

**WEST VIRGINIA ENVIRONMENTAL QUALITY BOARD
CHARLESTON, WEST VIRGINIA**

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

Appellants,

v.

Appeal No. 22-03-EQB

**KATHERYN D. EMERY, DIRECTOR,
DIVISION OF WATER AND WASTE
MANAGEMENT, WEST VIRGINIA
DEPARTMENT OF ENVIRONMENTAL
PROTECTION,**

Appellee.

FINAL ORDER (Owner of Subject USTs)

This appeal was filed by J.C. Baker & Son, Inc., and Baker Oil Company (hereinafter jointly referred to as “Baker Oil”), and with the West Virginia Environmental Quality Board (“Board”) challenging Order No. UST-22-005 issued by the West Virginia Department of Environmental Protection (“WVDEP”)¹ on April 26, 2022, and pursuant to the Underground Storage Tank Act (West Virginia Code, Chapter 22, Article 17).

WVDEP found Baker Oil to be the owner and/or operator of several underground storage tanks where releases or leaks have occurred. WVDEP deemed Baker Oil as the responsible party and ordered Baker Oil to take corrective action to comply with all “pertinent laws and rules.” (See Order No. UST-22-005 – Order for Compliance).

¹ Some documents and correspondence in the record refers to the West Virginia Department of Natural Resources, WVDEP's regulatory predecessor for the matters discussed herein. Where the distinction is of no practical effect, the West Virginia Department of Natural Resources is additionally herein referred to as WVDEP.

Baker Oil seeks reversal of all provisions of Order No. UST-22-005 and for the Board to determine the following:

- a. Neither J.C. Baker nor Baker Oil is, or was, at any relevant time, the owner or operator of, or otherwise liable for, any of those certain underground storage tanks ("UST") within the meaning of state and/or federal law governing the USTs located at:
 1. Linger's service station site in Buckhannon (Leak No. 92-289-L49);
 2. Paul's service station site in Phillippi (Leak No. 92-306-L01);
 3. Coastal Lumber Company site in Buckhannon (Leak No. 95-021);
 4. Hamrick's service station site in Webster Springs (Leak No. 93-034);
 5. W.J. Prince's service station site in Jane Lew (Leak No. 93-378);
 6. Sample's service station site in Prociuous (Leak No. 92-074-L08);
 7. Steve White's service station site in Gassaway (Leak No. 91-036-L04);
 8. Coastal Lumber Company site in Hacker Valley (Leak No. 91-075-L51);
 9. Clendenin service station site in Clendenin (Leak No. 91-008-L20);
 10. Point C Mart located in Lewis County; (Leak No. 94-035);
 11. Young's service station site in Dille (Leak No. 94-066);

12. C. Adam Toney Discount Tires site in Summersville (Leak No. 94-056); and,
 13. Glenville Sunoco site in Gilmer County.² (Leak No. 17-034).
- b. Neither J. C. Baker nor Baker Oil is liable, or has any responsibility, for any releases/leaks identified in the *Order*, or any other releases related to the Identified USTs which are the subject of the *Order*, under any environmental or other law governing USTs.
 - c. Vacate the *Order's* "Order For Compliance" in full; and
 - d. Vacate the *Order's* "Other Provisions" in full.

(See Baker Oil Notice of Appeal at pp. 2-3).

A motion to stay enforcement of Order No. UST-22-005 was contemporaneously filed by Baker Oil and was granted by an agreed order entered on June 8, 2022. Then, Baker Oil moved to bifurcate the hearing to address the limited issue of whether they were ever the owners or operators of the underground storage tanks ("USTs"). By order entered September 9, 2022, the Board granted Baker Oil's motion.

Thereafter, a quorum of the Board heard evidence of ownership over two days beginning February 9, 2023, and ending February 10, 2023. At the conclusion of the evidentiary hearing the parties were directed to submit proposed findings of fact and conclusions of law, response and reply briefs.

The parties submitted proposed findings of facts, conclusions of law, response and reply briefs. Included therein, were discussions of West Virginia law as it relates to personal property

² Because the parties have stipulated that Baker Oil owned the USTs at Glenville Sunoco, the issue of ownership or operation of the USTs at that site is moot for the purposes of the matter before this Board pursuant to the Bifurcation Order.

(USTs) being connected to real property in a manner that it may be considered a “fixture” to the property and thus becomes part of the real property and is owned by the owner of the real property. See *In Re Weikle*, Case No. 1:17-bk-10001, 2017 WL 4127994 at *3 (Bankr. S.D.W.Va. Sept. 13, 2017) and *Snuffer v. Spangler*, 79 W. Va. 608, 637-638, 92 S.E. 106, 110 (1917). The parties have acknowledged that ownership of real property on which USTs are present and that of the USTs themselves may be held by separate persons or entities.

The Board does not recall or believe the parties ever raised this legal theory or issue, presented evidence, or conducted a “fixture” analysis through pleadings, motions, or witness testimonies prior to or during the hearing.

Pursuant to West Virginia Code of State Regulations § 46-4-6.9, the Board requested the parties file written briefs to address this issue. The Board sought input on whether it was necessary for the Board to undergo a personal property “fixture” analysis for the USTs as set forth in *In Re Weikle* and *Snuffer* as part of the Board’s effort to reach a conclusion regarding UST ownership. Additionally, the Board wanted the parties’ input on whether it can assess the evidence of record or lack thereof and make determinations of UST ownership without having to undergo such analyses for each UST at issue.

After consideration of the written pleadings, evidence of record, supplemental briefs, and arguments of legal counsel, the Board concludes that it will assess the evidence in the record concerning UST ownership **without** conducting a review as to whether the USTs are connected to real property in a manner that it may be considered a “fixture” to the property.

The Board reaches this conclusion because Baker Oil did not raise the “fixture” issue or legal theory in the Notice of Appeal. Baker Oil could have raised a specific objection at that time. Baker Oil did not address or raise the issue in its position statement emailed to WVDEP on

February 24, 2022. (See Notice of Appeal at Exhibit B). Baker Oil's legal counsel did not address or raise the issue in Baker Oil's Notice of Request for Reconsideration dated May 3, 2022. (See Notice of Appeal at Exhibit C).

Additionally, Baker Oil did not raise this issue or put on the record any evidence at the two-day hearing regarding material facts relevant to the fixtures issue. Thus, Baker Oil did not meet its burden of proof as to that issue.

Further, Baker Oil cross-examined Ruth Porter, WVDEP's Tanks Program Manager. Baker Oil did not, however, specifically question her about responsible party search and designating USTs as fixtures.³

Although the parties stipulated to various property deeds, the Board agrees with WVDEP that the documents are irrelevant especially when no other relevant testimony or evidence was provided at hearing concerning these property deeds or the intent of the owners of the USTs and/or real property owners. Baker Oil appears to rely on post-hearing arguments to state its case regarding property fixtures. However, argument is not evidence.

Baker Oil first raised the property fixture legal theory or issue in post-hearing filings which the Board finds to be untimely. WVDEP was not given the opportunity to rebut any presumption of intent during the hearing. The Board was never given the opportunity to consider testimony and properly analyze the three-pronged "fixture" test as set forth in *Snuffer* and *Weikle*.

Thus, the Board will assess the evidence in the record concerning UST ownership **without** conducting a review as to whether the USTs are connected to real property in a manner that it may be considered a "fixture" to the property.

³ See Baker Oil Hearing Exhibit 31 – EPA Responsible Party Search Guide for the Underground Storage Tank Program.

Therefore, after consideration of the proposed findings and conclusions, response and reply briefs, supplemental briefs, Certified Record, the testimony and evidence presented at the hearing, exhibits, and arguments of legal counsel,⁴ the Board, by unanimous decision, **affirms** Order No. UST-22-005 only as it relates to the limited issue of ownership of the USTs.

