



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

JUL 20 2011

BY CERTIFIED MAIL -
RETURN RECEIPT REQUESTED

Colonel Jim S. McCready, Commander
107th Air Refueling Wing
New York Air National Guard
Niagara Falls Air Reserve Station
9910 Blewett Avenue
Niagara Falls, New York 14304-6001

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REGION 2
2011 AUG 10 P 2 21
REGIONAL HEARING
CLERK

In the Matter of U.S. Air Force and the New York Air National Guard
Docket No. RCRA-02-2011-7501

Dear Colonel McCready:

Please find enclosed a copy of the Consent Agreement and Final Order ("CA/FO") in the above-referenced matter signed by the Regional Judicial Officer of the U.S. Environmental Protection Agency, Region 2 on July 19, 2011.

The schedule for payment of the penalty is set forth in Paragraphs 5 and 7 of the Consent Agreement. Kindly arrange for the payment in accordance with the terms of the CA/FO. Thank you in advance for your cooperation in this matter.

If you have any questions, please contact me at (212) 637-3167.

Sincerely yours,

Beverly Kolenberg
Assistant Regional Counsel
Office of Regional Counsel

cc: P. Burton Gray, Office of the Chief Counsel

Enclosure



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

JUL 20 2011

BY CERTIFIED MAIL –
RETURN RECEIPT REQUESTED

Colonel Kevin W. Bradley, Commander
174th Fighter Wing
New York Air National Guard
6001 East Molloy Road
Syracuse, New York 13211

In the Matter of U.S. Air Force and the New York Air National Guard
Docket No. RCRA-02-2011-7501

Dear Colonel Bradley:

Please find enclosed a copy of the Consent Agreement and Final Order (“CA/FO”) in the above-referenced matter signed by the Regional Judicial Officer of the U.S. Environmental Protection Agency, Region 2 on July 19, 2011.

The schedule for payment of the penalty is set forth in Paragraphs 4 and 7 of the Consent Agreement. Kindly arrange for the payment in accordance with the terms of the CA/FO. Thank you in advance for your cooperation in this matter.

If you have any questions, please contact me at (212) 637-3167.

Sincerely yours,

Beverly Kolenberg
Assistant Regional Counsel
Office of Regional Counsel

cc: P. Burton Gray, Office of the Chief Counsel

Enclosure

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. 2
2011 AUG 10 P 2:21
REGIONAL HEARINGS
CLERK



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REGION 2
2011 AUG 10 P 2:24
REGIONAL HEARING
CLERK

JUL 20 2011

BY CERTIFIED MAIL -
RETURN RECEIPT REQUESTED

Brig. General Verle L. Johnston Jr., Commander
105th Airlift Wing
New York Air National Guard
One Maguire Way
Newburgh, NY 12550-5075

In the Matter of U.S. Air Force and the New York Air National Guard
Docket No. RCRA-02-2011-7501

Dear Brig. General Johnson:

Please find enclosed a copy of the Consent Agreement and Final Order (“CA/FO”) in the above-referenced matter signed by the Regional Judicial Officer of the U.S. Environmental Protection Agency, Region 2 on July 19, 2011.

The schedule for payment of the penalty is set forth in Paragraphs 3 and 7 of the Consent Agreement. Kindly arrange for the payment in accordance with the terms of the CA/FO. Thank you in advance for your cooperation in this matter.

If you have any questions, please contact me at (212) 637-3167.

Sincerely yours,

Beverly Kolenberg
Assistant Regional Counsel
Office of Regional Counsel

cc: P. Burton Gray, Office of the Chief Counsel

Enclosure.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

In the Matter of

U.S. AIR FORCE and
NEW YORK AIR NATIONAL GUARD

Respondents

Proceeding Under Section 9006
of the Solid Waste Disposal Act,
as amended

CONSENT AGREEMENT
AND FINAL ORDER

Docket No. RCRA-02-2011-7501

U.S. ENVIRONMENTAL
PROTECTION AGENCY REGION 2
2011 AUG 10 P 2 21
HEARING
CLERK

PRELIMINARY STATEMENT

This civil administrative proceeding was instituted pursuant to Section 9006 of the Solid Waste Disposal Act, as amended, 42 U.S.C. §6901 *et seq.* (hereinafter referred to as the "Act"). The Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance, Region 2, United States Environmental Protection Agency ("EPA" or "Complainant"), issued a "Complaint, Compliance Order, and Notice of Opportunity for Hearing" on December 22, 2010 to the U.S. Air Force ("USAF") and the New York Air National Guard ("NYANG") (collectively the "Respondents").

