



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2

290 BROADWAY

NEW YORK, NEW YORK 10007-1866

September 15, 2009

CERTIFIED MAIL -
RETURN RECEIPT REQUESTED

Mr. Charles Hayward, Administrator
Wesley Health Care Center, Inc.
131 Lawrence Street
Saratoga Springs, New York 12866

Re: In the matter of Wesley Health Care Center, Inc.
Docket No. RCRA-02-2009-7504

Dear Mr. Hayward:

Please find enclosed a copy of the Consent Agreement and Final Order ("CA/FO") in the above-referenced matter signed by the Regional Judicial Officer of the U.S. Environmental Protection Agency, Region 2 on September 10, 2009.

The schedule for payment of the penalty is set forth in Paragraph 2 of the Consent Agreement. Kindly arrange for the payment in accordance with the terms of the CA/FO. Thank you in advance for your cooperation in this matter.

If you have any questions, please contact me at (212) 637-3167.

Sincerely yours,

A handwritten signature in cursive script that reads "Beverly Kolenberg".

Beverly Kolenberg
Assistant Regional Counsel
Office of Regional Counsel

Enclosure

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG.11
2009 SEP 15 AM 10:57
REGIONAL HEARING
CLERK

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. ENVIRONMENTAL PROTECTION AGENCY-REG. II
2009 SEP 15 PM 10:57
REGIONAL HEARING CLERK

-----x
In the Matter of :
 :
Wesley Health Care Center, Inc.:
 :
 : CONSENT AGREEMENT AND
 : FINAL ORDER
 Respondent. :
 :
 : Docket No.
 : RCRA-02-2009-7504
 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, 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, Region 2, United States Environmental Protection Agency ("EPA" or "Complainant") issued a "Complaint, Compliance Order, and Notice of Opportunity for Hearing" ("Complaint") to Wesley Health Care Center, Inc. ("Respondent") on May 19, 2009.

The Complaint alleged violations of Subtitle I of the Act and the regulations promulgated pursuant to the Act, found at Volume 40 of the Code of Federal Regulations ("C.F.R.") Part 280 for an underground storage tank ("UST"). Specifically, the

Complaint alleged that Respondent failed to 1) upgrade its existing UST with spill and overflow prevention devices, 2) ensure proper cathodic protection and reporting, and 3) provide for release detection that can detect a release from any portion of the UST system located at its facility in Saratoga Springs, New York, in violation of 40 C.F.R. § 280.21(d), §280.31(b), §280.34, §280(d), respectively.

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. § 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 Wesley Health Care Center, Inc. ("Respondent").
2. Respondent is a non-for-profit corporation organized pursuant to the laws of the State of New York.
3. Respondent is a "person" as that term is defined in Section 9001(6) of RCRA, 42 U.S.C. § 6991(6), and 40 C.F.R. § 280.12.
4. Respondent was, and continues to be, an "owner" and an "operator" of a 1,000-gallon UST, as that term is defined in

Section 9001 of the Act, 42 U.S.C. §6991, and 40 C.F.R. § 280.12, at the Wesley Health Care Center, 131 Lawrence Street, Saratoga Springs, New York (the "Facility").

5. On or about October 7, 2008, authorized staff from the New York State Department of Environmental Conservation ("NYSDEC") performed a compliance inspection ("Inspection") of the Facility in order to determine compliance with NYSDEC's regulations and those of EPA at 40 C.F.R. Part 280. To document the Inspection, NYSDEC prepared a Petroleum Bulk Storage ("PBS") Regulations Inspection Report.

6. Following the Inspection, NYSDEC sent a referral to EPA, including the Notice of Violation, dated October 17, 2008, and the PBS Regulations Inspection Report (collectively the "Referral"). The Referral stated that the existing "gasoline/ethanol tank" at the Facility was not upgraded with operational overfill and spill prevention devices, and the corrosion protection system was not tested. The Referral also stated that release detection was not being performed for the UST system at the Facility.

