



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

SEP 14 2009

REPLY TO THE ATTENTION OF:

LR-8J

CERTIFIED MAIL #: 7001 0320 0006 1452 3468
RETURN RECEIPT REQUESTED

Ms. Pamela McCombe
Director of Safety
Greater Cleveland Regional Transit Authority
1240 West 6th Street
Cleveland, Ohio 44113-1331

Re: Consent Agreement and Final Order
In re Greater Cleveland Regional Transit Authority, Docket No. **RUST-05-2009-0012**

Dear Ms. McCombe:

Enclosed, please find an original, signed and fully-executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The CAFO was filed with the Regional Hearing Clerk on SEP 14 2009

Please pay the civil penalty in the amount of \$6,000 in the manner prescribed in Section VII of the CAFO, and reference your check with the number BD 2750906M014 and docket number RUST-05-2009-0012. Payment is due within 30 days of the effective date of the CAFO. Also, please note the obligation to implement the Supplemental Environmental Project in accordance with Section VIII of the CAFO.

Thank you for your cooperation in resolving this matter.

Sincerely,

Willie H. Harris, P.E.
Chief, RCRA Branch
Land and Chemicals Division

Enclosures

cc: Kathleen M. Minahan, GCRTA
Steven Krichbaum, Ohio State Fire Marshal, Bureau of Underground Storage Tank Regulations

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:

**Greater Cleveland Regional Transit
Authority, 1240 West 6th Street,
Cleveland, Ohio 44113-1331**

Respondent.

)
) **Docket No. RUST-05-2009-0012**
)
) Proceedings Under Section 9006(a) of the
) Solid Waste Disposal Act, as amended,
) 42 U.S.C. § 6991e(a)
)

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SEP 14 2009

CONSENT AGREEMENT

I. Jurisdiction and Authority

**REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY**

1. This civil administrative action is commenced and settled under the authority vested in the Administrator of the United States Environmental Protection Agency (U.S. EPA) pursuant to Section 9006 of the Solid Waste Disposal Act (SWDA), 42 U.S.C. § 6991e, and Sections 22.13(b) and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules) as codified at 40 C.F.R. Part 22.
2. The Complainant is the Director of the Land and Chemicals Division, United States Environmental Protection Agency (U.S. EPA), Region 5.
3. Respondent is the Greater Cleveland Regional Transit Authority, 1240 West 6th Street, Cleveland, Ohio 44113-1331.
4. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.
5. This Consent Agreement and its accompanying Final Order (CAFO) simultaneously commences and concludes this administrative penalty proceeding, as provided by Sections 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, 40 C.F.R. §§ 22.13(b)

and 22.18(b)(2) and (3), for Respondent's alleged violations of Sections 280.31(b) and 280.42(a) and (b) of the Underground Storage Tank (UST) Regulations, 40 C.F.R. §§ 280.31(b) and 280.42(a) and (b).

6. Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

II. Statutory and Regulatory Background

7. Subchapter IX of the SWDA, 42 U.S.C. § 6991 *et seq.*, regulates the installation and use of underground storage tanks (USTs) which are defined in Section 9001(1) of the SWDA, 42 U.S.C. § 6991(1), and 40 C.F.R. § 280.12.

8. Section 9003 of SWDA, 42 U.S. C. § 6991b, requires the Administrator of U.S. EPA to promulgate release detection, prevention and correction regulations applicable to all owners and operators of USTs. These regulations are codified in 40 C.F.R. Part 280.

9. Under Section 9004 of SWDA, 42 U.S.C. § 6991c, the Administrator may approve a State program to administer the UST program in lieu of the federal program when the Administrator finds that the State program meets certain conditions. Any violation of regulations promulgated pursuant to Subtitle IX (Sections 9001 through 9010 of SWDA, 42 U.S.C. § 6991 through 6991i) or of any State provision approved under SWDA Section 9004, constitutes a violation of SWDA, subject to the assessment of civil penalties and issuance of compliance orders as provided in Section 9006 of SWDA, 42 U.S.C. § 6991e.

