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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY PM 2:07

Region 9
75 Hawthorne Street
San Francisco, California 94105

U.S. ENVIRONMENTAL PROTECTION AGENCY
REGIONAL HEARING CLERK

IN THE MATTER OF: )
Seaside Service Station )
American Samoa Environmental )
Protection Agency Tank ID No. )
UST-1-2-06 )
Respondent )
Docket No.
RCRA-9-2007-0007
CONSENT AGREEMENT
AND FINAL ORDER

CONSENT AGREEMENT

A. PRELIMINARY STATEMENT

- 1. This is a civil administrative enforcement action instituted pursuant to Section 9006 of the Solid Waste Disposal Act...
2. Respondent operates a gasoline service station at Malaloa Village, in Pago Pago, American Samoa...
3. This Consent Agreement and Final Order ("CA/FO"), pursuant to 40 C.F.R. Sections 22.13 and 22.18, simultaneously commences and concludes this proceeding...

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**B. JURISDICTION**

4. Respondent is a "person," as defined in Section 9001 of RCRA, 42 U.S.C. § 6991, and 40 C.F.R. § 280.12.
5. Respondent is the "operator" of an "underground storage tank" as these terms are defined in Section 9001 of RCRA, 42 U.S.C. § 6991, and 40 C.F.R. § 280.12.
6. The UST systems at the Facility were installed in 1991 and have been used to store petroleum, which is a "regulated substance," as that term is defined in Section 9001, 42 U.S.C. § 6991, and 40 C.F.R. § 280.12.
7. On or about April 12, 2006, EPA performed an inspection at the Facility. During this inspection, the EPA inspector found that Respondent had failed to conduct line tightness tests or use monthly monitoring on suction lines for tanks T2 and T3. The violations detected during the April 12, 2006 inspection forms the basis for this action.
8. Based upon the findings EPA made during the inspection, and additional information obtained subsequent to the inspection, EPA determined that Respondent had violated RCRA Section 9003, 42 U.S.C. § 6991b, and the regulations adopted pursuant thereto.
9. Pursuant to RCRA Section 9001(6), 42 U.S.C. § 6991(6), which incorporates RCRA Section 1004(15), 42 U.S.C. § 6903(15), by reference, the term "person" as used in RCRA includes a "State." The term "State" as defined in RCRA Section 1004(31), 42 U.S.C. § 6903(31), includes American Samoa. EPA administers the Federal UST program in "States" that have not received authorization to administer the UST program pursuant to RCRA Section 9004, 42 U.S.C. § 6991c. American Samoa has not received authorization to administer the Federal UST program and, as a result, EPA administers the Federal UST program in American Samoa.
10. Respondent, in violating the requirements of 40 C.F.R. Part 280, violated Subtitle I of RCRA, and, therefore, is subject to the powers vested in the EPA Administrator by Section 9006 of RCRA, 42 U.S.C. § 6991e.
11. Section 9006(a) of RCRA, 42 U.S.C. § 6991e(a), authorizes the EPA Administrator to issue orders requiring compliance immediately or within a specified time for violation of any requirement of Subtitle I of RCRA, Section 9001 of RCRA et seq., 42 U.S.C. § 6991 et seq.
12. The Administrator has delegated the authority under Section 9006 of RCRA to the EPA Regional Administrator for Region IX, who has redelegated this authority to the Director of the Waste Management Division.



**C. ALLEGED VIOLATION****COUNT I****Failure to Conduct Line Tightness Tests or  
Use Monthly Monitoring on Suction Lines**

13. Paragraphs 1 through 12 above are incorporated herein by this reference as if they were set forth here in their entirety.
14. 40 C.F.R. § 280.41(b)(2) requires owners and operators of petroleum UST systems with suction piping to provide release detection for tanks and piping as required by 40 C.F.R. §§ 280.41 and 280.44 (b) or (c).
15. Owners and operators of petroleum UST systems may meet the release detection requirements by conducting line tightness tests at least every three years in accordance with 40 C.F.R. § 280.44(b), or by using a monthly monitoring method in accordance with 40 C.F.R. § 280.44(c).
16. In January 2006, Respondent became the new operator of the existing service station. The previous operator had purchased sensors necessary to conduct monthly monitoring in accordance with 40 C.F.R. § 280.44, but had not installed the sensors. Therefore the tanks at the station were not in compliance when Respondent began operating the station.
17. EPA inspected the Facility on April 12, 2006, and discovered that Respondent was operating the station, but had not installed the sump sensors, and so had not come into compliance with leak detection requirements.
18. Therefore, EPA alleges that the Respondent violated RCRA and its implementing regulations at 40 C.F.R. § 280.41.

