



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

1595 WYNKOOP STREET

DENVER, CO 80202-1129

Phone 800-227-8917

http://www.epa.gov/region08

2009 FEB 17 11:11:00

DOCKET NO.: RCRA-08-2009-0001

IN THE MATTER OF:)	
)	
FAYE and MONROE KRAFT,)	
)	
TIMBER LAKE SERVICE)	FINAL ORDER
824 Main Street)	
Timber Lake, SD 57656)	
EPA ID Number 4020017)	
)	
RESPONDENTS)	

Pursuant to 40 C.F.R. §22.18, of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondents are hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondents of this Consent Agreement and Final Order.

SO ORDERED THIS 17th DAY OF February, 2009.

Elyana R. Sutin
Regional Judicial Officer

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

2009 FEB 17 11:11:49

IN THE MATTER OF)	Docket No. RCRA-08-2009-0001
)	
Faye and Monroe Kraft,)	CONSENT AGREEMENT
)	
Timber Lake Service)	
824 Main Street)	
Timber Lake, SD 57656)	
EPA ID Number 4020017,)	
)	
Respondents.)	
_____)	

Complainant, United States Environmental Protection Agency, Region 8 (EPA), and Respondents, Faye and Monroe Kraft (“the Krafts” or “Respondents”), by their undersigned representatives, hereby consent and agree as follows:

FACTUAL AND PROCEDURAL BACKGROUND

1. On November 3, 2008, Complainant issued the Respondents a Complaint and Notice of Opportunity for Hearing (Complaint) alleging certain violations of Section 9003(c)(1) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6991b(c)(1), and the underground storage tank (UST) regulations set forth at 40 C.F.R. Part 280, subpart D. The Complaint proposes a civil penalty for the violations alleged therein.

2. The Respondents admit the jurisdictional allegations of the Complaint and neither admit nor deny the specific factual allegations of the Complaint.

3. The Respondents waive their right to a hearing before any tribunal, to contest any issue of law or fact set forth in the Complaint or the Consent Agreement.

4. This Consent Agreement contains all terms of the settlement agreed to by the Parties. Upon incorporation into a final order, this Consent Agreement applies to and is binding

upon the Respondents, their officers, directors, employees, agents and all persons acting under or for the Respondents, until such time as the civil penalty required under paragraph no. 6 has been paid. This Consent Agreement upon incorporation into a final order shall constitute full civil settlement of the violations alleged in the Complaint.

5. The facility currently is in compliance with the statutory and regulatory violations alleged in the Complaint.

6. Pursuant to RCRA § 9006(d)(2)(c), 42 U.S.C. § 6991e(d)(2)(c), consistent with the factors set forth in RCRA 9006(c), 42 U.S.C. § 6991(c), i.e. the seriousness of the violation and any good faith efforts by Respondents to comply with the applicable requirements, and in consideration of Respondents' ability to pay, EPA has determined that an appropriate civil penalty to settle this action is in the amount of \$2,236.00. This amount reflects the economic benefit to the Respondents during the period in which they failed to perform monthly leak detection at each of the four USTs subject to the Complaint.

TERMS OF SETTLEMENT

7. Beginning not more than thirty (30) days after Respondents' receive a signed Final Order in this matter, the Respondents shall pay the civil penalty cited in paragraph no. 6 above by making the first of three semi-annual payments in the amount of Seven Hundred Forty Six Dollars (\$746.00) in the manner described below in this paragraph not more than thirty (30) days after Respondents' receipt of a signed Final Order in this matter:

- a. Payment is due within 30 calendar days from the date written on the Final Consent Order, issued by the Regional Judicial Officer, adopting this Consent Agreement. If the due date falls on a weekend or legal federal holiday, then the due date becomes the next business day. The date the payment is made is considered to be the date processed by Mellon Bank described below. Payments received by 11:00 AM EST are processed on the same day, those received after 11:00 AM are processed on the next business day.

- b. The payment shall be made by remitting a cashier's or certified check, referencing the name and docket number of this case for this amount, payable to "**Environmental Protection Agency,**" to:

US checks by regular

US postal service mail:

US EPA Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

**Federal Express, Airborne,
or other commercial carrier:**

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

Wire transfers:

Federal Reserve Bank of 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 68010727
Environmental Protection Agency"

On Line Payment:

WWW.PAY.GOV
Enter sfo 1.1 in the search field

Open form and complete required
fields.

