

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

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HEARING CLERK

IN THE MATTER OF:)

Florida Air National Guard)
U.S. Air Force)
125th Fighter Wing)
14300 Fang Drive)
Jacksonville, FL 32218-7933)

Docket No.: RCRA-UST-04-2012-0025)
Proceeding under Section 9006)
of the Resource Conservation)
and Recovery Act, as amended)
42 U.S.C. § 6991e)

RESPONDENT)
_____)

CONSENT AGREEMENT

I. NATURE OF THE ACTION

1. This is a civil administrative enforcement action, ordering compliance with the requirements of Subtitle I of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §§ 6991 *et seq.* This action seeks civil penalties pursuant to Sections 9006 and 9007 of RCRA, 42 U.S.C. §§ 6991*e* and 6991*f*, for alleged violations of Subtitle I of RCRA and the regulations promulgated pursuant thereto, set forth at Title 40 of the Code of Federal Regulations (40 C.F.R.), Part 280.

2. *The Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, 40 C.F.R. Part 22, provide that where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order (CAFO). 40 C.F.R. §§ 22.13 and 22.18(b)(2-3).

3. The parties have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18, and desire to settle this action. Accordingly, before any testimony has been taken upon the pleadings and without any admission of violation or adjudication of any issue of fact or law, and in accordance with 40 C.F.R. § 22.13(b), the parties have agreed to the execution of this CAFO, and Respondent hereby agrees to comply with the terms of this CAFO.

II. THE PARTIES

4. Complainant is the Director, RCRA Division, Region 4, U.S. Environmental Protection Agency (EPA). Complainant is authorized to issue the instant CAFO pursuant to Sections 9006 and 9007 of RCRA, 42 U.S.C. §§ 6991*e* and 6991*f*, and applicable delegations of authority.

5. Respondent is the Florida Air National Guard, 125th Fighter Wing, a component of the U.S. Air Force, and the owner and operator of five (5) underground storage tank (UST) systems located at 14300 Fang Drive, Jacksonville, Florida, 32218 (the Facility).

III. PRELIMINARY STATEMENTS

6. This CAFO resolves violations of RCRA Subtitle I, 42 U.S.C. §§ 6991-6991m, with respect to the UST systems at the Facility.

7. Section 9003 of RCRA, 42 U.S.C. § 6991b, requires the EPA to develop and promulgate release detection, prevention and corrective action regulations applicable to all owners and operators of USTs as may be necessary to protect human health and the environment. The implementing regulations are codified at 40 C.F.R. Part 280.

8. Section 9007 of RCRA, 42 U.S.C. § 6991f, provides, *inter alia*, that each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal Government (1) having jurisdiction over any UST system, or (2) engaged in any activity resulting, or which may result, in the installation, operation, management, or closure of any UST, release response activities related thereto, or in the delivery, acceptance, or deposit of any regulated substance to an UST or UST system, shall be subject to, and comply with, all Federal, State, interstate, and local requirements, both substantive and procedural, respecting USTs in the same manner, and to the same extent, as any person is subject to such requirements.

9. Section 9006(d) of RCRA, 42 U.S.C. § 6991e(d), authorizes the EPA to assess a civil penalty against any owner or operator of an UST who fails to comply with, *inter alia*, any requirement or standard promulgated under Section 9003 of RCRA, 42 U.S.C. § 6991b.

10. Pursuant to 40 C.F.R. § 280.40(a), owners and operators of USTs must, *inter alia*, use a method (or combination of methods) for release detection that meets the performance requirements of 40 C.F.R. §§ 280.43 (for tanks) and 280.44 (for piping).

11. Pursuant to the Memorandum of Agreement between EPA and the State of Florida, dated August 30, 2007, Complainant has given notice of this action to the State.

IV. ALLEGATIONS AND DETERMINATIONS

12. Paragraphs 1 through 11 are incorporated herein by reference.

13. Respondent is a department, agency or instrumentality of the executive branch of the federal government.

14. Respondent is a "person" as defined in Section 9001(5) of RCRA, 42 U.S.C. § 6991(5), and 40 C.F.R. § 280.12.

15. At all times relevant to this CAFO, Respondent was the "owner" and "operator" of

¶

"underground storage tanks" or "USTs" and "UST systems," as those terms are defined in Section 9001 of RCRA, 42 U.S.C. § 6991, and/or 40 C.F.R. § 280.12, located at the Facility. The USTs at the Facility were used to store a "regulated substance," as that term is defined in Section 9001 of RCRA, 42 U.S.C. § 6991, and 40 C.F.R. § 280.12, until August 27, 2012, when the USTs at the Facility were emptied and taken out-of-service.

