



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

U.S. ENVIRONMENTAL PROTECTION AGENCY-REGION 2
2008 APR -2 PM 3:40
REGIONAL HEARING CLERK

APR - 1 - 2008

CERTIFIED MAIL/
RETURN RECEIPT REQUESTED

Suzanne M. Avena, Esq.
Garfunkel, Wild & Travis, P.C.
111 Great Neck Road
Great Neck, New York 11021

Re: In the Matter of Saint Vincent Catholic Medical Centers
Docket No. RCRA-02-2008-7503

Dear Ms. Avena:

Please find enclosed a copy of the Consent Agreement and Final Order ("CA/FO") in the above-referenced matter, signed by the Regional Administrator of the United States Environmental Protection Agency, Region 2.

Please have your client, Saint Vincent Catholic Medical Centers, arrange payment of the civil penalty in accordance with the terms of the CA/FO.

Thank you in advance for your cooperation in this matter. If you have any questions, please contact me at (212) 637-3224.

Sincerely yours,

Bruce H. Aber
Assistant Regional Counsel

Enclosure

cc: Karen Maples, Office of Regional Hearing Clerk
Russ Brauksieck, Chief, NYSDEC

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. ENVIRONMENTAL
PROTECTION AGENCY REGION 2
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REGIONAL HEARINGS
CLERK

In the Matter of:

Saint Vincent Catholic Medical
Centers
Respondent

Proceeding Under Section 9006
of the Solid Waste Disposal Act,
as amended.

**CONSENT AGREEMENT
AND FINAL ORDER**

Docket No. RCRA-02-2008-7503

This is a civil administrative proceeding instituted pursuant to Section 9006 of the Solid Waste Disposal Act, as amended by various statutes including the Resource Conservation and Recovery Act, the Hazardous and Solid Waste Amendments of 1984, the Superfund Amendments and Reauthorization Act of 1986, and the Energy Policy Act of 2005, 42 U.S.C. §6901 et seq. (referred to collectively as the "Act" or "RCRA").

The Complainant in this proceeding is the Director of the Division of Enforcement and Compliance Assistance, EPA Region 2, who has been duly delegated the authority to institute and carry forward this proceeding. The Respondent is Saint Vincent Catholic Medical Centers (SVC MC), a major healthcare resource provider for the greater New York metropolitan area. Respondent has been an "owner" and "operator" of "underground storage tank" or "UST Systems" as those terms are defined in Section 9001 of the Act, 42 U.S.C. §§ 6991, and 40 C.F.R. § 280.12, at the Saint Mary's Hospital and Holy Family Home facilities, located in Brooklyn, New York. On the basis of information provided by Respondent, the Complainant believes that there have been violations of certain applicable federal underground storage tank ("UST") requirements involving two 1,000 gallon UST systems at the SVC MC St. Mary's Hospital facility and one 1,080 gallon UST system at the SVC MC Holy Family Home facility.

Pursuant to 40 Code of Federal Regulations (“C.F.R.”) § 22.13(b), 64 Fed. Reg. 40181 (July 23, 1999), where parties agree to settlement of one or more causes of action before the filing of a Complaint, a proceeding may simultaneously be commenced and concluded by the issuance of a Consent Agreement and Final Order (“CA/FO”) pursuant to 40 C.F.R. §§ 22.18(b)(2) and (3).

The Complainant and Respondent agree that settling this matter by entering into this CA/FO pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) is an appropriate means of resolving this matter without further litigation.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Respondent is subject to the requirements of the Act and its implementing regulations applicable to underground storage tanks.
2. SVCMC participated in EPA’s Voluntary Audit Disclosure Program and entered into a Facility Audit Agreement with EPA on August 5, 2004.
3. On July 5, 2005, SVCMC filed a chapter 11 bankruptcy petition.
4. SVCMC submitted a disclosure to EPA on August 5, 2005, which revealed federal underground storage tank (“UST”) violations at the following two facilities: SVCMC St. Mary’s Hospital, 170 Buffalo Avenue, Brooklyn, NY 11213; and SVCMC Holy Family Home, 1740 84th Street, Brooklyn, NY 11214.
5. The USTs at the St. Mary Hospital and Holy Family Home facilities are "petroleum UST systems", as that term is defined in 40 C.F.R. §280.12, and they are subject to the regulatory requirements set forth at 40 C.F.R. Part 280.

