

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

U.S. EPA-REGION 3-RHC
FILED-21AUG2019am11:11

IN THE MATTER OF:

A-Del Construction Company
10 Adel Drive
Newark, DE 19702

Facility,

A-Del Construction Company, Inc.
10 Adel Drive
Newark, DE 19702

Respondent.

Docket No.: RCRA-03-2019-0098

**EXPEDITED SETTLEMENT
AGREEMENT AND FINAL ORDER**

EXPEDITED SETTLEMENT AGREEMENT

1. This Expedited Settlement Agreement (“Agreement”) is entered into by the Director, Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region III (“EPA” or “Complainant”), and A-Del Construction Company, Inc. (“Respondent”), pursuant to Section 9006 of the Resource Conservation and Recovery Act (“RCRA”), as amended, 42 U.S.C § 6991e, and 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 (with specific reference to 40 C.F.R. §§ 22.13(b), 22.18(b)(2), and (3)).
2. EPA alleges that Respondent, owner and/or operator of the underground storage tanks located at the A-Del Construction Company facility, 10 Adel Drive, Newark, Delaware (“Facility”), failed to comply with specific requirements of Subtitle I of RCRA, 42 U.S.C. §§ 6991 *et seq.*, its implementing regulations at 40 C.F.R. Part 280, and the federally authorized State of Delaware’s UST management program regulations set forth in the Delaware Regulations Governing Underground Storage Tank Systems, and will be cited as “DRGUST” followed by the applicable section of the regulations.
3. EPA has jurisdiction over the above-captioned matter pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e, and 40 C.F.R. §§ 22.1(a)(4) and 22.4 of the Consolidated Rules of Practice.
4. Respondent is a “person,” and is the “operator” and/or “owner” of “underground storage tanks” (“USTs”) and “UST systems,” located at a facility (the Facility), as those terms are defined in DRGUST Part A, Section 2.
5. At the time of the June 5, 2018 Compliance Evaluation Inspection, and at all times relevant to

the applicable violations alleged herein, three (3) USTs, as described in the following subparagraphs, were located at the Facility:

- a. A ten thousand (10,000) gallon tank that was installed in or about June 2009, and that, at all times relevant hereto, routinely contained regular-grade gasoline, a “regulated substance” as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and DRGUST Part A, § 2 (hereinafter “UST No. 1”).
- b. A ten thousand (10,000) gallon tank that was installed in or about June 2009, and that, at all times relevant hereto, routinely contained diesel, a “regulated substance” as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and DRGUST Part A, § 2 (hereinafter “UST No. 2”).
- c. A one thousand (1,000) gallon tank that was installed in or about February 1988, and that, at all times relevant hereto, routinely contained used oil, a “regulated substance” as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and DRGUST Part A, § 2. (hereinafter “UST No. 3”).

6. EPA has identified the following violation:

From at least January 2017 through April 2018, Respondent failed to properly conduct tank release detection on Tank #3 as required by DRGUST Part B, § 1.08.D.

7. The EPA and the Respondent agree that settlement of this matter for a penalty of **\$940.00** is in the public interest, and has been calculated in accordance with the statutory factors set forth in Section 9006(c) of RCRA, 42 U.S.C. § 6991e(c), and the Interim Consolidated Enforcement Penalty Policy for Underground Storage Tank Regulations and Revised Field Citation Program and ESA Pilot, effective October 5, 2018.

8. Respondent agrees that within 30 days of the effective date of this Agreement (the date it is filed with the Regional Hearing Clerk), Respondent shall submit a check made out to “**United States Treasury**” with the case name, address and docket number of this Agreement (RCRA-03-2019-0098), for the amount specified above, to:

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

Respondent shall send a copy of the payment to:

Melissa Toffel, UST Compliance Officer
U.S. EPA Region III (Mail Code 3ED22)
1650 Arch Street
Philadelphia, PA 19103; and,

Regional Hearing Clerk
U.S. EPA Region III (Mail Code 3RC00)
1650 Arch Street
Philadelphia, PA 19103-2029.

- 9. In signing this Agreement, the Respondent: admits the jurisdictional allegations set forth in this Agreement; neither admits nor denies the specific factual allegations and conclusions of law set forth in this Agreement, except as provided in the jurisdictional admission above; agrees not to contest EPA's jurisdiction with respect to the execution of this Agreement, the issuance of the attached Final Order, or the enforcement the Agreement; expressly waives its right to a hearing on any issue of law or fact set forth in this Agreement and any right to appeal the accompanying Final Order; consents to the issuance of the Agreement and agrees to comply with its terms; and bear its own costs and attorney's fees.
- 10. By its signature below, the Respondent certifies, subject to civil and criminal penalties for making a false submission to the United States Government, that he or she has: (1) corrected the alleged violations, and (2) submitted true and accurate documentation of those corrections.
- 11. This Agreement and attached Final Order constitute a settlement by EPA of its claims for civil penalties for the violations alleged in this Agreement.
- 12. 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 Sections 22.18(c) and 22.31(a) of the Consolidated Rules of Practice. Further, 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 CAFO, following its filing with the Regional Hearing Clerk.
- 13. This Agreement is binding on the parties signing below, and in accordance with 40 C.F.R. § 22.31(b), is effective upon filing.
- 14. The undersigned representative certifies that she/he is fully authorized to execute this Agreement and to legally bind A-Del Construction Company, Inc. to this Agreement.