**COUNT II****Inadequate Operation or Maintenance of Automatic Tank Gauging**

19. Paragraphs 1 through 18 above are incorporated herein by this reference as if they were set forth here in their entirety.
20. 40 C.F.R. § 280.43(d) requires owners and operators of petroleum UST systems to meet certain requirements for automatic tank gauging equipment that tests for the loss of product and conducts inventory control.
21. During the April 12, 2006 inspection, an EPA Inspector discovered that Respondent had not adequately operated or maintained the automatic tank gauging on tanks T1, T2 and T3.



22. Therefore, EPA alleges that the Respondent violated RCRA and its implementing regulations at 40 C.F.R. § 280.44(d).

**D. CIVIL PENALTY**

23. Section 9006(d)(2) of RCRA, 42 U.S.C. § 6991e(d)(2), provides in relevant part that any owner or operator of an underground storage tank who fails to comply with any requirement promulgated under Section 9003 of RCRA, 42 U.S.C. § 6991b, or any requirement or standard of a State program authorized pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c, shall be liable for a civil penalty not to exceed \$10,000 per violation, for each tank for each day of violation. Pursuant to the Debt Collection Improvement Act of 1996 ("DCIA") and the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 61 Fed. Reg. 69360 (December 31, 1996), codified at 40 C.F.R. Part 19 ("Penalty Inflation Rule"), violations which occur subsequent to January 30, 1997 are subject to a new statutory maximum penalty of ten percent greater than the prior statutory maximum, or \$11,000 per violation, for each tank for each day of violation.
24. Based upon the facts alleged in this Complaint and upon those factors which EPA must consider pursuant to Section 9006(c) of RCRA, 42 U.S.C. § 6991e(c), and EPA's November 1990 U.S. EPA Penalty Guidance for Violations of UST Regulations (the "UST Penalty Guidance"), including the seriousness of the violations, any good faith efforts by the Respondent to comply with applicable requirements, and any economic benefit accruing to the Respondent, as well as such other matters as justice may require, EPA proposes that Respondent be assessed \$10,400 as the civil penalty for the violations alleged herein. The proposed penalties were calculated in accordance with the UST Penalty Guidance. Under the UST Penalty Guidance, EPA uses a penalty assessment matrix to determine a gravity-based penalty. The penalty amount is then adjusted to take into account multi-day violations, the environmental sensitivity of the location of the USTs, case-specific circumstances, and any economic benefit gained from non-compliance.

**E. ADMISSIONS AND WAIVERS OF RIGHTS**

25. Respondent admits the jurisdictional allegations set forth in Section B of this CA/FO. Respondent consents to and agrees not to contest EPA's jurisdiction and authority to enter into and issue this CA/FO and to enforce its terms. Further, Respondent will not contest EPA's jurisdiction and authority to compel compliance with this CA/FO in any enforcement proceedings, either administrative or judicial, or to impose sanctions for violations of this CA/FO.
26. Respondent neither admits nor denies any allegations of fact or law set forth in Section C of this CA/FO. For purposes of this proceeding, Respondent hereby waives any rights



Respondent may have to contest the allegations set forth in this CA/FO, and waives any rights Respondent may have to a hearing or appeal on any issue relating to the factual allegations or legal conclusions set forth in the CA/FO, including without limitation a hearing pursuant to Section 9006(b) of RCRA, 42 U.S.C. §6991e(b). Respondent hereby consents to the issuance of this CA/FO without adjudication. In addition, Respondent hereby waives any rights Respondent may have to appeal the Final Order attached to this Consent Agreement and made part of this CA/FO.

**F. PARTIES BOUND**

27. This CA/FO shall apply to and be binding upon Respondent and its agents, successors and assigns and upon all persons, independent contractors, contractors, and consultants acting under or for Respondent, until such time as the civil penalty required under Section D and G has been paid and any delays in performance and/or stipulated penalties have been resolved. At such time as those matters are concluded, this CA/FO shall terminate and constitute full settlement of the violations alleged herein.
28. The undersigned representative of Respondent hereby certifies s/he is fully authorized by Respondent to enter into this CA/FO, to execute and to legally bind Respondent to it.

