

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
 REGION III
 1650 Arch Street
 Philadelphia, Pennsylvania 19103-2029**

In the Matter of:)	
)	
Southern States Cooperative, Inc.)	
6606 West Broad Street)	U.S. EPA Docket Number
Richmond, VA 23230)	RCRA- 03-2009-0007
)	
RESPONDENT)	Consent Agreement
)	
H-Mart)	
1501 New York Ave.)	
Martinsburg, WV 25401)	
)	
FACILITY)	
)	

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CONSENT AGREEMENT

I. PRELIMINARY STATEMENT

1. This Consent Agreement is filed pursuant to Section 9006 of the Solid Waste Disposal Act, commonly referred to as the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984 (collectively referred to hereinafter as "RCRA"), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules"), 40 C.F.R. Part 22. The Complainant is the Director, Land and Chemicals Division, United States Environmental Protection Agency, Region III ("Complainant").

2. Pursuant to Section 22.13(b) of the Consolidated Rules, this Consent Agreement and the attached Final Order (“CAFO”) both commence and conclude an administrative proceeding against Southern States Cooperative, Inc. (“Respondent”), brought under Section 9006 of RCRA, 42 U.S.C. § 6991e, to resolve alleged violations of Subtitle I of RCRA at Respondent’s facility at 1501 New York Ave., Martinsburg, WV 25401 (the “Facility”).
3. Effective February 10, 1998, pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c, and 40 C.F.R. Part 281, Subpart A, the State of West Virginia was granted final authorization to administer a state underground storage tank management program (“West Virginia Authorized UST Management Program”) *in lieu* of the Federal underground storage tank management program established under Subtitle I of RCRA, 42 U.S.C. §§ 6991-6991m. *See 62 Fed. Reg. 49620 (September 23, 1997) and 63 Fed. Reg. 6667 (February 10, 1998).* Through this final authorization, the provisions of the West Virginia Authorized UST Management Program became requirements of RCRA Subtitle I and are, accordingly, enforceable by EPA pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e.
4. The factual allegations and legal conclusions in this CAFO are based upon the provisions of the West Virginia Authorized UST Management Program, as set forth in Title 33, Series 30 of West Virginia’s Hazardous Waste Management Regulations, which incorporates by reference the federal underground storage tank program regulations set forth at 40 C.F.R. Part 280 (1995 edition), with some modifications. These regulations, the West Virginia authorized underground storage tank regulations (“WVUSTR”), will hereinafter be cited as WVUSTR, §§ 33-30-1, *et seq.* All references to the provisions of

40 C.F.R. Part 280 which are incorporated by reference in the WVUSTR are to such regulations as set forth in the 1995 edition of the Code of Federal Regulations.

5. Complainant has given the State of West Virginia, through the West Virginia Department of Environmental Protection ("WVDEP"), prior notice of the issuance of this CAFO in accordance with Section 9006(a)(2) of RCRA, 42 U.S.C. § 6991e(a)(2).
6. This Consent Agreement is entered into by Complainant and Respondent to resolve EPA's claims for civil penalties based upon the violations alleged in the Findings of Fact, as set forth below.
7. For the purposes of this proceeding, Respondent admits the jurisdictional allegations of this Consent Agreement.
8. Respondent neither admits nor denies the Findings of Fact contained in this Consent Agreement, except as provided in Paragraph 7, above.
9. Respondent neither admits nor denies the Conclusions of Law contained in this Consent Agreement, except as provided in Paragraph 7, above.
10. For the purposes of this proceeding only, Respondent hereby expressly waives its right to a hearing on any issue of law or fact set forth herein, and any right to appeal the accompanying Final Order.
11. The settlement agreed to by the parties in this Consent Agreement reflects the desire of the parties to resolve this matter without litigation.
12. Respondent consents to the issuance of this Consent Agreement and to the attached Final Order and agrees to comply with their terms. Respondent agrees not to contest

Complainant's jurisdiction with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement thereof.

