

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

2015 APR 29 PM 2: 28  
REGIONAL HEARING  
CLERK

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In the Matter of:	:	
	:	
City of Paterson	:	
	:	
	:	<u>CONSENT AGREEMENT AND</u>
	:	<u>FINAL ORDER</u>
Respondent.	:	
	:	Docket No. RCRA-02-2014-7501
Proceeding Under Section	:	
9006 of the Solid Waste	:	
Disposal Act, as amended.	:	
-----X	:	

**PRELIMINARY STATEMENT**

This administrative proceeding was instituted pursuant to Section 9006 of the Solid Waste Disposal Act, as amended by various laws including the Resource Conservation and Recovery Act and the Hazardous and Solid Waste Amendments of 1984 (“HSWA”), 42 U.S.C. § 6901 *et seq.* (collectively referred to as “RCRA” or the “Act”).

The Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance, United States Environmental Protection Agency, Region 2 (“EPA” or “Complainant”) issued a “Complaint, Compliance Order, and Notice of Opportunity for Hearing” to City of Paterson (“Respondent”) on December 31, 2013.

The Complaint alleged violations of Subtitle I of the Act and the regulations promulgated pursuant to the Act, codified in Volume 40 of the Code of Federal Regulations (“C.F.R.”) Part 280, applicable to Respondent’s underground storage tanks (“UST”s).

By entering into this Consent Agreement and Final Order (“CA/FO”) pursuant to 40 C.F.R. § 22.18, the parties agree that 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. Respondent is City of Paterson.
2. Respondent is a "person" as that term is defined Section 9001(6) of RCRA, 42 U.S.C. § 6991(6), and 40 C.F.R. § 280.12.
3. Respondent was and continues to be an “owner” and an “operator” of multiple “underground storage tanks” (“UST”) or “UST systems” as those terms are defined in Section 9001 of the Act, 42 U.S.C. § 6991, and 40 C.F.R. § 280.12.

4. Respondent's UST systems are or were located at Hillcrest Firehouse, 221 Union Ave., Paterson, NJ 07514, Northside Firehouse, 48 Temple Street, Paterson, NJ 07505, and Southside Firehouse, 124 Getty Ave., Paterson, NJ 07503, (the "Facilities").

5. On or about July 27, 2011 and July 28, 2011, Mr. Jeffrey K. Blair of PARS Environmental, Inc., a contractor to EPA, conducted UST inspections of Respondent's federally regulated UST systems pursuant to Section 9005 of the Act, 42 U.S.C. § 6991d. The purpose of the inspections was to determine whether Respondent was in compliance with the Act and UST regulations (hereinafter referred to as the "Inspections").

6. On December 9, 2011, EPA, pursuant to RCRA § 9005 and 40 C.F.R. § 280.34, sent an Information Request Letter ("IRL") (hereinafter "First IRL") to Respondent in order to determine its compliance with the Act and 40 C.F.R. Part 280. The First IRL required the submittal of information on all UST systems owned and/or operated by Paterson.

7. On or about February 17, 2012, Respondent submitted a response to the First IRL.

8. After a review of the response to the First IRL, EPA determined that the UST systems at three facilities, Northside Firehouse, Southside Firehouse and Hillcrest Firehouse, were not in compliance with 40 C.F.R. § 280.45(b).

9. On May 26, 2012, three Proposed Expedited Enforcement Compliance Orders and Settlement Agreements, or "Field Citations" (FC), were sent to Paterson, for non-compliance with 40 C.F.R. § 280.45(b), with a penalty of \$70 per Facility for the USTs located at the Northside Firehouse (FC#868EC), Southside Firehouse (FC#867EC) and Hillcrest Firehouse (FC#869EC), respectively.

10. Paterson received the Field Citations on May 29, 2012.

11. Field Citations are tentative offers on the part of EPA to settle a matter with a reduced penalty, subject to certain conditions that must be satisfied. The offer to settle is valid for 30 days after receipt, unless an extension is requested by Respondent and granted by EPA. The conditions that must be met include the following: violations must be corrected, documentation of compliance must be provided to EPA, and the penalty associated with the violations must be paid within this time.

