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L. Guy

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

In the Matter of:)

Chester Aytch)
34 Pritchard Lane)
Sicklerville, NJ 08081;)

5631 Corporation)
1313 N. 52nd Street)
Philadelphia, Pennsylvania 19131;)

RESPONDENTS)

Consent Agreement

58th Street Sunoco)
5744 Woodland Avenue)
Philadelphia, Pennsylvania 19143;)

U.S. EPA Docket Number
RCRA-03-2009-0322

and)

Woodland Sunoco)
5200 Woodland Avenue)
Philadelphia, Pennsylvania 19143;)

FACILITIES)

CONSENT AGREEMENT

1. PRELIMINARY STATEMENT

1. On September 30, 2009, the Director, Land and Chemicals Division, U.S. Environmental Protection Agency, Region III ("Complainant" or "EPA") issued an Administrative Complaint, Compliance Order and Notice of Opportunity for Hearing ("Complaint") against Chester Aytch and 5631 Corporation ("Respondents"), pursuant to Section 9006(a) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C.

§ 6991e(a). On November 24, 2009, Respondent filed an Answer to the Complaint. On August 18, 2010, Complainant filed a Motion to Allow Minor Amendments to the Complaint. This Motion was granted by the Presiding Officer on August 24, 2010. By such action the original Complaint, as modified by the changes to three paragraphs, as set forth in such Motion, became the Amended Complaint in this matter.

2. This Consent Agreement is entered into by Complainant and Respondents in settlement of EPA's claims against Respondents for civil penalties under Section 9006(d) of RCRA, 42 U.S.C. § 6991e(d), for the violations alleged in the Amended Complaint.
3. For the purposes of this proceeding, Respondents admit the jurisdictional allegations of the Amended Complaint.
4. Respondents neither admit nor deny the Findings of Fact contained in the Amended Complaint, except as provided in Paragraph 3, above.
5. Respondents neither admit nor deny the Conclusions of Law contained in the Amended Complaint, except as provided in Paragraph 3, above.
6. For the purposes of this proceeding only, each Respondent hereby expressly waives its right to a hearing on any issue of law or fact set forth in the Amended Complaint, and any right to appeal the accompanying Final Order.
7. The settlement agreed to by the parties in this Consent Agreement reflects the desire of the parties to resolve this matter without continued litigation.

8. Respondents consent to the issuance of this Consent Agreement and to the attached Final Order and agree to comply with their terms. Respondents agree not to contest Complainant's jurisdiction with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement thereof.
9. This Consent Agreement and Final Order resolve only EPA's claims for civil penalties for the specific violations alleged in the Amended Complaint. EPA reserves the right to commence action against any person, including Respondents, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice.
10. EPA reserves any rights and remedies available to it under RCRA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this Consent Agreement and Final Order, following its filing with the Regional Hearing Clerk. Respondents reserve all available rights and defenses they may have to defend themselves in any such action.
11. Nothing in this Consent Agreement and Final Order shall alter or otherwise affect each Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations.

12. The settlement embodied in this Consent Agreement is based in part upon an analysis of Respondents' ability to pay a civil penalty. This analysis was based upon information submitted to Complainant by the Respondents, as listed on Exhibit A to this Consent Agreement. Respondents and their undersigned representative, by such representative's signature to this Consent Agreement, certify that the information submitted to EPA regarding Respondents' ability to pay is accurate and not misleading.
13. Respondents are aware that the submission of false or misleading information to the United States government may subject it to separate civil and/or criminal liability. Complainant reserves the right to seek and obtain appropriate relief if Complainant obtains evidence that the information provided and/or representations made by Respondents to Complainant regarding the matters at issue in the Findings of Fact and Conclusions of Law are false or, in any material respect, inaccurate.
14. Each party shall bear its own costs and attorney's fees in connection with this proceeding.

II. EPA'S FINDINGS OF FACT AND CONCLUSIONS OF LAW

15. EPA's Findings of Fact and Conclusions of Law set forth in the Amended Complaint are hereby incorporated into this Consent Agreement as if set forth fully herein.

III. CERTIFICATION OF COMPLIANCE

16. As to all relevant provisions of RCRA and the Commonwealth of Pennsylvania Authorized UST management program allegedly violated as set forth in the Amended Complaint, Respondents certify to EPA that, upon investigation, to the best of each

Respondent's knowledge and belief, Respondents are currently in compliance with all such relevant provisions and regulations.

