



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2  
290 BROADWAY  
NEW YORK, NY 10007-1866

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2013 APR -2 A 10:44  
REGIONAL HEARINGS  
CLERK

APR - 2 2013

**CERTIFIED MAIL/RETURN RECEIPT**

Robert R. Tyson, Esq.  
BOND, SCHOENECK & KING,  
One Lincoln Center  
Syracuse, NY 13202-1355

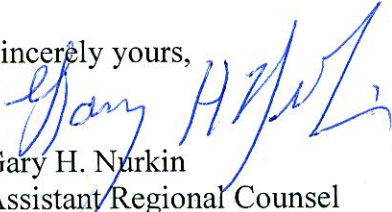
Re: United Refining Company Docket No. RCRA-02-2012-7504

Dear Mr. Tyson:

Enclosed is a copy of the Consent Agreement and Final Order ("CA/FO") in the above referenced proceeding signed by the Regional Administrator of the U.S. Environmental Protection Agency.

Please note that payment is due within forty-five (45) days of signature of the Final Order by the Regional Administrator. Please arrange for payment of this penalty according to the instructions given in that Order.

Sincerely yours,

  
Gary H. Nurkin  
Assistant Regional Counsel

cc: Russ Brauksieck, Chief  
Facility Compliance Section  
NYSDEC  
625 Broadway- 11<sup>th</sup> Floor  
Albany, New York 12233

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2013 APR -2 A 10:44  
REGIONAL HEARING  
CLERK

-----X  
In the Matter of :  
 :  
United Refining Company : **CONSENT AGREEMENT/ FINAL ORDER**  
Respondent. : **Docket No. RCRA-02-2012-7504**  
 :  
Proceeding Under Section 9006 :  
of the Solid Waste Disposal Act, :  
as amended :  
-----X

**PRELIMINARY STATEMENT**

This is a civil administrative proceeding 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").

Section 9006 of RCRA, 42 U.S.C. § 6991(e), authorizes the Administrator to enforce violations of the Act and the regulations promulgated or authorized pursuant to it. United Refining Company ("United") has been the owner and operator of six service stations situated in Rochester, Dunkirk, Westfield, Jamestown ("Forest Avenue" and "North Main Street Extension"), and Fredonia, in New York State. EPA issued a Complaint on September 25, 2012 alleging that Respondent, United violated at these stations various requirements of RCRA and regulations relating to the technical standards and corrective action requirements for owners and operators of underground storage tanks ("USTs").

EPA and United have subsequently engaged in settlement discussions with respect to the violations alleged in the aforementioned Complaint. United, in these discussions, has objected to the methods used by EPA to calculate its proposed penalty. Nevertheless, both the Complainant, the Director of EPA Region 2's Division of Enforcement and Compliance Assistance, and the Respondent, United, have agreed that entering into this Consent Agreement/Final Order ("CA/FO") is an appropriate means of resolving the alleged noncompliance with RCRA requirements that EPA believes existed at the six service stations referenced above without further litigation or other administrative action.

This CA/FO is being issued pursuant to, and under the authority of, 40 C.F.R. § 22.18(b). No adjudicated findings of fact or conclusions of law have been made. Respondent neither admits nor denies the Findings of Fact and Conclusions of Law set forth below.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. Respondent is United Refining Company.



