

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

IN THE MATTER OF:)

Kanchanalal Patel)
1420 U.S. Highway 19 South)
Leesburg, Georgia 31763)

RESPONDENT)

) Docket No.
) RCRA-UST-04-2008-0001

) Proceeding under Section 9006
) of the Resource Conservation
) and Recovery Act, as amended
) 42 U.S.C. §§ 6991e

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CONSENT AGREEMENT

I. NATURE OF THE ACTION

1. This is a civil administrative enforcement action, ordering compliance with the requirements of Subtitle I of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6991 *et seq.*, and the Georgia Underground Storage Tank Act (GUSTA) (O.C.G.A. § 12-13-1 *et seq.*). This action is for alleged violations of Section 9006 of RCRA, 42 U.S.C. § 6991e, and the regulations promulgated pursuant thereto, set forth at Title 40 of the Code of Federal Regulations (40 C.F.R.), Part 280, and the Georgia Rules for Underground Storage Tank Management (GUST Rules) Chapter 391-3-15.

2. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to settle the action initiated by EPA's Complaint, docket number RCRA-UST-04-2008-0001. Complainant and Respondent have agreed to the execution of this CAFO and Respondent hereby agrees to comply with the terms of this CAFO.

II. THE PARTIES

3. Complainant is the Director, RCRA Division, Region 4, United States Environmental Protection Agency (EPA). Complainant is authorized to issue the instant CAFO pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e, and applicable delegations of authority.

4. Respondent, Kanchanalal Patel, owns and operates underground storage tanks at 1420 U.S. Highway 19 South, Leesburg, Georgia.

III. PRELIMINARY STATEMENTS

5. Section 9003 of RCRA, 42 U.S.C. § 6991b, requires the Administrator to develop and promulgate release detection, prevention, and corrective action regulations applicable to all

owners and operators of Underground Storage Tanks (USTs) as may be necessary to protect human health and the environment. These regulations became effective on December 22, 1988, and are found at 40 C.F.R. Part 280, and the GUST Rules (Chapter 391-3-15).

6. Pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c, in 1991, the State of Georgia received final authorization from EPA to carry out certain portions of RCRA, including those recited herein, in lieu of the federal program. The Georgia Environmental Protection Division (Georgia EPD) is charged with the statutory duty of enforcing the laws of the State of Georgia relating to management of USTs pursuant to GUSTA (O.C.G.A. § 12-13-1 *et seq.*) and the GUST Rules (Chapter 391-3-15). Georgia has adopted and incorporated by reference 40 C.F.R. Part 280, Subparts B, C, D, E, F, and G into GUST Chapter 391-3-15. Therefore, the regulatory citations in this CAFO are to the relevant sections of 40 C.F.R. Part 280, and a citation to the Federal rules is equivalent to a citation to the State rules.

7. Although EPA has granted the State of Georgia authority to enforce its own UST program, EPA retains jurisdiction and authority to initiate an independent enforcement action pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e. This authority is exercised by EPA in the manner set forth in the Memorandum of Agreement between EPA and the State of Georgia.

8. Pursuant to Section 9006(a)(2) of RCRA, 42 U.S.C. § 6991e(a)(2), Complainant has given notice of this action to the State of Georgia prior to issuing this CAFO.

IV. ALLEGATIONS AND DETERMINATIONS

9. Respondent is a "person" as defined in 40 C.F.R. § 280.12.

10. Respondent is an "owner" and "operator" of "underground storage tanks" (USTs), as those terms are defined in 40 C.F.R. § 280.12.

11. On August 2, 2005, a duly designated representative of EPA conducted a compliance inspection of Respondent's USTs at 1420 U.S. Highway 19 South, Leesburg, Georgia (Facility #1), and at 2125 Newton Road, Albany, Georgia (Facility #2).

12. Respondent owns and operates three USTs at Facility #1, but no longer owns or operates any USTs at Facility #2.

13. At the time of the inspection, Respondent was using three USTs at Facility #1 to store gasoline, which is a petroleum product, and is a "regulated substance" as that term is defined in 40 C.F.R. § 280.12.

14. Pursuant to 40 C.F.R. §§ 280.40(a)(1), and 280.41(b), owners and operators of all UST systems must utilize release detection for USTs, and underground piping that routinely

contains regulated substances. At the time of the inspection, Respondent was not performing release detection on the USTs and underground piping at Facility #1.

15. Pursuant to 40 C.F.R. §280.31(b), steel USTs with cathodic protection must be inspected for proper operation by a qualified tester as specified in that section. Pursuant to 40 C.F.R. §280.31(b)(1), all cathodic protection systems must be tested within 6 months of installation, and thereafter, once every three years. At the time of the inspection, Respondent had failed to comply with the UST cathodic protection requirements at Facility #1.

16. Pursuant to 40 C.F.R. § 280.90, all owners and operators of UST systems are subject to the financial responsibility requirements of 40 C.F.R. Part 280, Subpart H. Pursuant to 40 C.F.R. § 280.93, owners or operators of petroleum USTs must demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs, in amounts specified in the regulations. Respondent has not demonstrated that he is in compliance with the financial responsibility requirements for his USTs at Facility #1.

