



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG.11
2012 JUL 26 A 10:03
REGIONAL HEARING
CLERK

JUL 26 2012

**CERTIFIED MAIL-
RETURN RECEIPT REQUESTED**

Jack P. DiTeodoro
General Attorney
U.S. Department of Veterans Affairs
Office of the Regional Counsel
800 Poly Place, Building 14
Brooklyn, NY 11209

Re: U.S. Department of Veterans Affairs
Docket Number RCRA-02-2012-7502

Dear Mr. DiTeodoro:

Enclosed is a copy of the Consent Agreement and Final Order ("CA/FO") in the above-referenced proceeding, signed by the Regional Administrator of the U.S. Environmental Protection Agency, Region 2.

Please arrange for the payment of the penalty according to the instructions given in the Order.

Sincerely yours,

Rudolph Perez
Assistant Regional Counsel

Enclosure

cc: Russ Brauksieck, Chief
Spill Prevention and Bulk Storage Section
NYSDEC
625 Broadway – 11th Floor
Albany, New York 12233

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

In the Matter of:

U.S. Department of Veterans Affairs

Respondent

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

**CONSENT AGREEMENT
AND FINAL ORDER**
Docket No. RCRA-02-2012-7502

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2012 JUL 26 A 10:03
REGIONAL HEARING
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PRELIMINARY STATEMENT

This administrative proceeding was instituted pursuant to Section 9006 of the Solid Waste Disposal Act, as amended, 42 U.S.C. §6901 *et seq.* and the Federal Facilities Compliance Act of 1992, 42 U.S.C. § 6901 *et. seq* (referred to collectively as the "Act" or "RCRA").

The Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance, United States Environmental Protection Agency ("EPA"), Region 2 ("EPA" or "Complainant"), issued a "Complaint, Compliance Order, and Notice of Opportunity for Hearing" to the U.S. Department of Veterans Affairs ("VA" or "Respondent") on December 29, 2011 for alleged violations at two of its facilities located in New York State and one of its facilities located in New Jersey. The Complaint alleged violations of Subtitle I of the Act and the regulations promulgated pursuant to that Section, Volume 40 of the Code of Federal Regulations (C.F.R.) Part 280.

The Complainant and Respondent have reached an amicable resolution of this matter and agree, by entering into this Consent Agreement and Final Order ("CA/FO") pursuant to the

Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules”), 40 C.F.R. Part 22, including, specifically, §§ 22.18(b)(2) and (3), that settlement of this matter upon the terms set forth in this CA/FO is an appropriate means of resolving this case without further litigation.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Respondent is a department, agency or instrumentality of the executive branch of the federal government.
2. Respondent is a "person" within the meaning of Section 9001(5) of the Act, 42 U.S.C. § 6991(5) and 40 C.F.R. § 280.12.
3. For all times relevant to the allegations set forth in the Complaint, Respondent was the “owner” and/or “operator” of the “underground storage tank” (“UST”) systems, as those terms are defined in Section 9001 of the Act, 42 U.S.C. § 6991 (3), (4) and (10) and in 40 C.F.R. § 280.12, that are located at the NY Medical Center in Northport, 79 Middleville Road, Northport, New York 11768 (“Northport Facility”), the Hudson Valley Health Care System, 2094 Albany Post Road, Montrose, New York 10548 (“HVHCS Facility”), and the Veterans Affairs Medical Center, 151 Knollcroft Road, Lyons, New Jersey 07939 (“Lyons Facility”). (The three facilities collectively referred to as the “Facilities”).
4. Pursuant to Section 9005 of the Act, 42 U.S.C. § 6991d, a representative of EPA (“EPA Representative”) inspected the Northport Facility on or about January 13, 2009, the HVHCS Facility on or about February 12, 2009 and the Lyons Facility on or about May 4, 2009 (hereinafter collectively referred to as the “EPA Inspections”). The purpose of these inspections was in part to determine the Respondent’s compliance with the Act and 40 C.F.R. Part 280.

