

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. Environmental Protection Agency
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In the Matter of :
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Rome Gas Inc., :
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Respondent. :
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Proceeding under Section 9006 of :
the Solid Waste Disposal Act, as amended :
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CONSENT AGREEMENT
AND
FINAL ORDER

Docket No.
RCRA-02-2017-7504

PRELIMINARY STATEMENT

This administrative proceeding for the assessment of a civil penalty is instituted pursuant to Section 9006 of the Solid Waste Disposal Act, as amended, 42 U.S.C. § 6991e *et seq.* (the “Act” or “RCRA”), and the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits,” 40 Code of Federal Regulations (“C.F.R.”) Part 22. The Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance, Region 2, United States Environmental Protection Agency (“EPA” or “Complainant”), issued a “Complaint, Compliance Order, and Notice of Opportunity for Hearing,” (“Original Complaint”) to Respondent Rome Gas Inc. on September 29, 2017 and issued an Amended Complaint on August 2, 2018 (“Amended Complaint”). Complainant and Respondent agree that settling the Amended Complaint by entering into this Consent Agreement and Final Order (“CA/FO”), pursuant to 40 C.F.R. Sections 22.18(b)(2) and (3), is an appropriate means of resolving this matter without further litigation. No findings of fact or conclusions of law have been judicially or administratively adjudicated.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent is Rome Gas Inc. (hereinafter “Respondent”), a corporation organized pursuant to the laws of the State of New York.
2. Respondent was, for the times relevant to the matters discussed herein, the “owner” and/or “operator” of “underground storage tanks” (“USTs”) 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, that are located at the following facilities:
 - a. A1 Easy Mart, 49 Union St., Sidney, NY
 - b. P & H Petroleum (Runway) 8516 Seneca Turnpike, New Hartford, NY
 - c. Runway # 4, 4 North Ann. St., Little Falls, NY
 - d. Runway #6371, 6371 State Route 167, Dolgeville, NY
 - e. Runway Mobil #105, 2794 State Route 28, Thendara, NY
 - f. Saini Associates, Inc., 976 Conklin Road, Conklin, NY
 - g. Johnson Sunoco, 143 Riverside Drive; Johnson City, NY
 - h. Runway # 684, 684 Conklin St., Binghamton, NY
 - i. Runway #429, 429-431 East Main St., Endicott, NY
 - j. JK Gas Mart, 3 Sova Road, Harpursville, NY
3. Pursuant to 40 C.F.R. § 280.34, owners and operators of UST systems must cooperate fully with inspections by the implementing agency, as well as requests for document submission, testing, and monitoring by the owner or operator pursuant to Section 9005 of Subtitle I of the Resource Conservation and Recovery Act, as amended (“RCRA”).
4. Pursuant to Section 9005 of the Act, 42 U.S.C. § 6991d, between January 7 through 13, 2016, an authorized representative of EPA inspected the above ten (10) facilities

which have USTs to determine their compliance with the Act and 40 C.F.R. Part 280. Sufficient documentation of compliance was not available or provided during the inspections.

5. Pursuant to Section 9005 of the Act, 42 U.S.C. § 6991d, and 40 C.F.R. § 280.34, EPA sent RCRA § 9005 Information Request Letters (“IRLs”), dated March 10, 2016 (the “First IRL”) and December 23, 2016 (the “Second IRL”), to Respondent in order to determine Respondent’s compliance with the Act and 40 C.F.R. Part 280. Responses were due 30 days after receipt of the IRLs which occurred on April 16, 2016 and January 26, 2017.

6. Respondent submitted a partial response to the First IRL on June 8, 2016. Respondent submitted a partial response to the Second IRL on May 1, 2017.

7. Following the issuance of the Original Complaint, on November 30, 2017, EPA met with Respondent on November 30, 2017 to discuss EPA’s allegations that Respondent had in multiple ways failed to comply with the UST regulations at its facilities.