The Complaint alleged violations of the Act and the regulations set forth at 40 Code of Federal Regulations (C.F.R.) Part 280, for underground storage tanks ("USTs") owned and operated by Respondents at Stewart Air National Guard Base in Newburgh, Niagara Falls Air Reserve Station in Niagara Falls and Syracuse Air National Guard Base in Syracuse in New York State.

The Complainant and Respondents have reached an amicable resolution of this matter and agree that, by entering into this Consent Agreement and Final Order ("CA/FO") pursuant to Section 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("CROP"), settlement of this matter upon the terms set forth in this CA/FO is an appropriate means of resolving this case without further litigation.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondents are the U.S. Air Force and the New York Air National Guard, and they are jointly referred to hereinafter as “Respondents.”
2. Respondent U.S. Air Force is a department of the United States, and Respondent NYANG is a component of the U.S. Air Force.
3. Each Respondent is a department, agency or instrumentality of the executive branch of the federal government.
4. Each Respondent is a “person” within the meaning of Section 9001(5) of the Act, 42 U.S.C. § 6991(5) and 40 C.F.R. § 280.12.
5. At all times relevant to this CA/FO, Respondents have “owned” and/or “operated,” as those terms are defined in Section 9001 of the Act, 42 U.S.C. § 6991, and in 40 C.F.R. § 280.12, three USTs for the 105th Airlift Wing that are located at Stewart Air National Guard Base (“Stewart ANGB”), One Maguire Way, Newburgh, New York 12550-5075, and identified by Respondent NYANG as: # UST Systems # 21-200, # 22-200 and # 23-200.
6. At all times relevant to this CA/FO, Respondents have “owned” and/or “operated” three USTs for the 107th Air Refueling Wing that are located at Niagara Falls Air Reserve Station (“Niagara Falls ARS”), 9910 Blewett Avenue, Niagara Falls, New York 14304-6001, and identified by Respondent NYANG as: # UST Systems # 2, # 3 and # 4.
7. At all times relevant to this CA/FO, Respondents have “owned” and/or “operated” two USTs for the 174th Fighter Wing that are located at the Syracuse Air National Guard Base (“Syracuse ANGB”), 6001 East Molloy Road, Syracuse, NY 13211, adjacent to Hancock International Airport, and identified by Respondent NYANG as: UST Systems # 003 and # 004.
8. On or about June 10, 2008, September 22 to 23, 2008 and November 16 to 17, 2009, pursuant to Section 9005 of the Act, 42 U.S.C. § 6991d, an authorized representative of EPA inspected Stewart ANGB, Niagara Falls ARS and Syracuse ANGB, respectively to determine the Respondents’ compliance with the Act (“Inspections”).
9. On or about November 5, 2008 and October 14, 2008, EPA sent a Notices of Violation (“NOVs”) and an Information Request Letters (“IRLs”) to commanders at Niagara Falls ARS and Stewart ANGB. The IRLs and NOVs were issued pursuant to Sections 9005(a) and 9006 of the Act, 42 U.S.C. §6991d(a) and 42 U.S.C. §6991e, respectively.
10. EPA did not send an IRL and a NOV related to the Inspection on November 16-17, 2009 at Syracuse ANGB because email correspondence from Syracuse ANGB confirmed the inspector’s observations.
11. EPA’s NOVs listed UST violations that were identified by the EPA representative during the Inspections.

