



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

APR 17 2009

CERTIFIED MAIL/RETURN RECEIPT REQUESTED

Article Number: 7005 3110 0000 5943 2556

Mark S. Johnson
Assistant Regional Counsel
U.S. General Services Administration
26 Federal Plaza
New York, New York 10278

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REGION 2
2009 APR 21 AM 10:01
REGIONAL HEARING
CLERK

Re: In the Matter of the United States General Services Administration, Respondent
Docket No. RCRA-02-2008-7501

Dear Mr. Johnson:

The United States Environmental Protection Agency ("EPA") is in receipt of your letter, dated March 25, 2008 [sic, March 25, 2009], wherein you requested a six month (180 day) extension of time, from March 28, 2009 [sic, March 29, 2009] to September 24, 2009 [sic, September 29, 2009]. Your request sought an extension of time for the United States General Services Administration ("GSA") to comply with the requirements set forth in paragraphs 3 and 4 of the Consent Agreement/Final Order ("CA/FO") entered into between EPA and GSA on September 29, 2008, in the above-referenced matter.

As you are aware, under paragraph 3 of the CA/FO, GSA is required to provide, within 180 calendar days of the EPA Regional Administrator's signature of the Final Order, the following: i) a written certification that the 500 gallon UST system, at the Martin Luther King courthouse facility in Newark, N.J., has been permanently closed, in accordance with 40 C.F.R. Sections 280.70-74, and that any replacement of the UST system either meets new UST system performance standards or is an above-ground storage ("AST") tank; ii) documentation that the permanent closure work (ie., the site assessment) for the UST has been completed; and iii) a closure report.

Pursuant to paragraph 8 of the CA/FO, EPA may grant an extension of the date of performance required in paragraph 3 if "good cause" exists for such extension. Any request for extension by GSA "shall be accompanied by supporting documentation . . .". Such supporting documentation may include letters, invoices, proposals or other communications that explain why GSA's compliance with the requirements of paragraph 3 of the CA/FO was withheld or delayed.

EPA has reviewed GSA's request and finds that it is not sufficiently detailed in explaining why GSA has been unable to meet each of the specific requirements set forth in paragraph 3 of the CA/FO within the timeframe specified therein. Moreover, GSA did not provide a detailed explanation and adequate justification as to why it needs six months additional time (for each task that must be completed for full compliance) to comply with the permanent closure deadline. Without detailed information and supporting documentation, EPA does not have "good cause" to grant GSA's extension request at this time.

Please be advised that, pursuant to paragraph 7 of the CA/FO, stipulated penalties shall accrue each day that GSA continues to be in non-compliance.

EPA requests that GSA respond to this letter within two weeks of receipt. If GSA fails to respond to this letter or provides an inadequate explanation for the delay in compliance, EPA will issue a demand letter for stipulated penalties pursuant to paragraph 9 of the CA/FO.

If you have any questions, please contact Mr. Bruce Aber of our legal staff at (212) 637-3224.

Sincerely yours,

Dore LaPosta
Director

Dore LaPosta, Director
Division of Enforcement & Compliance Assistance

bcc: Frank Spina, RCB-UST
Dennis McChesney, RCB-UST
Bruce Aber, ORC

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

-----X	:	
In the Matter of	:	
	:	
United States General Services Administration	:	
	:	<u>CONSENT AGREEMENT AND</u>
	:	<u>FINAL ORDER</u>
Respondent	:	
	:	Docket No. RCRA-02-2008-7501
Proceeding Under Section 9006 of the Solid Waste Disposal Act, as amended	:	
-----X	:	

PRELIMINARY STATEMENT

This administrative proceeding was instituted pursuant to Section 9006 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act ("RCRA"), the Hazardous and Solid Waste Amendments of 1984, the Superfund Amendments and Reauthorization Act of 1986, the Federal Facility Compliance Act of 1992, and the Energy Policy Act of 2005, 42 U.S.C. §6901 et seq. (collectively referred to as the "Act"). 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" to the Respondent, the United States General Service Administration on December 26, 2007.

