

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

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In the Matter of: :
: :
In the Matter of County of :
Monmouth, New Jersey, : CONSENT AGREEMENT AND
: FINAL ORDER
: :
Respondent. :
: : Docket No. RCRA-02-2015-7501
: :
Proceeding Under Section :
9006 of the Solid Waste :
Disposal Act, as amended. :
-----X

U.S. Environmental
Protection Agency-Reg 2
2015 SEP 22 AM 10:44
REGIONAL HEARING
CLERK

PRELIMINARY STATEMENT

This administrative proceeding was instituted pursuant to Section 9006 of the Solid Waste Disposal Act, as amended by various laws including the Resource Conservation and Recovery Act and the Hazardous and Solid Waste Amendments of 1984 (“HSWA”), 42 U.S.C. § 6901 *et seq.* (collectively referred to as “RCRA” or the “Act”).

The Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance, United States Environmental Protection Agency, Region 2 (“EPA” or “Complainant”) issued a “Complaint, Compliance Order, and Notice of Opportunity for Hearing” to County of Monmouth, New Jersey (hereinafter “Monmouth” or “Respondent”) on March 31, 2015.

The Complaint alleged violations of Subtitle I of the Act and the regulations promulgated pursuant to the Act, codified in Volume 40 of the Code of Federal Regulations (“C.F.R.”) Part 280, applicable to Respondent’s underground storage tanks (“UST”s).

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 County of Monmouth, New Jersey.
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. At all relevant times herein, Respondent was an “owner” and an “operator” of multiple “underground storage tanks” (“UST”) 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.

4. Respondent’s UST systems that were the focus of the Complaint are or were located at:

- a) Monmouth County Highway District #8, 1621 Union Ave., Hazlet, NJ
- b) Monmouth County Highway District #3 + 6, 1180 Pine Brook Road, Tinton Falls, NJ. (Note, after EPA’s inspection the name of this facility was changed to Monmouth County Highway District #3.)
- c) Monmouth County Highway District #5, 383 Cranberry Road, Howell, NJ

5. Pursuant to Section 9005 of the Act, 42 U.S.C. § 6991d, an authorized representative of the EPA inspected Respondent’s six UST systems located at the three facilities specified above, on December 9 and 10, 2013, in order to determine Respondent’s compliance with the Act and 40 C.F.R. Part 280.

6. EPA sent RCRA § 9005 Information Request Letters (hereinafter “IRLs”) in order to determine Monmouth’s compliance with the requirements of the Act and 40 C.F.R. Part 280 pertaining to the underground storage tanks at the facilities specified in paragraph 4, above. These IRLs were sent, respectively:

- a) March 10, 2014, seeking information on “Federally Regulated Underground Storage Tanks (USTs) Owned/Operated by Monmouth County or affiliates”;
- b) September 18, 2014, seeking follow-up information on “Federally Regulated Underground Storage Tanks (USTs) Owned/Operated by Monmouth County or affiliates).”

7. Respondent’s response to the March 10, 2014 IRL referenced in paragraph number 6(a) was provided by mail on or about April 8, 2014. Respondent’s response to the September 18, 2014 IRL referenced in paragraph number 6(b) was provided by e-mail on or about October 31, 2014 with a “certification of answers” for the October 31, 2014 IRL response provided by e-mail on November 7, 2014.

8. In Respondent’s April 8, 2014 response to EPA’s March 10, 2014 IRL and in its October 31, 2014 response to EPA’s September 18, 2014 IRL, Monmouth stated that it had owned the UST systems at the three facilities subject to this action (as specified in paragraph 4, above) and that as of the date of its response, Respondent was the owner and the operator of the USTs at the three facilities.

9. After a review of Respondent’s response to the IRLs, and based on the EPA inspections of Respondent’s facilities, EPA determined that the UST systems at the facilities specified in paragraph 4, above, were not in compliance with 40 C.F.R. §§ 280.34(b), 280.34(c), 280.41(a) and 280.45(b).

- a. At Monmouth County Highway District #8, Respondent failed to conduct

monthly monitoring for two USTs and failed to maintain records of release detection for its underground piping;

- b. At Monmouth County Highway District #3, Respondent failed to maintain records of release detection for its pressurized piping; and,
- c. At Monmouth County Highway District #5, Respondent failed to conduct monthly monitoring of an UST, and failed to maintain records of release detection for its pressurized piping.