IV. CIVIL PENALTIES

17. Respondents jointly and severally agree to pay a civil penalty in the amount of one hundred thousand dollars (\$100,000.00), which Respondents agree to pay in accordance with the terms set forth below. Such civil penalty amount shall become due and payable immediately upon Respondents' receipt of a true and correct copy of this Consent Agreement and the attached Final Order (together referred to as the "CAFO") fully executed by all parties. Respondents may avoid the assessment of interest in connection with such civil penalty as described in Paragraph 21 of this CAFO, including the interest calculated in Paragraph 19 of this CAFO for purposes of the installment payments agreed to herein, by paying the entire civil penalty no later than thirty (30) calendar days after the date on which a copy of this CAFO is mailed or hand-delivered to Respondents.
18. Having determined that this Consent Agreement is in accordance with law and that the civil penalty amount was determined after consideration of the statutory factors set forth in Section 9006(c)-(e) of RCRA, 42 U.S.C. § 6991e(c)-(e), which include the seriousness of the violation, any good faith efforts to comply with the applicable requirements, the compliance history of the owner and operator, and any other appropriate factors, EPA hereby agrees and acknowledges that payment of the civil penalty shall be in full and final satisfaction of all civil claims for penalties which Complainant may have under Section

9006(d) of RCRA, 42 U.S.C. § 6991e(d), for the violations alleged in this Consent Agreement and Final Order.

19. The civil penalty of one hundred thousand dollars (\$100,000.00) set forth in Paragraph 17, above, may be paid in thirteen (13) installments with interest at the rate of one percent (1%) per annum on the outstanding principal balance in accordance with the following schedule:

- a. 1st Payment: The first payment in the amount of thirty thousand dollars (\$30,000.00), consisting of a principal payment of \$30,000.00 and an interest payment of \$0.00, shall be paid no later than thirty (30) calendar days after the date on which a copy of this CAFO is mailed or hand-delivered to Respondents.
- b. 2nd Payment: The second payment in the amount of six thousand eight dollars (\$6,008.00), consisting of a principal payment of \$5,833.00 and an interest payment of \$175.00, shall be paid no later than three (3) calendar months after the date on which a copy of this CAFO is mailed or hand-delivered to Respondents.
- c. 3rd Payment: The third payment in the amount of five thousand nine hundred ninety-three dollars (\$5,993.00), consisting of a principal payment of \$5,833.00 and an interest payment of \$160.00, shall be paid no later than six (6) calendar months after the date on which a copy of this CAFO is mailed or hand-delivered to Respondents.

- d. 4th Payment: The fourth payment in the amount of five thousand nine hundred eighty dollars (\$5,980.00), consisting of a principal payment of \$5,834.00 and an interest payment of \$146.00, shall be paid no later than nine (9) calendar months after the date on which a copy of this CAFO is mailed or hand-delivered to Respondents.
- e. 5th Payment: The fifth payment in the amount of five thousand nine hundred sixty-four dollars (\$5,964.00), consisting of a principal payment of \$5,833.00 and an interest payment of \$131.00, shall be paid no later than twelve (12) calendar months after the date on which a copy of this CAFO is mailed or hand-delivered to Respondents.
- f. 6th Payment: The sixth payment in the amount of five thousand nine hundred fifty dollars (\$5,950.00), consisting of a principal payment of \$5,833.00 and an interest payment of \$117.00, shall be paid no later than fifteen (15) calendar months after the date on which a copy of this CAFO is mailed or hand-delivered to Respondents.
- g. 7th Payment: The seventh payment in the amount of five thousand nine hundred thirty-six dollars (\$5,936.00), consisting of a principal payment of \$5,834.00 and an interest payment of \$102.00, shall be paid no later than eighteen (18) calendar months after the date on which a copy of this CAFO is mailed or hand-delivered to Respondents.

- h. 8th Payment: The eighth payment in the amount of five thousand nine hundred twenty dollars (\$5,920.00), consisting of a principal payment of \$5,833.00 and an interest payment of \$87.00, shall be paid no later than twenty-one (21) calendar months after the date on which a copy of this CAFO is mailed or hand-delivered to Respondents.
- i. 9th Payment: The ninth payment in the amount of five thousand nine hundred six dollars (\$5,906.00), consisting of a principal payment of \$5,833.00 and an interest payment of \$73.00, shall be paid no later than twenty-four (24) calendar months after the date on which a copy of this CAFO is mailed or hand-delivered to Respondents.
- j. 10th Payment: The tenth payment in the amount of five thousand eight hundred ninety-two dollars (\$5,892.00), consisting of a principal payment of \$5,834.00 and an interest payment of \$58.00, shall be paid no later than twenty-seven (27) calendar months after the date on which a copy of this CAFO is mailed or hand-delivered to Respondents.
- k. 11th Payment: The eleventh payment in the amount of five thousand eight hundred seventy-seven dollars (\$5,877.00), consisting of a principal payment of \$5,833.00 and an interest payment of \$44.00, shall be paid no later than thirty (30) calendar months after the date on which a copy of this CAFO is mailed or hand-delivered to Respondents.