**G. PAYMENT OF CIVIL PENALTY**

29. Respondent consents to the assessment of and agrees to pay a civil penalty of **\$10,400** in full settlement of the civil penalty claims set forth in the CA/FO.
30. Respondent shall submit payment of the entire civil penalty within thirty (30) calendar days of the Effective Date of this CA/FO. The Effective Date of this CA/FO is the date the Final Order, signed by the Regional Judicial Officer, is filed by the Regional Hearing Clerk. Payment shall be made by certified or cashier's check payable to "Treasurer of the United States" and shall be remitted to:

Mellon Bank  
Attn: EPA Region IX Hearing Clerk  
P.O. Box 371099M  
Pittsburgh, PA 15251

At the time payment is made, a copy of either the check or EPA Form 2570-6 shall be sent to:

Regional Hearing Clerk (ORC-1)  
U.S. Environmental Protection Agency - Region IX  
75 Hawthorne Street  
San Francisco, CA 94105



and to:

Norwood Scott (CED-6)  
Pacific Islands Office  
U.S. Environmental Protection Agency - Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

31. In accordance with the Debt Collection Act of 1982 and U.S. Treasury directive (TFRM 6-8000), the payment must be received within thirty (30) calendar days of the Effective Date of this CA/FO to avoid additional charges. If payment is not received within thirty (30) calendar days, interest will accrue from the Effective Date of this CA/FO at the current rate published by the United States Treasury as described at 40 C.F.R. § 13.11. A late penalty charge of \$15.00 will be imposed after thirty (30) calendar days with an additional charge of \$15.00 for each subsequent 30-day period. A 6% per annum penalty will further apply on any principal amount not paid within ninety (90) calendar days of the due date. Respondent further will be liable for stipulated penalties as set forth below for any payment not received by its due date.

#### H. COMPLIANCE

32. Respondent agrees to implement the following work in accordance with the schedule set forth below:
- a. Within 60 days of the Effective Date of the CA/FO, Respondent shall submit a signed affidavit that overfill protection valves on the three active tank systems have been removed from the drop tubes and checked for adequate operability. The affidavit shall include photographs demonstrating compliance.
  - b. Within 60 days of the Effective Date of the CA/FO, Respondent shall submit copies of at least three recent requests to companies for UST insurance or another financial assurance mechanism that complies with 40 C.F.R. Part 280. If the facility is able to obtain a policy, submit the complete policy. If the facility is unable to obtain a policy, submit the three rejection letters.
  - c. Within 90 days of the Effective Date of the CA/FO, Respondent shall complete a site assessment of the Facility using 40 C.F.R. § 280.72 (a) as guidance.
  - d. Within 120 days of the Effective Date of this CA/FO, Respondent shall submit a Site Assessment Report for EPA's review and approval to the following address:

Norwood Scott (CED-6)  
U.S. Environmental Protection Agency



75 Hawthorne Street  
San Francisco, California 94105

33. The Site Assessment Report ("Report") shall describe the specific activities performed in connection with the site assessment activities, including the results of the site assessment. The Report shall also identify any corrective action work that may be required to address contamination discovered at the site, and shall include a proposed schedule for implementing such work. If the Respondent determines that no corrective action is necessary at the Facility, the Report shall provide the basis for that determination.
34. EPA shall review the Report. If EPA approves the Report, no further work will be required under this CA/FO, although additional corrective action work may be required pursuant to Subtitle I of RCRA and its implementing regulations. If EPA does not approve the Report, it will provide written comments to the Respondent. Respondent shall revise and resubmit the Report in accordance with EPA's comments. If a revised Report is not approved by EPA, EPA may require additional revisions of the Report or may itself modify the Report. Respondent's obligations under this Section H shall continue until the Report is approved by EPA.

**I. DELAY IN PERFORMANCE/STIPULATED PENALTIES**

35. In the event Respondent fails to meet any requirement set forth in this CA/FO, Respondent shall pay stipulated penalties as follows:
- for failure to submit a payment to EPA by the time required in this CA/FO, and for failure to meet any requirement in Section H of this CA/FO: up to ONE THOUSAND DOLLARS (\$1,000) per day for the first to fifteenth days of delay, up to ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500) per day for the sixteenth to thirtieth day of delay, and up to FIVE THOUSAND DOLLARS (\$5,000) per day for each day of delay thereafter.
36. All penalties shall begin to accrue on the date that performance is due or a violation occurs, and shall continue to accrue through the final day of correction of the noncompliance. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations.
37. All penalties owed to EPA under this Section shall be due within thirty (30) days of receipt of a notification of noncompliance. Such notification shall describe the noncompliance and shall indicate the amount of penalties due. Interest at the current rate published by the United States Treasury, as described at 40 CFR § 13.11, shall begin to accrue on the unpaid balance at the end of the thirty-day period.
38. All penalties shall be made payable by certified or cashier's check to "Treasurer of the



United States" and sent to:

Mellon Bank  
U.S. EPA Region IX  
P.O. Box 371099M  
Pittsburgh, PA 15251

At the time payment is made, a copy of the check shall be sent to:

Regional Hearing Clerk (ORC-1)  
U.S. Environmental Protection Agency - Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

and to:

Norwood Scott (CED-6)  
Pacific Islands Office  
U.S. Environmental Protection Agency - Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

39. All payments shall indicate the name of the Facility, UST identification number (UST-1-2-06), the Respondent's name and address, and the EPA docket number of this action.
40. The payment of stipulated penalties shall not alter in any way Respondent's obligation to complete the performance required hereunder.
41. The stipulated penalties set forth in this Section do not preclude EPA from pursuing any other remedies or sanctions which may be available to EPA by reason of Respondent's failure to comply with any of the requirements of this CA/FO.