V. TERMS OF AGREEMENT

Based on the foregoing, the parties agree to the following:

17. Respondent has submitted information showing that the USTs at Facility #1 are temporarily closed. Currently, Respondent's USTs are equipped with a tank gage that can not perform its release detection function when low levels of fuel are in the USTs. Pursuant to the "temporary closure" regulations at 40 C.F.R. §280.70(a), if Respondent ensures that the temporarily closed USTs at Facility #1 contain no more than one inch of product, he may cease performing release detection on tanks and piping so long as the USTs remain temporarily closed. Alternatively, if Respondent stores more than one inch of product in the temporarily closed USTs at Facility #1, pursuant to 40 C.F.R. §§ 280.40(a)(1), and 280.41(a) and (b), he must utilize one of the methods of release detection for tanks and piping that it is capable of performing the release detection functions specified in the regulations at whatever fuel levels may be in the USTs.

18. If Respondent decides to put the USTs at Facility #1 back into service, pursuant to 40 C.F.R. 280.71, Respondent must notify Georgia EPD before doing so. Additionally, if Respondent decides to put the USTs at Facility #1 back into service, the automatic tank gauge on the USTs should be calibrated and tested by a qualified technician pursuant to 40 C.F.R. § 280.40(a)(2).

19. Respondent has submitted information showing that on March 6, 2007, pursuant to a Georgia EPD Cathodic Protection System Evaluation at Facility #1, Respondent's cathodic protection was found to be adequate. In order to remain in compliance with 40 C.F.R. §§ 280.31(b)(1), and 280.70(a), Respondent must test the USTs at Facility #1 once every three

years until the USTs have been permanently closed. The next cathodic protection compliance survey is due on or before March 6, 2010, unless the USTs at Facility #1 are permanently closed before that time.

20. Within twenty (20) calendar days of receipt of a final copy of this CAFO, Respondent shall submit to EPA a certification signed by Respondent, which shall be as follows:

"I certify under penalty of law that, to the best of my knowledge and belief, the USTs located at 1420 U.S. Highway 19 South, Leesburg, Georgia, which were the subject of Consent Agreement and Final Order, Docket No. RCRA-04-2008-0001 (CAFO), are in compliance with the UST system release detection requirements of 40 C.F.R. §§ 280.40(a)(1), and 280.41(b) or, alternatively, with the temporary closure release detection requirements specified in 40 C.F.R. § 280.70(a); and with the cathodic protection system testing requirements in 40 C.F.R. §280.31(b). Additionally, I also certify under penalty of law that, to the best of my knowledge and belief, a financial responsibility mechanism is in place that meets the requirements of 40 C.F.R. Part 280, Subpart H.

Any work with reference to removing product from the USTs at issue was done under my direction or supervision according to a system designed to assure that qualified personnel implemented and completed the required tasks. This certification is based on my inquiry of the person(s) who performed the tasks, or those persons directly responsible for the person(s) who performed the tasks. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

This certification shall be sent to EPA care of William E. Truman at the address below:

William E. Truman
Chief, Underground Storage Tank Section
U.S. Environmental Protection Agency, Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, Georgia 30303
(404) 562-9457

21. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set forth above pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e.

22. Respondent neither admits nor denies the factual allegations set forth above.

23. Respondent waives any right to contest the EPA allegations and its right to appeal the CAFO.

24. Respondent waives its right to challenge the validity of this CAFO and the settlement of the matters addressed in this CAFO on the basis of any issue related to the Paperwork Reduction Act.

25. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be served with and reply to any memorandum or communication addressed to EPA officials, or to be present during any discussion with EPA officials, where the purpose of such discussion, memorandum or communication is to persuade such officials to accept and issue this CAFO.

26. The parties agree that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of RCRA.

27. The parties agree that compliance with the terms of this CAFO shall resolve the violations of RCRA Subtitle I alleged in EPA's Complaint, docket no. RCRA-UST-04-2008-0001.

28. Each party will pay its own costs and attorney's fees.

VI. RESERVATION OF RIGHTS

29. Notwithstanding any other provision of this CAFO, an enforcement action may be brought pursuant to Section 9003(h) of RCRA, 42 U.S.C. § 6991b(h), or other statutory authority, should EPA find that the release of regulated substances from a UST may have occurred and implementation of any corrective action is needed to address such release.

30. Complainant reserves the right to take enforcement action against Respondent for any future violations of RCRA and the implementing regulations and to enforce the terms and conditions of this CAFO.

31. Except as expressly provided herein, nothing in this CAFO shall constitute or be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions, including the right to pursue criminal enforcement or the right to initiate an action for imminent and substantial endangerment, available by virtue of Respondent's violation of this CAFO or of the statutes and regulations upon which this CAFO is based, or for Respondent's violation of any applicable provisions of law. Compliance with this CAFO shall not be a defense against any action subsequently commenced pursuant to federal laws and regulations administered by EPA, and it is the responsibility of the Respondent to comply with such laws and regulations.