2. Respondent is a corporation organized pursuant to the laws of the State of Pennsylvania and is doing business in New York.
3. 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.
4. Respondent was and is the "owner" and "operator" of USTs" as those terms are defined in Section 9001 of the Act, 42 U.S.C. §6991, and in 40 C.F.R. § 280.12.
5. Respondent has owned and operated and continues to own and operate USTs located at the following service stations in New York State:
  - Kwik Fill-M0332-332 service station, situated at 2271 Culver Road, Rochester, New York 14609
  - Kwik Fill-M0150-096 service station, situated at 769 Central Avenue, Dunkirk, New York 14048
  - Kwik Fill-M0034-082 service station, situated at 7630 East Main Road, Westfield, New York 14787
  - Kwik Fill M0312-312 service station, situated at 342 Forest Avenue, Jamestown, New York 14701
  - Kwik Fill M0380-380 service station, situated at 10419 Bennett Road, Fredonia, New York 14063
  - Kwik Fill M0395-395 service station, situated at 2930 North Main Street Extension, Jamestown, New York 14701
6. Pursuant to 40 C.F.R. § 280.12, EPA is the "implementing agency" responsible for enforcing the requirements of the Act and the regulations promulgated pursuant thereto which are the subject of this case.
7. Pursuant to Sections 2002, 9002, and 9003 of the Act, 42 U.S.C. §§ 6912, 6991a, and 6991b, EPA promulgated rules setting forth requirements applicable to owners and operators of UST systems, set forth at 40 C.F.R. Part 280.
8. Forty C.F.R. § 280.12 defines an "underground storage tank or UST" as "any one or combination of tanks (including underground pipes connected thereto) that is used to contain an accumulation of regulated substances, and the volume of which (including the volume of underground pipes connected thereto) is 10 percent or more beneath the surface of the ground."

9. Pursuant to 40 C.F.R. § 280.21(c), owners and operators of existing UST systems must upgrade metallic piping with corrosion protection by no later than December 22, 1998.
10. Pursuant to 40 C.F.R. § 280.40(a), “[o]wners and operators of UST systems of new and existing UST systems must provide a method or combination of methods of release detection that” meets the requirements set forth therein.
11. Pursuant to 40 C.F.R. § 280.41(a), owners and operators of petroleum UST systems must provide, *inter alia*, release detection for tanks in accordance with 40 C.F.R. § 280.43(d) – (h).
12. Pursuant to 40 C.F.R. § 280.43(g), owners and operators of petroleum UST systems may use interstitial monitoring as a method of release detection for tanks if the tanks are double walled or the tanks have a secondary barrier immediately around or beneath it.
13. Pursuant to 40 C.F.R. § 280.45, “[a]ll UST system owners and operators must maintain records in accordance with [40 C.F.R.] § 280.34 demonstrating compliance with all applicable requirements of this subpart [40 C.F.R. Part 280, Subpart D].”
14. Pursuant to 40 C.F.R. § 280.31(c), “UST systems with impressed current must also be inspected every sixty days to insure the equipment is running properly.”
15. Pursuant to 40 C.F.R. § 280.31(d)(1), for “UST systems using cathodic protection . . . the results of the last three inspections required in paragraph (c) of this section. . .” must be maintained.
16. Pursuant to Section 9005 of the Act, 42 U.S.C. § 6991d, during March 2009 and February 2012, authorized representatives of EPA inspected United’s facilities to determine their compliance with respect to the Act and 40 C.F.R. Part 280.
17. Pursuant to Section 9005(a) of the Act, 42 U.S.C. § 6991d(a), and 40 C.F.R. § 280.34, EPA sent a Notice of Violation (“NOV”) and an Information Request Letter (“IRL”) to Respondent dated April 19, 2012 notifying the Respondent of the deficiencies EPA observed at its facilities, seeking information relating to those deficiencies, obtaining evidence of Respondent’s financial responsibility for each of those facilities, and acquiring a complete listing of all UST facilities that Respondent owns and or operates irrespective of whether those facilities are situated within New York State.
18. On or about May 18, and May 24, 2012 Respondent sent EPA its responses to the April 18, 2012 NOV and IRL.
19. Based on EPA’s inspections and Respondent’s replies to both the NOV and the IRL, EPA determined that for a period of time between at least 2009 and/or 2012, United (a) at



the Rochester station, failed to upgrade the metallic piping in violation of 40 C.F.R. § 280.21(c); (b) at the Dunkirk station, Fredonia station, and Jamestown station ("North Main Street Extension"), failed to maintain records of release detection in violation of 40 C.F.R. § 280.45; (c) at the Westfield station, failed to maintain the last three readings of impressed current in violation of 40 C.F.R. § 280.31(d)(1); and (d) at the Jamestown station ("Forest Avenue"), Respondent failed to ensure that its equipment was running properly in violation of 40 C.F.R. § 280.31(c).