For Respondent: A-Del Construction Company, Inc.

Name (print): Barry J. Baker Barry J. Baker

Title (print): Pres

Signature: [Handwritten Signature]

Date 8/7/2019

For Complainant: U.S. Environmental Protection Agency, Region III

After reviewing the Expedited Settlement Agreement and other pertinent matters, I, the undersigned Director of the Enforcement and Compliance Assurance Division of the United States Environmental Protection Agency, Region III, agree to the terms and conditions of this Agreement and recommend that the Regional Administrator, or his/her designee, the Regional Judicial Officer, issue the attached Final Order.

AUG 19 2019
Date



Karen Melvin
Director, Enforcement and Compliance
Assurance Division
U.S. EPA – Region III
Complainant

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

U.S. EPA-REGION 3-RHC
 FILED-21AUG2019AM11:11

IN THE MATTER OF:)

A-Del Construction Company)
 10 Adel Drive)
 Newark, DE 19702)

Facility,)

A-Del Construction Company, Inc.)
 10 Adel Drive)
 Newark, DE 19702)

Respondent.)

Docket No.: RCRA-03-2019-0098

**EXPEDITED SETTLEMENT
 AGREEMENT AND FINAL ORDER**

FINAL ORDER

Complainant, the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency - Region III, and Respondent, A-Del Construction Company, Inc., have executed a document entitled "Expedited Settlement 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, (with specific reference to Sections 22.13(b) and 22.18(b)(2) and (3)). The terms of the foregoing Expedited Settlement Agreement are accepted by the undersigned and incorporated herein as if set forth at length.

Based upon the representations of the parties in the attached Expedited Settlement Agreement, the penalty agreed to therein is based upon consideration of, *inter alia*, the

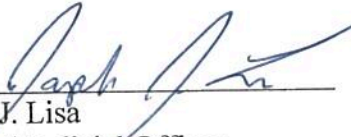
Interim Consolidated Enforcement Penalty Policy for Underground Storage Tank Regulations and Revised Field Citation Program and ESA Pilot, effective October 5, 2018, and the statutory factors set forth in 9006(c) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6991e(c).

NOW, THEREFORE, PURSUANT TO Section 9006 of RCRA, as amended, 42 U.S.C. Section 6991e, and Section 22.18(b)(3) and (3) of the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty in the amount of **NINE HUNDRED AND FORTY DOLLARS (\$940.00)**, in accordance with the payment provisions set forth in the Expedited Settlement Agreement, and comply with the terms and conditions of the Expedited Settlement Agreement.

This Final Order constitutes the final Agency action in this proceeding. This Final Order shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief, or criminal sanctions for any violations of the law. This Final Order resolves only those causes of action alleged in the Expedited Settlement Agreement and does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of Subtitle I of RCRA, 42 U.S.C. §§ 6991 *et seq.*, and the regulations promulgated thereunder.

The effective date of the foregoing Expedited Settlement Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

Aug 21, 2019
Date



Joseph J. Lisa
Regional Judicial Officer
U.S. EPA - Region III

IN THE MATTER OF:

A-Del Construction Company
10 Adel Drive
Newark, DE 19702

Facility,

A-Del Construction Company, Inc.
10 Adel Drive
Newark, DE 19702

Respondent.

Docket No.: RCRA-03-2019-0098

**EXPEDITED SETTLEMENT
AGREEMENT AND FINAL ORDER**

CERTIFICATE OF SERVICE

I certify that on AUG 21 2019, the original and one (1) copy of foregoing Consent Agreement and Final Order, were filed with the EPA Region III Regional Hearing Clerk. I further certify that on the date set forth below, I served a true and correct copy of the foregoing to each of the following persons, in the manner specified below, at the following addresses:

Copy served via Certified Mail, Return Receipt Requested, Postage Prepaid, to:

Barry Baker, Owner
A-Del Construction Company, Inc.
10 Adel Drive
Newark, DE 19702

Copy served via Hand Delivery or Inter-Office Mail to:

Melissa Toffel
UST Compliance Officer
U.S. EPA Region III
Enforcement and Compliance Assurance Division (Mail Code 3ED22)
1650 Arch Street
Philadelphia, PA 19103-2029

Dated: AUG 21 2019

Berwin Esposito
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region III

TRACKING NUMBER(S): 1Z A43 F71 A2 9706 8274

