

# Press Release

Contact: C. G. Steiner  
Phone: 913.897.2727

**For Immediate Release**  
Date: April 6, 2007

**Subjects: Highland Tank Alleges Defamatory Literature**

**Highland Tank Alleges Infringement On Its Registered Federal Trademark**

**WaterSmart Environmental, Inc.** announces multiple allegations against the company's continuing Website publication of WSE Publication No. 0394, and by "any other publication" reference WSE Publication No. 1995 (see [http://www.watersmart.com/WWT\\_Engineering\\_Data\\_Sheets.html](http://www.watersmart.com/WWT_Engineering_Data_Sheets.html)) as defamatory literature. Highland Tank's attorney also alleges infringement on the name "Highland Tank" as a Registered Federal Trademark.

According to **Webster's New World Dictionary** defamation occurs as a result of false and malicious statements. The referenced WSE Publication No. 0394 was published in 1998 and WSE Publication No. 1995 was published in 1999. The Publications point out the scientifically fraudulent practice on the part of Highland Tank regarding its use of polypropylene filaments ("Petro-Screen™" Coalescer). In 1990 the Department of the Air Force did an exhaustive study to determine which oil/water separators work and which did not. Highland Tank made the "do not comply" list. Note that the Air Force letter refers to polypropylene as an unacceptable material of construction because it "becomes sticky and plugs with solids".

Since 1994 the Department of the Army Corps of Engineers (DOACOE) has been forthwith in telling consulting engineers not to use Highland Tank as an oil/water separator supplier because of the same reasons cited by the Air Force. Their attached DOACOE letter was sent to inform me of their updated version of the guide specifications that prohibited the use of polypropylene materials within oil/water separators. Our documents point out why Highland Tank's oil/water separators do not work and we intend to keep these documents available to consulting engineers in the marketplace. In the field of law, simple truth is always a perfect defense against allegations of defamation.

According to the United States Patent and Trademark Office, the legal method to claim a registered trademark is to place the authorized mark "®" after the name such as **Highland Tank®**. A search of the United States Patent and Trademark Office for the existence of a "Highland Tank" registered federal trademark came up empty per the attachment. Making a claim that a federal registered trademark exists is itself a violation of the law per the attachment.

**Speaking of trademarks**, the selection of a particular mark that will function as a trademark is very important. This is because the particular mark will be placed on a continuum where the mark will be categorized as *fanciful*, *arbitrary*, *suggestive*, *descriptive* or *generic*. The strength of trademark protection varies along the continuum with the greatest protection for fanciful and arbitrary marks, somewhat lesser protection for suggestive marks, even less protection for descriptive marks and finally no protection for generic marks.

Fanciful marks consist of "coined" words or terms that have been invented and do not have a dictionary meaning, such as *Kodak*, *Polaroid* or *Exxon*. Arbitrary marks are those marks that consist of common-place words, terms or symbols that are used in such a manner that they do not describe the product or service with which they are associated and include such marks as **Black & White** for scotch whiskey and **Apple** for computers. Suggestive marks are familiar words or phrases that are frequently used by publishing and media companies in an inventive way to "suggest" what their product or service really consists of and are the middle ground between arbitrary and descriptive marks. Such marks include **Nickelodeon** for a children's television channel and **At A Glance** for calendars. Descriptive marks describe the product, service or contents of the product and include such marks as **Continuous Progress** for educational materials and **Personal Finance** for a financial investment magazine. Generic marks are names of the product or service itself and these terms cannot function as trademarks; such terms include **Aspirin**, **Consumer Electronics Monthly** as a title of a magazine and **Pocket Book** for paperback books. From the above analysis, it appears that the name "**Highland Tank**" does not qualify.

**WaterSmart Environmental, Inc.** is a provider of waste-to-energy, food independence, water independence, and energy independence technologies and a manufacturer of highly engineered water purification components and systems. The company designs and builds a wide variety of water treatment equipment including packaged water and wastewater treatment plants, UltraPac<sup>TM</sup> aerobic package plants, OAT<sup>TM</sup> Process anaerobic digesters with associated energy production, aerators, filters, Pur-iSep<sup>TM</sup> and SmartWater<sup>TM</sup> oil/water and solids/liquids separators, RainDrain<sup>TM</sup> perimeter trench sand filters for stormwater runoff, dissolved air flotation separators, air strippers, complete skid assembled aqueous waste treatment plants, FilterFresh<sup>TM</sup> skid mounted potable water production plants, skid mounted wastewater treatment systems for laundromats, commercial laundries, and car/truck wash facilities with water reclamation and reuse, softeners, demineralizers, activated carbon treatment equipment, and water purifiers for domestic and international markets.