10. Respondent has removed all of its USTs or is planning to remove its USTs from all of the above-noted facilities. Respondent plans to install an above-ground tank at a different facility as further detailed below.

11. 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) admits 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 ensure that monthly records of release detection monitoring for the pressurized lines at the Monmouth County Highway District #3 + 6 facility (now named Monmouth County Highway District #3) will be maintained in accordance with 40 C.F.R. §§ 280.34(b), 280.34(c) and 280.45(b). Respondent shall further provide EPA with final closure report and a site assessment no later than sixty (60) days after the date when the UST systems at this facility are permanently closed pursuant to 40 C.F.R. Part 280, Subpart G.

a. Respondent shall send all required submissions to:

Paul Sacker, Senior Environmental Engineer
RCRA Compliance Branch
United States Environmental
Protection Agency, Region 2
290 Broadway
New York, NY 10007-1866

3. Respondent will maintain compliance with all applicable requirements of 40 C.F.R. Part 280 for each federally regulated UST system (as covered under 40 C.F.R. § 280.10) at any of its facilities where it is an owner and/or operator of an UST system.

4. Respondent shall pay a civil penalty to EPA in the total amount of **THIRTY-SIX HUNDRED SIXTY DOLLARS (\$3,660.00)**. 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 County of Monmouth, New Jersey, Docket No. RCRA-02-2015-7501**. 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 County of Monmouth, New Jersey**
- 7) Case Number: **RCRA-02-2015-7501**

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

Carl R. Howard
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, N.Y. 10007-1866

and

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, N.Y. 10007-1866
Attn: Karen Maples

- a. The payment must be received at the above address on or before forty-five (45) 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.

5. Respondent agrees to, and shall in accordance with the terms and conditions of this CA/FO, implement and perform a Supplemental Environmental Project (“SEP”) that consists of the installation of one 20,000 gallon above-ground tank (“AST”) at the Monmouth County Reclamation Center, 6000 Asbury Ave. Tinton Falls, NJ to replace three USTs at that facility. Respondent is expected to spend at least \$400,000 for work associated with this project, and Respondent expects to spend at least \$276,000 on the parts of the project that are eligible for SEP credit. (Creditable expenditures for this SEP shall not include any economic savings realized by the Respondent attributable to this SEP.)

6. Respondent shall order the necessary components and equipment for the SEP within ninety days of the effective date of this CA/FO.

7. Respondent shall install and begin using the AST within one hundred and eighty (180) days of the effective date of this CA/FO.

8. Within two hundred and ten (210) days after the effective date of this CA/FO, Respondent shall submit a Final SEP Report to EPA for approval, to the addressee set forth in Paragraph 2 of this section, which shall:

- a. Provide documentation of the purchase, installation, and use of the AST referenced in Paragraph 5, above;
- b. Provide documentation of its expenditures in connection with the SEP referenced in Paragraph 5, above;
- c. Provide a cost report, with appropriate documentation, certified as accurate under penalty of perjury by a responsible Monmouth County official itemizing the costs incurred to date in the purchase, construction, installation of the AST, including any shipping, labor and other costs that would not have been

incurred but for the implementation of the SEP as required herein. Costs associated with removal of old USTs and site preparation work shall not be included in the report as they have been determined not to be creditable expenditures; and,

d. A certification under penalty of perjury by a responsible Monmouth County official that the SEP was performed in accordance with the terms of this CA/FO.

9. Following receipt of the Final SEP Report described in paragraph 8, above, EPA will either (i) accept the Final SEP Report or (ii) reject the Final SEP Report, notify the Respondent, in writing, of questions that EPA has and/or deficiencies therein and grant Respondent an additional short period of time, which shall be reasonable under the then-existing circumstances (fifteen (15) days at a minimum), in which to respond to EPA's inquiries and/or to correct any deficiencies in the Final SEP Report.

10. Whether Respondent has complied with the terms of this CA/FO with regard to the successful and satisfactory implementation and/or operation of the SEP as herein required, including whether Respondent has made good faith and timely efforts to effect same, and whether costs expended are creditable to the SEP as herein required shall be solely determined by EPA. Should EPA have any concerns about the satisfactory completion of the SEP, EPA will communicate those concerns in writing to Respondent and provide it with an opportunity to respond, and/or correct any deficiencies. If EPA makes a determination that the SEP has been satisfactorily completed, it will provide Respondent with written confirmation of the determination within a reasonable amount of time.