In support of its decision, the Board finds and concludes as follows:

Standard of Review/Burden of Proof

The Board's standard of review is *de novo*. W. Va. Code § 22B-1-7(e). The Board does not afford deference to the WVDEP's decision, but rather, the Board acts independently on the evidence before it. *W. Va. Div. of Env't'l Protection v. Kingwood Coal Co.*, 490 S.E.2d 823, 834 (W. Va. 1997).

When ruling on appeal, pursuant to West Virginia Code § 22B-1-7(g)(1), the Board "shall make and enter a written order affirming, modifying, or vacating the order, permit, or official action of the chief or secretary, or shall make and enter such order as the chief or secretary should have entered, or shall make and enter an order approving or modifying the terms of any permit issued[.]

⁴ All proposed findings submitted by the parties have been considered and reviewed in relation to the record developed in this matter. All argument of counsel, proposed findings of fact and conclusions of law, replies and responses, have been considered and reviewed with reference to the evidentiary record before the Board, as well as applicable law. To the extent that the proposed findings of fact, conclusions of law and arguments advanced by the parties are in accordance with these findings of fact, conclusions and legal analysis of the Board and are supported by the evidence, they have been adopted in their entirety. To the extent that the proposed findings, conclusions, and arguments are inconsistent therewith, they have been rejected. Certain proposed findings and conclusions have been omitted as not relevant or necessary to a proper decision. To the extent that the testimony of the various witnesses is not in accord with the findings stated herein, it is not credible.

The Board does recognize, however, that the Certified Record is more than 7,000 pages in length. It is not likely that all documents reflecting UST ownership by Baker Oil has been specifically referenced or cited in this Order.

Pursuant to the Board's procedural rules governing appeals, the presentation of evidence is as follows:

The appellant shall open the hearing and present testimony and offer exhibits that support the notice of appeal. The appellant's witnesses shall be subject to cross-examination by any other party to the appeal or by the board. At the conclusion of the appellant's case, the appellee may then present testimony and offer exhibits. After initial presentations have been made, both the appellant and the appellee may present rebuttal evidence on the issues in the case, providing that such evidence is not cumulative, repetitive, or immaterial to the case.

W. Va. Code R. § 46-4-6.8.

Pursuant to West Virginia Code of State Rules § 46-4-3.3, the Certified Record "shall be evidence" of the WVDEP's consideration of the matter being appealed, and "shall form the basis of the [B]oard's review of the matter." Thus, the Certified Record, which is 7,902 pages, is part of the hearing record in this matter.

At the outset of the hearing, the Board's Chairperson specifically addressed the legal requirements as to the burden of proof for the appeal proceedings:

Burden of proof, in order to prevail, the appellant has the burden to raise an issue with sufficient evidence to support a finding that the appellee's decision was incorrect, that it violated a statute or regulation or otherwise should not have issued the permit violation under order. Then the appellee must produce the evidence demonstrating it's [sic] reasoning in making its decision. The appellant then has the opportunity to show that the evidence produced by the appellee is deficient.

Now, the shifting burden of proof standard is set out in a case before the Circuit Court in Kanawha County, *Wetzel County Solid Waste Authority v. Chief[,] Water and Waste Management Division of Environmental Protection*, Civil Action Number 95[-]AA-3. This is in the court of Kanawha County. While *Wetzel County* is merely persuasive authority, the board agrees with the analysis.

(See Hearing Transcript, Day 1 at pp. 6 – 7).

The Board recognizes WVDEP does have the ultimate burden of proving that the USTs at issue were owned or operated by Baker Oil.

Findings of Fact and Conclusions of Law

Because the initial evidentiary hearing addresses only the limited issue of whether the Appellants were ever the owners or operators of the USTs at issue, a recitation of the history of the sites, compliance, and enforcement actions is not included except insofar as it is relevant to the limited issue of ownership and operation.

The UST sites at issue are as follows:

- Linger's Service Station ("Linger's"), Upshur County;
- Paul's Service Station ("Paul's"), Barbour County;
- Coastal Lumber ("Coastal Buckhannon"), Upshur County;
- Hamrick Service Station ("Hamrick"), Webster County;
- W.J. Prince's Store ("Prince's"), Lewis County;
- Sample's Service Station ("Sample's"), Clay County;
- Steve White Service Station ("Steve White"), Clay County;
- Coastal Lumber ("Coastal Webster"), Webster County;
- Clendenin Service Station ("Clendenin"), Kanawha County;
- Point C Mart ("Point C Mart"), Lewis County;
- Young's ("Young's"), Webster County; and
- C. Adam Toney Tire ("C. Adam Toney"), Nicholas County.

1. The West Virginia Legislature enacted the Underground Storage Tank Act in part to create a program to control the installation, operation, and abandonment of USTs and to provide for corrective action to remedy releases of regulated substances from these tanks. W. Va. Code § 22-17-2.

2. WVDEP is the designated implementing agency responsible for the state UST program ("UST Program") and is accordingly authorized to regulate USTs in the state and take appropriate enforcement actions against owners or operators of USTs. W. Va. Code § 22-17-4; W. Va. Code R. § 33-30-2; 40 C.F.R. 280.

3. Pursuant to West Virginia Code §22-17-3(e) an “owner” of UST means the following:

(i) In the case of an underground storage tank in use on the eighth day of November, one thousand nine hundred eighty-four, or brought into use after that date, a person who owns an underground storage tank used for the storage, use or dispensing of a regulated substance.

(ii) In the case of an underground storage tank in use before the eighth day of November, one thousand nine hundred eighty-four, but no longer in use on that date, a person who owned such a tank immediately before the discontinuation of its use.

See also 40 C.F.R. § 280.12, incorporated by reference in W. Va. Code R. § 33-30-2.

4. Pursuant to West Virginia Code §22-17-3(d) an “operator” of UST means “any person in control of, or having responsibility for, the daily operation of an UST.”

5. Ruth Porter, WVDEP’s Tanks Program Manager, testified at hearing that it is "very common" for a site's real property owner and its UST owners to be different individuals or entities. (See Ruth Porter Testimony at 14).

6. Under 40 C.F.R. § 280.92, incorporated by reference in West Virginia Code of State Rules § 33-30-2, “[o]wner operator, when the owner or operator are separate parties, refers to the party that is obtaining or has obtained financial assurances.”

7. The USTs at issue were in use on November 8, 1984, or brought into use after that date, and accordingly are subject to the federal and state UST requirements. 40 C.F.R. 280.12, incorporated by reference in W. Va. Code R. § 33-30-2.

8. West Virginia’s UST Program requires self-reporting by UST owners pursuant to the notification requirements of West Virginia Code § 22-17-8. Tank owners are obligated under federal and state law to identify themselves as owners and notify WVDEP accordingly. (See Testimony of WVDEP Tanks Program Manager Ruth Porter at 9, 11).

9. Primarily, WVDEP receives information about USTs through the notification process. (See Ruth Porter Testimony at 11).

10. WVDEP depends on self-reporting tank owners to provide the agency with information regarding USTs. (Id. at 11).

11. The Notification for Underground Storage Tanks Form is the backbone of the UST program. (Id. at 12).

12. Each Notification Form includes technical information as to each UST, including each tank's age, capacity, material of construction, internal protection, external protection, piping, and stored substances. (See Notification for Underground Storage Tanks Forms).

13. The person signing the form is verifying or certifying, under penalty of law, that he or she is the owner of the UST or the owner's authorized representative, and that he or she has personally examined and is familiar with the information being submitted. The person is further certifying that based on his/her inquiry of those individuals immediately responsible for obtaining the information submitted, he/she believes the submitted information is true, accurate, and complete. (See Baker Oil Exhibits No. 1, 2 and 3 – Completed Notification for Underground Storage Tank Forms); (See Certified Record); (See Ruth Porter Testimony at 12).

14. There is a potential \$10,000 fine for submitting a false notification form. (See Ruth Porter at 12).

15. There are approximately 3,400 registered USTs in West Virginia, spread across about 1,280 facilities, and there have been approximately 26,000 USTs registered over the course of the UST Program. (See Ruth Porter Testimony at 18). WVDEP keeps a file on each UST facility and assigns a facility ID that runs with that facility for its lifetime. (See Ruth Porter Testimony at 26).