5. During the EPA Inspections and for all time periods relevant to the allegations set forth in the Complaint, all UST Systems at the Facilities have stored either diesel fuel or gasoline for use in vehicles, and thus have been and remain subject to the UST requirements set forth in 40 C.F.R. Part 280.
6. During the EPA Inspections and for all time periods relevant to the allegations set forth in the Complaint, all of the UST systems at the Facilities were "petroleum UST systems" as that term is defined in 40 C.F.R. § 280.12.
7. On or about March 19, 2009, EPA sent Respondent separate Information Request Letters ("IRL") and Notice of Violations ("NOV") for the Northport Facility and the HVHCS Facility. On or about May 19, 2009, EPA sent Respondent an IRL and NOV Letter for the Lyons Facility.
8. EPA's Information Request Letters sought general information about the USTs owned and/or operated by the Respondent at the Facilities, as well as information about any actions taken to correct the violations and to prevent recurrence of the violations identified in the NOVs. EPA's NOVs listed UST violations that had been identified by EPA during the Inspections.
9. On or about April 15, 2009, Respondent submitted to EPA a response to the IRL/NOV for the HVHCS Facility and a follow-up response on or about June 18, 2009. On or about April 23, 2009, Respondent submitted to EPA a response to the IRL/NOV for the Northport Facility and a follow-up response on or about May 22, 2009. On or about June 22, 2009, Respondent submitted to EPA a response to the IRL/NOV for the Lyons Facility. (Hereafter Respondent's responses for the Facilities will be collectively referred to as the "Respondent's Responses").

10. Based on the EPA Inspections and Respondent's Responses, the Complaint alleged that Respondent at its Northport Facility failed to: (i) immediately investigate and report a suspected release at one UST system in violation of 40 C.F.R. §§ 280.50 and 280.52 ; (ii) maintain records of release detection of the tank of one UST system in violation of 40 C.F.R. § 280.45(b); (iii) either perform, or maintain records of, an annual line tightness test or release detection monitoring of the piping of one UST System in violation of 40 C.F.R. §§ 280.41(b)(1) and 280.45(b); (iv) equip the pressurized piping system of one UST system with an automatic line leak detector and test it annually in violation of 40 C.F.R. §§ 280.41(b)(1)(i) and 280.44(a); and (v) have required overfill prevention on three UST systems in violation of 40 C.F.R. § 280.20(c)(1)(ii). The complaint further alleged that Respondent at its HVHCS Facility failed to: Provide release detection for the piping of one UST system in violation of 40 C.F.R. § 280.41(b)(2) and that the Respondent at its Lyons Facility failed to (vii) Immediately investigate and report a suspected release from one UST System in violation of 40 C.F.R. §§ 280.50 and 280.52.
11. Complainant and Respondent participated in an informal settlement conference on or about May 2, 2012 and subsequently Respondent supplied to Complainant certain documentation requested by Complainant. Thereafter, the parties agreed to enter into this CA/FO pursuant to 40 C.F.R. §§ 22.18 (b)(2) and (3) of the revised Consolidated Rules, in accordance with to the terms and conditions set forth below.

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 of the Consolidated Rules, the parties hereby agree, as follows:

1. Each person signing this Consent Agreement on behalf of the Respondent certifies to

EPA by his or her signature herein that Respondent, as of the date of his or her signature, is in compliance with the provisions of Subtitle I of the Act and 40 C.F.R. Part 280 at the Facility that each signatory represents.

2. Respondent shall maintain compliance with the provisions of Subtitle I of the Act and 40 C.F.R. Part 280, including, but not limited to, the rules cited in paragraph "10" of the Findings of Fact and Conclusions of Law.
3. Respondent admits the jurisdictional basis of this action and neither admits nor denies the Findings of Fact and Conclusions of Law set forth above. Respondent agrees not to contest EPA's jurisdiction with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of the CA/FO.
4. Respondent consents to the payment of a civil penalty as set forth in this Consent Agreement and agrees to pay the penalty in accordance with the terms of this Consent Agreement.
5. Respondent shall pay, by cashier's or certified check or by Electronic Fund Transfer (EFT), a civil penalty in the amount of **fifty-three thousand dollars** (\$53,000.00). If the payment is made by check, then the payment shall be made to the "Treasurer of the United States of America" and shall be mailed to:

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

The check shall be identified with a notation of both the name and docket number of this case as: In the Matter of the U.S. Department of Veterans Affairs, Docket Number RCRA-02-2012-7502. The payment must be received at the above address on or before

sixty (60) calendar days after the date of signature of the Final Order at the end of this document (the “due date”).

a) If Respondent chooses to make the payment by EFT, then Respondent shall provide the following information to its remitter bank:

- 1) Amount of Payment
- 2) SWIFT address: FRNYUS33, 33 Liberty Street, New York, NY 10045.
- 3) Account Code for Federal Reserve Bank of New York receiving payment: 68010727.
- 4) Federal Reserve Bank of New York ABA routing number: 021030004.
- 5) Field Tag 4200 of the Fedwire message should read “D 68010727 Environmental Protection Agency.”
- 6) Name of Respondent: In the Matter of the U.S. Department of Veterans Affairs
- 7) Case Number: RCRA-02-2012-7502.

