

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 6  
DALLAS, TEXAS

FILED  
2011 MAR 30 PM 3:14  
REGIONAL HEARING CLERK  
EPA REGION VI

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IN THE MATTER OF:	§	DOCKET NO. RCRA 06-2011-5600
	§	
TEE PEE SMOKE SHOP,	§	
RESPONDENT	§	
	§	
	§	COMPLAINT AND
	§	CONSENT AGREEMENT AND
	§	FINAL ORDER
	§	

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**COMPLAINT AND  
CONSENT AGREEMENT AND FINAL ORDER**

The Director, Multimedia Planning and Permitting Division, United States Environmental Protection Agency (EPA), Region 6 (Complainant), and Tee Pee Smoke Shop (Respondent) in the above-referenced proceeding, hereby agree to resolve this matter through the issuance of this Consent Agreement and Final Order ("CAFO").

**I.  
PRELIMINARY STATEMENT**

1. This proceeding for assessment of civil penalties pursuant to Section 9006 of the Solid Waste Disposal Act ("SWDA"), 42 U.S.C. § 6991e, as amended by the Resource Conservation and Recovery Act ("RCRA") is simultaneously commenced and concluded by the issuance of this CAFO against the Respondent pursuant to 40 C.F.R. §§ 22.13 (b) and 22.18 (b)(2) and (3).

2. As this is a proceeding for violations committed on Indian tribal land, EPA's underground storage tank (UST) regulations, 40 C.F.R. Part 280, which were promulgated pursuant to the authority conferred by Section 9003 of RCRA, 42 U.S.C. § 6991b, apply and

Oklahoma's UST statutes and regulations do not apply.

3. For purposes of this proceeding, the Respondent admits the jurisdictional allegations herein; however, the Respondent neither admits nor denies the specific factual allegations contained in this CAFO.

3. The Respondent explicitly waives any right to contest the allegations and its rights to appeal the proposed Final Order set forth therein, and waives all defenses which have been raised or could have been raised to the claims set forth in the CAFO.

~~4. Compliance with all the terms and conditions of this CAFO shall resolve only those violations which are set forth herein.~~

5. The Respondent consents to the issuance of this CAFO, to the assessment and payment of the stated civil penalty in the amount and by the method set forth in this CAFO.

6. The Respondent represents that it is duly authorized to execute this CAFO and that the party signing this CAFO on behalf of the Respondent is duly authorized to bind the Respondent to the terms and conditions of this CAFO.

7. The Respondent agrees that the provisions of this CAFO shall be binding on its officers, directors, employees, agents, servants, authorized representatives, successors, and assigns.

8. Respondent hereby certifies that, as of the date of its execution of this CAFO, Tee Pee Smoke Shop, Yale, Oklahoma has corrected the violations alleged in the Complaint and is now, to the best of its knowledge, in compliance with all applicable requirements of Section 9003 of RCRA, 42 U.S.C. § 6991b, 40 U.S.C. § 280.20 and 280.41.

## II.

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

#### A. PRELIMINARY ALLEGATIONS

9. Respondent is a "person" as defined by 42 U.S.C. § 6991(5).

10. Respondent is an "owner" or "operator" of underground storage tanks, as those terms are defined at Sections 9001(3), (4) and (10) of RCRA, 42 U.S.C. §§ 6991(3), (4) and (10), and 40 C.F.R. § 280.12, located at 28314 East 6<sup>th</sup> Street, Yale, Oklahoma, 74085 (Facility).

11. During the relevant time period, Respondent stored and sold gasoline, diesel fuel, and other petroleum products at the Facility.

12. During the relevant time period, the USTs and UST systems at the Facility routinely contained greater than de minimus concentrations of a regulated substance as that term is defined by Section 9001(7) of RCRA, 42 U.S.C. § 6991(7).

## **B. VIOLATIONS**

### Violation 1: Failure to update Release Detection Method

13. At all times relevant to this count, 40 C.F.R. 280.41(a) required that all tanks using Inventory Control and Tank Tightness as release detection methods must upgrade to another approved method ten years after tanks were installed.

14. The three underground storage tanks located at the Facility were installed in August of 1998.

15. An EPA inspector inspected the Facility on January 23, 2007, and informed an employee that the release detection method must be changed from Inventory Control and Tank Tightness in August 2008, which would be ten years after the installation of the tanks.