32. Except as expressly provided herein, nothing in this CAFO shall constitute a release from any claim (civil or criminal), cause of action, or demand in law or equity by or against any person, firm, partnership, entity, or corporation for any liability it may have arising out of or relating in any way to Respondent's management of the USTs located at his facilities.

33. This CAFO may be amended or modified only by written agreement executed by both EPA and Respondent.

34. The provisions of this CAFO shall be deemed satisfied upon a determination by Complainant that Respondent has fully completed the actions required in this CAFO.

35. The headings in this CAFO are for convenience of reference only and shall not affect interpretation of this CAFO.

VII. PARTIES BOUND

36. This CAFO shall be binding upon Respondent and its successors and assigns. Respondent shall cause its officers, directors, employees, agents, and all persons, including independent contractors, contractors, and consultants acting under or for Respondent, to comply with the provisions hereof in connection with any activity subject to this CAFO.

37. No change in ownership, partnership, corporate, or legal status relating to the facility will in any way alter Respondent's obligations and responsibilities under this CAFO.

38. The undersigned representative of Respondent hereby certifies that she or he is fully authorized to enter into this CAFO and to execute and legally bind Respondent to it.

VIII. SERVICE OF DOCUMENTS

39. A copy of any legal documents that Respondent files in this action should be sent to the following attorney who represents EPA in this matter and who is authorized to receive service for EPA in this proceeding:

Deborah S. Benjamin, Associate Regional Counsel
U.S. Environmental Protection Agency, Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, Georgia 30303
(404) 562-9561

40. A copy of any documents that Complainant files in this action shall be sent to the following person who represents Respondent in this matter and who is authorized to receive service for Respondent in this proceeding:

Debi Bailey
Advanced Environmental Technologies, LLC
208 North Magnolia St.
Albany, Georgia 31707

IX. EFFECTIVE DATE

41. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

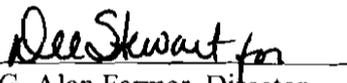
AGREED AND CONSENTED TO:

Kanchanlal Patel, Respondent

By: 
Kanchanlal Patel
1420 U.S. Highway 19 South
Leesburg, Georgia 31763

Dated: 11.18.08

U.S. Environmental Protection Agency, Complainant

By: 
G. Alan Farmer, Director
RCRA Division
U.S. EPA, Region 4

Dated: 12/2/08

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

IN THE MATTER OF:)

Kanchanal Patel)
1420 U.S. Highway 19 South)
Leesburg, Georgia 31763)

RESPONDENT)

) Docket No.
) RCRA-UST-04-2008-0001

) Proceeding under Section 9006
) of the Resource Conservation
) and Recovery Act, as amended
) 42 U.S.C. §§ 6991e

FINAL ORDER

The foregoing Consent Agreement is hereby approved, ratified and incorporated by reference into this Final Order 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 Respondent is hereby ORDERED to comply with all of the terms of the foregoing Consent Agreement effective immediately upon filing of this Consent Agreement and Final Order with the Regional Hearing Clerk. This Order disposes of matters under RCRA Subtitle I pursuant to 40 C.F.R. §§ 22.18 and 22.31.

BEING AGREED, IT IS SO ORDERED this 8th day of December 2008 *SS*

BY: *Susan B. Schub*
Susan B. Schub
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing Consent Agreement and the attached Final Order (CAFO), in the Matter of Kanchanlal Patel, 1420 U.S. Highway 19 South, Leesburg, Georgia, Docket Number: RCRA-UST-04-2008-0001, on the parties listed below in the manner indicated:

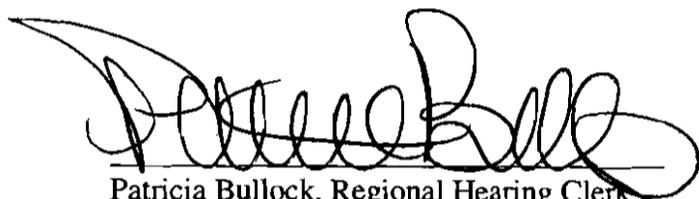
Deborah Benjamin, Associate Regional Counsel (Via EPA's internal mail)
U.S. Environmental Protection Agency
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

Kanchanlal Patel (Via Certified Mail- Return Receipt Requested)
1420 U.S. Highway 19 South
Leesburg, Georgia 31763

Debi Bailey (Via Certified Mail - Return Receipt Requested)
Advanced Environmental Technologies, LLC
208 North Magnolia St.
Albany, Georgia 31707

The Honorable Spencer Nissen (Via Certified Mail - Return Receipt Requested)
Administrative Law Judge
Office of Administrative Law Judges
U.S. Environmental Protection Agency
Mail Code 1900L
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460-2001

Date 12-8-08


Patricia Bullock, Regional Hearing Clerk
U.S. Environmental Protection Agency
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, GA 30303
(404) 562-9511