



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

DEC 13 2012

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. William Picon
B&R Mini Mart
PO Box 3083
Cullowhee, North Carolina 28723

RE: Consent Agreement and Final Order
B&R Mini Mart
Docket Number: RCRA-04-2012-0021

Dear Mr. Picon:

Enclosed is a copy of the fully executed Consent Agreement and Final Order (CAFO) as filed with the Regional Hearing Clerk (RHC) in the above referenced matter. The CAFO was effective upon filing with the RHC. The initial payment of the civil penalty is to be paid within thirty (30) calendar days of the effective date of the CAFO, and subsequent payments are to be made in accordance with the schedule specified in Paragraph 27 of the CAFO.

Also enclosed is a copy of a document titled "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings." This document puts you on notice of your potential duty to disclose to the Securities and Exchange Commission any environmental actions taken by the EPA.

If you have any questions, please feel free to contact Roberto X. Busó, Associate Regional Counsel, at (404) 562-8530.

Sincerely,


Michael Norman, Acting Chief
Restoration and Underground Storage Tanks
Branch
RCRA Division

Enclosures

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

IN THE MATTER OF:) Docket No.: RCRA-UST-04-2012-0021
)
DevonP, Inc.)
William Picon, Owner) Proceeding under Section 9006
P.O. Box 3083) of the Resource Conservation
Cullowhee, North Carolina 28723) and Recovery Act, as amended
) 42 U.S.C. § 6991e
RESPONDENT)
_____)

CONSENT AGREEMENT

I. NATURE OF THE ACTION

1. This is a civil administrative enforcement action, ordering compliance with requirements of Subtitle I of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §§ 6991 *et seq.* This action seeks civil penalties pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e, for alleged violations of Subtitle I of RCRA and the regulations promulgated pursuant thereto, set forth at Title 40 of the Code of Federal Regulations (40 C.F.R.), Part 280.

2. *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, provide that where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order (CAFO). 40 C.F.R. §§ 22.13 and 22.18(b)(2).

3. The parties have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18, and desire to settle this action. Accordingly, before any testimony has been taken upon the pleadings and without any admission of violation or adjudication of any issue of fact or law, and in accordance with 40 C.F.R. § 22.13(b), the parties have agreed to the execution of this CAFO, and Respondent hereby agrees to comply with the terms of this CAFO.

II. THE PARTIES

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

5. Respondent is DevonP, Inc., the former owner and operator of three (3) underground storage tank (UST) systems located at 1607 Acquino Rd, Cherokee, North Carolina (the Facility). The Facility is located on tribal land of the Eastern Band of Cherokee Indians (EBCI), which constitutes "Indian Country" as that term is defined in 18 U.S.C. § 1151.

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HEARING CLERK

III. PRELIMINARY STATEMENTS

6. Pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c, the State of North Carolina (the State) received final authorization from the EPA to carry out a state UST program in lieu of the federal UST program.

7. Although the EPA has granted the State authority to enforce its own UST program, the State is not approved to implement its UST program in Indian Country within the State. Pursuant to the Memorandum of Agreement (MOA) entered into on December 11, 2000, by and among the EBCI, the State and the EPA Region 4, which addresses the regulation of UST facilities on EBCI tribal land, the EPA has retained exclusive responsibility for the execution of the requirements of Subtitle I of RCRA, and the regulations promulgated pursuant thereto, on EBCI tribal land.

8. Section 9003 of RCRA, 42 U.S.C. § 6991b, requires the EPA to develop and promulgate release detection, prevention and corrective action regulations applicable to all owners and operators of USTs as may be necessary to protect human health and the environment. The implementing regulations are codified at 40 C.F.R. Part 280.

9. Pursuant to 40 C.F.R. § 280.41(a), owners and operators of petroleum UST systems must monitor the UST systems at least every 30 days for release detection.

10. Pursuant to the MOA, Complainant has given notice of this action to the State and the EBCI.

IV. ALLEGATIONS AND DETERMINATIONS

11. Respondent is a "person" as defined in Section 9001 of RCRA, 42 U.S.C. § 6991, and 40 C.F.R. § 280.12.

12. Respondent is an "owner" and "operator" of "underground storage tanks" used as "petroleum UST systems" as those terms are defined in Section 9001 of RCRA, 42 U.S.C. § 6991, and 40 C.F.R. § 280.12.