12. EPA's IRL sought general information about the USTs owned and/or operated by the Respondents at the facilities, as well as information about any actions taken to correct the violations and to prevent recurrence of the violations identified in the NOV.

13. On November 6, November 20, and December 2, 2008 and on January 20, 25 and February 9, 2010, Respondents provided separate certified responses to the NOV/IRLs for Niagara Falls ARS, Stewart ANGB and the email correspondence for Syracuse ANGB.

14. Based on the EPA Inspections and Respondents' respective responses to EPA's NOV's and IRLs, EPA alleged in Count 1 of the Complaint that Stewart ANGB and Syracuse ANGB failed to monitor cathodic protection systems and maintain records of release detection, in violation of 40 C.F.R. §§ 280.31(b)(1) and (2) and 40 C.F.R. § 280.31(d), and that Syracuse ANGB failed to ensure corrosion protection in violation of the Act and its implementing regulations, in violation of 40 C.F.R. §§ 280.31(b)(1) and (2) and 40 C.F.R. § 280.31(d)

15. Based on the EPA Inspections and Respondents' responses to EPA's NOV's and IRLs, EPA alleged in Count 2 of the Complaint that Stewart ANGB and Niagara Falls ARS failed to provide corrosion protection for steel piping in contact with the ground in violation of the Act and its implementing regulations at 40 C.F.R. §280.21(c).

CONSENT AGREEMENT

Based upon the foregoing, and pursuant to Section 9006 of the Act, 42 U.S.C. §6991e, and Section 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. §22.18, it is hereby agreed by and between the Complainant and the Respondents that:

1. For purposes of this proceeding, Respondents (a) admit the jurisdictional basis of this action; (b) neither admit nor deny the Findings of Fact and Conclusions of Law, above; (c) consent to the terms of this Consent Agreement; and (d) consent to the issuance of the Final Order.

2. Respondents each hereby certify that the subject USTs referenced in the above Findings of Fact and Conclusions of Law are, as of the date(s) of their signatures to this Consent Agreement, in compliance with all applicable requirements found in 40 C.F.R. Part 280, including, but not limited to, the rules concerning monitoring of cathodic protection systems, maintaining records, and ensuring corrosion protection for tanks and piping.

3. Respondents shall pay, by either a cashier's or certified check, or by Electronic Funds Transfer ("EFT"), a civil penalty in the amount of Fourteen Thousand, Two Hundred and Thirty One Dollars (\$14,231), payable to the "Treasurer, United States of America" for violations at the Stewart ANGB facility.

4. Respondents shall pay, by either a cashier's or certified check, or by Electronic Funds Transfer, a civil penalty in the amount of Twelve Thousand, One Hundred and Fifty Dollars (\$12,150), payable to the "Treasurer, United States of America" for violations at the Syracuse

ANGB facility.

5. Respondents shall pay, by either a cashier's or certified check, or by Electronic Funds Transfer, a civil penalty in the amount of Eight Thousand, Six Hundred and Forty Dollars (\$8,640), payable to the "Treasurer, United States of America" for violations at the Niagara Falls ARS facility.

6. The payments specified in Paragraphs 3, 4 and 5, above, shall be made according to the methods specified in this paragraph.

a. If by check, the check shall be identified with a notation of the name and docket number of this case as follows: In the Matter of U.S. Air Force and New York Air National Guard, Docket No. RCRA-02-2011-7501. The check shall be mailed to:

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

If overnight delivery is preferred, Respondents may mail the check to the following address:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
Attn: USEPA Box #979077
St. Louis, MO. 63101

b. If Respondents choose to make payment by EFT, then that Respondents shall provide the following information to the remitter bank:

- 1) Amount of Payment
- 2) SWIFT address: FRNYUS33, 33 Liberty Street, New York, NY 10045.
- 3) Account Code for Federal Reserve Bank of New York receiving payment:
68010727
- 4) Federal Reserve Bank of New York ABA routing number: 021030004.
- 5) Field Tag 4200 of the Fedwire message should read
"D 68010727 Environmental Protection Agency."
- 6) Name of Respondents' facility making the payment and of the case: In the Matter of U.S. Air Force and New York Air National Guard
- 7) Docket No. RCRA-02-2011-7501

