

Notice is hereby given of your right to appeal the terms and conditions of this Order which you are aggrieved to the Environmental Quality Board by filing a NOTICE of APPEAL on the form prescribed by such Board, in accordance with the provisions of Chapter 22, Article 17, Section 18 of the Code of West Virginia within thirty (30) days after receipt of this Order.

This Order shall become effective upon receipt.



Kathryn Emery, P.E., Director
Division of Water and Waste Management

WEST VIRGINIA ENVIRONMENTAL QUALITY BOARD
CHARLESTON, WEST VIRGINIA

J.C. BAKER & SON, INC.
and BAKER OIL COMPANY,

Appellants,

Appeal No. 22-03-EQB

KATHERYN EMERY, P.E., DIRECTOR,
DIVISION OF WATER AND WASTE
MANAGEMENT, DEPARTMENT OF
ENVIRONMENTAL PROTECTION,

Appellee.

CERTIFICATE OF SERVICE

I, R. Terrance Rodgers, do hereby certify that I, on this 31st day of May, 2022, served the forgoing *Appellants' Motion For Stay Of "Order Issued Under The Underground Storage Act West Virginia Code Chapter 22, Article 17, Order No. UST-22-005"* via hand delivery to the Honorable Kenna M. DeRaimo, Clerk of the West Virginia Environmental Quality Board, 601 57th Street, S.E., Charleston, West Virginia 25304, and via regular United States mail, postage prepaid, in envelopes addressed as follows:

Office of Legal Services
West Virginia Department of Environmental Protection
601 57th Street, S.E.
Charleston, West Virginia 25304

Katheryn Emery, P.E., Director
Division of Water and Waste Management
West Virginia Department of Environmental Protection
601 57th Street, S.E.
Charleston, West Virginia 25304


R. Terrance Rodgers (WVSB #3148)