13. This Consent Agreement and Final Order resolve EPA's claims for civil penalties for the specific violations alleged in the Findings of Fact and Conclusions of Law, below. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice.
14. EPA reserves any rights and remedies available to it under RCRA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this Consent Agreement and Final Order, following its filing with the Regional Hearing Clerk. Respondent reserves all available rights and defenses it may have to defend itself in any such action.
15. Nothing in this Consent Agreement and Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations.
16. Respondent is aware that the submission of false or misleading information to the United States government may subject it to separate civil and/or criminal liability. Complainant reserves the right to seek and obtain appropriate relief if Complainant obtains evidence that the information provided and/or representations made by Respondent to Complainant

regarding the matters at issue in the Findings of Fact and Conclusions of Law are false or, in any material respect, inaccurate.

17. Each party shall bear its own costs and attorney's fees in connection with this proceeding.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

18. This section represents the Findings of Fact and Conclusions of Law made by Complainant in this matter. As set forth in Paragraphs 8 and 9 above, Respondent neither admits nor denies these Findings of Fact and Conclusions of Law, but agrees to this settlement to avoid further litigation, as set forth in Paragraph 11, above.
19. Respondent is a "person" as defined in Section 9001 of RCRA, 42 U.S.C. § 6991, and in 40 C.F.R. § 280.12, as incorporated by reference in WVUSTR § 33-30-2.1.
20. Respondent is and, at the time of the violations alleged in this complaint, was the "owner" of four "underground storage tanks" ("USTs") and the associated "UST systems," as those terms are defined in Section 9001 of RCRA, 42 U.S.C. § 6991, and 40 C.F.R. § 280.12, as incorporated by reference into WVUSTR § 33-20-2.1, located at the Respondent's Facility at 1501 New York Ave., Martinsburg, WV 25401. The four USTs consists of one 12,000-gallon UST, one 6,000-gallon UST, and two 4,000-gallon USTs. The USTs are double wall tanks (steel interior, plastic exterior).
21. The four tanks at the Facility were each installed in 1990, and are "new tank systems" as that term is defined in 40 C.F.R. § 280.12, as incorporated by reference into WVUSTR § 33-20-2.1.
22. On July 31, 2007, an EPA representative conducted an inspection of the USTs and UST systems at the Facility pursuant to RCRA § 9005, 42 U.S.C. § 6991d.

23. At the time of EPA's inspection, H.K. Corporation was the operator of the Facility.
24. At the time of the July 2007 inspection, and at all times relevant hereto, the 12,000-gallon tank (UST 1) at the Facility was used to store regular gasoline, a petroleum product and a regulated substance" as that term is defined in Section 9001 of RCRA, 42 U.S.C. § 6991, and 40 C.F.R. § 280.12, as incorporated by reference into WVUSTR § 33-20-2.1. The 12,000-gallon tank at the Facility and its associated underground pressurized piping therefore constitute a "petroleum UST system" as that term is defined in 40 C.F.R. § 280.12, as incorporated by reference into WVUSTR § 33-20-2.1.
25. At the time of the July 2007 inspection, and at all times relevant hereto, the 6,000-gallon tank (UST 2) at the Facility was used to store premium gasoline, a petroleum product and a "regulated substance" as that term is defined in Section 9001 of RCRA, 42 U.S.C. § 6991, and 40 C.F.R. § 280.12, as incorporated by reference into WVUSTR § 33-20-2.1. The 6,000-gallon tank at the Facility and its associated underground pressurized piping therefore constitute a "petroleum UST system" as that term is defined in 40 C.F.R. § 280.12, as incorporated by reference into WVUSTR § 33-20-2.1.
26. At the time of the July 2007 inspection, and at all times relevant hereto, one 4,000-gallon tank (UST 3) at the Facility was used to store "plus gasoline," a petroleum product and a "regulated substance" as that term is defined in Section 9001 of RCRA, 42 U.S.C. § 6991, and 40 C.F.R. § 280.12, as incorporated by reference into WVUSTR § 33-20-2.1. The 4,000-gallon tank at the Facility and its associated underground pressurized piping therefore constitute a "petroleum UST system" as that term is defined in 40 C.F.R. § 280.12, as incorporated by reference into WVUSTR § 33-20-2.1.

27. At the time of the July 2007 inspection, and at all times relevant hereto, one 4,000-gallon tank (UST 4) at the Facility was used to store diesel fuel, a petroleum product and a “regulated substance” as that term is defined in Section 9001 of RCRA, 42 U.S.C. § 6991, and 40 C.F.R. § 280.12, as incorporated by reference into WVUSTR § 33-20-2.1. The 4,000-gallon tank at the Facility and its associated underground pressurized piping therefore constitute a “petroleum UST system” as that term is defined in 40 C.F.R. § 280.12, as incorporated by reference into WVUSTR § 33-20-2.1.
28. USTs 1- 4 and their associated piping that routinely contains regulated substances are in contact with the ground.