16. On March 21, 2012, the EPA conducted an announced UST compliance evaluation inspection at the Facility.

17. At the time of the inspection, Respondent was unable to demonstrate that it was using a method for release detection that meets the performance requirements of 40 C.F.R. § 280.43.

18. Complainant therefore alleges that Respondent violated 40 C.F.R. § 280.40(a) by failing to use a method for release detection that meets the performance standards of 40 C.F.R. § 280.43.

V. TERMS OF AGREEMENT

Based on the foregoing, the parties agree to the following:

19. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set out in this CAFO.

18. Respondent neither admits nor denies the specific factual allegations or alleged violations set out in this CAFO.

19. Respondent waives any right to contest the allegations and its right to appeal this CAFO, and agrees not to contest the EPA's jurisdiction with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of this CAFO.

20. Respondent waives its right to challenge the validity of this CAFO and the settlement of the matters addressed in this CAFO based on any issue related to the Paperwork Reduction Act.

21. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8, to be served with and reply to any memorandum or communication addressed to EPA officials, or to be present during any discussion with EPA officials, where the purpose of such discussion, memorandum or communication is to persuade such officials to accept and issue this CAFO. Respondent expressly waives the right to confer with the Administrator pursuant to Section 6001(b)(2) of RCRA, 42 U.S.C. § 6961(b)(2).

22. Respondent hereby expressly waives its right to a hearing on any issue of law or fact set forth in this Consent Agreement and any right to appeal the accompanying Final Order.

23. The parties agree that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of RCRA Subtitle I.

24. The parties agree that compliance with the terms of this CAFO shall resolve the Respondent's liability for civil penalties for the violations and facts alleged and stipulated to in this CAFO.

25. Respondent consents to the issuance of this CAFO, and agrees to comply with its terms and conditions.

26. The person signing this Consent Agreement on behalf of Respondent certifies to the EPA that Respondent, as of the date of its execution of this Consent Agreement, is in compliance with the provisions of RCRA, Subtitle I, 42 U.S.C. §§6991-6991*m*, and its implementing regulations, at the Facility. This certification is based on the personal knowledge of the signer or an inquiry of the person or persons responsible for the Facility's compliance with Subtitle I of RCRA, 42 U.S.C. §§ 6991 et seq.

27. The parties agree that they will pay their own costs and attorney's fees.

28. The headings in this CAFO are for convenience of reference only and shall not affect interpretation of this CAFO.

29. The provisions of this CAFO shall be binding upon the EPA and Respondent.

30. This CAFO 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, nor does this CAFO constitute a waiver, suspension or modification of the requirements of RCRA Subtitle I, 42 U.S.C. §§ 6991-6991*m*, or any regulations promulgated thereunder.

31. Complainant shall have the right to institute further actions to obtain appropriate relief if Complainant obtains evidence that the information provided and/or representations made by Respondent to the EPA regarding matters at issue in this CAFO are false or, in any material respect, inaccurate. Respondent reserves all available rights and defenses it may have, consistent with the terms of this CAFO, to defend itself in any such action.

VI. PAYMENT OF CIVIL PENALTY

32. In settlement of Complainant's claim for civil penalties for the violation alleged in this CAFO, Respondent agrees to pay a civil penalty in the amount of **SEVENTEEN THOUSAND EIGHT HUNDRED AND EIGHTY FOUR DOLLARS (\$17,884)**. The civil penalty amount is due within sixty (60) calendar days from the effective date of this CAFO.

33. The aforesaid settlement amount was based upon Complainant's consideration of a number of factors, including, but not limited to, the statutory factors of the seriousness of Respondent's violation and good faith efforts by Respondent to comply with all applicable requirements of RCRA, the maximum civil penalties established under RCRA § 9006(d), 42 U.S.C. § 6991e(d), as well as applicable portions of EPA's Penalty Guidance for Violations of UST Regulations dated November 4, 1990.