16. The UST program must rely on UST owners to notify WVDEP that they own USTs, as well as provide other information in their Notification documents. (See Ruth Porter Testimony at 11).

Q. So how important would you say that notification form is to your daily duties?

A. It's absolutely the backbone of our program. Without the notification process, then we have no way of knowing if tanks are out there and stuff. And we take it face value when someone submits a notification form, saying that they're the tank owner. We take that at face value because we know that they're submitting that with the understanding that they're doing so under penalty of law. There's a \$10,000 fine potential for submitting a notification form falsely ... And, plus, they're also certifying that the information that they're providing to the agency is true, accurate and complete. So basically, you know, that is the -- like I said, the backbone of the program.

(Ruth Porter Testimony at 12); (See also Ruth Porter Testimony at 43)

17. Accordingly, and pursuant to West Virginia Code § 22-17-8, the UST Program must rely on accurate self-reporting by UST owners and operators to perform its regulatory duties and fulfill its obligations under state and federal law. An inability to rely upon accurate self-reporting by UST owners and operators would likely have significant consequences for the UST Program and its ability to perform its regulatory duties, fulfill its obligations, and protect the health and safety of West Virginia residents. (See Ruth Porter Testimony at 42 - 43).

Q. And just one last question for you. What would be the consequences to your program of incorrect information being supplied on notification forms in similar documents?

A. Well, it would be highly detrimental to the program. We depend on the notification form to provide us with the information of who the owner and operator is. Okay. And without that information, we don't know who to engage with, and if someone was to provide us with documentation saying that they were the owner, and then later recant on that, then we will have spent time dealing with that person and not be looking at the correct person ... And in the case of these cases here, you

know, Baker had represented that they were the tank owner and through looking at the files and stuff, they took all the actions at these sites and did all these things and now they're saying for us to go back and look at the operators. You know, as was I think mentioned yesterday, these operators are dead. Now, these individuals are.

(Ruth Porter Testimony at 42 – 43).

18. Ms. Porter testified upon direct examination that when a UST owner submits a Notification for Underground Storage Tanks Form, it is the usual case that errors are rectified quickly rather than decades later.

A. ... We would look at -- when someone submits a notification to us, we send them an invoice. So generally, if someone has made a mistake on their notification form, usually what we have found is that once people incur costs, like having to pay an invoice or they have to do some kind of compliance issue or they have to go get insurance, they very quickly say, well, listen we made a mistake ... You know, mistakes are generally found very quickly because of that ... We would look at certainly correspondence, like I said, closure reports, remedial action reports and such.

(Ruth Porter Testimony at 13, 14); (See also Ruther Porter Testimony at 43 - 44).

19. The Notification for Underground Storage Tanks Form is the most important document when dealing with USTs. (See Ruth Porter Testimony at 13). Baker Oil Exhibits 1-3, includes multiple Notification for Underground Storage Tanks Forms wherein Baker Oil is listed as the owner of the USTs. These forms are evidence of ownership of the subject USTs. Specifically, a Notification Form was completed by Baker Oil and submitted to WVDEP by Baker Oil for each tank at issue on the dates noted in the respective findings for each site. Each Notification Form indicated that Baker Oil was the owner of the USTs. Ownership by Baker Oil was claimed in clearly marked checkboxes as "Current" and by a "Private or Corporate" owner. Michael C. Baker signed all but two Notification Forms certifying under penalty of law as follows:

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my

inquiry of those individuals immediately responsible for obtaining this information submitted in this and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. (See Baker Oil Exhibit 3)

20. The next most important piece of information is any documentation of financial responsibility and financial assurance. (See Ruth Porter Testimony at 13).

21. UST owners or operators had to provide assurance they had financial responsibility to take care of their tanks in the case of release.⁵ (Id. at 13).

22. Ms. Porter testified that obtaining insurance for USTs is considered an indicator of ownership, as if an individual or entity is obtaining a significant insurance policy for USTs, "we feel fairly confident that they know that they're responsible and are acknowledging responsibility for the tanks." (Id. at 13).

23. Ms. Porter testified that under the UST rule, the act of obtaining or attempting to obtain insurance or other financial assurances indicates ownership or operation. (Id. at 16, 17).⁶

24. Ms. Porter testified that either a UST owner or operator may obtain financial assurances, and that doing so indicates that they are taking on financial responsibility for the USTs. (Id. at 30).

⁵ The EPA financial responsibility rules require UST owners or operators to demonstrate financial responsibility for the costs of corrective action and compensation of third parties arising from releases of petroleum from underground storage tanks. The financial responsibility requirements help ensure that owners and operators can respond promptly to clean up releases and can compensate others for any associated injuries or damages. (See EPA Financial Responsibility for Underground Storage Tanks: A Reference Manual, November 30, 1999, at p. 3); (See also W. Va. Code 22-17-10 addressing requirements for maintaining evidence of financial responsibility); (See W. Va. Code R. § 33-30-4.2.d, Notification of Compliance, Financial responsibility in accordance with the provisions of 40.C.F.R. Part 280, Subpart H).

⁶ A financial assurance mechanism is a financial instrument, such as state fund program, guarantee, letter of credit, surety bond, or insurance that is available to an UST owner or operator to demonstrate financial responsibility. (See EPA Financial Responsibility for Underground Storage Tanks: A Reference Manual, November 30, 1999, Glossary of Terms Related to UST Financial Assurance).

25. Ms. Porter testified that the existence of West Virginia Board of Risk and Insurance Management (“BRIM”) insurance cancellation notices indicates that at some point, Baker Oil did obtain insurance for the USTs. (See Ruth Porter Testimony at 31 – 33); (See Certified Record at 0036 – 0041, BRIM Underground Tank Liability Insurance Policy Cancellation Notice to Baker Oil dated July 15, 1992); (See Certified Record at 829 - Listing of Underground Tanks Cancelled – Paul’s Service Station – Baker Oil, Insured).

26. BRIM insurance documents and applications completed by Baker Oil indicate ownership of the subject USTs. (See CR 0003 - DEP Exhibit 1 – W. Va. Underground Tank Owner or Operator Questionnaire); (See CR 0006 – 0012 - DEP Exhibit 2 – Underground Tank Insurance Application Form).

27. Ms. Porter testified upon direct examination that in her experience with the UST program, it would be highly unusual for a non-owner to obtain insurance on a UST. (See Ruth Porter Testimony at 33).

28. For multiple UST sites, the Certified Record includes a West Virginia Underground Tank Owner or Operator Questionnaire Form submitted to BRIM listing one of the Appellants as the owner of the USTs at issue, as noted in the respective findings for each site. (Example: CR 0003, WVDEP Exhibit 1).

29. For multiple UST sites, the Certified Record includes an Underground Tank Insurance Application Form submitted to BRIM, listing Baker Oil as the owner of the tanks and Baker Oil as the insured. This Insurance Application includes technical information as to each tank's service status, age, capacity, number of compartments, piping, stored substances, gauging, and tightness. (Example: CR 0006 – 0012, WVDEP Exhibit 2); (See also CR 0036 – 0041, Underground Tank Liability Insurance Policy Cancellation Documents for Multiple UST sites).

30. Michael Baker of Baker Oil testified that the BRIM insurance documents concerning the subject USTs were completed by others in the Baker Oil office that handled liability insurance. (See Michael Baker Testimony at 188). He did not have anything to do with obtaining insurance. (Id. at 188). He does not have personal knowledge of the existence of UST insurance. (Id. at 142). He testified that he did not think Baker Oil ever had UST insurance. (Id. at 141, 189). He does not have any personal knowledge regarding the cost of the insurance premiums and whether such costs may have been passed on to customers. (Id. at 143). He acknowledges that Baker Oil would have been the beneficiary of any claim pay outs. (Id. at 214).

31. Other than Michael Baker, Baker Oil did not present any witnesses or documents concerning UST insurance and insurance premiums, and how Baker Oil may have handled such costs.