COUNT 1

29. Paragraphs 1 through 28 of this CAFO are incorporated by reference as if fully set forth herein.
30. At all times relevant to the violation set forth in this Count the underground piping associated with USTs 1- 4 has conveyed regulated substances under pressure.
31. Pursuant to 40 C.F.R. § 280.41(b)(1), incorporated by reference into WVUSTR § 33-20-2.1, underground pressurized piping which is part of a petroleum UST system and which routinely conveys regulated substances under pressure must:
- i Be equipped with an automatic line leak detector in accordance with 40 C.F.R. § 280.44(a); and
 - ii Have an annual line tightness test conducted in accordance with 40 C.F.R. § 280.44(b), or have monthly monitoring conducted in accordance with 40

C.F.R. § 280.44(c), which in turn allows the use of any of the methods in 40 C.F.R. § 280.43(e) through (h) if such methods are designed to detect a release from any portion of the piping that routinely contains regulated substances.

32. From at least July 31, 2007 to September 12, 2007, neither Respondent, nor any other person, conducted tightness testing on the underground piping associated with USTs 1- 4, even though the last tightness testing conducted on such piping occurred at least one year prior to July 31, 2007. From at least July 31, 2007 to September 12, 2007, the underground piping associated with USTs 1- 4 has not at any time been monitored in accordance with the methods set forth in 40 C.F.R. § 280.43(e), (f) or (h).
33. From at least July 31, 2007 to September 12, 2007, Respondent violated 40 C.F.R. § 280.41(b)(1)(ii), incorporated by reference into WVUSTR § 33-20-2.1, by failing to provide a method of release detection for the underground piping associated with USTs 1 - 4 at the H-Mart Facility which meets the requirements referenced in such regulation.

COUNT 2

34. Paragraphs 1 through 33 of this CAFO are incorporated by reference as if fully set forth herein.
35. 40 C.F.R. § 280.44(a), incorporated by reference into WVUSTR§ 33-30-2.1, provides, in pertinent part, that an annual test of the operation of the automatic line leak detector required under 40 C.F.R. § 280.41(b)(1)(i), incorporated by reference into WVUSTR § 33-30-2.1, shall be conducted in accordance with the manufacturer's requirements.

36. From January 1, 2003 to December 31, 2006, the automatic line leak detectors on USTs 1- 3 at Respondent's Facility were not tested as required by 40 C.F.R. § 280.44(a), incorporated by reference in WVUSTR § 33-30-2.1.
37. From January 1, 2003 to December 31, 2003, and January 1, 2005 to December 31, 2006, the automatic line leak detector on UST 4 at Respondent's Facility was not tested as required by 40 C.F.R. § 280.44(a), incorporated by reference in WVUSTR § 33-30-2.1.
38. From January 1, 2003 until December 31, 2006 with respect to USTs 1-3, and from January 1, 2003 to December 31, 2003 and January 1, 2005 to December 31, 2006 with respect to UST 4, Respondent violated 40 C.F.R. § 280.44(a), incorporated by reference into WVUSTR § 33-20-2.1, by failing to perform testing of the operation of the automatic line leak detectors for the underground piping associated with USTs 1 - 4 at the H-Mart Facility.

COUNT 3

39. Paragraphs 1 through 38 of this CAFO are incorporated by reference as if fully set forth herein.
40. Pursuant to 40 C.F.R. § 280.20(c)(1)(ii), incorporated by reference into WVUSTR § 33-20-2.1, new UST systems must be equipped with overfill prevention equipment which shall (1) automatically shut off flow into the tank when the tank is no more than 95 percent full, or (2) alert the transfer operator when the tank is no more than 90 percent full by restricting the flow into the tank or triggering a high level alarm.

