



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

DEC 18 2009

Eckhart Blackert, Esq.
Mills and Hoopes, LLC
1550 North Brown Rd.
Suite 130
Lawrenceville, Georgia 30043

Re: Dilbag Khera – AM Food and Gas, Alpharetta, Georgia
Consent Agreement and Final Order, Docket No. RCRA-04-2009-0001

Dear Mr. Blackert:

Enclosed please find the fully executed Consent Agreement and Final Order (CA/FO) referenced above. Please note that pursuant to paragraph 20, the first payment of \$2,401.68 is due on January 30, 2010. Thank you for your help in concluding this matter.

Sincerely,

A handwritten signature in cursive script that reads "Deborah Benjamin".

Deborah Benjamin
Associate Regional Counsel

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

2009 DEC 17 PM 2:33
EPA REGION 4
ADMINISTRATIVE

IN THE MATTER OF:)

Dilbag Khera)
AM Food and Gas)
11670 Jones Bridge Road)
Alpharetta, Georgia 30005)

RESPONDENT)

) Docket No.
) RCRA-UST-04-2009-0001

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

CONSENT AGREEMENT

I. NATURE OF THE ACTION

1. The United States Environmental Protection Agency issued an Administrative Complaint to Dilbag Khera on June 1, 2009, pursuant to Subtitle I of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6991e et seq., and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("C.R.O.P."), 40 C.F.R. Part 22.

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

3. Respondent is Dilbag Khera, the previous owner and operator of AM Food and Gas.

4. 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-04-2009-0001. Accordingly, before any testimony has been taken on the pleadings, and without any admission of violation, or adjudication of any issue of fact or law, Complainant and Respondent have agreed to the execution of this CAFO, and Respondent hereby agrees to comply with the terms of this CAFO.

II. PRELIMINARY STATEMENTS

5. Respondent has been served with the Administrative Complaint and has been given notice of opportunity for a hearing.

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

7. Respondent is a "person" as defined in 40 C.F.R. § 280.12 and GA. COMP. R. & REGS. r. 391-3-15-.02(o).

8. The Respondent's facility, AM Food and Gas, was located at 11670 Jones Bridge Road, Alpharetta, Georgia 30005 (the facility).

9. Respondent was the "owner" and "operator" of the "USTs" at the facility, as those terms are defined in 40 C.F.R. § 280.12, and GA. COMP. R. & REGS. r. 391-3-15-.02(m), (l), and (z).

10. Respondent was using the two USTs at the facility to store gasoline, which is a petroleum product, and is a "regulated substance," as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and GA Code Ann. § 12-3-3.

11. Pursuant to 40 C.F.R. 22.18(b)(2), Respondent neither admits nor denies the factual allegations set forth in the Complaint.

12. Respondent waives any right to contest and have a hearing on the allegations in the Complaint, and its right to appeal the CAFO.

13. 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.

14. 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.

15. 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.

16. 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-04-2009-0001.

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

III. PAYMENT OF CIVIL PENALTY

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

18. Respondent consents to the assessment of and agrees to pay the civil penalty set forth below.

19. Pursuant to Section 9006 of RCRA and 40 C.F.R. § 22.18, given the nature of the violations and taking into account the seriousness of the violations and any good faith efforts to comply with the applicable requirements, Respondent shall pay a civil penalty in the amount of **nine thousand, five hundred dollars (\$9,500), divided into four installment payments including interest, as set forth in paragraph 20 below.**

20. **A total of four payments of \$2,401.68 will be due and owing to EPA. One payment of \$2,401.68 must be received by EPA by each of the following dates: January 30, 2010; April 30, 2010; July 30, 2010; and October 30, 2010.**

21. Payment shall be made by cashier's check, certified check, by electronic fund transfer (EFT), or by Automated Clearhouse (ACH) (also known as REX or remittance express). If paying by check, the check shall be payable to: Treasurer, United States of America, and the facility name and docket number for this matter shall be referenced on the face of the check. If the Respondent sends payment by the U.S. Postal Service, the payment shall be addressed to:

United States Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

If the Respondent sends payment by non-U.S. Postal express mail delivery, the payment shall be sent to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
(314) 418-1028