32. Ruth Porter testified that in her experience, it would be unusual for a non-owner, non-operator individual or entity to pay fees, perform tank testing, apply for UST closure, or participate in remedial action at a UST site, as these activities are extremely expensive. (See Ruth Porter Testimony at 20).

33. Mr. Baker acknowledged that Baker Oil paid the registration fees for the USTs at issue. (See Michael Baker Testimony at 81).

34. Mr. Baker acknowledged that Baker Oil purchased testing equipment; that he became a certified tank tester; that testing USTs cost "[p]robably between \$1,500 and \$2000" for each tank, every year. (See Michael Baker Testimony at 89 - 90). The testing was done by Baker Oil to satisfy the leak detection requirement. (Id. at 91).

35. Mr. Baker acknowledged that Baker Oil performed maintenance on the USTs if a leak was detected. (See Michael Baker at 101). Baker Oil would empty the tank and take it out of service. (Id.). In some cases, Baker Oil decided USTs were going to have to come out. (Id. at 103 - 104). Baker Oil paid to remove the USTs. (Id. at 107). Mr. Baker testified, with the exception of Coastal Lumber (Hacker Valley), Baker Oil removed all of the USTs at all of these other 11 sites. (Id. at 110).

36. Mr. Baker also acknowledged submitting corrective action plans and engaging in remedial action at subject UST sites. (See Michael Baker Testimony at 194, 201 - 203); (See CR 2220 - 2222 and WVDEP Exhibits 52 and 94 - CORE Environmental Services Summary of Actions dated July 15, 2015); (See CR 3747 - 3766, WVDEP Exhibit 92 - CORE Groundwater Monitoring Report dated May 25, 2011); (See CR 3823, WVDEP Exhibit 93 - CORE Report).

37. Ms. Porter testified that WVDEP reviewed each file for the sites and USTs at issue in its consideration and drafting Order No. UST-22-005, relying not only on Notification Forms but Baker Oil's other representations and actions.

Q. So next thing I'll ask you is what documents did you examine when you reviewed the J.C. Baker file in preparation for this whole issue that we're having?

A. Well, we actually looked at each facility file, individually, and the things that we keyed in on, of course, is, again, going back to what is the backbone of our program, which is the notification. So we looked at that to see who had, you know, notified us under penalty of law that they were in fact the owner ... So we looked at the notification. We looked at who claimed to have financial responsibility for cleaning up any releases from their tanks. We looked at correspondence documents. We looked at closure reports. We looked at remedial action reports, sampling reports and such.

(See Ruth Porter Testimony at 25 - 26).

38. Ms. Porter testified that during the relevant time period, WVDEP engaged in regular communication with Baker Oil, noting that actions on Baker Oil's part such as Notification

for USTs, fee payments, tank testing, tank closures, and remedial action indicated to WVDEP that Baker Oil was responsible for the USTs as owners. (See Ruth Porter Testimony at 41 – 42).

39. Baker Oil tank closure documentation/reports indicate ownership of subject USTs. (See WVDEP Exhibit 5 – Baker Oil Request to Issue Closure Permits); (See WVDEP Exhibit 9 – Tank Closure Report).

40. Pursuant to correspondence dated May 6, 1992, Baker Oil requested that WVDNR issue closure permits for USTs at the following facilities:⁷

- Linger's (CR 024)
- Paul's (CR 815)
- Coastal Buckhannon (CR 1498)
- Hamrick (CR 1883)
- Prince's (CR 2352)
- Sample's (CR 2585)
- Steve White (CR 2759)
- Clendenin (CR 3399)
- Point C Mart (CR 3601)
- C. Adam Toney (CR 4135)

41. Evidence of ownership of the USTs is also reflected in the Certified Record at 3852 – 3854. (See also DEP Exhibit 94). On behalf of J.C. Baker & Sons, CORE Environmental Resources("CORE") submitted a document to WVDEP, dated July 15, 2015. This document contained "a revised summary of actions to date and projected completion dates" on the subject UST sites⁸ where J.C. Baker & Sons, had previously been identified as the responsible party.

⁷ See also DEP Exhibit 5 – Baker Oil Request for Closure Permits (CR 0024).

⁸ Point C Mart, Sample's, Prince's, Linger's, Steve White, Coastal Lumber, Hamrick, Clendenin, C. Adam Toney

CORE requested "a time extension to address the remaining issues in a timely fashion" for multiple sites, including the sites at issue, and it "[had] been authorized by [J.C. Baker] to "proceed with remedial actions" at three of the sites at issue: Point C Mart, Clendenin Service Station and C. Adam Toney. The document includes extensive descriptions of actions already performed and expected to be performed at the subject UST sites.

42. Ruth Porter also testified concerning Baker Oil owner registration fee reports. (See Ruth Baker at 39); (See WVDEP Exhibits 7, 44, 57, and 70). These documents support a finding that Baker Oil owned the subject USTs.

43. Ms. Porter testified concerning the documents making up Baker Oil Exhibit Nos. 9 – 13, 15, 16. The documents address the subject USTs. The documents include Inspection of Non-Compliance, Existing UST Facility Checklist, Notice of Non-Compliance, Review of Confirmed Release Report, Leaking Underground Storage Office Site Visit Report, Request for Enforcement, Notification for USTs, Notice of Closure, Tank Closure Report, UST Tank Release Report, and UST Closure Inspection. These documents are evidence that Baker Oil owned the subject USTs. (See Ruth Porter Testimony at pp. 48-69).

44. The Board finds Ms. Porter's testimony to be credible.

With respect to the specific UST sites, the Board finds as follows:

45. Linger's Service Station – Upshur County

The Board concludes that WVDEP proved by the preponderance of evidence that Baker Oil owned the subject UST(s) at this site.

The evidence reflects that a W. Va. Underground Storage Tank Owner or Operator Questionnaire was completed by Baker Oil and was submitted to BRIM listing Baker Oil as the owner of the Linger's USTs. Michael Baker was listed as the contact person. (CR 0003); (See

WVDEP Exhibit 1).

Additionally, an Underground Tank Insurance Application was completed by Baker Oil and submitted to BRIM listing Baker Oil as the owner of Linger's USTs and Baker Oil Company as the insured. (See WVDEP Exhibit 2); (See CR 0006 - 0012).

A Notification for Underground Storage Tanks Form dated April 1, 1986, was completed by Baker Oil and submitted to WVDEP. This document indicates that Baker Oil was the owner of the on-site USTs. This document was signed and certified, under penalty of law, by Michael C. Baker. (See Baker Oil Exhibit 1; WVDEP Exhibit 3; and CR 0013 - 0015).

By letter dated May 23, 1990, on Baker Oil letterhead, Michael C. Baker informed WVDEP as follows concerning the Linger USTs:

We have purchased several underground storage tanks from J.C. Baker & Sons. Enclosed is notification of this change of ownership.

(See WVDEP Exhibit 4 and CR 0016 - 0019).

A Notification for Underground Storage Tanks Form was enclosed with the above letter and submitted to WVDEP by Baker Oil, dated May 22, 1990. This document was signed by Michael Baker. This document stated that Baker Oil was the owner of the onsite USTs. (WVDEP Exhibit 4 and CR 0016 - 0019).

By letter dated May 6, 1992, on J.C. Baker letterhead, Baker Oil requested the issuance of closure permits for USTs on the Linger's site. The letter was signed by Michael Baker. (WVDEP Exhibit 5 and CR 0024).

An Owner Registration Fee Report maintained by WVDEP and dated July 10, 1992, indicates that registration fees for Linger's USTs were being paid by owner Baker Oil. (See WVDEP Exhibit 7 and CR 0034).

In December 1992, a Confirmed Release Notice to Comply was issued to Baker Oil by WVDEP regarding the subject USTs. The Notice to Comply included requirements for the owner/operator to conduct an initial site characterization and submit a report concerning contaminated soil. Service was accepted and acknowledged by "owner/operator" Mike Baker. (See CR 0060).