**J. RESERVATION OF RIGHTS**

42. EPA expressly reserves all rights and defenses that it may have. EPA further reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, including the right to require that Respondent perform tasks in addition to those required by this CA/FO. EPA further reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, which may pertain to Respondent's failure to comply with any of the requirements of this CA/FO, including the assessment of penalties under Section 9006(c) of RCRA, 42 U.S.C. §6991e(c), except for civil penalty liability for the violations alleged in this CA/FO. This CA/FO shall not be construed as a covenant not to sue, release, waiver or limitation of any rights,



remedies, powers or authorities, civil or criminal, which EPA has under RCRA, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), or any other statutory, regulatory or common law enforcement authority of the United States.

43. Compliance by Respondent with the terms of this CA/FO shall not relieve Respondent of its obligations to comply with RCRA or any other applicable local, State or federal laws and regulations.
44. The entry of this CA/FO and Respondent's consent to comply shall not limit or otherwise preclude EPA from taking additional enforcement actions should EPA determine that such actions are warranted except as it relates to those matters resolved by this CA/FO.
45. This CA/FO is not intended to be nor shall it be construed as a permit. This CA/FO does not relieve Respondent of any obligation to obtain and comply with any local, territorial, State or federal permits.

**K. OTHER CLAIMS**

46. Nothing in this CA/FO shall constitute or be construed as a release from any other claim, cause of action or demand in law or equity by or against any person, firm, partnership, entity or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the Facility.

**L. MISCELLANEOUS**

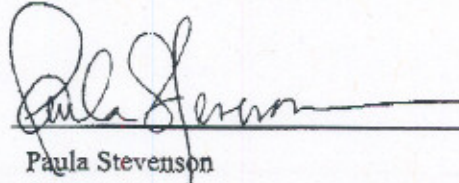
47. This CA/FO may be amended or modified only by written agreement executed by both EPA and Respondent
48. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.



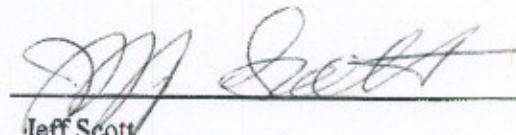
49. The Effective Date of this CA/FO is the date the Final Order, signed by the EPA Regional Judicial Officer, is filed with the Regional Hearing Clerk.

**IT IS SO AGREED.**

11/3/06  
Date

  
\_\_\_\_\_  
Paula Stevenson  
Operator  
Seaside Service Station

12/21/06  
Date

  
\_\_\_\_\_  
Jeff Scott  
Director  
Waste Management Division  
United States Environmental Protection Agency,  
Region IX



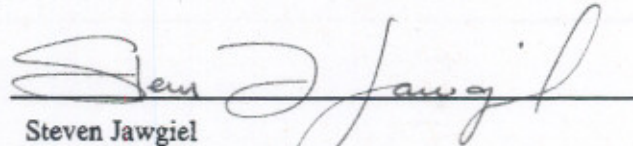
**FINAL ORDER**

**IT IS HEREBY ORDERED** that this Consent Agreement and Final Order for the Seaside Service Station (U.S. EPA Docket No. RCRA 09-2007-0007) be entered and that Respondent pay a civil penalty of \$10,400.00. In addition Respondent must complete the compliance tasks set out in Section H of this Consent Agreement. Respondent shall pay by certified or cashier's check payable to "Treasurer of the United States" and shall be remitted in accordance with Section G of this Consent Agreement and Final Order within thirty (30) days after the Effective Date of this Consent Agreement and Final Order. A copy of the check or EPA Form 2570-6 shall be sent to the EPA Region IX addresses specified in Section G of this Consent Agreement and Final Order within such 30-day period.

This Final Order shall be effective upon filing with the Regional Hearing Clerk.

01/05/07

Date



Steven Jawgiel  
Regional Judicial Officer  
United States Environmental Protection Agency,  
Region IX



CERTIFICATE OF SERVICE

I hereby certify that on the date below, the original copy of the foregoing Consent Agreement and Final Order was filed with the Regional Hearing Clerk, Region 9, and that a copy was sent by certified mail, written verification of delivery required, to:

Ms. Paula Stevenson  
Seaside Service Station  
P.O. Box 5365  
Pago Pago, AS 96799

Jan. 8, 2007  
Date

Danielle L. Carr  
Danielle Carr  
Regional Hearing Clerk  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 9