11. Respondent agrees that EPA (including authorized representatives of EPA) may inspect the facility during reasonable business hours in order to confirm that the SEP is being implemented properly and in conformity with the terms and conditions set forth in this CA/FO, provided, however, that this paragraph is not intended or is to be construed to deny, limit or waive any right of EPA pursuant to applicable law, including the provisions of RCRA, or other federal law, to conduct an inspection of the facility for any purpose allowed by any applicable law.

12. Respondent shall maintain in one central location legible copies of documentation concerning the development, construction/installation and financing of the SEP, and documentation supporting information in any report required to be submitted to EPA pursuant to this CA/FO. Respondent shall grant EPA (including authorized representatives of EPA) access to such documentation and shall provide copies of such documentation to EPA within twenty (20) days of Respondent's receipt of a request by EPA for such information or within such additional time as approved by EPA in writing. The provisions of this paragraph shall remain in effect for five (5) years from the effective date of this CA/FO, or two years after the completion of the SEP, whichever date is later.

13. The SEP to be implemented by Respondent pursuant to this CA/FO has been accepted by EPA solely for purposes of settlement of this administrative proceeding. Nothing in

this CA/FO is intended or is to be construed as a ruling on or determination of any issue related to any federal, state or local permit.

14. Any public statement, oral or written, in print, film or other media, made by the Respondent, or by any officer, employee or agent of the Respondent, that makes reference to the SEP under this CA/FO shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action initiated by the U.S Environmental Protection Agency against County of Monmouth, New Jersey, under the Resource Conservation and Recovery Act."

15. Respondent hereby certifies that, as of the date of its authorized signature on this Consent Agreement, it is not required to implement or complete the aforementioned SEP pursuant to any federal, state or local law, or other requirement including federal or state rules. Respondent further certifies that, with the exception of this Consent Agreement, Respondent is not required to implement or complete the SEP set forth in this Consent Agreement by any agreement, grant, or as injunctive relief in this or any other suit, action or proceeding in any jurisdiction, and that before May 2015 Respondent had not commenced any of the work that is part of this SEP.

16. Respondent certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for the aforementioned SEP and that Respondent in good faith believes that the SEP is in accordance with the provisions of EPA's 2015 Supplemental Environmental Projects policy issued March 10, 2015.

17. Respondent certifies that it is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP. Respondent further certifies, to the best of its knowledge and belief after reasonable and diligent inquiry, there is no such open federal financial transaction that constitutes funding or could be used to fund the same activity as the SEP, nor has the same activity as the SEP been described in an unsuccessful federal financial assistance transaction submitted to EPA within two years of the date of the execution of this settlement (unless the project(s) was barred from funding as statutorily ineligible). For the purpose of the certifications to be made pursuant to this paragraph, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not yet expired.

18. Respondent shall not use or expend any money received from the United States government, as a grant or otherwise, directly to finance, implement, and/or perform any aspect or any portion of the aforementioned SEP.

19. EPA may, in the exercise of its discretion, grant an extension of the date(s) of performance established in this CA/FO with regard to any of requirements for the SEP, if good cause exists for such extension(s). If Respondent submits a request for extension, such request shall be accompanied by supporting documentation and be submitted to EPA no later than fourteen (14) days prior to any due date set forth in this CA/FO, or other deadline established pursuant to this CA/FO. Such extension, if any, shall be approved in writing.

20. Respondent shall be liable for stipulated penalties in the event Respondent fails to comply with the terms and conditions of this CA/FO including the performance, implementation, and completion of the SEP as set forth below in this paragraph:

- a. If the SEP is not undertaken and completed to EPA's satisfaction, Respondent shall pay a stipulated penalty of \$15,000;
- b. If the SEPs is completed to EPA's satisfaction and creditable SEP expenditures incurred by the County are determined by EPA to be more than \$150,000, no stipulated penalty will be due (except as provided for in "d");
- c. If the SEP is completed to EPA's satisfaction but the creditable expenditures are determined by EPA to be less than \$150,000, Respondent shall pay a stipulated penalty of \$10,000 (in addition to any penalties due under "d"); and,
- d. For any failure to timely submit any SEP Report required by this CA/FO, Respondent shall pay a stipulated penalty in the amount of \$100.00 for each day any such report is late up to the 30th day, and Respondent shall pay a stipulated penalty in the amount of \$250 for each day any such report is thereafter late, and such penalty(ies) shall continue to accrue from the first date such report(s) is untimely until said report(s) is submitted to EPA.