6. The USTs at the St. Mary's Hospital and Holy Family Home facilities store diesel fuel for emergency generators.
7. Under the Audit Agreement, SVCMC was required to bring the USTs into compliance at the St. Mary's Hospital and Holy Family Home facilities, but failed to do so.
8. EPA notified SVCMC by email on September 8, 2006, that the SVCMC St. Mary's Hospital Facility was not eligible for coverage under the Audit Policy, since the violations were not corrected (i.e., the USTs were not upgraded or closed) in a timely manner.
9. EPA notified SVCMC, by a Notice of Determination (NOD) letter on March 20, 2007, that the violations of upgrade/closure requirements for the USTs at the SVCMC Holy Family Home facility had not been corrected and SVCMC was therefore not eligible for Audit coverage.
10. SVCMC's July 20, 2007 response to EPA's May 2007 Information Request Letter ("the SVCMC Response") concerning these two facilities confirmed that SVCMC failed to upgrade or close two (2) 1,000 gallon USTs at the St. Mary's Hospital facility, and failed to upgrade or close one (1) 1,080 gallon UST at the Holy Family Home Facility.

Upgrade or Closure of UST Systems

11. In accordance with 40 C.F.R. §280.21(b), owners and operators of regulated UST systems had to be in compliance with the performance standards specified in the regulation (also known as "upgrade requirements") or, in the alternative, they had to

comply with the closure requirements set forth at 40 C.F.R. §280.70 through §280.74, Subpart G, no later than December 22, 1998.

12. The two (2) 1,000 gallon UST systems at St. Mary's Hospital facility were made of steel and had not been upgraded pursuant to 40 C.F.R. Section 280.21.
13. The UST systems at the SVCMC St. Mary's Hospital facility did not have corrosion protection (interior lining and/or cathodic protection), and did not have spill and overflow prevention equipment, as required by 40 C.F.R. Section 280.21.
14. The one (1) 1080 gallon UST at the Holy Family Home facility was made of steel and had not been upgraded pursuant to 40 C.F.R. Section 280.21.
15. The UST System at the Holy Family Home facility did not have corrosion protection (i.e., interior lining and/or cathodic protection), and did not have spill and overflow prevention equipment, as required by 40 C.F.R. §280.21.
16. In the SVCMC Response, SVCMC confirmed that it had sold the St. Mary's Hospital facility, including the two 1,000 gallon UST systems located at the St. Mary's Hospital facility, in December 2006.
17. In the SVCMC Response, SVCMC confirmed that it continues to be an owner and operator of the UST system at the Holy Family Home Facility.
18. SVCMC has provided EPA with the information set out in paragraphs 19 through 26, below, on events in January 2008 and February 2008.
19. On January 30, 2008, SVCMC removed the one (1) 1080 gallon UST system at the Holy Family Home facility, and SVCMC intends to replace the 1080 gallon UST system with a new UST system.