The Complaint alleged violations of the Act and the regulations promulgated pursuant to Subtitle I set forth in Volume 40 of the Code of Federal Regulations (C.F.R.) Part 280. Specifically, the Complaint alleged that the Respondent failed to upgrade, meet new underground storage tank (UST) system performance standards, or close existing UST systems at

two federal facilities located in New York City, New York and failed to meet performance standards for a new UST system in a federal facility located in Newark, New Jersey.

The parties have reached an amicable resolution of this matter and agree, by entering into this Consent Agreement and Final Order ("CA/FO") pursuant to 40 C.F.R. Section 22.18, 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 the United States General Services Administration (hereinafter "the Respondent").

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

3. Respondent is a "person" as that term is defined in Section 9001(5) of the Act, 42 U.S.C. § 6991(5), and in 40 C.F.R. § 280.12.

4. Respondent owned and operated, and continues to own and operate, "underground storage tanks" or "USTs", as those terms are defined in Section 9001(1) and 9001(3) of the Act, 42 U.S.C. § 6991(1) and 6991(3), and in 40 C.F.R. § 280.12, located at the following locations: the Silvio V. Mollo Federal Building, One Saint Andrews Plaza, New York, N.Y. ("the Mollo Facility"); the Thurgood Marshall U.S. Courthouse, 40 Foley Square, New York, N.Y. ("the Marshall Facility"); and the Martin Luther King Courthouse, 50 Walnut Street, Newark, New Jersey ("the MLK Facility"), for all times relevant to this Complaint.

5. On or about May 18, 2006, pursuant to Section 9005 of the Act, 42 U.S.C. Section 6991d, authorized representatives of EPA inspected the Mollo Facility and the Marshall Facility, in order to determine whether the underground storage tanks at the facilities were in compliance with Subtitle I of the Act and 40 C.F.R. Part 280.
6. On or about March 1, 2007, the New Jersey Department of Environmental Protection ("NJDEP") conducted an inspection of the MLK Facility and issued a Notice of Violation ("NOV") to the MLK Facility. The NOV cited several violations of federal and state UST requirements, including failure to provide overfill and spill prevention equipment on the 500 gallon UST system at the MLK Facility.
7. Pursuant to Section 9005 of the Act, 42 U.S.C. §6991d(a) and 40 C.F.R. §280.34, EPA sent to Respondent an Information Request Letter ("IRL") on February 15, 2007, to determine the status of Respondent's compliance with the Act and 40 C.F.R. Part 280, for USTs at all GSA facilities in EPA, Region 2.
8. Respondent provided a response to the IRL on June 15, 2007, which contained information concerning the USTs that are owned and/or operated by Respondent in EPA, Region 2.
9. Based on the inspection by EPA and the Respondent's June 15, 2007 response to EPA's IRL, the Complaint alleged that Respondent violated 40 C.F.R. Section 280.21, by failing to meet any of the following requirements at the Mollo Facility and the Marshall Facility: new UST system performance standards under Section 280.20; upgrading requirements in Section 280.21(b) through (d); or closure requirements under Part 280 Subpart G, including applicable requirements for corrective action under Subpart F.

10. Based on the March 1, 2007 inspection by NJDEP, the NOV on same date, and the Respondent's July 25, 2007 supplemental response to EPA's IRL, the Complaint alleged that Respondent violated 40 C.F.R. Section 280.20, by failing to meet performance standards for the new UST system at the MLK facility.

11. Respondent requested and received several extensions of time to file an Answer.

12. Complainant and Respondent agree that settling this matter by entering into this CA/FO pursuant to 40 C.F.R. subsections 22.18(b)(2) and (3) of the revised Consolidated Rules of Practice, is an appropriate means of resolving the allegations described in paragraphs 9 and 10 without further litigation.

13. Respondent has installed an automatic tank gauging (ATG) release detector system for the upgraded 1,500 gallon UST system at the Mollo Facility, and has informed EPA that it plans to install an ATG release detector system for a new 3,000 gallon DW-FRP UST system performance standard at the MLK facility. Respondent also has informed EPA that these two tanks will be included in GSA's central monitoring system.