41. From at least July 31, 2007 until August 22, 2007 neither Respondent, nor any other person, provided overfill protection for UST 1 pursuant to 40 C.F.R. § 280.20(c)(1)(ii), incorporated by reference into WVUSTR § 33-20-2.1, due to a broken tank gauging stick that was observed wedged in the overfill tube on UST 1, rendering the overfill prevention equipment for this tank inoperable.
42. From at least July 31, 2007 until August 22, 2007, Respondent violated 40 C.F.R. § 280.20(c)(1)(ii), incorporated by reference into WVUSTR § 33-20-2.1, by failing to provide overfill protection for UST 1 at the H-Mart Facility which meets the requirements referenced in such regulation.

III. CERTIFICATION OF COMPLIANCE

43. As to all relevant provisions of RCRA and the WVUSTR allegedly violated as set forth in the Findings of Fact and Conclusions of Law, above, Respondent certifies to EPA that, upon investigation, to the best of Respondent's knowledge and belief, Respondent is presently in compliance with all such relevant provisions and regulations.
44. Respondent has submitted documentation to EPA in support of the certification of compliance set forth in Paragraph 43, above.

IV. CIVIL PENALTY

45. Respondent agrees to pay a civil penalty in the amount of twenty-seven thousand dollars (\$27,000) which Respondent agrees to pay in accordance with the terms set forth below. Such civil penalty amount shall become due and payable immediately upon Respondent's

receipt of a true and correct copy of this CAFO fully executed by all parties. In order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with such civil penalty as described in this CAFO, Respondent must pay the civil penalty no later than thirty (30) calendar days after the date on which a copy of this CAFO is mailed or hand-delivered to Respondent.

46. Having determined that this Consent Agreement is in accordance with law and that the civil penalty amount was determined after consideration of the statutory factors set forth in Section 9006(c) and (e) of RCRA, 42 U.S.C. § 6991e(c) and (e), which include the seriousness of the violation, any good faith efforts to comply with the applicable requirements, the compliance history of the owner and operator, and any other appropriate factors, EPA hereby agrees and acknowledges that payment of the civil penalty shall be in full and final satisfaction of all civil claims for penalties which Complainant may have under Section 9006(d) of RCRA, 42 U.S.C. § 6991e(d), for the violations alleged in this Consent Agreement and Final Order.
47. Respondent shall remit the full penalty, and/or any interest, administrative fees and late payment penalties, in accordance with Paragraph 45, above, and Paragraphs 51 through 54, below, via one of the following methods:
- a. Via U.S. Postal Service regular mail of a certified or cashier's check, made payable to the "United States Treasury", sent to the following address:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077

St. Louis, MO 63197-9000

- b. Via overnight delivery of a certified or cashier's check, made payable to the "United States Treasury", sent to the following address:

US Environmental Protection Agency
Fines and Penalties
U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

The U.S. Bank customer service contact for both regular mail and overnight delivery is Natalie Pearson, who may be reached at 314-418-4087.

- c. Via electronic funds transfer ("EFT") to the following account:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 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"

The Federal Reserve customer service contact may be reached at 212-720-5000.

- d. Via automatic clearinghouse ("ACH"), also known as Remittance Express ("REX"), to the following account:

PNC Bank
ABA No. 05136706
Environmental Protection Agency
Account 310006
CTX Format
Transaction Code 22 - checking
808 17th Street NW

Washington, D.C. 20074.

The PNC Bank customer service contact, Jesse White, may be reached at 301-887-6548.

- e. Via on-line payment (from bank account, credit card, debit card), access “www.pay.gov” and enter “sfo 1.1” in the search field. Open the form and complete the required fields.
- 48. All payments by the Respondent shall include the Respondent’s full name and address and the EPA Docket Number of this Consent Agreement (RCRA- 03-2009-0007).
- 49. At the time of payment, Respondent shall send a notice of such payment, including a copy of the check, EFT authorization or ACH authorization, as appropriate to:

Lydia Guy
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region III (Mail Code 3RC00)
1650 Arch Street
Philadelphia, PA 19103-2029

and

Jeffrey Nast
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency
Region III (Mail Code 3RC30)
1650 Arch Street
Philadelphia, PA 19103-2029

- 50. Respondent agrees not to deduct for civil taxation purposes the civil penalty specified in this Consent Agreement and the attached Final Order.
- 51. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to 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, as more fully described

V. PARTIES BOUND

55. This Consent Agreement and the accompanying Final Order shall apply to and be binding upon the EPA, the Respondent, Respondent's officers and directors (in their official capacity) and Respondent's successors and assigns. By his or her signature below, the person signing this Consent Agreement on behalf of Respondent acknowledges that he or she is fully authorized to enter into this Consent Agreement and to bind the Respondent to the terms and conditions of this Consent Agreement and the accompanying Final Order.