### **CONSENT AGREEMENT**

Based upon the foregoing, and pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991(e), and 40 C.F.R. § 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. Part 22, it is hereby agreed by and between Complainant and Respondent and voluntarily and knowingly accepted by United, that United for purposes of this Consent Agreement: (a) admits that EPA has jurisdiction over this matter as stated in the Preliminary Statement of the CA/FO; (b) neither admits nor denies the Findings of Fact and Conclusions of Law stated above; (c) consents to the assessment of the civil penalty as set forth below; (d) consents to the issuance of the Final Order incorporating this Consent Agreement; and (e) waives its right to contest or appeal that Final Order.

It is further hereby agreed by and between Complainant and United, and voluntarily and knowingly accepted by United, that the Respondent shall comply with the following terms and conditions:

1. Commencing on the effective date of the Order, Respondent, to the extent it has not already done so, shall immediately correct the violations alleged in the Complaint issued in this matter and briefly summarized in paragraph "19", *supra*, of the Findings of Fact and Conclusions of Law. Respondent shall hereinafter maintain compliance at its Rochester, Dunkirk, Westfield, Jamestown, and Fredonia facilities with all applicable regulations relating to the technical standards and corrective action requirements for owners and operators of USTs set forth at 40 C.F.R. Part 280.
2. Respondent hereby certifies, at the time of its signature to this document, that, to the best of its knowledge and belief, it is in compliance with all of the applicable regulations relating to the technical standards and corrective action requirements for owners and operators of underground storage tanks at its Rochester, Dunkirk, Westfield, Jamestown and Fredonia facilities cited in paragraph "5" of the Findings of Fact and Conclusions of Law.
3. This CA/FO is not intended, and shall not be construed, to waive, extinguish or otherwise affect United's obligation to comply with all applicable federal, state and local law and regulations governing the regulations relating to the technical standards and corrective action requirements for owners and operators of USTs.

4. Nothing in this document is intended nor shall it be construed, to waive, prejudice or otherwise affect the right of EPA, or the United States, from pursuing any appropriate remedy, sanction or penalty prescribed by law against United for having made any material misrepresentations or for United having provided materially false information in any document submitted to EPA.
5. United shall pay a civil penalty to EPA in the total amount of **TWENTY-FOUR THOUSAND DOLLARS (\$24,000)**. Such payment shall be made by cashier's or certified check or by Electronic Fund Transfer (EFT). If the payment is made by check, then the check shall be made payable to the "**Treasurer, United States of America,**" and shall be mailed to:

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

The check shall be identified with a notation thereon listing the following: *IN THE MATTER OF UNITED REFINING COMPANY* and shall bear the Docket Number *RCRA-02-2012-7504*. Payment of the penalty must be *received* at the above address on or before forty-five (45) calendar days after the Effective Date of this CA/FO (the "Due Date").

If United chooses to make the payment by EFT, then United shall provide the following information to its 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 Respondent: United Refining Company
- 7) Case Number: RCRA-02-2012-7504.

Such EFT must be received on or before forty-five (45) calendar days after the Effective Date of this CA/FO.

Whether the payment is made by check or by EFT, United shall promptly thereafter furnish reasonable proof that such payment has been made, to both:

Gary H. Nurkin, Esq.  
Assistant Regional Counsel



Environmental Protection Agency, Region 2  
290 Broadway, Room 1623  
New York, New York 10007-1866

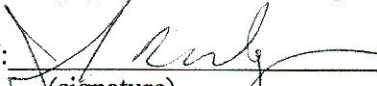
and

Karen Maples, Regional Hearing Clerk  
Environmental Protection Agency, Region 2  
290 Broadway, 16<sup>th</sup> floor  
New York, New York 10007-1866

