

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

FILED
2011 NOV 22 AM 10:01
REGIONAL HEARING CLERK
EPA REGION VI

In the Matter of:)
)
RK Distributing, Inc.) Docket No. RCRA-06-2011-5601
Oklahoma City, Oklahoma)
)
RESPONDENT) CONSENT AGREEMENT
) AND
) FINAL ORDER
)

The Director, Compliance Assurance and Enforcement Division, United States Environmental Protection Agency ("EPA"), Region 6 ("Complainant"), and RK Distributing, Inc., Oklahoma City, Oklahoma ("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 is for the assessment of civil penalties pursuant to Section 9006, 42 U.S.C. § 6991e, of the Solid Waste Disposal Act ("SWDA") as amended by the Resource Conservation and Recovery Act ("RCRA") and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22. This proceeding is simultaneously commenced and concluded through the issuance of this CAFO under 40 C.F.R. §§ 22.13(b), 22.13(b), 22.18(b)(2) and 22.18(b)(3).

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

3. Respondent waives any right to contest the allegations in the CAFO and its right to appeal the Final Order set forth herein, 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 only resolve Respondent's liability for federal civil penalties for the violations alleged in the CAFO.

5. Each party to this action shall bear its own costs and attorney fees.

6. Respondent consents to the issuance of the CAFO hereinafter recited and consents to the assessment and payment of the stated civil penalty in the amount and by the method set out in this CAFO.

7. 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.

8. Each undersigned representative of the parties to this agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this agreement, to execute it, and to legally bind that party to it.

9. This CAFO shall apply to and be binding upon Respondent, its officers, directors, servants, employees, agents, successors, and assigns, including, but not limited to, subsequent purchasers.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Preliminary Statement

10. Respondent RK Distributing, Inc. is and at all times relevant to the violations alleged herein was a person as defined by Okla. St. Ann. § 303(24) [42 U.S.C. 6991(5)].

11. During the relevant time period, Respondent was an owner or operator of underground storage tanks, as those terms were defined by Okla. St. Ann. 303(22) and (21) [42 U.S.C. 6991(3), (4) and (10) and 40 C.F.R. 280.12], located at the Ethio Mart, 5220 S. I-35, Oklahoma City, Oklahoma, 73129 (Facility).

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

13. 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 was defined by 17 Okla. St. Ann. § 303(28) [42 U.S.C. 6991(7)].

B. Alleged Violations

Alleged Violation: Failing to Conduct Repairs in Accordance with a Code of Practice Developed by a Nationally Recognized Association or an Independent Test Laboratory.

14. Paragraphs 10-13 above are realleged as if fully set forth in this count

15. At all times relevant to this count, Okla. Admin. Code § 165:25-5-2(1) [40 C.F.R. § 280.21(b) 280.33] required that a tank upgrade with interior lining must be conducted in accordance with a code of practice developed by a nationally recognized association or an independent testing laboratory.

16. At all times relevant to this count, Okla. Admin. Code § 165:25-2-2(D) and (10) [40 C.F.R. § 280.21 and 280.33] incorporated codes and standards for interior lining by nationally recognized associations.

17. At all times relevant to this count, nationally recognized standards for tank lining required 125 millimeters, with a minimum of 100 millimeters

18. The lining was installed on August 8, 1998 at a thickness of less than 125 millimeters and with a minimum thickness of less than 100 millimeters. The UST's only method of leak prevention remained lining until cathodic protection was installed on August 7, 2008.

19. Therefore, Respondent was in violation of Okla. Admin. Code § 165:25-5-2(1) [40 C.F.R. § 280.21(b) and 280.33(a)] from August 8, 1998 till August 7, 2008.

III. TERMS OF SETTLEMENT

20. For the reasons set forth above, Respondent has agreed to pay a civil penalty in the amount of One Thousand Five Hundred Dollars (\$1,500). The Respondent shall pay the full amount of the civil penalty, One Thousand Five Hundred (\$1,500), within thirty (30) days of the effective date of this CAFO

22. All payments must be made by certified check, cashier's check, or wire transfer, made payable to "Treasurer, United States of America, EPA - Region 6". Payment shall be remitted in one of three (3) ways: regular U.S. Postal mail (including certified mail), overnight mail, or wire transfer. For regular U.S. Postal mail, U.S. Postal Service certified mail, or U.S. Postal Service express mail, the check(s) should be remitted to: (See next page)

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

For overnight mail (non-U.S. Postal Service, e.g., Fed Ex), the check(s) should be remitted to:

U.S. Bank
Government Lockbox 979077 U.S. EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
Phone No. (314) 418-1028

For wire transfer, the payment should be remitted to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 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"

PLEASE NOTE: Docket number RCRA-06-2011-5601 shall be clearly typed on the check to ensure proper credit. If payment is made by check, the check shall also be accompanied by a transmittal letter and shall reference Respondent's name and address, the case name, and docket number of the CAFO. If payment is made by wire transfer, the wire transfer instructions shall reference Respondent's name and address, the case name, and docket number of the CAFO. Respondent shall also send a simultaneous notice of such payment, including a copy of the check and transmittal letter, or wire transfer instructions to the following:

Lorena Vaughn
Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Greg Pashia
Enforcement Officer
UST/Solid Waste Section (6PD-U)
Multimedia Planning and Permitting Division
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

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

23. 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.

24. 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 delinquent debts owed to the United States and assess a charge to cover the costs of processing and handling a delinquent debt. Interest on the civil penalty assessed in this CAFO will begin to accrue on the effective date of this CAFO but will only be recovered by EPA for any amount not paid within thirty (30) days after the effective date of this CAFO, including installment payments. Interest will not be assessed on any interest charges or any administrative costs. Charges to cover the administrative costs of handling a delinquent debt will be assessed monthly for the period the debt is overdue. *See* 40 C.F.R. § 13.11(b).

25. In addition to any assessed administrative costs, 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.

26. Pursuant to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5), any person who fails to pay on a timely basis a civil penalty ordered or assessed under this section shall be required to pay, in addition to such penalty and interest, the United States' enforcement expenses, including, but not limited to, attorneys fees and costs incurred by the United States for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be 10 percent of the aggregate amount of such person's outstanding penalties and nonpayment penalties accrued as of the beginning of each quarter.

IT IS SO AGREED.

FOR THE RESPONDENT:


Date: 11/7/11



Mr. Steven B. Hanska
RK Distributing, Inc.

FOR THE COMPLAINANT:

Date: 11/17/11



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

IV. 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. 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: 11/22/11



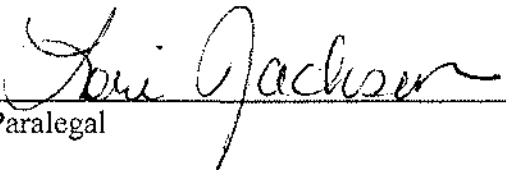
Patrick Rankin
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that the original and one copy of the foregoing Consent Agreement and Final Order (CAFO) concerning RK Distributing, Docket No. RCRA-06-2011-5601 was filed with the Regional Hearing Clerk, EPA Region 6, Dallas, Texas, and a true and correct copy of such CAFO was placed in the United States mail, postage prepaid, certified mail, return receipt requested, on this 22nd day of November, 2011, addressed to the following:

CERTIFIED MAIL - RETURN RECEIPT REQUESTED: 7003 0500 0003 0875 1919

R K Distributing, Inc.
Attn: Mr. Steve Hanska
1001 West Memorial Road
Oklahoma, City, Oklahoma 73144


Paralegal