Respondents shall also send documentation of payment for each facility to the following:

Beverly Kolenberg
Assistant Regional Counsel
Office of Regional Counsel

and

Karen Maples
Regional Hearing Clerk

U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, N.Y. 10007-1866

7. Respondents' payments must be received on or before forty-five (45) calendar days after the date of the signature of the Final Order, which is located at the end of this CA/FO (the date by which payment must be received shall hereafter be referred to as the "due date").

a. Failure to pay the penalty in full according to the provisions in this Consent Agreement will result in further action for collection or other appropriate action; and

b. A late payment handling charge of fifteen dollars (\$15.00) will be assessed for each thirty (30)-day period (or any portion thereof) following the due date in which the balance remains unpaid.

8. This CA/FO is being voluntarily and knowingly entered into by the Complainant and the Respondents to resolve, upon full payment of the penalty, the civil and administrative claims specifically alleged in the Complaint against Respondents. Nothing herein shall be read to preclude EPA, or the United States on behalf of EPA, from pursuing the remedies mentioned in 40 C.F.R. § 22.18(c) for any violations of law.

9. Respondents have read the CA/FO, understand its terms, find it to be reasonable and consent to its issuance and its terms. Respondents consent to the issuance of the accompanying Final Order. Respondents agree that all terms of settlement are set forth herein.

10. Respondents explicitly and knowingly consent to the assessment of the civil penalty as set forth in this CA/FO and agree to pay these penalties in accordance with the terms of this CA/FO.

11. Respondents explicitly waive their right to request or to seek any Hearing on the Complaint or any of the allegations therein asserted, on this Consent Agreement or on the Findings of Fact and Conclusions of Law herein, or on the accompanying Final Order.

12. Respondents waive their right to appeal the proposed Final Order accompanying this Consent Agreement.

13. Respondents waive their right to confer with the Administrator pursuant to Section 6001(b)(2) of the Act, 42 U.S.C. § 6961(b)(2).

14. This CA/FO and any provision herein shall not be construed as an admission of liability in any criminal or civil action or other administrative proceeding, except in an action or proceeding to enforce or seek compliance with this Consent Agreement and its accompanying Final Order.

15. Respondents explicitly waive any right they may have pursuant to 40 C.F.R. § 22.8 to be present during discussions with or to be served with and to reply to any memorandum or communication addressed to the Regional Administrator, Deputy Regional Administrator, or Regional Judicial Officer for Region 2, where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the attached Final Order.

16. Nothing in this CA/FO shall be interpreted to require obligation or payment of any funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341; the Non-Appropriated Fund Anti-Deficiency Act, 10 U.S.C. § 2783; or other applicable law.

17. This CA/FO does not waive, extinguish, or otherwise affect Respondents' obligation to comply with all applicable provisions of federal, state, or local law concerning USTs, nor shall it be construed to be a ruling on or determination of any issue related to a federal, state, or local permit.

18. EPA reserves the right to commence action against any person, including Respondents, in response to any condition which EPA determines may present a potential for an imminent and substantial endangerment to the public health, public welfare, or the environment. 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 CA/FO, following its filing with the Regional Hearing Clerk. Respondents reserve all available rights and defenses they may have, consistent with the terms of this CA/FO, to defend themselves in any such action.

19. Each party hereto agrees to bear its own costs and fees in this matter.

20. Respondents consent to service of a copy of this CA/FO by an EPA employee other than the Regional Hearing Clerk.

21. Pursuant to 40 C.F.R. § 22.31(b), the effective date of the Final Order herein shall be the date when filed with the Regional Hearing Clerk of the United States Environmental Protection Agency, Region 2.

22. Each undersigned signatory to this Consent Agreement certifies that he or she is duly and fully authorized to enter into and to ratify this Consent Agreement and all the terms and conditions set forth in this Consent Agreement on behalf of the party for whom he or she signs.