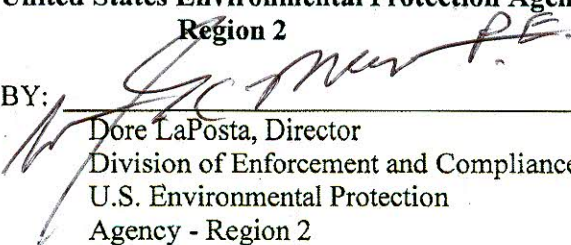
- a. Failure to pay the amount in full within the time period set forth above may result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection.
  - b. Furthermore, if payment is not made on or before the date specified in this document, interest for said payment shall be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, on the overdue amount from the date said payment was to have been made through the date said payment has been received. In addition, a late payment handling charge of \$15.00 will be assessed for each thirty (30) calendar day period or any portion thereof, following the date the payment was to have been made, in which payment of the amount remains in arrears. In addition, a 6% per annum penalty will be applied to any principal amount that has not been received by the EPA within ninety (90) calendar days of the date for which the payment was required hereto to have been made.
  - c. The civil penalties provided for herein are penalties within the meaning of Title 26, Section 162(f) of the United States Code, 26 U.S.C. § 162(f), and are not deductible expenditures for purposes of federal or state taxes.
6. This Consent Agreement is being voluntarily entered into by the parties in full and final settlement of all civil liabilities that attach or might have attached under the Act to United as a result of the violations alleged in the Complaint bearing Docket Number RCRA-02-2012-7504. Nothing herein shall be read to preclude EPA or the United States, however, from pursuing appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.
  7. The provisions of this Consent Agreement shall be binding upon both Complainant and United along with their authorized representatives and successors or assigns.
  8. United explicitly waives its right to request or to seek any Hearing on the terms and conditions set forth in the Consent Agreement and its accompanying Final Order and/or the Findings of Fact/Conclusions of Law, above.

9. United waives any rights it 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, the Deputy Regional Administrator, or the Regional Judicial Officer 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.
10. The undersigned signatory for United certifies that she is duly and fully authorized to enter into this Consent Agreement and all the terms and conditions set forth in this Consent Agreement.
11. United consents to the service of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk.
12. The effective date of this Consent Agreement and Final Order shall be the date that it is filed with the Regional Hearing Clerk, U.S. EPA Region 2, New York, New York.
13. Each party hereto agrees to bear its own costs and fees in this matter.

**RESPONDENT: UNITED REFINING COMPANY**

BY:   
(signature)  
 NAME: JOHN R. WAGNER  
(Please Print)  
 TITLE: V.P.  
 DATE: March 28, 2013

**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: 3/29/13



In the Matter of United Refining Company.  
Docket No. RCRA-02-2012-7504

**FINAL ORDER**

The Regional Judicial Officer of the U.S. Environmental Protection Agency, Region 2, ratifies the foregoing Consent Agreement. The Consent Agreement, entered into by the Complainant and Respondent United Refining Company to this matter, is hereby approved, incorporated herein, and issued as an Order pursuant to Section 9006 of the Act and 40 C.F.R. § 22.18(b)(3). The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, U.S. EPA, Region 2, New York, New York.

*Helen Ferrera*

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

DATE: April 1, 2013

**In the Matter of United Refining Company,  
Docket No. RCRA-02-2012-7504**

**CERTIFICATE OF SERVICE**

I certify that I have this day caused to be sent the foregoing fully executed CONSENT AGREEMENT and FINAL ORDER, bearing the above-referenced docket number, in the following manner to the respective addressees below:

Original and One Copy  
by Hand:

Office of Regional Hearing Clerk  
U.S. Environmental Protection  
Agency - Region 2  
290 Broadway, 16th floor  
New York, New York 10007-1866

Copy by Certified Mail,  
Return Receipt Requested:

Robert K. Tyson, Esq  
Bond, Schoeneck & King  
Attorney for Respondent  
One Lincoln Center  
Syracuse, New York 13202

**APR - 2 2013**

*Mildred N. Baer*