13. Gasoline is a petroleum-based fuel that is a "regulated substance" as defined in Section 9001 of RCRA, 42 U.S.C. § 6991, and 40 C.F.R. § 280.12.

14. On June 7, 2011, the EPA conducted an announced compliance inspection of Respondent's petroleum UST systems located at the Facility.

15. At the time of the inspection, Respondent was unable to demonstrate that the petroleum UST systems at the Facility were being monitored at least every 30 days for release detection, as required by 40 C.F.R. § 280.41(a).

16. Complainant therefore alleges that Respondent violated 40 C.F.R. § 280.41(a) by failing to monitor the petroleum UST systems at least every 30 days.

V. TERMS OF AGREEMENT

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

17. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set out in the above paragraphs pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e.

18. Respondent neither admits nor denies the factual allegations or alleged violations set out in this CAFO.

19. Respondent waives any right to contest the allegations and its right to appeal this CAFO.

20. Respondent waives its right to challenge the validity of this CAFO and the settlement of the matters addressed in this CAFO based on any issue related to the Paperwork Reduction Act.

21. 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.

22. 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 Subtitle I.

23. The parties agree that compliance with the terms of this CAFO shall resolve the Respondent's liability for civil penalties for the violations and facts alleged and stipulated to in this CAFO.

24. Respondent, by signing this CAFO, certifies that Respondent is in compliance with RCRA Subtitle I and its implementing regulations.

25. The parties agree that they will pay their own costs and attorney's fees.

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

VI. PAYMENT OF CIVIL PENALTY

27. Respondent is assessed a civil penalty of **THREE THOUSAND, EIGHT HUNDRED DOLLARS (\$3,800)**. Six payments will be made to complete payment of the entire civil penalty including interest. The first payment is due within thirty (30) calendar days from the effective date of this CAFO and subsequent payments will be due in ninety (90) day intervals thereafter. Including the civil penalty and interest, the total amount that will be paid upon completion of all payments will be **THREE THOUSAND, EIGHT HUNDRED, TWENTY THREE DOLLARS AND SEVENTY SIX CENTS (\$3,823.76)**. Respondent shall make payments in accordance with the following payment schedule:

<u>Payment No.</u>	<u>Payment Due Date</u>	<u>Payment due</u>
1	Within 30 days of date CAFO filed	\$637.29
2	Within 120 days of date CAFO filed	\$637.29
3	Within 210 days of date CAFO filed	\$637.29
4	Within 300 days of date CAFO filed	\$637.29
5	Within 390 days of date CAFO filed	\$637.29
6	Within 480 days of date CAFO filed	\$637.31

28. Payment shall be made by cashier's or certified check, or by Automated Clearing House (ACH) (also known as REX or remittance express). If paying by check, the check shall be payable to: **Treasurer, United States of America**. The Respondent's name and the docket number for this matter shall be referenced on the face of the check. Payment shall be tendered to:

United States Environmental Protection Agency
Fines and Penalties
 Cincinnati Finance Center
 P.O. Box 979077
 St. Louis, MO 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 No. 979077
U.S. EPA Fines and Penalties
 1005 Convention Plaza
 Mail Station SL-MO-C2GL
 St. Louis, MO 63101
 Contact: Natelie Pearson at (314) 418-4087
 (314) 418-1028

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, D.C. 20074
 Contact: Jessee White, (301) 887-6548

29. Respondent shall submit a copy of each payment to:

Patricia A. Bullock
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

and to:

William E. Truman
Chief, Underground Storage Tank Section
U.S. Environmental Protection Agency, Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

30. If Respondent fails to remit the civil penalty as agreed to herein, the EPA is required to assess interest, penalties, and a charge to cover the costs of processing and handling the delinquent claim. Interest, at the statutory judgment rate provided for in 31 U.S.C. § 3717, will begin to accrue on the civil penalty if not paid as specified above. 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 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 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 more than ninety (90) calendar days past due, Respondent must pay a non-payment penalty of six percent (6%) per annum, which will accrue from the date the penalty payment became due and is not paid. This non-payment is in addition to the charges which may accrue under subparagraphs (a) and (b).

31. If Respondent fails to meet the payment requirements set forth above, the entire unpaid balance of the penalty and all accrued interest shall become due immediately upon such failure, and Respondent shall immediately pay the entire penalty including the remaining principal balance of the civil penalty along with any interest that has accrued up to the time of payment. In addition, Respondent shall be liable for and shall pay administrative handling charges and late

payment penalty charges as described above in the event of such failure or default.