34. Payment of the civil penalty amount described above shall be made by cashier's or certified check, or electronic wire transfer (Automated Clearing House (ACH) (also known as REX or remittance express) or on-line, in the following manner:

- a. All payments by Respondent shall reference its name and address, and the docket number for this matter.
- b. If paying by check, the check shall be payable to: **Treasurer, United States of America.**
- c. Payment made by check and sent by regular mail shall be addressed and tendered to:

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

- d. Payment made by check and sent by non-U.S. Postal express mail delivery shall be addressed and tendered to:

U.S. Bank
Government Lockbox No. 979077
U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101
Contact: Natelie Pearson at (314) 418-4087
(314) 418-1028

- e. Payment made by electronic wire transfer shall be directed to:

Federal Reserve Bank New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read "D 6801027
Environmental Protection Agency"

f. Electronic payments made by ACH (or REX), shall be directed to:

US Treasury REX/Cashlink ACH Reciever
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - checking
5700 Rivertech Court
Riverdale, MD 20737
Contact: John Schmid, (202) 874-7026

g. On-Line Payment Options:

www.PAY.gov

Enter sfo 1.1 in the search field. Open and complete the form.

h. The customer service phone numbers for the above payment centers are:

212-720-5000 (wire transfers, Federal Reserve Bank of New York)
800-762-4224 (ACH/Wire Info, PNC Bank)

Additional payment guidance is available at:

http://www.epa.gov/ocfo/finservices/make_a_payment.htm

35. Respondent shall submit a copy of payment to:

Patricia A. Bullock
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

and to:

William E. Truman
Chief, Underground Storage Tank Section
U.S. Environmental Protection Agency, Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

36. In accordance with 40 C.F.R. § 13.3, any debt owed to the EPA as a result of Respondent's failure to make timely payments in accordance with Paragraph 32 above, shall be

resolved by negotiation between the EPA and Respondent or by referral to the General Accounting Office, now referred to as the Government Accountability Office (PL-108-271).

VII. RESERVATION OF RIGHTS

37. Notwithstanding any other provision of this CAFO, an enforcement action may be brought pursuant to Section 9003(h) of RCRA, 42 U.S.C. § 6991b(h), or other statutory authority, should the EPA find that the release of regulated substances from an UST may have occurred and that implementation of corrective action is necessary to address such release.

38. Complainant reserves the right to take enforcement action against Respondent for any future violations of RCRA and its implementing regulations and to enforce the terms and conditions of this CAFO.

39. Except as expressly provided herein, nothing in this CAFO shall constitute or be construed as prohibiting, altering, or in any way limiting the ability of the EPA to seek any other remedies or sanctions, including the right to pursue criminal enforcement or the right to initiate an action for imminent and substantial endangerment, available by virtue of Respondent's violation of this CAFO or of the statutes and regulations upon which this CAFO is based, or for Respondent's violation of any applicable provisions of law. Compliance with this CAFO shall not be a defense against any action subsequently commenced pursuant to federal laws and regulations administered by the EPA, and it is the responsibility of the Respondent to comply with such laws and regulations.

40. Except as expressly provided herein, nothing in this CAFO shall constitute a release from any claim (civil or criminal), 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 Respondent's management of the USTs located at its Facility.

41. Respondent reserves all available rights and defenses it may have, consistent with the terms of this CAFO, to defend itself in any such action brought pursuant to paragraphs 37-40 above.

42. This CAFO may be amended or modified only by written agreement executed by both the EPA and Respondent.

43. The provisions of this CAFO shall be deemed satisfied when Respondent has fully fulfilled the payment obligations required by this CAFO.

VIII. PARTIES BOUND

44. This CAFO shall be binding upon the parties and their successors and assigns. Respondent shall cause its officers, directors, employees, agents, and all persons, including independent contractors, contractors, and consultants acting under or for Respondent, to comply with the provisions hereof in connection with any activity subject to this CAFO.

45. No change in military command, ownership, partnership, corporate, or legal status relating to the Facility will in any way alter Respondent's obligations and responsibilities under this CAFO.

46. The undersigned representative of Respondent hereby certifies that she or he is fully authorized to enter into this CAFO and to execute and legally bind Respondent to it.

IX. SERVICE OF DOCUMENTS

47. A copy of any legal documents that Respondent files in this action should be sent to the following attorney who represents the EPA in this matter and who is authorized to receive service for the EPA in this proceeding:

Roberto X. Busó, Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

48. A copy of any documents that Complainant files in this action shall be sent to the Respondent at the following address:

Burton Gray
Office of the Chief Counsel
National Guard Bureau (NGB-JA)
AHS-Building 2, Suite TS-319B
111 S. George Mason Dr.
Arlington, VA 22204
703-607-2740

and to:

James O. Eifert, Colonel, FLANG
Commander, 125th Fighter Wing
Florida Air National Guard
14300 Fang Drive
Jacksonville, Florida 32218-7933

X. SEVERABILITY

49. It is the intent of the parties that the provisions of this CAFO are severable. If any provision or authority of this CAFO or the application of this CAFO to any party or circumstance is held by any judicial or administrative authority to be invalid or unenforceable, the application of such provision to other parties or circumstances and the remainder of this CAFO shall remain in force and shall not be affected thereby.