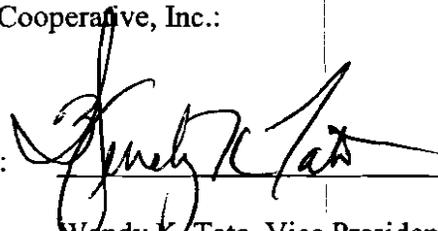
VI. EFFECTIVE DATE

56. The effective date of this Consent Agreement and Final Order is the date on which it is filed with the Regional Hearing Clerk after signature by the Regional Judicial Officer or Regional Administrator.

For Respondent Southern States Cooperative, Inc.:

Date: 11/12/08

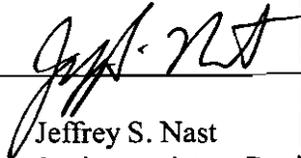
By: _____



Wendy K. Tate, Vice President
Southern States Cooperative, Inc.

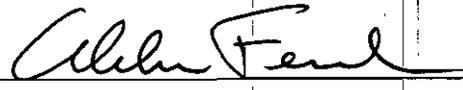
For Complainant United States Environmental Protection Agency, Region III:

Date: 11/13/08

By: 
Jeffrey S. Nast
Senior Assistant Regional Counsel

After reviewing the foregoing Consent Agreement and other pertinent information, the Director, Land and Chemicals Division, U.S. EPA Region III, recommends that the Regional Administrator or the Regional Judicial Officer issue the Final Order attached hereto.

Date: 11/17/08

By: 
Abraham Ferdas, Director
Land and Chemicals Division

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION III

1650 Arch Street

Philadelphia, Pennsylvania 19103-2029

In the Matter of:)

Southern States Cooperative, Inc.)
6606 West Broad Street)
Richmond, VA 23230)

U.S. EPA Docket Number
RCRA- 03-2009-0007

RESPONDENT)

Final Order

H-Mart)
1501 New York Ave.)
Martinsburg, WV 25401)

FACILITY)

FINAL ORDER

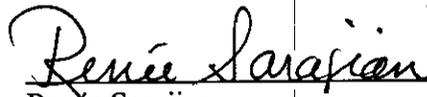
The Director, Land and Chemicals Division, U.S. Environmental Protection Agency - Region III ("Complainant"), and Southern States Cooperative, Inc. ("Respondent"), have executed a document entitled "Consent Agreement" which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules 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 terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated herein as if set forth at length.

NOW THEREFORE, pursuant to Section 9006(a) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6991e(a), and based on representations in the Consent Agreement that the penalty agreed to in the Consent Agreement is based on a consideration of the factors set forth in Section 9006(c) and (e) of RCRA, 42 U.S.C. § 6991e(c) and (e), Respondent

Southern States Cooperative, Inc. is hereby ordered to pay a civil penalty of twenty-seven thousand dollars (\$27,000) as set forth in Section IV of the Consent Agreement, and to comply with the terms and conditions of the Consent Agreement.

The effective date of this document is the date on which it is filed with the Regional Hearing Clerk after signature by the Regional Administrator or Regional Judicial Officer.

Date: 11/20/08



Renee Sarajian
Regional Judicial Officer
U.S. EPA, Region III

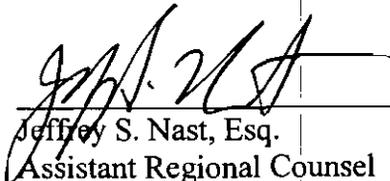
CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on November 20, 2008, the original and one true and correct copy of the foregoing Consent Agreement and Final Order was hand-delivered to and filed with the Regional Hearing Clerk (3RC00), U.S. EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania, and on November 20, 2008, a true and correct copy of same with enclosures was sent via express delivery upon the following:

Dawn T. Mistretta
Womble Carlyle Sandridge & Rice
One Wachovia Center, Suite 3500
301 South College Street
Charlotte, NC 28202

11/20/08

Date



Jeffrey S. Nast, Esq.

Assistant Regional Counsel

U.S. EPA - Region III

Counsel for Complainant

Philadelphia, PA 19103-2029