7. On or about November 5, 2008, EPA sent an Information Request Letter ("IRL") to Respondent to determine the status of its compliance with the Act and 40 C.F.R. Part 280.

8. Respondent replied to EPA's IRL on November 20, 2008 (the "November 2008 Response"). In the November 2008 Response, Respondent admitted that it was the owner of one 1,000-gallon steel tank that was installed at the Facility on or about November 1, 1985. Respondent also admitted that the UST system at the Facility was used for storage of "regular gas (10% ethanol)." In the November 2008 Response, Respondent admitted that the UST system at the Facility was not equipped with overfill and spill prevention devices. At the time of the Inspection, the UST system at the Facility was in use, and did not meet all the performance standards set forth at 40 C.F.R. § 280.21.

9. Based on the Inspection and the November 2008 Response, the Complainant issued a Complaint to Respondent on May 19, 2009.

10. Respondent removed the UST at issue in this case and replaced it with a new UST on December 17, 2008. Respondent has informed EPA that the new UST installed at the Facility is in compliance with all applicable federal and state rules.

11. Complainant and Respondent have engaged in informal settlement discussions and agree to enter into this CA/FO pursuant to 40 C.F.R. §§ 22.18(b)(2) and (3) and the terms and conditions set forth herein.

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) neither admits nor denies 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 pay a civil penalty to EPA in the total amount of **TWENTY THOUSAND DOLLARS (\$20,000.00)**. 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 **Wesley Health Care Center, Inc, Docket No. RCRA-02-2009-7504.**

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 Wesley Health Care Center, Inc.**
- 7) Case Number: **RCRA-02-2009-7504**

Payment of the civil penalty must be received on or before forty-five (45) calendar days after the Effective Date of this CA/FO (the due date). Whether the payment is made by check or EFT, Respondent shall promptly thereafter furnish reasonable proof that such payment has been made to both:

Beverly Kolenberg
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 17th 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. Failure to pay the penalty in full according to the above provisions will 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.
- b. Furthermore, if 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.
- c. A 6% per annum penalty also will be applied on any principal amount not paid within 90 days of the due date.

3. Respondent shall operate any UST at the Facility in full compliance with all applicable 40 C.F.R. Part 280 requirements.

4. 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.

5. This CA/FO is being voluntarily and knowingly entered into by the parties to resolve (upon 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 injunctive or other equitable relief or criminal sanctions for any violations of law.

6. 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.

7. 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.

8. 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 on the Findings of Fact and Conclusions of Law herein, or on the accompanying Final Order.

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

10. 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.

11. 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.

12. The provisions of this CA/FO shall be binding upon Respondent, its officials, officers, agents, authorized representatives and successors or assigns.

13. 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, Deputy Regional Administrator, or Regional Judicial Officer for Region 2, 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.

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

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

16. Pursuant to 40 C.F.R. §22.13(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.

In the Matter of Wesley Health Care Center, Inc.
Docket No. RCRA-02-2009-7504

RESPONDENT: Wesley Health Care Center, Inc.

BY: Charles R. Hayward

Name: Charles R. Hayward, Administrator

Date: September 1, 2009

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

BY: Dore LaPosta

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: 9/2/09

**In the Matter of Wesley Health Care Center, Inc.,
Docket No. RCRA-02-2009-7504**

FINAL ORDER

The Regional Judicial Officer 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 RCRA 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. Environmental Protection Agency, Region 2, New York, New York.

DATE: September 10, 2009

Helen Ferrara

Helen Ferrara
Regional Judicial Officer
U.S. Environmental Protection Agency,
Region 2
290 Broadway
New York, New York 10007-1866

**In the Matter of Wesley Health Care Center, Inc.
Docket No. RCRA-02-2009-7504**

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:

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:

Charles Hayward, Administrator
Wesley Health Care Center, Inc.
131 Lawrence Street
Saratoga Springs, New York 12866

Dated: SEP 15 2009
New York, New York

Mildred N. Baer