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RICHARD P. JACOB  
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WILLIAM L. JACOB  
(1895-1971)

April 3, 2007

Mr. Charles G. Steiner  
WaterSmart Environmental, Inc.  
P.O. Box 26436  
Shawnee Mission, KS 66225-6346

Re: Highland Tank and Manufacturing Company  
Oil Water Separators

Dear Mr. Steiner:

I represent Highland Tank, and they have asked me to contact you regarding the defamatory literature you are posting on your company's website regarding their company and the products (namely oil water separators) manufactured by their company. Additionally, the name "Highland Tank" is a registered federal trademark, and you are using this name for your own benefit without my client's authorization. All of these actions must cease and desist immediately, or my client is prepared to utilize the courts to enforce their rights in this matter. If they are forced to resort to any court action, this will mean added costs and fees to your company.

I realize that you have the right to make whatever wild claims about your company's products that you wish, but you do not have any legal right to state that my clients are unscrupulous imposters who misrepresent their products to the public. There is no protection under the law for the use of such language, and my client will pursue all legal remedies available to them if you do not remove their name from your literature.

Therefore, in order to avoid any lawsuits, kindly remove any mention of my client Highland Tank from your "WSE Publication #0394" (and any other publications) on your website. If this is not accomplished by the end of April, 2007, my client has authorized me to seek any legal remedies available for infringement on their trademark and all damages associated with the libelous language contained in your papers.

Should you wish to discuss this matter please feel free to contact me at anytime.

Yours Very Truly,

  
Matthew M. Jacob

cc: John W. Jacob  
Highland Tank and Manufacturing Company



DEPARTMENT OF THE AIR FORCE

HEADQUARTERS STRATEGIC AIR COMMAND

OFFUTT AIR FORCE BASE, NEBRASKA 68113-5001

REPLY TO  
ATTN OF: DEO

SUBJECT: Gravity Oil/Water Separator Design Criteria

TO: DEE

1. The Omaha District Corps of Engineers has indicated they are concerned regarding the probable cost impact of the criteria as indicated in our HQ SAC/DEO to HQ SAC/DEE letter dated 8 Jul 91. Though we appreciate their concern over first cost, we are more concerned that the initial construction provide implementation for adequate pretreatment of industrial wastewater, whether that pretreatment is by gravity oil/water separators or some type of more advanced pretreatment. In order to be effective, these units must be such that they are maintainable by base personnel.

2. Oil/water separators require periodic servicing and cleaning to remain effective. The maintainability of cylindrical buried units is very restricted and requires special safety equipment which significantly increases the hazards during maintenance. The Air Force perspective includes life cycle costs of maintenance, not just first cost.

3. The following is presented to better define and clarify the design features presented in the previous letter:

a. In industrial buildings such as hangars and maintenance bays, the floor drains shall be equipped with bars or grates which are permanently or semi-permanently (bolted) fixed directly on the entrance of the pipe conveying the wastewater from the facility. These bars or grates shall be constructed to retain solids larger than 3 inches in any dimension.

b. All buried (below grade) units which are only accessible through small diameter (2-3 feet) access ports are not acceptable. Such units are not practical for maintenance and servicing and as such, pose high non-compliance potential. In cases where aesthetics are a major concern, the designer shall relocate the units or provide acceptable screening in their design. Screening shall allow access for servicing and cleaning.

c. Specifications for all oil/water separators shall require the removal of all 60 micron particles and larger. In specifying the horizontal plate separation area for plate separators, the specifications shall address the projected area not the actual area (plates are at an incline of 55 degrees minimum). The specifications shall also address the surface overflow rate based on the projected plate area. This overflow rate shall vary between 0.20 and 0.50 GPM/sq ft (288 to 720 GPD/sq ft) of projected separation area. The actual value specified shall be based on conditions and the designers experience, but shall be within the range indicated herein. Vertical coalescer plates or tubes shall not be used. When non-vertical coalescer plates are required they shall not be constructed of oleophilic (oil loving) materials such as polypropylene, polyethylene, or teflon. These materials absorb hydrocarbons becoming sticky and plug with solids. Coalescer plates shall be spaced a standard 3/4 inch apart and inclined at a minimum 55 degrees. All units plated or unplated shall have laminar flow with a Reynold's Number of 500 or less. For plated units this condition is in the plated cross section based on projected area. The hydraulic design shall address both the rising product and the settling solids.

d. The volume of the units shall be based on an evaluation of the facility being serviced. For facilities with large floor areas which have the potential of being washed down with multiple hoses, the worst condition shall be used in designing the unit.

e. Air Force policy (see attachment 1) preferred to minimize the number of waste oil storage tanks. Where possible, the collected product shall be intrinsically stored in the separator. In cases where a separate double walled waste oil storage tank is provided, the tank shall follow California regulations for underground storage tanks, Administrative Code Title 14, Section 18653-18654 and Title 23, Sections 2610-2713, and 40 CFR 280.12. Also, this storage tank shall be accessible from the surface through a minimum 36 inch diameter manhole type cover.

f. The monitoring wells required in the 8 Jul 91 letter are defined as using any type of leak detection or gauge devices. The designers have the option of perforated PVC pipe or other type device installed between the unit and secondary containment which is used to detect leaks in the primary unit.

g. All oil/water separators shall be designed to comply with California South Coast Air Quality Management District (SCAQMD) Rule 464 (see attachment 2). The best available control technology is required when emissions exceed 1 pound/day. The design agent shall contact SCAQMD directly to determine design requirements to meet this rule.