10. Section 9006 of SWDA, 42 U.S.C. § 6991e, authorizes U.S. EPA to initiate an enforcement action against any person found to be in violation of any requirement of SWDA Subchapter IX, including State programs approved under Section 9004 of SDWA, 42 U.S.C. § 6991c.

III. General Allegations

11. Respondent, is a “person” as defined in 40 C.F.R. § 280.12, and is therefore subject to regulation under the SWDA

12. Respondent is the “owner” and/or “operator” (as defined in 40 C.F.R. § 280.12) of facilities where petroleum and hazardous substance underground storage tanks (USTs) are located, and is therefore subject to regulation under the SWDA.

13. Certain USTs at Respondent’s facilities are used to accumulate regulated substances, the volume of which is at least 10% below ground, and are otherwise “Underground storage tanks,” as defined in 40 C.F.R. § 280.12.

14. At times relevant to this proceeding, certain UST's at Respondent's facilities were used to accumulate ethylene glycol, a hazardous substance under Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), 42, U.S.C. § 9601(14), and therefore are “Hazardous substance UST systems,” as defined in 40 C.F.R. § 280.12.

15. U.S. EPA conducted compliance inspections at Respondent’s facilities on March 21, 2007, and on July 11, 2007

IV. Alleged Violations

16. 40 C.F.R. § 280.42(a) and (b) provides that where owners and operators of hazardous substance UST systems utilize secondary containment for release detection, such systems must be designed, constructed and installed to: contain regulated substances released from the tank system until they are detected and removed; prevent the release of regulated substances to the environment at any time during the operational life of the UST system; and be checked for evidence of a release at least every 30 days.

17. Respondent stored ethylene glycol anti-freeze in a single-walled UST at 4601 Euclid Avenue, Cleveland, Ohio, that did not have adequate secondary containment.

18. Respondent stored ethylene glycol anti-freeze in a single-walled UST at 2500 Woodhill Road, Cleveland, Ohio, that did not have adequate secondary containment.

19. Respondent's actions constitute violations of 40 C.F.R. § 280.42(a) and (b) and Section 9003 of SWDA, 42 U.S.C. § 6991b.

20. 40 C.F.R. § 280.31(b) requires owners and operators of steel UST systems equipped with cathodic protection systems to adequately test the cathodic protection on steel piping at least every 3 years.

21. Respondent failed to adequately test the cathodic protection on steel piping of the UST system at its facility located at 4371 Pearl Road, Cleveland, Ohio, within the 3-year period prior to U.S. EPA's inspections.

22. Respondent's actions constitute a violation of 40 C.F.R. § 280.31(b) and Section 9003 of SWDA, 42 U.S.C. § 6991b.

V. Terms of Settlement

23. Respondent admits the jurisdictional and general allegations set forth in this Consent Agreement.

24. Respondent neither admits nor denies the violations alleged in this Consent Agreement.

25. Respondent consents to the assessment of the civil penalty and to the performance of a Supplemental Environmental Project (SEP) as described in this Consent Agreement.

26. Respondent consents to the execution and filing of the accompanying Final Order without additional notice.

27. Respondent waives any right it may have to file an Answer and request a hearing.
28. Respondent consents to any and all other conditions specified in this Consent Agreement.
29. Respondent waives any right to contest or appeal the jurisdictional or factual allegations contained in this Consent Agreement.
30. Respondent waives any right to appeal the terms of the accompanying Final Order.
31. Respondent waives any rights it may possess in law or equity to challenge the authority of the U.S. EPA to bring a civil action in an appropriate United States District Court to compel compliance with this CAFO and/or to seek additional penalties, if Respondent fails to comply with any provision of this CAFO.
32. Respondent agrees that this CAFO shall apply to and be binding upon Respondent, its officers, directors, employees, assigns and successors in interest. Respondent shall give notice and a copy of this CAFO to any successor in interest prior to any transfer of ownership or operational control of the facilities described in paragraphs 17, 18 and 21, above.
33. This Consent Agreement constitutes a full settlement only for the aforementioned UST claims. This CAFO does not constitute a waiver by the U.S. EPA of its remedies, either judicial or administrative, for any other matter. Nothing in this CAFO is intended to, nor shall be construed to, operate in any way to resolve any criminal liability of Respondent that may arise from the factual allegations described above. Compliance with this CAFO shall not be a defense to any actions subsequently commenced pursuant to other federal laws and regulations administered by U.S. EPA, and it is the responsibility of the Respondent to comply with such laws and regulations.