20. Upon removal of the UST system on January 30, 2008, SVCMC noticed a small corrosion hole in the fill-pipe and discovered a release of a limited quantity (approximately 1 yard) of soil impacted by petroleum.
21. SVCMC notified the New York State Department of Environmental Conservation (“NYSDEC”) regarding the release mentioned in paragraph 20, above, within two (2) hours from when the release was discovered, in accordance with New York Petroleum Bulk Storage regulations, at 6 N.Y.C.R.R. Section 613.8. NYSDEC assigned spill number “071144” for this release.
22. SVCMC has completed the remediation of the petroleum impacted soils, and the soils were removed, stockpiled on site and disposed of off-site at an approved disposal facility.
23. SVCMC collected and analyzed five (5) end point soil samples from the side walls and bottom of the tank and determined that the residual soil samples were compliant with NYSDEC recommended soil cleanup objectives.
24. NYSDEC has provided verbal authorization for SVCMC to install a new UST system in the excavated area to replace the 1080 gallon UST that has been removed from the Holy Family Home facility.
25. SVCMC has informed EPA that it plans to reuse the excavation area (where the 1080 gallon UST was removed) for the installation of a new UST system at the Holy Family Home facility.
26. SVCMC has stated that it will install a new UST system (to replace the 1080 gallon UST system) at the Holy Family Home facility within ninety (90) days of the Regional Administrator’s signature of the Final Order.

CONSENT AGREEMENT

Based upon the foregoing, and pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e, and 40 C.F.R. § 22.18 (2007) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, the parties hereby agree, as follows:

1. Respondent admits the jurisdictional allegations contained herein and neither admits nor denies EPA's Findings of Fact and Conclusions of Law set forth above.
2. Respondent consents to the payment of a civil penalty as set forth in this Consent Agreement, and agrees to comply with the compliance provisions of this Consent Agreement, and to its conditions.
3. This Consent Agreement and Final Order shall not relieve Respondent from its continuing obligation to comply with all applicable provisions of federal, state or local environmental laws.
4. Respondent shall pay, by cashier's or certified check, a civil penalty for settlement of the violations described above, in the amount of **forty thousand dollars** (\$40,000.00). The payment instrument shall be payable to the "Treasurer of the United States of America" and shall be mailed to:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

Or by **OVERNIGHT MAIL:**

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

Contact: Natalie Pearson
314-418-4087

The check shall be identified with a notation of the name and docket number of this case as:

In the Matter of Saint Vincent Catholic Medical Center, RCRA-02-2008-7503.

Respondent shall also send a copy of the check to both Bruce Aber, Assistant Regional Counsel, United States Environmental Protection Agency, 290 Broadway, 16th Floor, New York, New York 10007-1866, and Karen Maples, Regional Hearing Clerk, at the same address.

- a. The payment must be received at the above address on or before forty-five (45) calendar days after the date of signature of the Final Order at the end of this document (the “due date”).
- b. Failure to pay the full amount, according to the above provisions may result in the referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection.
- c. Further, if timely payment is not received on or before the due date, interest will be assessed, at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling charge of \$15.00 will be assessed for each thirty (30) day period,

or any portion thereof, following the due date in which the balance remains unpaid.

- d. A 6% per annum penalty will also be applied on any principal amount not paid within 90 days of the due date.
- e. The effective date of this Consent Agreement and Final Order shall be the date of its filing with the Regional Hearing Clerk, Region 2, New York, New York.

5. **Compliance Provisions**

- a. Respondent shall, within thirty (30) days after the Regional Administrator's signature of the Final Order, submit a certified statement to EPA, in the form below, stating that it has removed the 1080 gallon UST system at the Holy Family Home facility in accordance with the permanent closure requirements set forth at 40 C.F.R. Section 280.70 to 280.74.

The certification shall be signed by a responsible official of Respondent and state:

To the best of my knowledge, after thorough investigation, I certify that the information submitted to EPA is true, accurate and complete. I am aware that there are significant potential penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

- b. Respondent shall submit a Permanent Closure Report (including the results of the site assessment and the remediation of the petroleum impacted soil that was discovered during the removal of the 1080 gallon UST system at the Holy Family Home facility) to EPA within thirty (30) days after the Regional Administrator's signature of the Final Order. Respondent shall also submit the permanent Closure Report to the appropriate NYSDEC regional office in accordance with any applicable deadline specified under

New York state law.