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/Termination or Suspension of Permits, 40 C.F.R. §22.18, it is hereby agreed that:

1. Within thirty (30) calendar days of EPA's Regional Administrator's signature of the Final Order in this settlement, Respondent shall provide: 1) a written certification to EPA that the 1,500 gallon UST system at the Mollo Facility has been upgraded with either internal lining or cathodic protection, or both internal lining combined with cathodic protection, as well as spill and overflow prevention equipment in accordance with the requirements at 40 CFR Section 280.21; and 2) documentation that the upgrade work has been completed.

2. Within thirty (30) calendar days of the EPA Regional Administrator's signature on the Final Order in this settlement, Respondent shall provide to EPA the following: 1) a written certification that the 3,500 or 4,000 gallon UST system at the Marshall Facility has been permanently closed in accordance with 40 CFR Section 280.70-74, and that any replacement of the UST system either meets new UST system performance standards in 40 C.F.R. Section 280.20, or is an Above-Ground Storage tank; 2) documentation that the permanent closure work (i.e., the site assessment) for the UST has been completed; and 3) a closure report.

3. Within one hundred and eighty calendar (180) days of the EPA Regional Administrator's signature on the Final Order in this settlement, Respondent shall provide to EPA the following:

1) a written certification to EPA that the 500 gallon UST system at the MLK Facility has been permanently closed in accordance with 40 C.F.R. Section 280.70-74, and that any replacement of the UST system either meets the new UST system performance standards in 40 C.F.R. Section 280.20, or is an Above-Ground Storage Tank; 2) documentation that the permanent closure work (i.e. the site assessment) for the UST has been completed; and 3) a closure report.

4. The certification in 1, 2 and 3, above shall include the following language:

I certify that, to the best of my knowledge and belief, the information contained in this written certification and in any documents accompanying this certification is true, accurate and complete. In making this statement, I have not made an independent review of all statements contained therein and have relied in good-faith on information, statements, and representations furnished to me by employees or contractors of GSA. Based on my inquiry of the person or persons (or the supervisors of such persons) directly responsible for gathering the information contained in this written certification and in any documents accompanying this certification, this document is, to the best of my knowledge and belief, true accurate and complete.

5. Respondent shall hereafter maintain compliance with all applicable provisions of federal and state UST laws and regulations at the Mollo Facility, the Marshall Facility and the MLK Facility.

6. If in the future EPA believes that any of the information, including records demonstrating compliance, certified to, pursuant to Paragraphs 1, 2, 3 and 4 is inaccurate, EPA will advise Respondent of its belief and its basis for such, and will afford Respondent an opportunity to respond to EPA. If EPA still believes that the certification is materially inaccurate, EPA shall have such remedies as are available to it by law.

7. If the Respondent fails to provide, in a timely manner, the certifications and documentation required by paragraphs 1 through 4, above, then Respondent shall be liable to EPA for a stipulated penalty in accordance with the following schedule, commencing on the first day of noncompliance and continuing through the date upon which compliance is achieved:

<u>Period of Failure to Comply</u>	<u>Penalty Per Day Per UST System</u>
1 st to 10 th day	\$500
11 th to 30 th day	\$1,000
31 st to 60 th day	\$2,000
Each day in excess of 60 days	\$3,000

8. The Director of the Division of Enforcement and Compliance Assistance, EPA Region 2, or the Director's representative, may grant an extension or further extensions of the date of performance established in paragraphs 1 through 4 of this Consent Agreement with regard to the certifications and documentation required by such paragraphs, if good cause exists for such extension, including, but not limited to, failures arising from causes beyond the reasonable contemplation of the parties and beyond the reasonable control and without fault or negligence of the Respondent. If Respondent submits a request for extension, such request shall be accompanied by supporting documentation and submitted to EPA no later than fourteen (14) calendar days prior to any due date (or later date if the grounds for such extension was not reasonably known to GSA at such time) set forth in this Consent Agreement, or other deadline established pursuant to this Consent Agreement. Such extension, if any, shall be approved in writing and shall not be unreasonably withheld or delayed.