16. The EPA inspector performed another inspection of the Facility on March 11, 2010, and observed the installation of Automatic Tank Gauge (ATG) release detection.

17. At the time of the inspections, Respondent explained that, at all times prior to March 11, 2010, Tank Tightness and Inventory Control were the sole release detection methods

used at the Facility. In response to a Request for Information, pursuant to Section 9005, 42 U.S.C. § 6991d, Respondent confirmed these prior statements.

18. Therefore, Respondent was in violation of 40 C.F.R. 280.41(a)(1) from September 1, 2008 to March 10, 2010.

Violation 2: Failure to Maintain Functional Spill Prevention Equipment

19. At all times relevant to this count, 40 C.F.R. § 280.20(c)(1)(i) required spill prevention equipment that will prevent the release of product to the environment during transfer to the UST system.

20. During the inspection on March 11, 2010, the EPA inspector observed that two spill buckets had been replaced. The inspector then located the recently replaced spill buckets, which were still at the Facility, and observed that they had large cracks and holes.

21. In response to the Request for Information sent by EPA to Respondent pursuant to Section 9005 of RCRA, 42 U.S.C. § 6991d, Respondent confirmed that the spill buckets had been replaced on March 11, 2010 and the replaced buckets had cracks.

22. Therefore, Respondent had been in violation of 40 C.F.R. § 280.20(c)(1)(i).

**III.**  
**CIVIL PENALTY AND TERMS OF SETTLEMENT**

**A. CIVIL PENALTY**

23. For the reasons set forth above, the Respondent has agreed to pay a civil penalty of **Seven Thousand Nine Hundred Sixty Six Dollar (\$7,966.00)**. The penalty shall be paid quarterly for two years at an annual interest rate of 1%. The payment plan is described as follows:

Principal:	\$7,966.00
Regular Payment Amount:	\$1,006.98
Total Repaid:	\$8,055.84

Total Interest Paid: \$89.84  
 Annual Payments: 4  
 Total Payments: 8 (2.00 years)  
 Annual Interest Rate: 1.00%  
 Periodic Interest Rate: 0.2500%

Payment Due Date	Principal	Interest	Cumulative Principal	Cumulative Interest	Principal Balance
04/01/2011	987.07	19.91	987.07	19.91	6,978.93
07/01/2011	989.53	17.45	1,976.60	37.36	5,989.40
10/01/2011	992.01	14.97	2,968.61	52.33	4,997.39
01/01/2012	994.49	12.49	3,963.10	64.82	4,002.90
04/01/2012	996.97	10.01	4,960.07	74.83	3,005.93
07/01/2012	999.47	7.51	5,959.54	82.34	2,006.46
10/01/2012	1,001.96	5.02	6,961.50	87.36	1,004.50
01/01/2013	*1,004.50	2.51	7,966.00	89.87	0.00

\*The final payment has been adjusted to account for payments having been rounded to the nearest cent.

24. This penalty has been determined in accordance with Section 9006(c) of RCRA, 42 U. S. C. § 6991e(c), for the violations contained in this Complaint and Consent Agreement and Final Order. The calculation of this amount is based on (a) the factors identified in section 9006(c) RCRA, 42 U.S.C. § 6991e(c), namely, the seriousness of the violations, any good faith efforts of Respondent to comply with the applicable requirements and (b) the factors identified in EPA's Penalty Guidance for Violations of UST Regulations, namely, economic benefit, if any, the extent of Respondent's deviation from legal requirements, the potential for harm to human health and the environment resulting from the alleged violations, the degree of Respondent's cooperation with the Oklahoma Corporation Commission and EPA, the degree of Respondent's willfulness or negligence, Respondent's history of noncompliance, if any, and the actual or potential impact that a release, if one were to occur, would have on the local environment and public health.

25. Attached as Attachment A and incorporated herein by reference is the penalty

calculation sheet for the violation.

26. Payment of a penalty shall be made by mailing a cashier's check or certified check payable to the Treasurer of the United States within 30 days of the effective date of this document to the following address:

Regional Hearing Clerk (6C)  
U. S. EPA Region 6  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

The docket number appearing in the caption on the first page of this CAFO should be typed or clearly written on the check to ensure proper credit.