23. The provisions of this CA/FO shall be binding upon EPA and Respondents, their officers, directors, officials, agents, servants, authorized representatives and successors or assigns.

In the Matter of U. S. Air Force and New York Air National Guard
Docket No. RCRA-02-2011-7501

RESPONDENTS NYANG AND USAF: for the **Stewart Air National Guard facility**

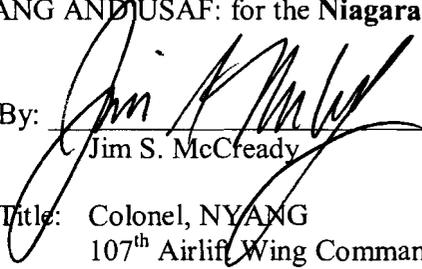
By: 
Verle L. Johnston, Jr.

Title: Brigadier General, NYANG
105th Airlift Wing Commander
New York Air National Guard
One Maguire Way
Newburgh, NY 12550-5075

Date: 28 June 2011

In the Matter of U. S. Air Force and New York Air National Guard
Docket No. RCRA-02-2011-7501

RESPONDENTS NYANG AND USAF: for the **Niagara Air Reserve Station facility**

By: 

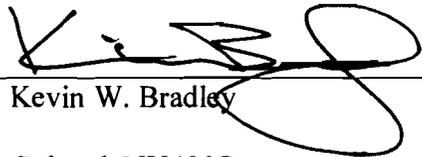
Jim S. McCready

Title: Colonel, NYANG
107th Airlift Wing Commander
New York Air National Guard
Niagara Falls Air Reserve Station
9910 Blewett Avenue
Niagara Falls, New York 14304-6001

Date: 7 JUL 11

In the Matter of U. S. Air Force and New York Air National Guard
Docket No. RCRA-02-2011-7501

RESPONDENTS NYANG AND USAF: for the **Syracuse Air National Guard Base facility**

By: 

Kevin W. Bradley

Title: Colonel, NYANG
174th Fighter Wing Commander
New York Air National Guard
6001 East Molloy Road
Syracuse, New York 13211

Date: 24 June 2011

In the Matter of U. S. Air Force and New York Air National Guard
Docket No. RCRA-02-2011-7501

COMPLAINANT: **United States Environmental Protection Agency Region 2**

By: 
Dore LaPosta, Director
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection
Agency - Region 2
290 Broadway
New York, N.Y. 10007-1866

Date: 6/27/11

In the Matter of U. S. Air Force and New York Air National Guard
Docket No. RCRA-02-2011-7501

FINAL ORDER

Environmental Protection Agency, Region 2, New York, New York.



Helen Ferrara
Regional Judicial Officer
U.S. Environmental Protection Agency, Region 2
290 Broadway
New York, New York 10007-1866

Date: July 19, 2011

In the Matter of U. S. Air Force and New York Air National Guard
Docket No. RCRA-02-2011-7501

CERTIFICATE OF SERVICE

This is to certify that I have this day caused to be mailed a copy of the foregoing Consent Agreement and Final Order, bearing docket number RCRA-02-2011-7501 by certified mail, return receipt requested, to:

P. Burton Gray
Office of the Chief Counsel
National Guard Bureau (NGB-JA)
AHS-Bldg. 2, Suite T319B
111 S. George Mason Drive
Arlington, VA 22204

Brig. General Verle L. Johnston Jr., Commander
105th Airlift Wing
New York Air National Guard
One Maguire Way
Newburgh, NY 12550-5075

Colonel Jim S. McCready, Commander
107th Air Refueling Wing
New York Air National Guard
Niagara Falls Air Reserve Station
9910 Blewett Avenue
Niagara Falls, New York 14304-6001

Colonel Kevin W. Bradley, Commander
174th Fighter Wing
New York Air National Guard
6001 East Molloy Road
Syracuse, New York 13211

Dated: JUL 20 2011
New York, New York

Stoddard N. Baer