VI. Certification of Compliance

34. Respondent certifies that it is fully complying with Subchapter IX of SDWA, 42 U.S.C. § 6991 et seq., and 40 C.F.R. Part 280, with respect to the underground storage tanks noted in paragraphs 17, 18 and 21 above and which are the subject of this Consent Agreement.

VII. Civil Penalty

35. U.S. EPA has assessed the civil penalty specified herein in accordance with the factors listed in Section 9006 of SWDA, 42 U.S.C. § 6991e(c), which requires the Administrator of U.S. EPA to consider any good faith efforts to comply with the applicable requirements and the seriousness of the violations. These requirements have been incorporated into the “U.S. EPA Penalty Guidance for Violations of UST Regulations” (November 14, 1990). This Penalty Guidance provides a rational, consistent and equitable calculation methodology for applying the penalty factors enumerated above to the specific facts of any particular case. In using the Penalty Guidance, U.S. EPA calculated an initial proposed penalty in the amount of \$38,520. However, after settlement discussions, U.S. EPA has determined that an appropriate civil penalty to resolve this matter is \$6000 and a SEP in the amount of \$22,500.

36. Respondent agrees to pay a civil penalty in the amount of \$6000. Payment shall be made by certified or cashier's check, payable to “Treasurer, United States of America,” and shall be sent to:

[for checks sent by regular U.S. Postal Service mail]

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

[for checks sent by express mail]

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

37. The check shall bear Respondent's name, the docket number of this CAFO, and the assigned "BD" billing document number (U.S. EPA will assign this BD number after the CAFO is filed). A transmittal letter stating Respondent's name, complete address, the docket number, and the assigned "BD" number must accompany payment check.

38. Respondent agrees to also send copies of the check and transmittal letter to:

Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3590

Mark Restaino
RCRA Programs Section (LR-8J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3590

Reginald Pallesen
Office of Regional Counsel (C-14J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3590

39. If Respondent violates this CAFO, U.S. EPA may refer collection of this penalty to the United States Department of Justice for an action in the appropriate United States District Court, in accordance with section 9006 of SWDA, 42 U.S.C. § 6991e(a).

40. Interest will accrue on any overdue amount from the date payment was due at a rate established under 31 C.F.R. § 901.9(b). Respondent will pay a Fifteen Dollar (\$15) handling charge each month that any portion of the penalty is more than 30 days past due.

VIII. Supplemental Environmental Project (SEP)

41. Respondent must complete a SEP designed to protect the environmental and public health by developing and implementing a tank removal project at the GCRTA Central Rail Maintenance Facility located at 6200 Grand Avenue, Cleveland, Ohio. Respondent will remove four 550 gallon underground drawoff tanks associated with oil/water separators in the Rail Equipment Building at the Central Rail Maintenance Facility.

42. Respondent must implement the SEP in accordance with the Project Description and Scope of Work attached to this Consent Agreement. The Project Description and Scope of Work constitute an enforceable part of this Consent Agreement.

43. Respondent must spend at least \$22,500 in capital costs on this SEP. At the completion of the SEP, Respondent will provide the actual cost expended for the project.

44. Respondent certifies that it is not required to perform or develop the SEP by any law, regulation, grant, order, or agreement, or as injunctive relief as of the date it signs this CAFO. Respondent further certifies that it has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.

45. Respondent certifies that it will not collect any State or federal funds specifically allocated for tank replacement or specific environmental projects, including, but not limited to, Leaking Underground Storage Tank Trust Fund or Brownfield grant funding, to pay for the SEP. To the degree Respondent seeks State or federal funding to supplement funding for the SEP, it must seek and receive approval from U.S. EPA prior to expending those supplemental funds.