22. Respondent shall send simultaneous notices of a penalty payment, including copies of the cashier's check or certified check, to:

Greg Pashia (6PD-U)  
U. S. EPA Region 6  
Suite 1200  
1445 Ross Avenue  
Dallas, Texas 75202-2733

Jay Przyborski (6RC-ER)  
U.S. EPA Region 6  
Suite 1200  
1445 Ross Avenue  
Dallas, Texas 75202-2733

The Respondent's adherence to this request will ensure proper credit is given when penalties are received by EPA and acknowledged in the Region.

25. The Respondent agrees not to claim or attempt to claim a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

27. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will 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. Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid by the respective due date. Interest 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). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period of the debt is overdue. *See* 40 C.F.R. § 13.11(b).

28. EPA will also 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) day period that the penalty remains unpaid. In addition, a penalty charge of up to six percent per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. *See* 40 C.F.R. § 13.11(c) Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent *See* 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

## **B. RETENTION OF ENFORCEMENT RIGHTS**

30. The EPA does not waive any rights or remedies available to EPA for any violations by the Respondent of Federal or State laws, regulations, statutes, or permitting conditions.

32. Except as specifically provided in this CAFO, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions to protect public

health, welfare, or the environment or prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants, contaminants, hazardous substances on, at or from the Respondent's facility. Furthermore, nothing in this CAFO shall be construed to prevent or limit EPA's civil and criminal authorities, or that of other Federal, State, or local agencies or departments to obtain penalties or injunctive relief under other Federal, State, or local laws or regulations.

**C. COSTS**

23. Each party shall bear its own costs and attorneys fees. Furthermore, the Respondent specifically waives its rights to seek reimbursement of its cost and attorney's fees under 5 U.S.C. § 504 and 40 C.F.R. Part 17.

**D. MODIFICATION**

24. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except upon the written agreement of both parties, and approved by a Regional Judicial Officer, and such modification or amendment being filed with the Regional Hearing Clerk.

**E. TERMINATION**

25. At such time as the Respondent believes that it has complied with all terms and conditions of this CAFO, it may request that EPA concur whether the requirements of this CAFO have been satisfied. Such request shall be in writing and shall provide the necessary documentation to establish whether there has been full compliance with the terms and conditions of this CAFO. EPA will respond to said request in writing as expeditiously as possible. This CAFO shall terminate when all action required to be taken by this CAFO have been completed, and the Respondent has been notified by EPA in writing that this CAFO has been satisfied and



terminated.

**F. EFFECTIVE DATE**

26. This CAFO, and any subsequent modifications, become effective upon filing with the Regional Hearing Clerk.

**THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS CONSENT AGREEMENT AND FINAL ORDER:**

**FOR THE RESPONDENT:**


Date: 3-5-11



Jeff White  
Tee Pec Smoke Shop  
28314 East 6<sup>th</sup> Street  
Yale, OK 74085

**FOR THE COMPLAINANT:**

Date:


  
3/22/11

Carl E. Edlund, P.E.  
Director  
Multimedia Planning and Permitting Division  
U.S. EPA Region 6  
Dallas, TX 75214

**FINAL ORDER**

Pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged in the Complaint. Nothing in this Final Order shall be construed to waive, extinguish or otherwise affect Respondent's (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. ~~The Respondent is ordered to comply with the terms of settlement and~~ the civil penalty payment instructions as set forth in the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

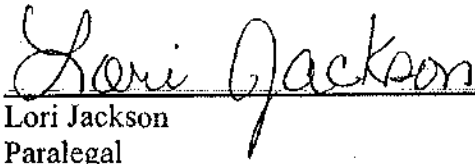
Dated March 28, 2011

  
Michael C. Barra  
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that on the 30<sup>th</sup> day of March, 2011, the original and correct copies of the foregoing Complaint and Consent Agreement and Final Order ("Complaint and CAFO") with the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733, and a true and correct copy was deposited with the U.S. Postal Service, first-class postage prepaid, certified mail, return receipt requested, addressed to:

Mr. Jeff White, Owner  
Tee Pee Smoke Shop.  
28314 East 6<sup>th</sup> Street  
Yale, OK 74085



Lori Jackson  
Paralegal  
U.S. EPA Region 6  
Dallas, Texas