9. Unless Respondent provides EPA with a written explanation pursuant to Paragraph 10, below, all stipulated penalties are due and payable within thirty (30) calendar days of the Respondent's receipt from EPA of a written demand for payment of the penalties. All stipulated penalty payments shall be made in accordance with the delivery instructions (i.e., regular mail or overnight delivery) and to the addresses specified in Paragraph 13 of this Consent Agreement. 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.

10. After receipt of a demand from EPA for stipulated penalties pursuant to the preceding paragraph, Respondent shall have twenty (20) calendar days in which to provide Complainant with a written explanation of why it believes that a stipulated penalty is not appropriate for the cited violation(s) of this Consent Agreement.

11. The Director of the Division of Enforcement and Compliance Assistance may, at the Director's sole discretion, reduce or eliminate any stipulated penalty due if Respondent has, in writing, demonstrated to EPA's satisfaction good cause for such action by EPA. If, after review of Respondent's submission pursuant to the preceding paragraph, Complainant reasonably determines that Respondent has failed to comply with the provisions of this Consent Agreement, and Complainant does not, at the Complainant's sole discretion, eliminate the stipulated penalties demanded by EPA, Complainant will notify Respondent, in writing, that either the full stipulated penalty or a reduced stipulated penalty must be paid by the Respondent. Respondent shall pay the stipulated penalty amount indicated in EPA's notice within thirty (30) calendar days of its receipt of such written notice from EPA. Failure of Respondent to pay any stipulated penalty required to be paid by Respondent pursuant to this Consent Agreement may result in further action for collection or appropriate action without prejudice to the right of Respondent to oppose, contest, or challenge such referral, collection, or action or any determination upon which such referral is made so long as Respondent does not contest the terms of this Consent Agreement.

12. For purposes of this proceeding, Respondent (a) admits the jurisdictional allegations of the Complaint, and (b) neither admits nor denies specific factual allegations and

conclusions of law contained in the Complaint, (c) consents to the issuance of the compliance order, and (d) consents to the conditions specified in the Consent Agreement.

13. Respondent shall pay, by cashiers or certified check, a civil penalty in the amount of Seventy Thousand Dollars (\$70,000), payable to the "Treasurer, United States of America." The check shall be identified with a notation of the name and docket number of this case as follows: In the Matter of: United States General Services Administration, Docket No. RCRA-02-2008-7501. The check shall be mailed to:

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

If overnight delivery is preferred, Respondent may mail the check to the following address:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
Attn: USEPA Box #979077
St. Louis, MO. 63101

Respondent shall also send copies of this payment to each of the following

Bruce Aber
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

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, which is located at the end of this CA/FO (the date by which payment must be received shall hereafter be referred to as the “due date”).

- a. Failure of Respondent to pay the penalty in full pursuant to this Consent Agreement will result in further action for collection or appropriate action without prejudice to the right of Respondent to oppose, contest, or challenge such referral, collection, or action or any determination upon which such referral is made so long as Respondent does not contest the terms of this Consent Agreement; and
- b. 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.

14. This Consent Agreement and Final Order shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state, or local law concerning USTs, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

15. Nothing in this Consent Agreement shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. Section 1341, or other applicable law.

16. This Consent Agreement and Final Order is being voluntarily and knowingly entered into by the parties to resolve the civil and administrative claims alleged in the Complaint (upon full payment of the penalty and any stipulated penalty that comes due and performance of the obligations set forth in paragraphs 1 through 4 above). Nothing herein shall be read to preclude EPA or the United States, however, from pursuing the remedies mentioned in 40 C.F.R. Section 22.18(c) for any violation(s) of law.