If paying by EFT, the Respondent shall transfer the payment to:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 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"

If paying by ACH, the Respondent shall remit payment to:

PNC Bank
ABA: 051036706
Account Number: 310006
CTX Format Transaction Code 22 – checking
Environmental Protection Agency
808 17th Street NW
Washington, DC 20074
Contact: Jesse White, (301) 887-6548

Respondent shall submit a copy of each payment to the following addressees:

Regional Hearing Clerk
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

and to:

Mr. Bill Truman, Chief
Underground Storage Tank Section
RCRA Management Division
U.S. Environmental Protection Agency, Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

22. If payment is not received by the due dates specified above, interest shall begin to accrue at the current U.S. Treasury rate, and handling charges and late-payment penalties will begin to accrue as set forth in 30 U.S.C. § 3717 and 40 C.F.R. § 13.11(b) and (c), and Respondent will be deemed in violation of this CAFO. Pursuant to 31 U.S.C. § 3717, Respondent must pay the following amounts on any amount overdue:

- (a) **Interest.** Any unpaid portion of a civil penalty or stipulated penalty must bear interest at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1). Interest will therefore begin to accrue on a civil penalty or stipulated penalty if it is not paid by the last date required. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 4 C.F.R. § 102.13(c).
- (b) **Monthly Handling Charge.** Respondent must pay a late payment handling charge of \$15.00 on any late payment, with an additional charge of \$15.00 for each subsequent thirty (30) calendar day period over which an unpaid balance remains.
- (c) **Non-Payment Penalty.** On any portion of a civil penalty or stipulated penalty more than ninety (90) calendar days past due, Respondent must pay a non-payment penalty of six percent per annum, which will accrue from the date the penalty payment became due and is not paid. This non-payment is in addition to charges which accrue or may accrue under subparagraphs (a) and (b).

23. If Respondent fails to meet the payment requirements of Paragraphs 20 and 21, Respondent shall pay to the United States a stipulated penalty of \$100 for each calendar day Respondent is late.

IV. RESERVATION OF RIGHTS

24. 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.

25. 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.

26. 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.

27. 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.

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

29. The provisions of this CAFO shall be deemed satisfied when Respondent has fully fulfilled the payment obligations required by this CAFO.

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

V. PARTIES BOUND

31. 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.

32. 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.

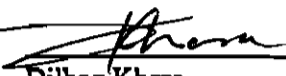
33. The undersigned representative of Respondent hereby certifies that she or he is fully authorized to enter into this CAFO and to execute and legally bind Respondent to it.

VI. EFFECTIVE DATE

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

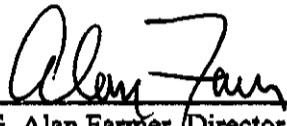
AGREED AND CONSENTED TO:

Dilbag Khera, Respondent

By: 
Dilbag Khera
1108 Hampton Ave. NW
Aiken, South Carolina 29482

Dated: 11-19-09

U.S. Environmental Protection Agency, Complainant

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

Dated: 12/14/09

VI. EFFECTIVE DATE

34. 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:

Dilbag Khera, Respondent

By: _____ Dated: _____
Dilbag Khera
1108 Hampton Ave. NW
Aiken, South Carolina 29482

U.S. Environmental Protection Agency, Complainant

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

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

IN THE MATTER OF:)

Dilbag Khera)
AM Food and Gas)
11670 Jones Bridge Road)
Alpharetta, Georgia 30005)

RESPONDENT)

) Docket No.
) RCRA-UST-04-2009-0001

) 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, 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 17th day of December, 2009

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 Dilbag Khera, Docket Number: RCRA-UST-04-2009-0001, on the parties listed below in the manner indicated:

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

Dilbag Khera (Certified Mail, Return Receipt Requested)
1108 Hampton Ave., NW
Aiken, South Carolina 29482

Eckhart Blackert (Certified Mail, Return Receipt Requested)
Mills and Hoopes, LLC
1550 North Brown Rd.
Suite 130
Lawrenceville, GA 30043

The Honorable Susan Biro (Certified Mail, Return Receipt Requested)
Chief 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 12-18-09



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