- l. 12th Payment: The twelfth payment in the amount of five thousand eight hundred sixty-two dollars (\$5,862.00), consisting of a principal payment of \$5,833.00 and an interest payment of \$29.00, shall be paid no later than thirty-three (33) calendar months after the date on which a copy of this CAFO is mailed or hand-delivered to Respondents.
 - m. 13th Payment: The thirteenth and final payment in the amount of five thousand eight hundred forty-nine dollars (\$5,849.00), consisting of a principal payment of \$5,834.00 and an interest payment of \$15.00, shall be paid no later than thirty-six (36) calendar months after the date on which a copy of this CAFO is mailed or hand-delivered to Respondents.
 - n. Pursuant to the above schedule, Respondents will remit total principal payments for the civil penalty in the amount of one hundred thousand dollars (\$100,000.00) and total interest payments in the amount of one thousand one hundred thirty-seven dollars (\$1,137.00).
- 20. If Respondents fail to make one of the installment payments in accordance with the schedule set forth in Paragraph 19, above, the entire unpaid balance of the penalty and all accrued interest shall become due immediately upon such failure, and Respondents shall *immediately* pay the entire remaining principal balance of the civil penalty along with any interest that has accrued up to the time of such payment. In addition, Respondents shall be liable for and shall pay administrative**

handling charges and late payment penalty charges as described in Paragraph 21.b. and c., below, in the event of any such failure or default.

21. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below.

- a. Interest on the civil penalty assessed in this Consent Agreement and Final Order will begin to accrue on the date that a copy of this Consent Agreement and Final Order is mailed or hand-delivered to Respondents. EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest on the portion of the civil penalty not paid within 30 calendar days will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).
- b. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives - Cash Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the

first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.

- c. A penalty charge of six percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

22. Respondents shall remit the full penalty, and/or any interest, administrative fees and late payment penalties, in accordance with this Section IV, via one of the following methods:

- a. All payments made by check and sent by regular mail (except as noted in Paragraph 22.c., below) shall be addressed to:

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

The customer service contact for this address is Eric Volck, who may be reached at 513-487-2105.

- b. All payments made by check and sent by overnight delivery service (except as noted in Paragraph 22.c, below) shall be addressed to:

U.S. Bank
Government Lockbox 979077
U.S. EPA, Fines & Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

The U.S. Bank customer service contact for overnight delivery is 314-418-1028.

- c. All payments made by check in any currency drawn on banks with no branches in the United States shall be addressed for delivery to the following address:

Cincinnati Finance
US EPA, MS-NWD
26 W. M.L. King Drive
Cincinnati, OH 45268-0001

- d. All payments made by electronic funds transfer ("EFT") shall be directed to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 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"

The Federal Reserve customer service contact may be reached at 212-720-5000.

- e. All electronic payments made through the Automated Clearinghouse ("ACH"), also known as Remittance Express ("REX"), shall be directed to:

US Treasury REX / Cashlink ACH Receiver
ABA = 051036706
Account No.: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - Checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737

Customer service contact: Jesse White, at 301-887-6548, or REX, 1-866-234-5681.

f. On-line payment option:

WWW.PAY.GOV

Enter "sfo 1.1" in the search field. Open and complete the form.

g. Additional payment guidance is available at:

http://www.epa.gov/ocfo/finservices/make_a_payment.htm

23. All payments by Respondents shall include each Respondent's full name and address and the EPA Docket Number of this Consent Agreement (RCRA-03-2009-0322).

24. At the time of payment, Respondents shall send a notice of such payment, including a copy of the check, EFT authorization or ACH authorization, as appropriate to:

Lydia Guy
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region III (Mail Code 3RC00)
1650 Arch Street
Philadelphia, PA 19103-2029

and

Benjamin D. Fields
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency
Region III (Mail Code 3RC30)
1650 Arch Street
Philadelphia, PA 19103-2029

25. Each Respondent agrees not to deduct for civil taxation purposes the civil penalty specified in this Consent Agreement and the attached Final Order.

V. PARTIES BOUND

26. This Consent Agreement and the accompanying Final Order shall apply to and be binding upon the EPA, each Respondent, Respondent 5631 Corporation's officers and directors (in their official capacities) and each Respondent's successors and assigns. By his or her signature below, the person signing this Consent Agreement on behalf of Respondents acknowledges that he or she is fully authorized to enter into this Consent Agreement and to bind both Respondents to the terms and conditions of this Consent Agreement and the accompanying Final Order.

VI. ENTIRE AGREEMENT

27. This Consent Agreement and the attached Final Order constitute the entire agreement and understanding of the parties concerning settlement of the above-captioned action and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Consent Agreement and the attached Final Order.