Multiple Tank Closure Reports were submitted to WVDEP regarding the Linger's USTs (ID 4905543). This report listed Baker Oil as the UST owner and the report was signed by Michael C. Baker. (WVDEP Exhibit 9; CR 0061 - 0066).

A Notification for Underground Storage Tanks Form was completed and submitted by Baker Oil to WVDEP. This document indicates that Baker Oil was the on-site owner of the USTs. The document was signed and certified, under penalty of law, by Vice President Michael Baker. (See CR 68 - 69).

On December 16, 1992, a Review of Confirmed Release Reporting was completed by WVDEP, listing Baker Oil as the owner of the subject USTs. This form was signed by owner Mike Baker. (See CR 0079).

By letter dated October 26, 1993, on Baker Oil letterhead and signed by Michael Baker, Baker Oil notified WVDEP that all USTs had been removed from the Linger location, that all contaminated soil had been removed or remediated, that groundwater monitoring wells had been installed, and that Baker Oil is monitoring the site wells periodically. (See WVDEP Exhibit 12 and CR 0104 - 0106).

On April 27, 1995, WVDEP issued Order USTA-193-94 regarding the USTs at the subject UST site. Paragraph 1 of the "Basis for Order" section notes that Baker Oil, was the owner of the USTs. Paragraphs 4 and 5 of this section notes that Baker Oil submitted both a

site characterization report and a corrective action plan, albeit in an untimely manner, and performed multiple investigations of the site. This order was signed by Michael Baker of Baker Oil. (See WVDEP Exhibit 13 and CR 0392 - 0395).

By letter dated March 22, 2002, on J.C. Baker letterhead, Baker Oil indicated it was operating a soil vapor extraction unit on the subject UST site, that the unit's piping system had been ruptured and rendered inoperable, and that Baker Oil will be proceeding "with testing of the existing monitoring wells and obtain analyticals to ascertain the next steps to be taken." The letter was signed by Barry J. Wine, J.C. Baker's UST Manager. (CR - 0656).

46. Paul's Service Station – Barbour County

The Board concludes that WVDEP proved by the preponderance of evidence that Baker Oil owned the subject UST(s) at this site.

The W. Va. Underground Tank Owner or Operator Questionnaire completed by Baker Oil and submitted to BRIM is evidence of ownership of Paul's USTs. (CR at 0802 – 0803). Baker Oil is listed as owner of the USTs.

Additionally, an Underground Tank Insurance Application Form was completed by Baker Oil and submitted to BRIM listing Baker Oil as the owner of the subject USTs and Baker Oil Company as the insured. (See CR 0805 - 0809).

A Notification for Underground Storage Tanks Form dated April 25, 1986, was completed by Baker Oil and submitted to WVDEP. This document reflects that Baker Oil was the owner of the on-site USTs. The documentation was signed and certified, under penalty of law, by Michael C. Baker. (See WVDEP Exhibit 19 and CR 0810 - 0811); (See Baker Oil Exhibit 1).

By letter dated May 6, 1992, on J.C. Baker letterhead, Baker Oil requested the issuance of closure permits for multiple USTs, including those on the Paul's site. The letter was signed by

Michael C. Baker. (See WVDEP Exhibit 5 and CR 0815).

By letter dated January 11, 1993, on J.C. Baker letterhead and signed by Vice President Michael Baker, Baker Oil notified WVDEP's Corrective Action Coordinator (UST Unit) that in response to a Notice to Comply, Baker Oil removed the USTs from the Paul's site and that site wells would be installed to check movement of free product. (See CR 0846).

By letter dated February 5, 1993, on J.C. Baker letterhead and signed by Vice President Michael Baker, Baker Oil submitted to WVDEP's Corrective Action Coordinator (UST Unit) noting that an initial site characterization for the Paul's site had been conducted. (CR 0849 - 0850). Mr. Baker notes that a site well is being installed and that samples will be obtained later. (Id).

47. Coastal Lumber (Buckhannon) – Upshur County

The Board concludes that WVDEP proved by the preponderance of evidence that Baker Oil owned the subject UST(s) at this site.

The evidence reflects that an Underground Storage Tank Owner or Operator Questionnaire was completed by Baker Oil and submitted to BRIM, listing Baker Oil as the owner of the Coastal Buckhannon USTs. (See CR 1480).

Additionally, an Underground Tank Insurance Application was completed by Baker Oil and submitted to BRIM listing Baker Oil as the owner of the Coastal Buckhannon USTs and Baker Oil as the insured. (See CR 1482-1483).

A Notification for Underground Storage Tanks Form dated May 1, 1986, was completed by Baker Oil and submitted to WVDEP. This document reflects that Coastal Lumber was the operator of the on-site USTs and that Baker Oil was the owner. The document was signed and certified, under penalty of law, by Michael C. Baker, Baker Oil's Production Manager. (See WVDEP Exhibit 30 and CR 1484-1485); (See Baker Oil Exhibit 1).

A Notification for Underground Storage Tanks Form dated May 7, 1986, was completed by Baker Oil and submitted to WVDEP. This document listed Coastal Lumber as the operator of the on-site USTs and Baker Oil as the owner. (See Baker Oil Exhibit 1 and CR 1486-1487).

By letter dated May 23, 1990, on Baker Oil letterhead, Michael C. Baker informed WVDEP as follows:

We have purchased several underground storage tanks from J.C. Baker & Sons. Enclosed is notification of this change of ownership.

(See WVDEP Exhibit 4 and CR 1492 - 1494).

A Notification for Underground Storage Tanks Form was enclosed with the above letter and submitted to WVDEP by Baker Oil, dated May 23, 1990. This document states that Coastal Lumber was the operator of the on-site USTs and that Baker Oil was the owner. This document was signed and certified, under penalty of law, by Michael C. Baker, Production Manager. (CR 1492-1494). Mr. Baker certified that Baker Oil was the owner of the on-site USTs. (Id.).

By letter dated October 14, 1991, on Coastal Lumber letterhead, Coastal Lumber requested closure permits for the Coastal Buckhannon USTs. The letter states that Baker Oil owned the tanks and Coastal Lumber operated them. (CR 1496).

By letter dated May 6, 1992, on J.C. Baker letterhead, Baker Oil requested the issuance of closure permits for USTs on the Coastal Buckhannon site. This letter is signed by Michael C. Baker. (See WVDEP Exhibit 5 and CR 1498).

An Owner Registration Fee Report maintained by WVDEP and dated July 10, 1992, indicates that the registration fees for the Coastal Buckhannon USTs were paid by owner Baker Oil. (See WVDEP Exhibit 7 and CR 1509).

A Notification for Underground Storage Tank Forms dated September 9, 1992, was completed and submitted by Baker Oil to WVDEP. This document reflects that Coastal Lumber was the operator of the on-site USTs and that Baker Oil was the owner. (CR 1532-1535).

By letter dated March 22, 2002, on J.C. Baker letterhead and signed by J. C. Baker President Michael C. Baker, Mr. Baker communicated Baker Oil's intention to develop and submit a corrective action plan for USTs on the Coastal Buckhannon site, including the pumping of monitoring wells, arrangement for monthly monitoring, and cleanup of the site. (See WVDEP Exhibit 39 and CR 1604).

Mr. Baker testified that he believed Baker Oil owned the USTs and was responsible for the corrective action plan. (See Michael Baker Testimony at 194).

48. Hamrick Service Station – Webster County

The Board concludes that WVDEP proved by the preponderance of the evidence that Baker Oil was the owner of the subject USTs at this site.

The evidence shows that a W. Va. Underground Storage Tank Owner or Operator Questionnaire was completed by Baker Oil and submitted to BRIM listing Baker Oil as the owner of the Hamrick USTs. (CR 1785 - 1786).

Additionally, an Underground Tank Insurance Application Forms were completed by Baker Oil and submitted to BRIM listing Baker Oil as the owner of the Hamrick USTs and Baker Oil as the insured. (CR 1788 – 1792).

