

By entering into this Consent Agreement and Final Order (“CA/FO”) pursuant to 40 C.F.R. § 22.18, the parties agree 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. Respondent is Thomas Schnibbe, doing business as Bob’s Service Station located at 611 Warburton Avenue, Hastings-On-Hudson, New York 10706 (the “Facility”).
2. Respondent is a "person" as that term is defined Section 9001(6) of RCRA, 42 U.S.C. § 6991(6), and 40 C.F.R. § 280.12.
3. Respondent was the “owner” and an “operator” of “underground storage tanks” (“UST”) and “UST systems” as those terms are defined in Section 9001 of the Act, 42 U.S.C. §6991, and/or 40 C.F.R. § 280.12 at the Facility.
4. The Westchester County Department of Health Petroleum Bulk Storage Registration Certificate dated July 25, 2012 lists Respondent as the owner and operator of UST systems at the Facility.
5. On or about August 11, 2016, a duly designated representative of EPA conducted an UST inspection of Respondent’s federally regulated UST systems pursuant to Section 9005 of the Act, 42 U.S.C. § 6991d (hereinafter referred to as the “Inspection”). The purpose of the inspection was to determine whether Respondent was in compliance with the Act and UST regulations.
6. On December 22, 2016, a Notice of Violation/Information Request Letter (“NOV/IRL”) was sent to Respondent which described alleged specific non-compliance with the UST regulations and asked a series of questions regarding potential additional violations. Postal records show the NOV/IRL was received on December 29, 2016. A written response was due 30 days later or January 28, 2017.
7. No written response was received by EPA on or before January 28, 2017 and no request for an extension was made at that time.

8. In a letter dated February 22, 2017, the EPA issued an “Overdue Notice”, which was received by Respondent on February 27, 2017. The response to this letter was due within fifteen (15) days of Respondent’s receipt of the letter (by March 14, 2017). No response was received.

9. During the next several months, EPA made numerous attempts to contact Mr. Schnibbe requesting a response to the NOV/IRL without receiving a response.

10. On August 4, 2017, Respondent requested by email an additional 30 days to respond to the NOV/IRL which EPA granted on August 18, 2017

11. On September 15, 2017 Respondent emailed EPA a copy of a pollution liability insurance certificate as a demonstration of financial responsibility, one of several alleged violations cited in the NOV/IRL.

12. On November 1, 2017, EPA sent an email to Respondent informing him that he still needed to give a complete written response to the NOV/IRL but none was provided.

13. On September 28, 2018, EPA issued to Respondent a “Complaint, Compliance Order, and Notice of Opportunity for Hearing” alleging four violations of the UST regulations including: (1) the failure to respond to an NOV/IRL in violation of 40 C.F.R. § 280.34 and Section 9005 of the Act, 42 U.S.C. § 6991d; (2) the failure to test annually the automatic line leak detectors for the piping associated with the USTs in violation of 40 C.F.R. § 280.44(a) and § 280 .45(b); (3) the failure to report a suspected release within 24 hours to the implementing agency and follow required procedures in violation of 40 C.F.R. § 280.50 and § 280.52; and (4) the failure to comply with the financial responsibility requirement for UST owners and operations in violation of 40 C.F.R § 280.93(a).

14. The parties have agreed to resolve this matter as herein provided.

CONSENT AGREEMENT

Based upon the foregoing, and pursuant to Section 9006 of the Act, 42 U.S.C. §6991e, and Section 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. §22.18, it is hereby agreed that:

1. For purposes of this proceeding, Respondent (a) admits the jurisdictional basis of this action; (b) neither admits nor denies the Findings of Fact and Conclusions of Law, above; (c) consents to the conditions specified in the Consent Agreement; and (d) consents to the issuance of the Final Order.

2. Respondent shall pay a civil penalty to EPA in the total amount of **SIXTEEN THOUSAND THREE HUNDRED AND SEVENTY ONE DOLLARS (\$16,371.00)**. Payment of the civil penalty shall be made by cashier's or certified check or by Electronic Funds Transfer ("EFT"). If the payment is made by check, then the check shall be made payable to the "**Treasurer, United States of America**" and shall be mailed to:

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

The check shall be identified with a notation thereon listing **In the Matter of Thomas Schnibbe, Docket No. RCRA-02-2018-7503**. 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: **Thomas Schnibbe**
 - 7) Case Number: **RCRA-02-2018-7503**
- a. The payment must be received at the above address on or before thirty (30) 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 penalty in full according to the above provisions may result in referral of this matter to the United States Department of Justice or the United States Department of Treasury for collection or other appropriate action.

- c. Further, if timely payment is not received on or before its due date, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to the Debt Collection Act, 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 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.
- d. A 6% per annum penalty will be applied on any principal amount not paid within 90 days of the due date.