XI. OTHER APPLICABLE LAWS

50. All actions required to be taken pursuant to this CAFO shall be undertaken in accordance with the requirements of all applicable laws and regulations. Respondent shall obtain or cause their representatives to obtain all necessary permits and approvals as required.

XII. ADEQUACY OF FUNDS; ANTIDEFICIENCY ACT

51. Failure to obtain adequate funds or appropriations from Congress does not release Respondent from its obligation to comply with RCRA, the applicable regulations thereunder, or with this CAFO. Nothing in this CAFO shall be interpreted to require obligation or payment of funds in violation of the Antideficiency Act, 31 U.S.C. § 1314.

XIII. SUBSEQUENT MODIFICATIONS

52. This CAFO may only be modified or amended in writing signed by the authorized signatories below.

XV. EFFECTIVE DATE

53. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO:

FOR RESPONDENT

By: James O. Eifert
James O. Eifert, Colonel, FLANG
Commander, 125th Fighter Wing
Florida Air National Guard
14300 Fang Drive
Jacksonville, Florida 32218-7933

Dated: 27 Sep 12

FOR U.S. Environmental Protection Agency, Complainant

By: G. Alan Farmer for
G. Alan Farmer, Director
RCRA Division
U.S. EPA, Region 4

Dated: 10/3/12

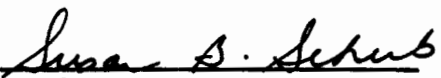
**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

| | | |
|--------------------------------|---|-----------------------------------|
| IN THE MATTER OF: |) | Docket No.: RCRA-UST-04-2012-0025 |
| |) | |
| Florida Air National Guard |) | |
| U.S. Air Force |) | Proceeding under Section 9006 |
| 125 th Fighter Wing |) | of the Resource Conservation |
| 14300 Fang Drive |) | and Recovery Act, as amended |
| Jacksonville, FL 32218-7933 |) | 42 U.S.C. § 6991e |
| |) | |
| |) | |
| RESPONDENT |) | |
| _____ |) | |

FINAL ORDER

The foregoing Consent Agreement is hereby approved, ratified and incorporated by reference into this Final Order in accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules of Practice), 40 C.F.R. Part 22. The Respondent is hereby ORDERED to comply with all of the terms of the foregoing Consent Agreement effective immediately upon filing of this Consent Agreement and Final Order with the Regional Hearing Clerk. This Order disposes of matters under RCRA Subtitle I pursuant to 40 C.F.R. §§ 22.18 and 22.31.

BEING AGREED, IT IS SO ORDERED this 4 day of Oct., 2012

BY: 
Susan B. Schub
Regional Judicial Officer
United States Environmental Protection Agency, Region 4

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing Consent Agreement and the attached Final Order, in the Matter of Florida Air National Guard, U.S. Air Force, 125th Fighter Wing, Docket Number: RCRA-UST-04-2012-0025, on the parties listed below in the manner indicated:

Roberto X. Busó,
Assistant Regional Counsel
U.S. Environmental Protection Agency
Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, Georgia 30303

(Via EPA's internal mail)

Quantindra Smith
RCRA Division
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

(Via EPA's internal mail)

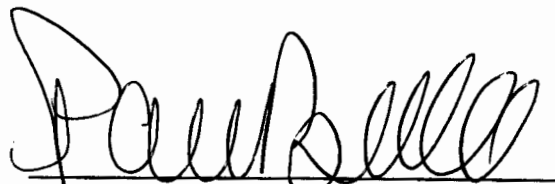
Burton Gray
Office of the Chief Counsel
National Guard Bureau (NGB-JA)
AHS-Building 2, Suite TS-319B
111 S. George Mason Dr.
Arlington, VA 22204

(Via Certified Mail- Return Receipt Requested)

James O. Eifert, Colonel, FLANG
Commander, 125th Fighter Wing
Florida Air National Guard
14300 Fang Drive
Jacksonville, Florida 32218-7933

(Via Certified Mail- Return Receipt Requested)

Date 10-9-12



Patricia Bullock, Regional Hearing Clerk
U.S. Environmental Protection Agency
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
(404) 562-9511