4. To assist design agents the following partial listing of complying and non-complying oil/water separator units is presented based on the design criteria previously stated in the 8 Jul 91 letter and in paragraph 3 above. This listing is provided as guidance only with no particular preference or rejection other than meeting the design criteria presented. The design agents shall feel free to add to this listing as their technical knowledge allows.

a. Units which presently comply with criteria:

Monarch  
Great Lakes Environmental  
Aqua Trend  
Lancy  
Purification Industries

b. Units which presently do not comply with criteria:

McTighe  
Highland Tank  
Clearwater Separator  
Enquip  
AFL  
Quantek (Fram, GE)  
Wemco  
BF Goodrich  
Filtronics

5. It is the intent of HQ SAC/DEO that the criteria be applied as of the date of this letter to all present designs which have not reached the 65% design level and all future designs.

6. Request the above requirements be forwarded to all design agencies and be incorporated into their standard design guidelines for initial treatment of wastewaters containing oils/greases/solvents/fuels or floatable wastes.

7. If your staff has any questions, our points of contact are Mr Edward L. Jankowski, PE, DEOO, 4-5991, and Mrs Delma Stoner, DEVC, 4-4061.

402-294-5991

2 Atch

1. HQ USAF/LEE Ltr, 30 May 90
2. SCAQMD Rule 464



DEPARTMENT OF THE ARMY  
CONSTRUCTION ENGINEERING RESEARCH LABORATORIES, CORPS OF ENGINEERS  
P.O. BOX 9005  
CHAMPAIGN, ILLINOIS 61826-9005

July, 11 1994

REPLY TO  
ATTENTION OF:

Technical Assistance Center

Mr. Chuck Steiner  
Purification Industries, Inc.  
P.O. Box 26346  
Shawnee Mission, Kansas 66225-6346

Subject: Updated Oil/Water Separator Guide Specification

Dear Mr. Steiner:

Enclosed is an updated version of our guide specification on oil/water separators. We have significantly changed certain sections since you last reviewed the document, and would appreciate any further comments you can provide. We hope to have a final version out soon. If you wish to fax your comments, our fax number is 217/373-3390.

Regards,

A handwritten signature in black ink, reading "Joseph E. Matherly", is written over the typed name.

Joseph E. Matherly  
Environmental Engineering  
and Operations Team





LII / Legal Information Institute

## U.S. Code collection

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### § 1125. False designations of origin, false descriptions, and dilution forbidden

*How Current is This?*

#### (a) Civil action

(1) Any person who, on or in connection with any goods or services, or any container for goods, uses in commerce any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which—

(A) is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person, or

(B) in commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or geographic origin of his or her or another person's goods, services, or commercial activities,

shall be liable in a civil action by any person who believes that he or she is or is likely to be damaged by such act.

(2) As used in this subsection, the term "any person" includes any State, instrumentality of a State or employee of a State or instrumentality of a State acting in his or her official capacity. Any State, and any such instrumentality, officer, or employee, shall be subject to the provisions of this chapter in the same manner and to the same extent as any nongovernmental entity.

(3) In a civil action for trade dress infringement under this chapter for trade dress not registered on the principal register, the person who asserts trade dress protection has the burden of proving that the matter sought to be protected is not functional.

#### (b) Importation

Any goods marked or labeled in contravention of the provisions of this section shall not be imported into the United States or admitted to entry at any customhouse of the United States. The owner, importer, or consignee of goods refused entry at any customhouse under this section may have any recourse by protest or appeal that is given under the customs revenue laws or may have the remedy given by this chapter in cases involving goods refused entry or seized.

#### (c) Remedies for dilution of famous marks

(1) The owner of a famous mark shall be entitled, subject to the principles of equity and upon such terms as the court deems reasonable, to an injunction against another person's commercial use in commerce of a mark or trade name, if such use begins after the mark has become famous and causes dilution of the distinctive quality of the mark, and to obtain such other relief as is provided in this subsection. In determining whether a mark is distinctive and famous, a court may consider factors such as, but not limited to—

(A) the degree of inherent or acquired distinctiveness of the mark;

(B) the duration and extent of use of the mark in connection with the goods or services with which the mark is used;

(C) the duration and extent of advertising and publicity of the mark;

(D) the geographical extent of the trading area in which the mark is used;

(E) the channels of trade for the goods or services with which the mark is used;

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