Such EFT must be received on or before sixty (60) calendar days after the Effective Date of this CA/FO.

b. Whether the payment is made by check or by EFT, Respondent shall promptly thereafter furnish reasonable proof that such payment has been made to both:

Rudolph Perez
Assistant Regional Counsel,
U.S. Environmental Protection Agency
290 Broadway, 16th Floor
New York, New York, 10007-1866

And

Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency
290 Broadway, 16th Floor
New York, New York, 10007-1866

c. Failure to pay the amount in full within the time period set forth above will result in further action for collection or other appropriate action.

- d Further, if timely payment is not received on or before the due date, a late payment handling charge of fifteen dollars (\$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.
 - e. The civil penalty constitutes a penalty within the meaning of 26 U.S.C. § 162(f).
6. This Consent Agreement is being voluntarily and knowingly entered into by Respondent and EPA to resolve (upon full payment of the civil penalty) Respondent's liability pursuant to Section 9006 for civil penalties for the violations of federal UST requirements specifically alleged in the Complaint issued in this case. 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.
 7. 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.
 8. 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, the Deputy Regional Administrator or the Regional Judicial Officer 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.

9. Respondent waives its right to confer with the Administrator pursuant to RCRA § 6001(b)(2), 42 U.S.C. § 6961 (b)(2).
10. Each undersigned signatory to this Consent Agreement certifies that he or she is duly and fully authorized to enter into and ratify this CA/FO and all the terms and conditions set forth in this CA/FO.
11. Each party hereto agrees to bear its own costs and fees in this matter.
12. Nothing in this Consent Agreement shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. §1341, or other applicable law.
13. Respondent consents to service upon Respondent of a copy of this CA/FO by an EPA employee other than the Regional Hearing Clerk.
14. 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.
15. Nothing in this document is intended or shall be construed to be a ruling on or determination of any issue related to a federal, state or local permit.
16. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present a potential for an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of right set forth in 40 C.F.R. §22.18(c). Further, EPA reserves any rights

and remedies available to it under RCRA, the regulations promulgated there under, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk.

Respondent reserves all available rights and defenses it may have, consistent with the terms of this CAFO, to defend itself in any such action.

17. The provisions of this Consent Agreement shall be binding upon Respondent, its officials, authorized representatives and successors or assigns and upon Complainant.
18. Pursuant to 40 C.F.R. §22.31(b), 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.

RESPONDENT:

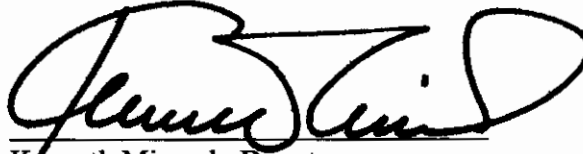
BY: Philip Moschitta
Philip Moschitta, Director
Northport VA Medical Center

DATE: 6/20/12

In the Matter of the U.S. Department of Veterans Affairs - Docket Number RCRA-02-2012-7502

RESPONDENT:

BY:



Kenneth Mizrach, Director
VA New Jersey Health Care System

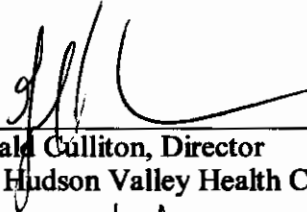
DATE:

7/15/12

In the Matter of the U.S. Department of Veterans Affairs - Docket Number RCRA-02-2012-7502

RESPONDENT:

BY:



Gerald Culliton, Director
VA Hudson Valley Health Care System


DATE:

6/28/12

In the Matter of the U.S. Department of Veterans Affairs - Docket Number RCRA-02-2012-7502

COMPLAINANT:

BY:


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

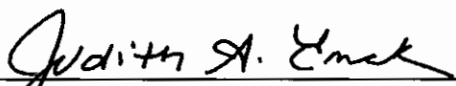
DATE:

JULY 19, 2012

In the Matter of the U.S. Department of Veterans Affairs - Docket Number RCRA-02-2012-7502

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 of In the Matter of the U.S. Department of Veterans Affairs, Docket Number RCRA-02-2012-7502. 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.



Judith A. Enck
Regional Administrator
U.S. Environmental Protection Agency -
Region 2
290 Broadway
New York, New York 10007-1866

DATE: 7/24/12

In the Matter of the U.S. Department of Veterans Affairs - Docket Number RCRA-02-2012-7502

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:

Original and One Copy
by Pouch mail:

The Honorable Susan L. Biro
Chief, Administrative law Judge
Office of Administrative law Judges
U. S. Environmental Protection Agency
Mail Code 1900L
1200 Pennsylvania Ave., NW, Suite 350
Washington, DC 20005

Copy by
Certified Mail/
Return Receipt Requested:

Jack P. DiTeodoro
General Attorney
U.S. Department of Veterans Affairs
Office of the Regional Counsel
800 Poly Place, Building 14
Brooklyn, NY 11209

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: July 26, 2012

Mildred N. Baez
New York, New York