A Notification for Underground Storage Tanks Form dated April 23, 1986, was completed by Baker Oil and was submitted to WVDEP. This document indicates that Hamrick was the operator of the on-site USTs and that Baker Oil was the owner. The document was signed and certified, under penalty of law, by Michael Baker. (See Baker Oil Exhibit 1 and CR 1793 – 1794).

By letter dated July 8, 1987, on J.C. Baker letterhead and signed by Michael C. Baker, Baker Oil informed WVDEP as follows:

Enclosed is a completed tank notification for Hamrick's Service Station. The underground tanks and related equipment at Weese Service Station have been sold to Mr. Weese.

(See WVDEP Exhibit 43 and CR 1796 – 1798). The letter contained a Notification for Underground Storage Tanks Form signed and certified, under penalty of law, by Michael Baker listing Baker Oil as the owner of the Hamrick USTs. (Id.).

An Owner Registration Fee Report maintained by WVDEP and dated July 10, 1992, indicates that registration fees for Hamrick USTs were paid by owner Baker Oil. (See WVDEP Exhibit 44 and CR 1804).

Multiple Tank Closure Reports were submitted to WVDEP regarding the Hamrick USTs. These documents are dated April 30, 1993. These documents list Baker Oil as the owner of the subject USTs. These documents were signed by Michael Baker of Baker Oil. (CR 1883 - 1889).

A Notification for Underground Storage Tanks Form dated April 30, 1993, was submitted to WVDEP. This document reflects that Hamrick was the operator of the on-site USTs and that Baker Oil was the owner. The document was signed and certified, under penalty of law, by Baker Oil Vice President Michael Baker. (See Baker Oil Exhibit 3 and CR 1877 – 1882).

By letter dated April 30, 1993, on J.C. Baker letterhead and signed by Vice President Michael Baker, Baker Oil submitted to the WVDEP Corrective Action Coordinator/UST Unit, and in reply to a Confirmed Release Notice to Comply. The letter notes that Baker Oil completed an initial site characterization. (CR 1892). The document noted contaminated soil was removed. (Id.).

Also, there is a Project Status Check List dated June 1, 1993, in the Certified Record concerning the Hamrick USTs. Baker Oil is listed as the owner of the subject USTs. (CR 1904).

By letter dated July 26, 1993, on J.C. Baker letterhead, and signed by Vice President Michael Baker, Baker Oil submitted a reply to a Confirmed Release Notice to Comply. Mr. Baker communicated that USTs had been removed from the Hamrick site, that monitoring wells had been installed, and that samples had been taken and submitted to Reliance Laboratories, Inc. (CR 1905).

In September 1993, the EPA issued administrative complaints against Baker Oil concerning the Hamrick USTs. The EPA made a finding that Baker Oil was the owner and/or operator of the subject USTs. (CR 1915 – 1925).

In 1995, Michael Baker of Baker Oil retained Allegheny Environmental Technology (“AET”) to prepare a site assessment report of the Hamrick site where the USTs had been removed in 1993. AET submitted the report to WVDEP on behalf of Baker Oil. (CR 1926 – 1937).

49. W. J. Prince’s Store – Lewis County

The Board concludes that WVDEP proved by the preponderance of the evidence that Baker Oil was the owner of the subject USTs at this site.

The evidence shows that a West Virginia Underground Storage Tank Owner and Operator Insurance Questionnaire was completed by Baker Oil and was submitted to BRIM listing Baker Oil as the owner of Prince's USTs. (CR 2294).

Also, Underground Tank Insurance Application Forms were completed by Baker Oil and submitted to BRIM listing Baker Oil as the owner of the Prince's USTs and Baker Oil as the insured. (CR 2295 – 2297).

A Notification for Underground Storage Tanks Form dated April 21, 1986, was completed by Baker Oil and submitted to WVDEP. This document reflects that Prince's was the operator of the on-site USTs and that Baker Oil was the owner. This document was signed and certified, under penalty of law, by Michael C. Baker. (See Baker Oil Exhibit 1 and CR 2298 – 2299).

By letter dated May 23, 1990, Baker Oil informed WVDEP of the following:

We have purchased several underground storage tanks from J.C. Baker & Sons. Enclosed is notification of this change of ownership.

(WVDEP Exhibit 56, Baker Oil Exhibit 2 and CR 2300). The letter was signed by Michael Baker. (Id.). A Notification for Underground Storage Tanks Form was enclosed with the above letter and submitted by Baker Oil to WVDEP. Baker Oil represented that Prince's was the operator of the on-site USTs and that Baker Oil was the owner. The document was signed and certified, under penalty of law, by Michael Baker. (CR 2301 – 2302).

An Owner Registration Fee Report maintained by WVDEP and dated July 10, 1992, indicates that the registration fees for Prince's USTs were paid by owner Baker Oil. (See WVDEP Exhibit 57 and CR 2310)

By letter dated October 22, 1993, on J.C. Baker letterhead and signed by Michael C. Baker, Baker Oil requested the issuance of a closure permit for USTs on Prince's site. (CR 2352).

By letter dated January 20, 1994, on Baker Oil letterhead and signed by Vice President Michael Baker, Baker Oil submitted to the WVDEP UST Section an initial site characterization report for the Prince's site. The letter indicates that a monitoring well had been installed, that contaminated soil had been removed and sampled, and that the soil had been stored on property owned by J.C. Baker. (CR 2369).

A Notification for Underground Storage Tanks Form dated February 2, 1994, was submitted to WVDEP. This document reflects that Prince's was the operator of the on-site USTs and that Baker Oil was the owner. This document was signed and certified, under penalty of law, by Michael C. Baker. (CR 2370 – 2373); (See Baker Oil Exhibit 3).

50. Sample's Service Station – Clay County

The Board concludes that WVDEP proved by a preponderance of the evidence that Baker Oil was the owner of the subject USTs at this site.

The evidence shows that a W. Va. Underground Storage Tank Owner or Operator Questionnaire was completed by Baker Oil and submitted to BRIM listing Baker Oil as the owner of the Sample's USTs. (CR 2554).

Also, Underground Tank Insurance Application Forms were completed by Baker Oil and submitted to BRIM listing Baker Oil as the owner of the Sample's USTs and Baker Oil as the insured. (CR 2555 – 2557).

A Notification for Underground Storage Tanks Form dated April 17, 1986, was completed by Baker Oil and submitted to WVDEP. This document notes that Sample's was the operator of the on-site USTs and that Baker Oil was the owner. The document was signed and certified, under penalty of law, by Michael Baker. (See Baker Oil Exhibit 1 and CR 2558 - 2559).

By letter dated May 23, 1990, on Baker Oil letterhead and signed by Michael Baker, WVDEP was informed of the following:

We have purchased several underground storage tanks from J.C. Baker & Sons. Enclosed is notification of this change of ownership.

CR 2560). The letter contained a Notification of Underground Storage Tank Form signed and certified, under penalty of law, by Michal Baker listing Baker Oil as the owner of the Samples'

USTs. (CR 2561 – 2562); (See also Baker Oil Exhibit 2).

By letter dated March 2, 1992, on J.C. Baker letterhead and signed by Mike Baker, Baker Oil requested the issuance of closure permits for USTs on the Sample's site. (CR 2563).

A Confirmed Release Notice to Comply was issued by WVDEP to "owner" J.C. Baker regarding the Sample's Service Station USTs. Service was accepted by "owner/operator" Mike Baker. (CR 2570).

A Notification for Underground Storage Tanks Form dated May 5, 1992, was submitted to WVDEP by Baker Oil. This document notes that Sample's Service Station was the operator of the on-site USTs and that J.C. Baker was the owner. This document was signed and certified, under penalty of law, by Michael C. Baker, Vice President. (CR 2580 – 2584); (See Baker Oil Exhibit 3).

An Owner Registration Fee Report maintained by WVDEP and dated July 10, 1992, indicates that registration fees for Sample's Service Station USTs were paid by owner Baker Oil. (CR 2591).