- c. For any new UST system(s) that Respondent installs at the Holy Family Home Facility, the new UST system(s) shall comply with 40 C.F.R. Part 280, subpart B (UST Systems: Design, Construction, Installation and Notification), including the new UST system(s) performance standards in 40 C.F.R. Section 280.20. Additionally, Respondent shall comply with applicable local and state requirements for UST system installation, including registration and notification to the appropriate NYSDEC regional office of Respondent's intent to add an UST system, at least three (3) days prior to installation.
- d. Respondent shall hereinafter maintain compliance with all applicable provisions of federal UST regulations set forth at 40 C.F.R. Part 280, as well as applicable provisions of state and local regulations.
- e. Respondent shall submit copies of any communications or reports with respect to the Compliance Provisions of this Consent Agreement to:

Rebecca Jamison
Enforcement Officer
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency, Region 2
290 Broadway, 20th Floor
New York, N.Y. 10007-1866

- 6. If Respondent fails to comply with the permanent closure requirements and reporting requirements to EPA that are specified in paragraph 5 a. to 5.b. above, it shall pay a stipulated penalty for each day that it fails to meet this final compliance deadline as follows:

| <u>Period of Failure to Comply</u> | <u>Penalty Per Day Per Violation</u> |
|--|--------------------------------------|
| 1 st to 10 th day | \$500 |
| 11 st to 30 th day | \$1000 |
| 31 to 60 days | \$2000 |
| Each day in excess of 60 days | \$3000 |

7. If the parties to this Consent Agreement agree that delay or noncompliance has been or will be caused by events, conditions, or circumstances entirely beyond the control of Respondent and if the parties to this Consent Agreement further agree that Respondent could not have prevented such delay or noncompliance by the exercise of due diligence, the time for performance of such requirement shall be extended for a period not to exceed the actual delay resulting from such circumstances and stipulated penalties for such delay or noncompliance shall not accrue for such period. Respondent shall bear the burden of proving to EPA by a preponderance of the evidence, through a written submission to EPA, that any delay was caused by circumstances entirely beyond the control of Respondent and that Respondent could not have prevented such delay by the exercise of due diligence. In the event that EPA does not agree that a delay has been or will be caused by circumstances beyond the control of Respondent, EPA will notify Respondent in writing of its decision.
8. Costs or expenses associated with the implementation of actions called for by this Consent Agreement, changed financial circumstances, and Respondent's inability to obtain any loan or funding shall not serve as a basis for changes to this Consent Agreement or any extensions of time under this Consent Agreement.

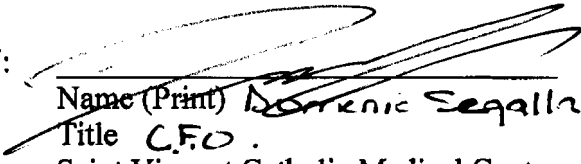
9. Complainant may, in her sole discretion, reduce or eliminate any stipulated penalty due if Respondent has in writing demonstrated to EPA's satisfaction good cause for such action by EPA. If, after review of Respondent's submission, Complainant determines that Respondent has failed to comply with the provisions of this Consent Agreement, and Complainant does not, in her sole discretion, eliminate the stipulated penalties demanded by EPA, Complainant will notify Respondent, in writing, that either the full stipulated penalty or a reduced stipulated penalty must be paid by the Respondent. Respondent shall pay the stipulated penalty amount indicated in EPA's notice within thirty (30) calendar days of its receipt of such written notice from EPA. Any penalty owed pursuant to this paragraph shall be paid in accordance with the instructions set forth in paragraph 4, above. Failure to pay the stipulated penalty in full will result in referral of this matter to the United States Department of Justice or the United States Department of Treasury for collection and/or other appropriate action.

10. This Consent Agreement is being voluntarily and knowingly entered into by Respondent and EPA to resolve (upon full payment of the civil penalty and any stipulated penalty that comes due) Respondent's liability pursuant to Section 9006 for civil penalties for the violations of federal UST requirements specifically set forth in the Findings of Fact and Conclusions of Law in this CA/FO. Respondent has read the foregoing Consent Agreement, understands its terms, finds it to be reasonable and consents to the issuance of the accompanying Final Order. The parties agree that all terms of settlement are set forth herein. Nothing herein shall be read to preclude EPA or the United States, however, from pursuing appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.