VII. EFFECTIVE DATE

28. The effective date of this Consent Agreement and Final Order is the date on which it is filed with the Regional Hearing Clerk after signature by the Regional Judicial Officer or Regional Administrator.

For Respondents Chester Aytch and 5631 Corporation:

Date: 9-16-10

By: 
Chester Aytch
Individually and as President, 5631 Corporation

For Complainant United States Environmental Protection Agency, Region III:

Date: 9/20/10

By: 
Benjamin D. Fields
Senior Assistant Regional Counsel

After reviewing the foregoing Consent Agreement and other pertinent information, the Director, Land and Chemicals Division, EPA Region III, recommends that the Regional Administrator or the Regional Judicial Officer issue the Final Order attached hereto.

Date: 9/20/10

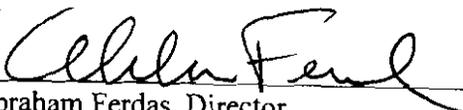
By: 
Abraham Ferdas, Director
Land and Chemicals Division

EXHIBIT A

Respondents Chester Aytch and 5631 Corporation submitted to EPA a number of documents with regard to its financial circumstances,. These documents include:

1. EPA financial questionnaire for 5631 Corporation, dated August 12, 2010;
2. EPA financial questionnaire for Chester Aytch, dated August 12, 2010;
3. Federal individual tax returns for Chester Aytch 2007, 2008 and 2009;
4. New Jersey individual tax returns for Chester Aytch for 2007 and 2008;
5. Federal corporate tax returns for 5631 Corporation for 2006, 2007, 2008 and 2009;
6. Asset detail reports for 5631 Corporation for 2006, 2007 and 2008;
7. Pennsylvania corporate tax report for 5631 Corporation for 2006, 2007 and 2008;

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029**

In the Matter of:

Chester Aytch
34 Pritchard Lane
Sicklerville, NJ 08081;

5631 Corporation
1313 N. 52nd Street
Philadelphia, Pennsylvania 19131;

RESPONDENTS

58th Street Sunoco
5744 Woodland Avenue
Philadelphia, Pennsylvania 19143;

and

Woodland Sunoco
5200 Woodland Avenue
Philadelphia, Pennsylvania 19143;

FACILITIES

Final Order

U.S. EPA Docket Number
RCRA-03-2009-0322

FINAL ORDER

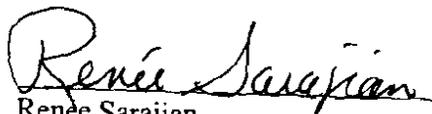
The Director, Land and Chemicals Division, U.S. Environmental Protection Agency - Region III ("Complainant"), Chester Aytch and 5631 Corporation ("Respondents"), have executed a document entitled "Consent Agreement" which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits

("Consolidated Rules of Practice"), 40 C.F.R. Part 22. The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated herein as if set forth at length.

NOW THEREFORE, pursuant to Section 9006(a) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6991e(a), and based on representations in the Consent Agreement that the penalty agreed to in the Consent Agreement is based on a consideration of the factors set forth in Section 9006(c)-(e) of RCRA, 42 U.S.C. § 6991e(c)-(e), Respondents Chester Aytch and 5631 Corporation are hereby ordered to pay a civil penalty of one hundred thousand (\$100,000.00), as set forth in Section IV of the Consent Agreement, and to comply with the terms and conditions of the Consent Agreement.

The effective date of this document is the date on which it is filed with the Regional Hearing Clerk after signature by the Regional Administrator or Regional Judicial Officer.

Date:

9/22/10

Renee Sarajian
Regional Judicial Officer
U.S. EPA, Region III

CERTIFICATE OF SERVICE

I hereby certify that, on the date below, I hand-delivered the original and one copy of the attached Consent Agreement and Final Order to the Regional Hearing Clerk, and caused true and correct copies to be sent as follows:

Via UPS Overnight to:

Chester Aytch
34 Pritchard Lane
Sicklerville, NJ 08081

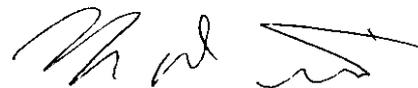
Paul Boni
Law Offices of Paul Boni, P.C.
Consitution Place, Suite 1109
325 Chestnut Street
Philadelphia, Pennsylvania 19106

Via Pouch Mail to:

Hon. Susan L. Biro
Chief Administrative Law Judge
Office of Administrative Law Judges
1200 Pennsylvania Ave., N.W.
Mail Code 1900L
Washington, D.C. 20005

Date

9/22/10



Benjamin D. Fields
Senior Assistant Regional Counsel