51. Steve White Service Station – Clay County

The Board concludes that WVDEP proved by a preponderance of the evidence that Baker Oil was the owner of the subject USTs at this site.

The evidence reflects that in July 1991, Baker Oil notified WVDEP by letter that it had “acquired” the Steve White property and wanted to remove Baker Oil tanks and clean up any contamination caused by the tanks. Michael Baker signed the letter. (See CR 2766).

By letter dated March 15, 1992, Baker Oil submitted to WVDEP a closure report and site assessment for the Steve White USTs. (CR 2836 – 2850). The letter was signed by Mike Baker. (Id.).

The closure report, prepared by Michael C. Baker, indicated that the USTs were removed and cleaned, and that waste manifests would be forwarded. The report further indicated that a contractor was handling the waste disposal; that the tank pit was screened; that contaminated soil was being removed to a treatment facility on Baker Oil's property; that a site assessment had been performed; and that sampling had occurred. (CR 2836 – 2850). Documents included in Baker Oil's closure report demonstrate that Baker Oil was the owner of the subject USTs. (Id.)

A Notification for Underground Storage Tanks Form dated March 15, 1992, was submitted to WVDEP. This document shows that Steve White was the operator of the on-site USTs and that Baker Oil was the owner. The document was signed and certified, under penalty of law, by Baker Oil Vice President Michael Baker. He is listed as the "contact person in charge of tanks." (CR 2847 – 2851); (See also Baker Oil Exhibit 3)

52. Coastal Lumber (Webster) – Webster County

The Board concludes that WVDEP proved by a preponderance of the evidence that Baker Oil was the owner of the subject USTs at this site.

The evidence shows that a Notification for Underground Storage Tanks Form dated April 15, 1986, was completed by Baker Oil and submitted to WVDEP. This document notes that Coastal Lumber (Webster) was the operator of the on-site USTs and that Baker Oil was the owner. This document was signed and certified, under penalty of law, by Michael Baker. (CR 3038 – 3039 and Baker Oil Exhibit 1).

By letter dated May 23, 1990, on Baker Oil letterhead and signed by Michael C. Baker, Baker Oil informed WVDEP of the following purchase:

We have purchased several underground storage tanks from J.C. Baker & Sons. Enclosed is notification of this change of ownership.

(CR 3041).

A Notification for Underground Storage Tanks Form dated May 22, 1990, was enclosed with the above letter. This document was completed by Baker Oil and submitted to the WVDEP. This document noted that Coastal Lumber (Webster) was the operator of the on-site USTs and that Baker Oil was the owner. This document was signed and certified, under penalty of law, by Michael Baker. (CR 3042 – 43); (See also Baker Oil Exhibit 2).

An Owner Registration Fee Report was maintained by WVDEP and dated July 10, 1992. This document indicates that registration fees for Coastal Lumber (Webster) USTs were paid by owner Baker Oil. (CR 3256).

53. Clendenin Service Station – Kanawha County

The Board concludes that WVDEP proved by a preponderance of the evidence that Baker Oil was the owner of the subject USTs at this site.

The evidence reflects that a Notification for Underground Storage Tanks Form dated June 9, 1989, was completed by Baker Oil and submitted to the WVDEP. This document notes that Clendenin was the operator of the on-site USTs and that Baker Oil was the owner. This document was signed and certified, under penalty of law, by Mike Baker, Baker Oil's authorized representative. (CR 3393 – 3394 and Baker Oil Exhibit 1).

In addition, an Owner Registration Fee Report maintained by WVDEP and dated July 10, 1992, indicates that registration fees for the Clendenin USTs were paid by owner Baker Oil. (CR 3435 and WVDEP Exhibit 57).

Ruth Porter testified concerning the Clendenin USTs with respect to Baker Oil's Exhibit 17. The Review of Confirmed Release Report lists Baker Oil as the owner of the USTs. (CR 3477). A Notice of Non-Compliance was issued listing Baker Oil as the owner of the USTs. (CR 3478). Correspondence between Rite-Aid and WVDEP indicates that Baker Oil was the owner of

the USTs and property. (See Ruth Porter Testimony at 71).

54. Point C Mart – Lewis County

The Board concludes that WVDEP proved by a preponderance of the evidence that Baker Oil was the owner of the subject USTs at this site.

The evidence reflects that a Notification for Underground Storage Tanks Form dated April 10, 1986, was completed by Baker Oil and submitted to WVDEP. This document shows that Point C Mart was the operator of the on-site USTs and Baker Oil was the owner. This document was signed and certified, under penalty of law, by Michael C. Baker, Baker Oil's production manager. (CR 3599 – 3600); (See also Baker Oil Exhibit 1).

By letter dated May 6, 1992, on J.C. Baker letterhead and signed by Michael C. Baker, Baker Oil requested the issuance of closure permits for USTs at this site. (CR 3601).

An Owner Registration Fee Report maintained by WVDEP and dated July 10, 1992, indicates that registration fees for Point C Mart USTs were paid by owner Baker Oil. (CR 3608); (See also WVDEP Exhibit 57).

A Notification for Underground Storage Tanks Form dated August 11, 1995, was completed by Baker Oil and submitted to WVDEP. This document shows that Point C Mart was the operator of the on-site USTs and Baker Oil was the owner. This document was signed and certified, under penalty of law, by Michael C. Baker, Baker Oil's Vice President. (CR 3677 – 3682); (See also Baker Oil Exhibit 3). The above document indicated in the "Financial Responsibility" section that the USTs were self-insured. (Id.)

A Site Assessment Addendum Report dated December 20, 1996, was submitted to WVDEP by Allegheny Environmental Technology on behalf of Baker Oil. This report was prepared for Baker Oil. This report detailed the installation of new groundwater monitoring wells,

and also provided lab results and topographical information for the Point C Mart site. (CR 3723 – 3741).

A Groundwater Monitoring Report dated May 25, 2011, was submitted to WVDEP by CORE Environmental Services on behalf of Baker Oil. The report detailed the performance and results of groundwater sampling at the Point C Mart site. (See WVDEP Exhibit 92; CR 3747 - 3766).

A Groundwater Monitoring Data Report dated December 17, 2013, was submitted to WVDEP by CORE on behalf of Baker Oil. This report detailed the performance and results of groundwater sampling at the Point C Mart site. (See WVDEP Exhibit 93; CR 3823 -3832).

Additionally, CORE submitted a Request for Extension -- Progress Update to WVDEP dated July 15, 2015. The document presented a summary of actions and projected completion dates of work involving UST sites, including Point C Mart, where Baker Oil was identified as the responsible party. (CR 3522 – 3524).

A Groundwater Monitoring Data Report dated April 26, 2019, was submitted to WVDEP by CORE on behalf of Baker Oil. The report detailed the performance and results of groundwater sampling at the Point C Mart site. (CR 3864 – 3890).

55. Young's – Webster County

The Board concludes that WVDEP proved by a preponderance of the evidence that Baker Oil was the owner of the subject USTs at this site.

The evidence reflects that a W. Va. Underground Tank Owner or Operator Questionnaire was completed by Baker Oil and submitted to BRIM listing Baker Oil as the owner or operator of the Young's USTs. (CR 3972 – 74).

Also, an Underground Tank Insurance Application Form was completed by Baker Oil and

submitted to BRIM listing Baker Oil as the owner of the Young's USTs and Baker Oil as the insured. (CR 3975 – 3976).

A Notification for Underground Storage Tanks Form dated April 12, 1986, was completed by Baker Oil and submitted to the WVDEP. This document notes that Young's was the operator of the on-site USTs and Baker Oil was the owner. This document was signed and certified, under penalty of law, by Michael C. Baker. (CR 3977 – 3978); (See also Baker Oil Exhibit 1).

A Notification for Underground Storage Tanks Form dated April 10, 1987, was completed by Baker Oil and submitted to WVDEP. This document notes that Young's was the operator of the on-site USTs and that Baker Oil was the owner. (CR 3980 – 3981); (See also Baker Oil Exhibit 1).