11. Respondent hereby waives its right to request or to seek any Hearing on any of the terms of this Consent Agreement or the Findings of Fact and Conclusions of Law herein, or on the accompanying Final Order.
12. Respondent waives any rights it may have pursuant to 40 C.F.R. § 22.8 to be present during discussions with or to be served with and to reply to any memorandum or communication addressed to the Regional Administrator or the Deputy Regional Administrator where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the attached Final Order.
13. Respondent certifies that he or she is duly and fully authorized to enter into and ratify this Consent Agreement and all the terms and conditions set forth in this Consent Agreement.
14. Each party hereto agrees to bear its own costs and fees in this matter.
15. Respondent consents to service upon Respondent of a copy of this CA/FO by an EPA employee other than the Regional Hearing Clerk.
16. This Consent Agreement and any provision herein shall not be construed as an admission of liability in any criminal or civil action or other administrative or legal proceeding, except one to enforce the terms of this CA/FO.

17. The provisions of this Consent Agreement shall be binding upon Respondent, its officials, authorized representatives and successors or assigns and upon Complainant.

RESPONDENT: SAINT VINCENT CATHOLIC MEDICAL CENTERS

BY: 
Name (Print) Dominic Segalla
Title C.F.O.
Saint Vincent Catholic Medical Centers
St. Mary's Hospital Brooklyn

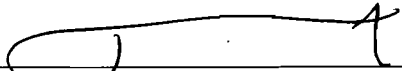
DATE: 3.20.08

BY: : 
Name (Print) Paul Rosenfeld
Title Senior Vice President + Executive Director
Saint Vincent Catholic Medical Centers
Holy Family Home

DATE: 3/24/08

COMPLAINANT:

BY:



Dore LaPosta, Director
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency -
Region 2

PATRICK DOMINIC
FOR

DATE: MARCH 25, 2008

FINAL ORDER

The Regional Administrator (or anyone duly delegated to act on his behalf) of the U.S. Environmental Protection Agency, Region 2, concurs in the foregoing Consent Agreement in the case of In the Matter of Saint Vincent Catholic Medical Centers, bearing Docket No. RCRA-02-2008-7503. The Consent Agreement, having been duly accepted and entered into by the parties to this matter, is hereby ratified, and incorporated into this Final Order, which is hereby issued and shall take effect when filed with the Regional Hearing Clerk of EPA, Region 2. 40 C.F.R. Section 22.31(b). This Final Order is being entered pursuant to the authority of 40 C.F.R. Section 22.18(b)(3) and shall constitute an order issued under authority of Section 9006 of RCRA, 42 U.S.C. Section 6991e.



Alan J. Steinberg
Regional Administrator
U.S. Environmental Protection Agency -
Region 2
290 Broadway
New York, New York 10007-1866

DATE: 3-28-09

In the Matter of Saint Vincent Catholic Medical Center, Docket No. RCRA-02-2008-7503

CERTIFICATE OF SERVICE

I certify that I have caused to be sent the foregoing CONSENT AGREEMENT and its accompanying FINAL ORDER bearing the above referenced docket number, in the following manner to the respective addressees listed below:

Copy by

Certified Mail/

Return Receipt Requested:

Suzanne M. Avena, Esq.

Counsel for Saint Vincent Catholic Medical Center
Garfunkel, Wild & Travis

111 Great Neck Road
Great Neck, NY 11021

Original and One Copy

by Hand:

Karen Maples

Office of Regional Hearing Clerk

U. S. Environmental Protection Agency

Region 2

290 Broadway, 16th Floor

New York, NY 10007-1866

Dated: **APR** 1, 2008

New York, New York