32. Further, if Respondent fails to pay the installment payments in accordance with the schedule set forth above, the EPA may refer the debt to a collection agency, a credit reporting agency, or to the Department of Justice for filing of a collection action in the appropriate United States District Court. In any such collection action, the validity, amount, and appropriateness of the assessed penalty and of this CAFO shall not be subject to review.

33. Notwithstanding Respondent's agreement to pay the assessed civil penalty in accordance with the installment schedule set forth above, Respondent may pay the entire civil penalty of **THREE THOUSAND, EIGHT HUNDRED DOLLARS (\$3,800)** within thirty (30) calendar days after the effective date of this CAFO and, thereby, avoid the payment of interest. In addition, Respondent may, at any time after commencement of payments under the installment schedule, elect to pay the entire principal and remaining balance, together with interest accrued up to the date of such full payment.

34. Penalties paid pursuant to this CAFO are not tax deductible under 26 U.S.C. § 62(f).

VII. RESERVATION OF RIGHTS

35. 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 the EPA find that the release of regulated substances from a UST may have occurred and that implementation of corrective action is necessary to address such release.

36. Complainant reserves the right to take enforcement action against Respondent for any future violations of RCRA and its implementing regulations and to enforce the terms and conditions of this CAFO.

37. 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 the 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 the EPA, and it is the responsibility of the Respondent to comply with such laws and regulations.

38. 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 its Facility.

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

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

VIII. PARTIES BOUND

41. 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.

42. 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.

43. 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.

IX. SERVICE OF DOCUMENTS

44. A copy of any legal documents that Respondent files in this action should be sent to the following attorney who represents the EPA in this matter and who is authorized to receive service for the EPA in this proceeding:

Roberto X. Busó, Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

45. A copy of any documents that Complainant files in this action shall be sent to the Respondent at the following address:

William Picon, Owner
DevonP, Inc.
P.O. Box 3083
Cullowhee, North Carolina 28723

X. SEVERABILITY

46. It is the intent of the parties that the provisions of this CAFO are severable. If any provision or authority of this CAFO or the application of this CAFO to any party or circumstance is held by any judicial or administrative authority to be invalid or unenforceable, the application of such provision to other parties or circumstances and the remainder of this CAFO shall remain in force and shall not be affected thereby.

XI. OTHER APPLICABLE LAWS

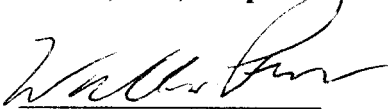
47. All actions required to be taken pursuant to this CAFO shall be undertaken in accordance with the requirements of all applicable laws and regulations. Respondent shall obtain or cause their representatives to obtain all necessary permits and approvals as required.

XII. EFFECTIVE DATE

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

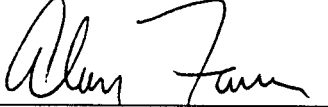
AGREED AND CONSENTED TO:

FOR DevonP, Inc., Respondent

By: 
William Picon, Owner
DevonP, Inc.
P.O. Box 3083
Cullowhee, North Carolina 28723

Dated: 11-3-12

FOR U.S. Environmental Protection Agency, Complainant

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

Dated: 12/12/12

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:) Docket No.: RCRA-UST-04-2012-0021
)
DevonP, Inc.)
William Picon, Owner) Proceeding under Section 9006
P.O. Box 3083) of the Resource Conservation
Cullowhee, North Carolina 28723) and Recovery Act, as amended
) 42 U.S.C. § 6991e
RESPONDENT.)
_____)

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* (Consolidated Rules of Practice), 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 13 day of Dec, 2012

BY: Susan B. Schub
Susan B. Schub
Regional Judicial Officer
United States Environmental Protection Agency, Region 4

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, in the Matter of DevonP, Inc., William Picon, Owner, Docket Number: RCRA-UST-04-2012-0021, on the parties listed below in the manner indicated:

Roberto X. Busó,
Assistant Regional Counsel
U.S. Environmental Protection Agency
Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, Georgia 30303

(Via EPA's internal mail)

Quantindra Smith
RCRA Division
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

(Via EPA's internal mail)

DevonP, Inc.
William Picon, Owner
P.O. Box 3083
Cullowhee, North Carolina 28723

(Via Certified Mail- Return Receipt Requested)

Date 12-13-12



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