Copies of the check or wire transfer shall be simultaneously sent to:

Amy Swanson, Enforcement Attorney
U.S. EPA Region 8 (8ENF-L)
1595 Wynkoop Street
Denver, CO 80202-1129

Tina Artemis, Regional Hearing Clerk
U.S. EPA Region 8 (8RC)
1595 Wynkoop Street
Denver, CO 80202-1129

- c. In the event payment is not received by the specified due date, interest accrues from the date of the final order, not the payment due date, at a rate

established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until the payment is received in full (i.e., on the 1st late day, 30 days of interest accrues).

- d. In addition to the accrual of interest specified in paragraph 5(c) of this Agreement, a handling charge of fifteen dollars (\$15.00) shall be assessed on the 31st day from the date of the final order, and each subsequent 30-day period that the penalty, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if the penalty payment is not received within 90 days of the due date (i.e., the 121st day from the date the final order is signed). Payments are first applied to outstanding handling charges, 6% penalty interest, and late interest. The remainder is then applied to the outstanding principal amount.
- e. The Respondents agree that the penalty shall never be claimed as a Federal or other tax deduction or credit.

8. The Respondents shall make two additional, consecutive semi-annual payments each in the amount of Seven Hundred Forty Five Dollars (\$745.00) no later than six months after the prior payment and in the same manner as referenced above in Paragraph 7 above.

9. The Respondents may make additional payments or pay in full the civil penalty totaling \$2,236 without incurring a pre-payment penalty.

GENERAL PROVISIONS

10. This Consent Agreement shall not relieve the Respondents of their obligation to comply with the Act and its implementing regulations.

11. Nothing in this Consent Agreement shall be construed as a waiver by the EPA of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of the Respondents' failure to perform pursuant to the terms of the Consent Agreement.

12. The undersigned representative of the Respondents certifies that he/she is fully authorized to enter into the terms and conditions for this Consent Agreement and to bind the Respondents to the terms and conditions of this Consent Agreement.

13. The parties agree to submit this Consent Agreement to the presiding officer with a request that it be incorporated into a final order.

14. Each party shall bear its own costs and attorney fees in connection with this matter.

15. Failure by the Respondents to comply with any of the terms of the Consent Agreement shall constitute a breach of the agreement and may result in referral of the matter to the Department of Justice for enforcement of the Consent Agreement and for such other relief as may be appropriate in federal district court.

16. The Consent Agreement, upon incorporation into a final order by the presiding officer and full satisfaction by the parties, shall be a complete and full civil settlement of the specific violations alleged in the Complaint.

17. This Consent Agreement shall become effective upon filing with the presiding officer.

FAYE AND MONROE KRAFT
Respondents.

Date: 2-5-09

By: Faye Kraft
Faye Kraft, Owner
Timber Lake Service LLC

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8,
Complainant.

Date: 2/11/09

By: Michael T. Risner
Michael T. Risner, Director
Legal Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

Date: 2/11/09

By: Kelcey Land
Kelcey Land, Acting Director
Technical Enforcement Program for
RCRA/CERCLA
Office of Enforcement, Compliance
and Environmental Justice

Date: 2/11/2009

By: Amy Swanson
Amy Swanson, Attorney
Legal Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT/FINAL ORDER** in the matter **FAYE and MONROE KRAFT, TIMBER LAKE SERVICE; DOCKET NO.: RCRA-08-2009-0001**; these documents were filed with the Regional Hearing Clerk on February 17, 2009.

Further, the undersigned certifies that a true and correct copies of the documents were delivered to Amy Swanson, Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned document was placed in the United States mail certified/return receipt requested on February 17, 2009 to:

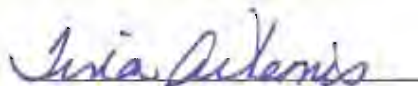
Faye and Monroe Kraft
Timber Lake Service
824 Main Street
Timber Lake, SD 57656

E-mailed to:

Honorable Spencer T. Nissen
Office of Administrative Law Judges
U. S. Environmental Protection Agency
1200 Pennsylvania Avenue (1900L)
Washington, DC 20460-2001

Michelle Angel
U. S. Environmental Protection Agency
Cincinnati Finance Center
26 W. Martin Luther King Drive (MS-0002)
Cincinnati, Ohio 45268

February 17, 2009



Tina Artemis
Paralegal/Regional Hearing Clerk