12. Paterson did not contact EPA, request an extension, provide documentation of compliance, or pay the penalty within 30 days of its receipt of the Field Citation.

13. After several attempts by EPA to contact Respondent and prompt Respondent to reply to EPA's Field Citations, Respondent sent EPA a check in the amount of \$210 on or about November 20, 2012. However, as Respondent failed to submit to EPA the compliance information EPA had been requesting, EPA did not accept the payment and did not finalize the Field Citations.



14. On March 20, 2013, EPA received some information from Respondent with regard to the Hillcrest Firehouse. The information provided was incomplete and the City's contractor, Fairfield Maintenance, reported problems with the alarms for the sump at Hillcrest Firehouse. No information was submitted for either Northside Firehouse or Southside Firehouse.

15. On May 29, 2013, pursuant to Section 9005 of RCRA, 42 U.S.C. Section 6991d, and 40 C.F.R. § 280.34, EPA sent a second IRL (hereinafter "the Second IRL") to Respondent requiring submittal of clarifying and additional information so that EPA could complete its assessment of the compliance status of Respondent's USTs. This letter was received by Respondent on June 1, 2013.

16. The Second IRL required an answer within thirty (30) calendar days of receipt of the letter, or July 1, 2013, and specified that a request for additional time to respond needed to be made within ten (10) days of receipt of the letter.

17. On or about July 11, 2013, EPA sent Paterson a "2<sup>nd</sup> Notice – Response Overdue" letter requesting that it respond to the Second IRL.

18. EPA did not receive a request for an extension of time by which the Respondent was to respond to the Second IRL.

19. Between July 11, 2013 and October 31, 2013, EPA e-mailed and called Paterson officials to obtain the compliance information for the non-compliant USTs and encouraged them to submit a response to the Second IRL.

20. Respondent did not submit a response to EPA with the information required by the Second IRL.

21. Respondent's failure to respond to the Second IRL, from July 1, 2013 to the date of issuance of the Complaint, constitutes a violation of 40 C.F.R. § 280.34 and Section 9005 of the Act, 42 U.S.C. Section 6991d.

22. The parties have agreed to resolve this matter as herein provided.

### **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 or Suspension of Permits, 40 C.F.R. § 22.18, it is hereby agreed that:

1. For purposes of this proceeding, Respondent (a) admits the jurisdictional basis of this action; (b) admits the Findings of Fact and Conclusions of Law, above; (c) consents to the conditions specified in the Consent Agreement; and (d) consents to the issuance of the Final Order.

2. Respondent shall pay a civil penalty to EPA in the total amount of **ELEVEN THOUSAND FOUR HUNDRED EIGHTY DOLLARS (\$11,480.00)**. Payment of the civil penalty shall be made by cashier's or certified check or by Electronic Funds 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 **In the Matter of City of Paterson, Docket No. RCRA-02-2014-7501**. If Respondent chooses to make the payment by EFT, then Respondent 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: **In the Matter of City of Paterson**
- 7) Case Number: **RCRA-02-2014-7501**

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

Carl R. Howard  
Assistant Regional Counsel  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, N.Y. 10007-1866

and

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, N.Y. 10007-1866  
Attn: Karen Maples



- a. The payment must be received at the above address on or before forty-five (45) calendar days after the date of signature of the Final Order at the end of this document (the “due date”).
- b. Failure to pay the penalty in full according to the above provisions may result in referral of this matter to the United States Department of Justice or the United States Department of Treasury for collection or other appropriate action.
- c. Further, if timely payment is not received on or before its due date, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to the Debt Collection Act, 31 U.S.C. § 3717, on the overdue amount from the due date through the date of payment. In addition, 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.
- d. A 6% per annum penalty will be applied on any principal amount not paid within 90 days of the due date.
- e. The effective date of this Consent Agreement and Final Order shall be the date of its filing with the Regional Hearing Clerk, Region 2, New York, New York.