By letter dated May 23, 1990, on Baker Oil letterhead and signed by Michael C. Baker, Baker Oil informed WVDEP of the company's purchase of USTs as follows:

We have purchased several underground storage tanks from J.C. Baker & Sons. Enclosed is notification of this change of ownership.

(CR 3982 – 3984),

The letter included a Notification for Underground Storage Tanks Form dated May 22, 1990. This document reflects that Young's was the operator of the on-site USTs and that Baker Oil was the owner. (CR 3983 – 3984); (See also Baker Oil Exhibit 1).

An Owner Registration Fee Report was maintained by WVDEP and dated July 10, 1992, which indicted that registration fees for Young's USTs were paid by owner Baker Oil. (CR 3995).

56. C. Adam Toney Tire – Nicholas County

The Board concludes that WVDEP proved by a preponderance of the evidence that Baker Oil was the owner of the subject USTs at this site.

The evidence reflects that a Notification for Underground Storage Tanks Form (undated) was completed by Baker Oil and submitted to WVDEP. The document notes that C. Adam Toney was the operator of the on-site USTs and that Baker Oil was the owner. The document was signed and certified, under penalty of law, by Michael Baker. (CR 4119 – 4123).

By letter dated June 28, 1993, on J.C. Baker letterhead and signed by Michael C. Baker, J.C. Baker informed WVDEP concerning ownership of USTs as follows:

It has come to my attention that we are the owners of underground storage tanks located at the [C. Adam Toney] location ... Enclosed you will find a completed notification for these tanks.

(CR 4130 – 4134).

A Notification for Underground Storage Tanks Form was enclosed with the above letter and submitted by Baker Oil to WVDEP. This document indicates that C. Adam Toney was the operator of the on-site USTs and that Baker Oil was the owner. This document was signed and certified, under penalty of law, by Michael Baker as "owner or owner's authorized representative." (CR 4131 – 4134); (See also Baker Oil Exhibit 1).

By letter dated March 1, 1994, Blake & August Environmental submitted a letter to WVDEP on behalf of Baker Oil. (CR 4135). The letter notes that Baker Oil is requesting a UST closure permit. (Id.). Blake & August Environmental included UST removal notification indicating that owner of the USTs were Baker Oil. (Id. at 4136).

The Certified Record also contains Leak Data information concerning the subject USTs wherein Baker Oil is listed as the owner. (CR 4137).

Discussion

57. Based on the testimony and evidence presented, and the Certified Record, the Board finds that WVDEP acted properly and in accordance with applicable UST law and regulation when it issued Order No. UST-22-005 as it pertains to WVDEP finding Baker Oil to be the owner of the subject USTs where releases or leaks have occurred, and therefore the responsible party.

58. The Board further finds that Baker Oil did not present reliable or credible evidence for it to conclude that Baker Oil was not the owner of the subject USTs. Michael Baker was the only witness called by Baker Oil and he admittedly lacked personal knowledge concerning the information contained within Baker Oil's Notification for Underground Storage Tanks Forms, BRIM Insurance Applications/Questionnaires/Documentation, and other relevant documents indicating ownership.

59. The Board is not persuaded by Baker Oil's testimony, evidence, or argument regarding errors or mistakes contained within the submitted documentation. Baker Oil did not provide corroborating testimony concerning errors or mistakes.

60. Baker Oil repeatedly claimed they were the owners of the subject USTs. Consistently, since 1986, in multiple Notification for Underground Storage Tanks Forms, including at least one for every UST at issue, Baker Oil has represented to WVDEP and the UST Program that they owned the subject USTs. Each Notification for Underground Storage Tanks Form states explicitly that Baker Oil was the current corporate owner of each UST at issue, and accordingly WVDEP or any reasonable person would conclude that Baker Oil was thereby self-reporting as owners. There is no indication that Baker Oil ever attempted to timely correct any purported errors on documentation.

61. An inability to rely upon accurate self-reporting by UST owners and operators would have severe consequences for the UST Program and its ability to perform its regulatory duties, fulfill its obligations, and protect the health and safety of West Virginia residents.

62. Furthermore, the record contains multiple instances of Baker Oil reporting that they acquired USTs, that they were transferring the tanks between themselves in a change of ownership, or that certain USTs at issue were their USTs.

63. Mr. Baker and Baker Oil believed that they were the owners of the USTs at issue, and that their representations and actions were predicated on that belief. The record consistently indicates that Baker Oil did in fact perform major maintenance, repair, remediation, monitoring, and other activities regarding the USTs at issue. Also, Baker paid registration fees for the USTs at issue.

64. The record shows that Baker Oil, at the very least, performed or contracted for the following actions, which reflects ownership of USTs:

- a) installation of USTs;
- b) removal of USTs;
- c) emptying of USTs;
- d) tank testing;
- e) submission of initial site characterizations;
- f) submission of site investigation reports;
- g) submission of corrective action plans;
- h) removal of contaminated soil;
- i) storage of contaminated soil on their own property;
- j) installation of groundwater monitoring wells;
- k) pumping of groundwater monitoring wells;
- l) site monitoring and sampling;
- m) operation of a soil vapor extraction unit;
- n) repair of piping;
- o) employment of waste disposal contractors;
- p) screening of tank pits;
- q) filling and grading;
- r) preparation of professional reports; and,
- s) remediation and cleanup.

65. At least as late as 2019, Baker Oil commissioned professional reports for submission to WVDEP, addressing remedial actions and the results of monitoring and sampling.

66. Mr. Baker testified that actions undertaken in regard to the subject USTs were performed out of altruism, the desire for good corporate citizenship, as a service to the Appellants' customers, or concern for Mr. Baker's grandfather's legacy. However, he did not provide any sufficient, if any, corroborating evidence. Mr. Baker himself does not have sufficient personal knowledge to be credible on this issue.

Order

For all the foregoing reasons, the Board hereby finds and rules that WVDEP has proved by the preponderance of the evidence that Baker Oil was the owner of the subject USTs. WVDEP did not put on evidence, and therefore did not prove that Baker Oil was the operator of the subject USTs.

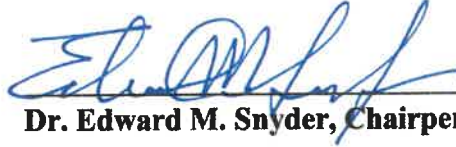
The Board finds that WVDEP acted properly and in accordance with applicable UST laws and regulations when it issued Order No. UST-22-005 as it pertains to finding Baker Oil to be the owner of the subject USTs, where releases or leaks have occurred, and thus the responsible party.

Accordingly, pursuant to West Virginia Code § 22B-1-7(g) and West Virginia Code of State Regulations § 46-4 *et seq.*, the Board hereby affirms Order No. UST-22-05 issued by WVDEP only as it relates to the issue of ownership of the USTs. The Board hereby denies Baker Oil's

appeal on this issue. The Board directs the EQB Clerk to schedule a hearing to address all remaining issues on appeal.

ORDERED and **ENTERED** this 4th day of March, 2024.

WEST VIRGINIA ENVIRONMENTAL QUALITY BOARD



Dr. Edward M. Snyder, Chairperson

**WEST VIRGINIA ENVIRONMENTAL QUALITY BOARD
CHARLESTON, WEST VIRGINIA**

**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.

CERTIFICATE OF SERVICE

I, Kenna M. DeRaimo, Clerk for the Environmental Quality Board, hereby certify that on this day, the 4th of March, 2024, a true copy of the foregoing **FINAL ORDER (OWNER OF SUBJECT USTs)** has been served upon the following:

R. Terrance Rodgers, Esq.
KAY CASTO & CHANEY PLLC
Post Office Box 2031
Charleston, WV 25327
*Counsel for Appellants
J.C. Baker & Son, Inc. and
Baker Oil Company*

Via Certified U.S. First Class Mail

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Charles S. Driver, Esq.
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OFFICE OF LEGAL SERVICES
601 57th Street, S.E.
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Counsel for WVDEP

Via Interdepartmental Mail


Kenna M. DeRaimo, Clerk