21. Unless Respondent provides EPA with a written explanation pursuant to Paragraph 23 below, all stipulated penalties are due and payable within thirty (30) days of Respondent's receipt of EPA's written demand for payment of the penalty(ies). The method of payment shall be in accordance with the provisions of Paragraph 4 of this section above. Interest and a late payment handling charge will be assessed in the same manner and in the same amounts as specified in Paragraph 4, above. Penalties shall accrue as provided above regardless of whether EPA has notified the Respondent of the violation or made a demand for payment, but need only be paid upon demand.

22. After receipt of a demand from EPA for stipulated penalty(ies) pursuant to the above paragraph, Respondent shall have twenty (20) days in which to provide EPA with a written explanation of why it believes that a stipulated penalty(ies) is not due and owing, or is not appropriate, for the cited violation(s) of the terms and conditions of this CA/FO (including any technical, financial or other information that Respondent deems relevant).

23. EPA may, in the exercise of its sole discretion, waive or reduce any stipulated penalty due if Respondent has in writing demonstrated to EPA's satisfaction good cause for such action. If, after review of Respondent's submission pursuant to the preceding paragraph, EPA determines that Respondent has failed to comply with the terms and conditions of this CA/FO and concludes that the demanded stipulated penalty(ies) is due and owing, and further EPA has not waived or reduced the demanded stipulated penalty(ies), EPA will notify Respondent, in writing, of its decision regarding the stipulated penalty(ies). Respondent shall then, within thirty (30) days of receipt thereof, pay the stipulated penalty amount(s) indicated in EPA's notice.

(EPA may also in its discretion, *sua sponte*, decide to reduce the amount of stipulated penalties that are otherwise due or decide not to demand stipulated penalties.)

24. Failure of Respondent to pay any stipulated penalty(ies) demanded by EPA pursuant to this CA/FO may result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection or other action provided by applicable law.

25. For federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

26. 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.

27. This CA/FO is being voluntarily and knowingly entered into by the parties to resolve (upon full compliance with the terms of this CAFO, including, but not limited to paragraphs 2 and 3, above, and full payment of the civil penalty) the civil and administrative claims alleged in the Complaint. However, nothing herein shall be read to preclude EPA or the United States from pursuing appropriate penalties, injunctive or other equitable relief or criminal sanctions for any violations of law.

28. If in the future EPA believes that any of the information certified to, pursuant to Paragraphs 15, 16, and 17 was inaccurate, EPA will so advise the Respondent of its belief and its basis, and will afford Respondent an opportunity to submit comments to EPA. If EPA later determines that any of the certifications in Paragraphs 15-17 were not accurate, Respondent shall pay a stipulated penalty in the amount of \$20,000. This payment shall not preclude EPA from initiating a separate criminal investigation pursuant to 18 U.S.C. § 1001 *et seq.*, or any other applicable law.

29. 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.

30. 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.

31. By executing this Consent Agreement, Respondent explicitly waives its 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.

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

33. 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.

34. The undersigned signatory to this Consent Agreement for the Respondent certifies that he or she 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.

35. The provisions of this CA/FO shall be binding upon Respondent, its officials, officers, agents, authorized representatives and any successor entity that may assume the Respondent's obligations.

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

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

38. 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.

RESPONDENT: County of Monmouth, New Jersey

BY: 

Name (print): Gary C. Rich, Sr.

Title: Freeholder Director

Date: 09/11/2015.

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

BY:  PATRICK DURACK FOR

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: SEPTEMBER 16, 2015

In the Matter of County of Monmouth, New Jersey
Docket No. RCRA-02-2015-7501

FINAL ORDER

The Regional Administrator of the U.S. Environmental Protection Agency, Region 2, ratifies the foregoing Consent Agreement. The Consent Agreement, entered into by the parties to this matter, is hereby approved, 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: Judith A. Enck
Judith A. Enck
Regional Administrator
U.S. Environmental Protection Agency - Region 2
290 Broadway
New York, New York 10007-1866

DATE: 9.17.15

In the Matter of County of Monmouth, New Jersey
Docket No. RCRA-02-2015-7501

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:

Andrea I. Bazer
County Counsel
County of Monmouth
Hall of Records
1 East Main Street, Room 236
Freehold, NJ 07728

Dated: 9/22/15

Love Monte
New York, New York