3. Respondent shall operate any UST or UST System that it owns or operates in full compliance with all applicable 40 C.F.R. Part 280 requirements, including the regulations cited in EPA’s Complaint, 40 C.F.R. §§ 280.34, and 280.45, as well as Section 9005 of the Act, 42 U.S.C. Section 6991d. Respondent shall, no later than thirty (30) days of the Effective Date of this Order (the date this Order is filed with the Regional Hearing Clerk), submit to EPA via counsel, named above, a complete and accurate response to question 3 of the Second IRL. That question asked Respondent to “Please indicate what actions were taken by the City when alarms have been found in the sumps” including, but not limited to the Hillcrest Firehouse. In addition, Respondent shall, within thirty (30) days of the Effective Date, submit to EPA a description of its current procedures for responding when an alarm indicates the possible presence of liquid in the sumps at each firehouse and shall submit documentation of its compliance with release detection, testing, and record keeping requirements, as required by 40 C.F.R. § 280.41(a) and (b), § 280.44 and § 280.45.

4. This CA/FO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state, or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

5. This CA/FO is being voluntarily and knowingly entered into by the parties to resolve (upon full compliance with the terms of this CAFO, including, but not limited to paragraph 3, above, and full payment of the civil penalty) the civil and administrative claims alleged in the Complaint. However, nothing herein shall be read to preclude EPA or the United States from pursuing appropriate penalties, injunctive or other equitable relief or criminal sanctions for any violations of law.

6. Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable and consents to its issuance and terms. Respondent consents to the issuance of the accompanying Final Order. Respondent agrees that all the terms of settlement are set forth herein.

7. Respondent explicitly and knowingly consents to the assessment of the civil penalty as set forth in this Consent Agreement and agrees to pay the penalty in accordance with the terms of this Consent Agreement.

8. By executing this Consent Agreement, Respondent explicitly waives its right to request or to seek any Hearing on the Complaint or on any of the allegations asserted therein, on this Consent Agreement or the Findings of Fact and Conclusions of Law herein, or on the accompanying Final Order.

9. By executing this Consent Agreement, Respondent waives its right to appeal the proposed Final Order accompanying the Consent Agreement.

10. 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 or legal proceeding except in one to enforce or achieve compliance with the terms of this Consent Agreement and its accompanying Final Order.

11. The undersigned signatory to this Consent Agreement for the Respondent certifies that he is duly and fully authorized to enter into and ratify this Consent Agreement and all the terms and conditions set forth in this Consent Agreement.

12. The provisions of this CA/FO shall be binding upon Respondent, its officials, officers, agents, authorized representatives and any successor entity that may assume the Respondent's obligations.

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

14. Respondent consents to service upon Respondent of a copy of this CA/FO by an EPA employee other than the Regional Hearing Clerk.

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

**In the Matter of City of Paterson  
Docket No. RCRA-02-2014-7501**

**RESPONDENT: City of Paterson**

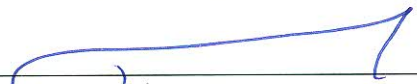
BY: Jose "joes" Torres

Name (print): J. Torres

Title: Mayor

Date: 1/15/15

**COMPLAINANT: U.S. 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, New York 10007-1866

DATE: January 21, 2015



**In the Matter of City of Paterson  
Docket No. RCRA-02-2014-7501**

**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 parties 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 its filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 2, New York, New York. 40 C.F.R. § 22.31(b).

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

DATE: *January 21, 2015*



**In the Matter of City of Paterson**  
**Docket No. RCRA-02-2014-7501**

**CERTIFICATE OF SERVICE**

I certify that I have on this day caused to be sent the foregoing 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 to:

Office of the Regional Hearing Clerk.  
U.S. EPA- Region 2  
290 Broadway, 16<sup>th</sup> floor  
New York, New York 10007-1866

Copy by Certified Mail Return Receipt Requested:

John Napolitano  
Cleary Giacobbe Alfieri Jacobs LLC.  
169 Ramapo Valley Road  
Upper Level 105  
Oakland, New Jersey 07436

Dated: 1/22/15  
New York, New York