17. Full payment of the civil penalty (and any stipulated penalty that comes due) and performance as established in paragraphs 1 through 4 of this CA/FO with regard to the certifications and documentation required by such paragraphs, demonstrating that the work specified in paragraphs 1 through 4 has been satisfactorily completed, as set forth in this settlement pursuant to 40 C.F.R. Section 22.18(b) shall resolve Respondent's federal civil liabilities to the EPA pursuant to 40 C.F.R. Section 22.31(a), for the violations at the Mollo, Marshall and MLK facilities, which were alleged in the Complaint issued in this case.

18. Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable and consents to the issuance and its terms. Respondent consents to the issuance of the accompanying Final Order. Respondent agrees that all terms of settlement are set forth herein.

19. Respondent explicitly and knowingly consents to the assessment of the civil penalty and stipulated penalties as set forth in this Consent Agreement and agrees to pay these penalties in accordance with the terms of this Consent Agreement.

20. Respondent explicitly waives its right to request or to seek any Hearing on the Complaint or on any of the allegations therein asserted, on this Consent Agreement or on the Findings of Fact and Conclusions of Law herein, or on the accompanying Final Order.

21. Respondent waives its right to appeal the proposed Final Order accompanying the Consent Agreement.

22. This Consent Agreement and Final Order 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 one to enforce this Consent Agreement and its accompanying Final Order.

23. Each undersigned signatory to this Consent Agreement 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.

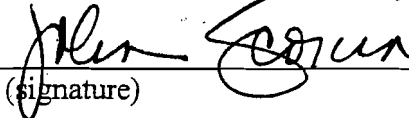
24. The provisions of this CA/FO shall be binding upon both EPA and Respondent, and their officials, officers, directors, agents, servants, authorized representatives and successors or assigns.

25. Respondent explicitly waives any right it may have pursuant to 40 C.F.R. §22.8 to be present during discussions with or to be served with and to reply to any memorandum or communication addressed to the EPA Regional Administrator or to the EPA Deputy Regional Administrator where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the attached Final Order.

26. Each party hereto agrees to bear its own costs and fees in this matter.
27. Respondent consents to service upon Respondent of a copy of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk.
28. Pursuant to 40 C.F.R. §22.13(b), the effective date of the Final Order herein shall be the date when filed with the Regional Hearing Clerk of the United States Environmental Protection Agency, Region 2.

In the Matter of United States General Services Administration, Docket No. RCRA-02-2008-
7501

RESPONDENT: United States General Services Administration

BY: 
(signature)

NAME JOHN SCORCIA
(Please Print)

TITLE: Assistant Regional Administrator
U.S. General Services Administration

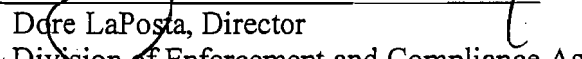
DATE: September 23, 2008

In the Matter of United States General Services Administration, Docket No. RCRA-02-2008-

7501

COMPLAINANT: **United States Environmental Protection Agency
Region 2**

BY: _____


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

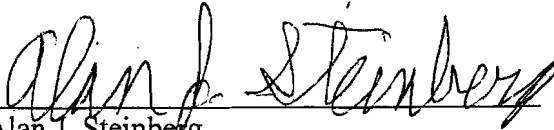
PATRICK DORRILL

DATE: SEPTEMBER 25, 2008

In the Matter of United States General Services Administration, Docket No. RCRA-02-2008-7501

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. Section 22.18(b)(3). The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, U.S. EPA, Region 2, New York, New York.



Alan J. Steinberg
Regional Administrator
U.S. Environmental Protection
Agency – Region 2
290 Broadway
New York, New York 10007-1866

DATE: _____

9-29-08

In the Matter of the General Services Administration, Docket No. RCRA-02-2008-7501

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing fully executed 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:

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

Copy by Personal Delivery and
Certified Mail, Return Receipt Requested:

Mark S. Johnson, Assistant Regional Counsel
Office of Regional Counsel
U.S. General Services Administration
26 Federal Plaza, Rm 18-105
New York, N.Y. 10007-1866

Date: Oct. 2, 2008



Bruce Aber, Assistant Regional Counsel