8. Respondent belatedly submitted additional information responding to the questions in the First and Second IRLs. Respondent made these submittals on various dates between November 30, 2017 through February 2, 2018 to establish its compliance with UST requirements and to refute EPA’s allegations in the Original Complaint. Based on these later submitted information and documentation, EPA issued the Amended Complaint, dropping many of the earlier alleged violations and alleging only that Respondent had failed to respond timely to EPA’s inquiries.

9. Respondent’s failure to fully and timely respond to the First and Second IRLs constitutes violations of 40 C.F.R. § 280.34 and Section 9005 of the Act, 42 U.S.C. § 6991d.

CONSENT AGREEMENT

Based on the foregoing, and pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e, and in accordance with the Consolidated Rules of Practice at 40 C.F.R. Part 22, it is hereby agreed by

and between the parties hereto, and accepted by Respondent, that Respondent voluntarily and knowingly agrees to, and shall comply with, the following terms:

1. Respondent shall hereafter maintain compliance with Subtitle I of RCRA and its implementing regulations set forth at 40 C.F.R. Part 280.
2. Respondent certifies, as of the date of execution of this CA/FO, that it is in compliance with the applicable provisions of 40 C.F.R. Part 280.
3. Respondent further certifies that the records and information it submitted to EPA between November 30, 2017 and February 2, 2018 are accurate and existed during the timeperiods for which EPA had alleged violations in the Original Complaint, i.e., they were not created after the fact to mislead EPA officials.
4. For the purposes of this Consent Agreement, Respondent: (a) admits all jurisdictional requirements for this action have been satisfied; and (b) neither admits nor denies the specific factual determinations and conclusions of law contained in the above "Findings of Fact and Conclusions of Law" section.
5. Respondent shall pay, by cashier's or certified check or electronic payment via Fedwire, a civil penalty in the amount of **FIVE THOUSAND DOLLARS (\$5,000)**. Such payment shall be made by cashier's check or certified check or electronically by Fedwire. 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 the following: ***IN THE MATTER OF ROME GAS INC.***, and shall bear thereon the **Docket No. RCRA-02-2017-7504**. If Respondent

chooses to make the payment by Fedwire, 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: **ROME GAS INC.**
- 7) Number: **RCRA 02-2017-7504.**

6. The payment must be received at the above address (or account of EPA) on or before thirty (30) calendar days from the date of the signature of the Final Order, which is located at the end of this CA/FO. (The date by which the payment must be received shall hereinafter be referred to as the “due date.”)

- a. Failure to pay the requisite civil penalty amount in full according to the above provisions may result in the referral of this matter to the United States Department of Justice or Department of the Treasury for collection or other appropriate action.
- b. Furthermore, if payment is not made on or before the date specified in this document, interest for said payment shall 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 date said payment was required to have been made through the date said payment has been received. In addition, a late payment handling charge of \$15.00 will be assessed for each thirty (30) calendar day period or any portion thereof, following the date the payment was to have been made, in which payment of the amount remains in arrears.
- c. In addition, a 6% per annum penalty will be applied to any principal amount that has not been received by the EPA within ninety (90) calendar days of the deadline for payment. Any such non-payment penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid.
- d. The civil penalty provided for herein constitutes “penalt[ies]” within the meaning of 26 U.S.C. § 162(f), and are not deductible expenditures for purposes of federal or state law.

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

Mr. Paul Sacker
Environmental Engineer
RCRA Compliance Branch
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency, Region 2
290 Broadway, Floor 20
New York, NY 10007-1866

and

Karen L. Taylor, Esq.
Assistant Regional Counsel
US Environmental Protection Agency, Region 2
290 Broadway, Floor 16
New York, NY 10007-1866

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

Mr. John Tal
Rome Gas Inc.
114 Danberry Circle
New Hartford, NY 13413

8. Nothing herein shall be read to preclude EPA or the United States from pursuing appropriate injunctive or other equitable relief or criminal sanctions for any violation of the law.

9. Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable, and consents to its issuance and its terms.

10. Respondent consents to the issuance of the accompanying Final Order.

11. Respondent agrees that all terms of settlement are set forth herein.

12. 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.

13. Full payment of the penalty described in paragraph "5" of this Section, above, shall only resolve Respondent's liability for federal civil penalties for the violations alleged in the Amended Complaint. 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.

14. Respondent hereby waives its right to seek or to obtain any hearing pursuant to Subpart D of 40 C.F.R. Part 22 or other judicial proceeding on this Consent Agreement or on the Findings of Fact and Conclusions of Law herein or on the accompanying Final Order.

15. Respondent agrees not to contest the validity or any term of this Consent Agreement and Final Order in any action brought: a) by the United States, including EPA, to enforce this Consent Agreement or Final Order; or b) to enforce a judgment relating to this Consent Agreement and Final Order. Any failure by Respondent to perform fully any requirement herein will be considered a violation of this Consent Agreement and Final Order, and may subject Respondent to a civil judicial action by the United States to enforce the provisions of this Consent Agreement and Final Order.

16. Respondent waives any rights it may have to appeal this Consent Agreement and the accompanying Final Order.

17. This Consent Agreement and Final Order does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable federal, state, or local laws, rules, or regulations, nor shall it be construed to be a ruling on, or a determination of, any issue related to any federal, state or local permit. This Consent Agreement and Final Order does not waive,


extinguish, or otherwise affect Respondent's obligation to comply with all applicable provisions of RCRA and the regulations promulgated thereunder.

18. The signatory for Respondent certifies that he or she is duly and fully authorized to enter into this Consent Agreement and all the terms and conditions set forth in this Consent Agreement.

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

20. Respondent consents to service upon them of a copy of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk.

In the Matter of Rome Gas Inc.
Docket Number RCRA-02-2017-7504

RESPONDENT: BY: 
(SIGNATURE)
NAME: PETER TAL
(PLEASE PRINT)
TITLE: PRESIDENT
DATE: 9/25/18

In the Matter of Rome Gas Inc.
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COMPLAINANT:



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

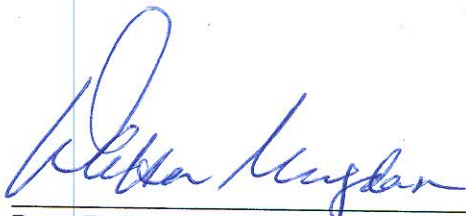
DATE: 9/26/18

In the Matter of Rome Gas Inc.
Docket No. RCRA-02-2017-7504

FINAL ORDER

The Regional Administrator of Region 2 of the U.S. Environmental Protection Agency signs and concurs in the foregoing Consent Agreement resolving *In the Matter of Rome Gas Inc.*, bearing Docket Number RCRA-02-2017-7504. Said Consent Agreement, having been duly accepted and entered into by the parties, is hereby ratified, incorporated into, and issued as this Final Order.

The Effective Date of this Order shall be the date of filing with the Regional Hearing Clerk of EPA - Region 2 (40 C.F.R. § 22.31(b)). This Final Order is being entered pursuant to the authority of 40 C.F.R. § 22.18(b)(3) and shall constitute an order issued pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e.

for 

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

Date: September 27, 2018

In the Matter of Rome Gas Inc.
Docket Number RCRA-02-2017-7504

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. Environmental Protection Agency, Region 2
290 Broadway, Floor 16
New York, NY 10007-1866

Copy by Certified Mail Return Receipt Requested:

Mr. John Tal
Rome Gas Inc.
114 Danberry Circle
New Hartford, NY 13413

Dated: Oct. 1, 2018
New York, NY


Yolanda Majette
Waste and Toxic Substances Branch Secretary
Office of Regional Counsel