3. Respondent shall operate any UST or UST Systems that he owns or operates in full compliance with all applicable 40 C.F.R. Part 280 requirements, including the regulations cited in EPA's Complaint and mentioned in paragraph 14 of the above Findings of Fact and Conclusions of Law.

4. This CA/FO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state, or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

5. Full payment of the penalty described in paragraph 2 of the Consent Agreement, shall only resolve Respondent's liability for federal civil penalties for the violation(s) and facts alleged in the Complaint issued in this matter. Full payment of this penalty shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

6. Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable and consents to its issuance and terms. Respondent consents to the issuance of the accompanying Final Order. Respondent agrees that all the terms of settlement are set forth herein.

7. Respondent explicitly and knowingly consents to the assessment of the civil penalty as set forth in this Consent Agreement and agrees to pay the penalty in accordance with the terms of this Consent Agreement.

8. By executing this Consent Agreement, Respondent explicitly waives his right to request or to seek any Hearing on the Complaint or on any of the allegations asserted therein, on this Consent Agreement or the Findings of Fact and Conclusions of Law herein, or on the accompanying Final Order.

9. By executing this Consent Agreement, Respondent waives his right to appeal the proposed Final Order accompanying the Consent Agreement.

10. This CA/FO 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 in one to enforce or achieve compliance with the terms of this Consent Agreement and its accompanying Final Order.

11. Respondent certifies that he 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.

12. The provisions of this CA/FO shall be binding upon Respondent, his authorized representatives and any successor entity that may assume the Respondent's obligations.

13. Each party hereto agrees to bear its own costs and fees in this matter.

14. Respondent consents to service upon himself of a copy of this CA/FO by an EPA employee other than the Regional Hearing Clerk.

15. Any responses, documentation, and other communication submitted in connection with this Consent Agreement shall be sent to:

Hiep Tran
Physical Scientist
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency – Region 2
290 Broadway, 20th Floor
New York, New York 10007

and

Stuart Keith
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency – Region 2
290 Broadway, 16th Floor
New York, New York 10007-1866

Unless the above-named EPA contacts are later advised otherwise in writing, EPA shall address any written future correspondence (including any correspondence related to payment of the penalty) to Respondent at the following address:

Thomas Schnibbe
Bob's Service Station
611 Warburton Avenue
Hastings-On-Hudson, NY 10706

16. Pursuant to 40 C.F.R. §22.31(b), the Effective Date of the Final Order herein shall be the date when it is filed with the Regional Hearing Clerk of the United States Environmental Protection Agency, Region 2.

In the Matter of Thomas Schnibbe
Docket No. RCRA-02-2018-7503

RESPONDENT: Thomas Schnibbe

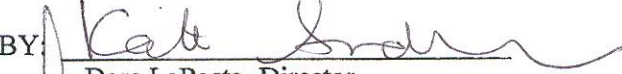
BY: 

Name (print): THOMAS SCHNIBBE

Title: OWNER

Date: 2/4/19

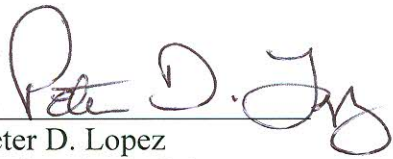
COMPLAINANT: U.S. Environmental Protection Agency, Region 2

BY: 
Dore LaPosta, Director
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency, Region 2
290 Broadway
New York, New York 10007-1866

DATE: FEB 11 2019

FINAL ORDER

The Regional Administrator of the U.S. Environmental Protection Agency, Region 2, signs and concurs in the foregoing Consent Agreement. The Consent Agreement, entered into by the parties to this matter, is hereby ratified, incorporated herein, and issued as an Order pursuant to Section 9006 of the Act and 40 C.F.R. § 22.18(b)(3). The Effective Date of this Order shall be the date of its filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 2, New York, New York. 40 C.F.R. § 22.31(b).

BY: 
Peter D. Lopez
Regional Administrator
U.S. Environmental Protection Agency - Region 2
290 Broadway
New York, New York 10007-1866

DATE: 2/12/19

In the Matter of Thomas Schnibbe
Docket No. RCRA-02-2018-7503

CERTIFICATE OF SERVICE

I certify that I have on this day caused to be sent the foregoing Consent Agreement and Final Order, bearing the above-referenced docket number, in the following manner to the respective addressees below:

Original and one copy by hand to:

Office of the Regional Hearing Clerk.
U.S. EPA- Region 2
290 Broadway, 16th floor
New York, New York 10007-1866

Copy by Certified Mail Return Receipt Requested:

Joseph F. Castiglione
Young/Sommer LLC
Attorneys for Thomas Schnibbe
Executive Woods
Five Palisades Drive
Albany, NY 12205

Dated: 2/15/19
New York, New York

Joseph F. Castiglione