

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY**

OCT 14 PM 12:57

BEFORE THE ADMINISTRATOR

FILED
EPA REGION VIII
HEARING CLERK

IN THE MATTER OF)	Docket No. RCRA-08-2008-0004
)	
U.S. Department of Interior,)	CONSENT AGREEMENT
Bureau of Indian Education,)	
)	
Bus Garage Facility)	
Fish Lake Road North)	
Belcourt, ND 58316)	
Turtle Mountain Reservation)	
)	
Respondent.)	

Complainant, United States Environmental Protection Agency, Region 8 (EPA) , and Respondent, U.S. Department of Interior, Bureau of Indian Education (BIE) (hereafter referred to collectively as “the Parties”), by their undersigned representatives, hereby consent and agree as follows.

FACTUAL AND PROCEDURAL BACKGROUND

1. On March 24, 2008, Complainant issued Respondent a Complaint and Notice of Opportunity for Hearing (Complaint) pursuant to section 9006 of the Resource Conservation and Recovery Act (“RCRA” or “the Act”), 42 U.S.C. § 6991e. The Complaint alleges that Respondent Bureau of Indian Education’s Turtle Mountain Bus Garage facility (facility) violated section 9003 of the Act, 42 U.S.C. § 6991b, and the Underground Storage Tank regulations codified at 40 C.F.R. Part 280. Specifically, the Complaint cites BIE for failure to monitor tanks every 30 days at the facility in violation of 40 C.F.R. § 280.41(a). The Complaint proposes a civil penalty for the violation alleged.

2. Respondent admits the jurisdictional allegations of the Complaint and the Consent

Agreement and neither admits nor denies the specific factual allegations of the Complaint and the Consent Agreement.

3. Respondent waives its right to a hearing before any tribunal, to contest any issue of law or fact set forth in the Complaint or the Consent Agreement.

4. This Consent Agreement contains all terms of the settlement agreed to by the Parties. Upon incorporation into a final order, this Consent Agreement applies to and is binding upon Respondent, its officers, directors, employees, agents and all persons acting under or for Respondent, until such time as the civil penalty required under paragraph no. 6 has been paid. This Consent Agreement upon incorporation into a final order shall constitute full civil settlement of the violations alleged in the Complaint.

5. The facility currently is in compliance with the Act and 40 C.F.R. § 280.41(a).

6. Pursuant to section 9006(d)(2)(c) of the Act, 42 U.S.C. § 6991e(d)(2)(c), the seriousness of the violation, any good faith efforts by Respondent to comply, and after taking into consideration other matters as justice may require, EPA has determined that an appropriate civil penalty to settle this action is in the amount of \$4,250 (FOUR THOUSAND TWO HUNDRED FIFTY DOLLARS).

TERMS OF SETTLEMENT

7. Respondent consents to the issuance of the Consent Agreement and consents, for the purposes of settlement and without admitting any of the allegations in the Order not heretofore admitted, to the payment of the civil penalty cited in paragraph 6 above.

8. Within sixty (60) days of the Consent Agreement and Final Order, Respondent shall make payment by Intra-Governmental Payment and Collection System ("IPAC") in the

amount of four thousand two hundred fifty dollars (\$4,250) to EPA's Agency Location Code: 68011008.

9. A copy of the IPAC report shall be simultaneously provided to:

Tina Artemis, Regional Hearing Clerk (8RC)
U.S. EPA Region 8
1595 Wynkoop Street
Denver, Colorado 80202-1129

and to:

Amy Swanson, Attorney
Legal Enforcement Program (8ENF-L)
U.S. EPA Region 8
1595 Wynkoop Street
Denver, Colorado 80202-1129

10. Respondent further agrees and consents that if it fails to make the payment in full by the date due, interest on the penalty amount shall accrue from the date of the order at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. A late payment charge of fifteen dollars (\$15.00) shall be imposed after the first 30 days that any of the payments, or portions thereof, are overdue, with an additional charge of fifteen dollars (\$15.00) imposed for each subsequent 30-day period until the payments are made. In addition, a six percent (6%) per annum penalty shall be applied on any principal amount not paid within 90 days of the due date of the final order or subsequent due dates.

11. The penalty specified in paragraph 6 above shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.

GENERAL PROVISIONS

12. The Parties agree to resolve all disputes regarding the provisions of this Consent Agreement through dispute resolution proceedings as defined and governed by 5 U.S.C. Section 571 et seq., in recognition that timely resolution of disputes is essential to the overall goal of

environmental compliance. All disputes arising under this Agreement that cannot be resolved informally amongst the Parties shall be submitted to a neutral available through the Federal Mediation and Conciliation Service or other available DOI or EPA agency dispute resolution techniques. The term “dispute” is intended to be interpreted broadly, including but not limited to disagreements over payment amount(s) and deadlines. Reimbursement of and general compensation for the neutral shall be paid equally by all Parties involved in each individual dispute referred for resolution.

13. This Consent Agreement shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law.

14. Nothing in this Consent Agreement shall relieve Respondent of the duty to comply with RCRA and the UST regulations.

15. Nothing in this Consent Agreement shall be construed as a waiver by the EPA of its authority to seek costs or any appropriate penalty associated with a collection action instituted as a result of Respondent's failure to perform pursuant to the terms of this Consent Agreement.

16. The undersigned representative of Respondent certifies that he/she is fully authorized to enter into the terms and conditions for this Consent Agreement and to bind the Respondent to the terms and conditions of this Consent Agreement.

17. The Parties agree to submit this Consent Agreement to the presiding officer with a request that it be incorporated into a final order.

18. Each party shall bear its own costs and attorneys fees in connection with this matter.

19. This Consent Agreement, upon incorporation into a final order by the presiding officer and full satisfaction by the Parties, shall be a complete and full civil settlement of the specific violations alleged in the Complaint.

20. This Consent Agreement shall become effective upon filing with the presiding officer.

SO CONSENTED TO AND AGREED:

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8,
Complainant.

Date: 9 October 2008

By: Sharon L Kercher
Sharon Kercher, Director
Technical Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

Date: 10/9/08

By: Lois M. Ross
for Michael T. Risner, Director
David J. Janik, Supervisory Attorney
Legal Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

UNITED STATES DEPARTMENT OF
THE INTERIOR, BUREAU OF INDIAN
EDUCATION,
Respondent.

Date: 10/2/08

Bureau of Indian Education

By: 
Director

U.S. Department of the Interior

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT/FINAL ORDER** in the matter of **U.S. DEPARTMENT OF INTERIOR, BUREAU OF INDIAN EDUCATION, BUS GARAGE FACILITY TURTLE MOUNTAIN RESERVATION; DOCKET NO.: RCRA-08-2008-0004**; these documents were filed with the Regional Hearing Clerk on October 14, 2008.

Further, the undersigned certifies that true and correct copies of the documents were delivered to Amy Swanson, Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned document were placed in the United States mail certified/return receipt requested on October 14, 2008, to:

Bus Garage Facility
Fish Lake Road North
Belcourt, ND 58316
Turtle Mountain Reservation

E-mailed to:

Michelle Angel
U. S. Environmental Protection Agency
Cincinnati Finance Center
26 W. Martin Luther King Drive (MS-0002)
Cincinnati, Ohio 45268

October 14, 2008


Tina Artemis
Paralegal/Regional Hearing Clerk