46. Respondent must submit to U.S. EPA a Final SEP Completion Report within 60 days of completion of the tank removal project. The final report must contain the following information:

- a. Detailed description of the SEP as completed;
- b. Description of any operating problems and any actions taken to correct the problems;
- c. Itemized costs of goods and services used to complete the SEP documented by copies of invoices, purchase orders, or canceled checks that specifically identify and itemize the individual costs of the goods and services;
- d. Certification that Respondent has completed the SEP in compliance with this CAFO; and
- e. Description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible).

47. Respondent must submit all notices and reports required by this CAFO by first class mail to:

Mark Restaino
RCRA Programs Section (LR-8J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois, 60604-3590

48. In each report that Respondent submits as provided by this CAFO, it must certify that the report is true and complete by including the following statement signed by one of its officers:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, the information is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

49. Following receipt of the SEP completion report described in paragraph 46 above, U.S. EPA will notify Respondent in writing that:

- a. It has satisfactorily completed the SEP report and the SEP;
- b. There are deficiencies in the SEP report or in the SEP, and U.S. EPA will give Respondent 30 days to correct the deficiencies; or
- c. It has not satisfactorily completed the SEP report or the SEP, and U.S. EPA will seek stipulated penalties under paragraph 51.

50. If U.S. EPA exercises option b. above, Respondent may object in writing to the deficiency notice within 10 days of receiving the notice. The parties will have 30 days from U.S. EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, U.S. EPA will give Respondent a written decision on its objection. Respondent will comply with any requirements that U.S. EPA imposes in its decision. If Respondent does not complete the SEP as required by U.S. EPA's decision, Respondent will pay stipulated penalties to the United States under paragraph 51 below.

51. If Respondent violates any requirement of this CAFO relating to the SEP, Respondent must pay stipulated penalties to the United States as follows:

- a. Except as provided in subparagraph b, below, if Respondent did not complete the SEP satisfactorily according to this CAFO, Respondent must pay a stipulated penalty in the amount of \$18,000.

- b. If Respondent did not complete the SEP satisfactorily, but U.S. EPA determines that Respondent: (i) made good faith and timely efforts to complete the SEP; and (ii) certified, with supporting documents, that it spent at least 90 percent of the required amount on the SEP, Respondent will not be liable for any stipulated penalty.

- c. If Respondent satisfactorily completed the SEP, but spent less than 90 percent of the required amount on the SEP, Respondent must pay a stipulated penalty in the

amount of \$22,500, minus the amount actually spent on the SEP.

d. If Respondent failed to timely submit the SEP completion report required by paragraph 46 above, Respondent must pay a stipulated penalty of \$100.00 for each day after the report was due until it submits the report.

52. U.S. EPA's determination of whether Respondent satisfactorily completed the SEP and whether it made good faith, timely efforts to complete the SEP will bind Respondent.

53. Respondent must pay stipulated penalties within 15 days of receipt of U.S. EPA's written demand for the penalties.

54. Any formal public statement, oral or written, in print, film or other media, that Respondent makes referring to the SEP must include the following language, "This project was undertaken in connection with the settlement of an enforcement action by the U.S. Environmental Protection Agency for violations of Section 9006 of the Solid Waste Disposal Act, as amended, 42 U.S.C. Section 6991e."

55. If an event occurs which causes or may cause a delay in completing the SEP as required by this CAFO:

a. Respondent must notify U.S. EPA in writing within 10 days after learning of the event which caused or may cause a delay in completing the SEP. The notice must describe the anticipated length of the delay, its cause(s), Respondent's past and proposed actions to prevent or minimize the delay, and a schedule to carry out those actions. Respondent must take all reasonable actions to avoid or minimize any delay. If Respondent fails to notify U.S. EPA according to this paragraph, Respondent will not receive an extension of time to complete the SEP.

b. If the parties agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, the parties will stipulate to an extension of time no longer than the period of delay.

c. If U.S. EPA does not agree that circumstances beyond Respondent's control caused or may cause a delay in completing the SEP, U.S. EPA will notify Respondent in writing of its decision, and any delays in completing the SEP will not be excused.

d. Respondent has the burden of proving that circumstances beyond its control caused or may cause a delay in completing the SEP. Increased costs for completing the SEP will not be a basis for an extension of time under subparagraph b, above. Delay in achieving an interim step will not necessarily justify or excuse delay in achieving subsequent steps.

SECTION IX - ADDITIONAL STIPULATIONS

56. Nothing in this CAFO shall be construed to relieve the Respondent from its obligation to comply with all applicable federal, State and local statutes and regulations.

57. Respondent agrees not to deduct any penalty payment made pursuant to this CAFO under any federal, State or local tax law.

58. Each party shall bear its own costs and attorney's fees, if any, in connection with the matter resolved by this CAFO.

59. Each undersigned representative of a party to this Consent Agreement certifies that he or she is fully authorized to enter into and bind legally such party to the terms and conditions of this Consent Agreement.

60. This Consent Agreement constitutes the entire agreement between U.S. EPA and the Respondent regarding the above-captioned matter.

61. This CAFO shall become effective on the date it is filed with the Regional Hearing Clerk, U.S. EPA, Region 5.

IT IS SO AGREED

Greater Cleveland Regional Transit Authority

By: Sheryl King Benford
Sheryl King Benford, General Counsel
Deputy General Manager for Legal Affairs

Aug. 5, 2009
Date

By: Pamela McCombe
Pamela McCombe
Director of Safety
Greater Cleveland Regional Transit Authority
1240 West 6th Street
Cleveland, Ohio 44113-1331

Aug. 5/09
Date

United States Environmental Protection Agency

Margaret M. Guerriero

Margaret M. Guerriero, Director
Land and Chemicals Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604-3590

August 27, 2009
Date

Consent Agreement and Final Order
Greater Cleveland Regional Transit Authority
1240 West 6th Street,
Cleveland, Ohio 44113-1331

Docket No.

FINAL ORDER

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. Respondent Greater Cleveland Regional Transit Authority is hereby **ORDERED** to comply immediately with all of the terms of the foregoing Consent Agreement upon the filing of this CAFO with the Regional Hearing Clerk, U.S. EPA, Region 5. This Final Order disposes of this matter pursuant to Sections 22.18(b) and 22.31 of the Consolidated Rules of Practice, 40 C.F.R. §§ 22.18(b) and 22.31.



Bharat Mathur
Acting Regional Administrator
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604-3590

8-28-09

Date

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SEP 14 2009

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

**Consent Agreement and Final Order
Greater Cleveland Regional Transit Authority
1240 West 6th Street,
Cleveland, Ohio 44113-1331**

Docket No. RUST-05-2009-0012

CERTIFICATE OF SERVICE

I hereby certify that today I filed the original of this **Consent Agreement and Final Order** and this **Certificate of Service** in the office of the Regional Hearing Clerk (E-19J), United States Environmental Protection Agency, Region 5, 77 W. Jackson Boulevard, Chicago, IL 60604-3590.

I further certify that I then caused true and correct copies of the filed document to be mailed via certified mail, return receipt requested, to the following:

Pamela McCombe
Director of Safety
Greater Cleveland Regional Transit Authority
1240 West 6th Street
Cleveland, Ohio 44113-1331

and

Kathleen M. Minahan
Deputy General Counsel-Litigation
Greater Cleveland Regional Transit Authority
1240 West 6th Street
Cleveland, Ohio 44113-1331

RECEIVED
SEP 14 2009

**REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY.**

Certified Mail #
Return Receipt Requested

Dated: 9-14, 2009

RUST-05-2009-0012

for Margaret Gray
Mark Restaino
RCRA Programs Section (LR-8J)
United States Environmental Protection Agency
Region 5
77 W. Jackson Boulevard
Chicago, IL 60604-3590