

RECEIVED

15 OCT -8 PM 12: 57

HEARINGS CLERK
EPA--REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

76 X-PRESS, LLC,

Tigard, Oregon,

Respondent.

DOCKET NO. RCRA-10-2015-0108

CONSENT AGREEMENT

I. STATUTORY AUTHORITY

1.1. This Consent Agreement is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 9006 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6991e.

1.2. The Director of the Office of Compliance and Enforcement, EPA Region 10 ("Complainant") has been delegated the authority pursuant to Section 9006(d) of RCRA, 42 U.S.C. § 6991e(d), to sign consent agreements between EPA and the party against whom an administrative penalty for violations of RCRA is proposed to be assessed.

1.3. Pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e, and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties," 40 C.F.R. part 22, EPA issues, and 76 X-Press ("Respondent") agrees to issuance of, the Final Order attached to this Consent Agreement ("Final Order").

II. PRELIMINARY STATEMENT

2.1. EPA initiated this proceeding for the assessment of a civil penalty pursuant to Section 9006(a) of RCRA, 42 U.S.C. § 6991e(a), by issuing a Complaint, Compliance Order, and Notice of Opportunity for Hearing (“Complaint”) against Respondent on June 10, 2015.

2.2. In the Complaint, EPA alleged that Respondent’s violations of RCRA subjected Respondent to civil penalties and a Compliance Order.

2.3. The complete factual and jurisdictional basis for proposing the assessment of a civil penalty is set forth in the Complaint and is incorporated herein by reference.

III. TERMS OF SETTLEMENT

3.1. Respondent admits the jurisdictional allegations of the Complaint.

3.2. Respondent neither admits nor denies the specific factual allegations contained in the Complaint.

3.3. As required by Section 9006(c) of RCRA, 42 U.S.C. § 6991e(c), EPA has taken into account the seriousness of the violation and any good faith efforts to comply with applicable requirements. After considering these factors, and adjustments for Respondent’s ability to pay the penalty, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is in the amount of \$13,520.

3.4. Respondent agrees to payment of the penalty cited in Paragraph 3.3, as follows:

3.4.1. Respondent agrees to payment of the penalty referenced in Paragraph 3.3 in three installments, paid over 24 months;

3.4.2. Respondent agrees to payment of 3% interest on the three installments referenced in Paragraph 3.4.1, as shown in Paragraph 3.4.3;

3.4.3. Respondent agrees to payment of the three installments as follows:
\$4,506.67, due 30 days after the effective date of the Final Order,
\$4,777.07, due one year after the effective date of the Final Order, and
\$4,641.86, due two years after the effective date of the Final Order.

3.5. Respondent agrees to pay the total civil penalty assessed by this Consent Agreement within the schedule set forth in Paragraph 3.4.3, and to undertake the actions specified in this Consent Agreement.

3.6. Payment under this Consent Agreement and the Final Order may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier's check or certified check must be payable to the order of "Treasurer, United States of America" and delivered to the following address:

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

Respondent must note on the check the title and docket number of this action.

3.7. Concurrently with payment, Respondent must serve photocopies of the check, or proof of other payment method, described in Paragraph 3.6 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-113
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101
Smith.candace@epa.gov

Katie Griffith
U.S. Environmental Protection Agency
Region 10, Mail Stop OCE-101
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101
Griffith.katherine@epa.gov

3.8. If Respondent fails to pay any portion of the penalty assessed by this Consent Agreement and the Final Order in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. If such a failure to pay occurs, Respondent may be subject to a civil action to collect any unpaid penalties, together with interest, handling charges, and nonpayment penalties, as set forth below. In any collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

3.9. If Respondent fails to pay any portion of the penalty assessed by this Consent Agreement and the Final Order in full by its due date, Respondent shall also be responsible for payment of the following amounts:

3.9.1. Interest. Pursuant to 31 U.S.C. § 3717(a)(1), any unpaid portion of the assessed penalty shall bear interest at the rate established by the Secretary of the Treasury from the effective date of the Final Order contained herein, provided, however, that no interest shall be payable on any portion of the assessed penalty that is paid within 30 days of the effective date of the Final Order contained herein.

3.9.2. Handling Charge. Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of \$15 shall be paid if any portion of the assessed penalty is more than 30 days past due.

3.9.3. Nonpayment Penalty. Pursuant to 31 U.S.C. § 3717(e)(2), a nonpayment penalty of 6% per annum shall be paid on any portion of the assessed penalty that is more than 90 days past due, which nonpayment shall be calculated as of the date the underlying penalty first becomes past due.

3.10. Under Section 9006(a)(3) of RCRA, 42 U.S.C. § 6991e(a)(3), failure to take corrective action within the time specified in this Consent Agreement may subject Respondent to additional civil penalties for each day of continued noncompliance.

3.11. Based on the findings contained in the Complaint, Respondent is also ordered to comply with the following requirement pursuant to Section 9006(a)(1) of RCRA, 42 U.S.C. § 6991e(a)(1).

3.11.1. Respondent shall conduct the first set of automatic line leak detector (“ALLD”) tests and line tightness tests (“LTTs”) within one year of the last successful ALLD tests and LTTs. If that time period has already elapsed, Respondent shall conduct the first set of ALLD tests and LTTs within 30 days of the effective date of this Compliance Order. Respondent shall conduct a second set of ALLD tests and LTTs no later than one year after the first set of tests. Respondent shall submit copies of the test reports from the abovementioned tests to the EPA within 30 calendar days of completion of each test.

3.11.2. Respondent shall submit copies of the financial assurance used to satisfy 40 C.F.R. part 280, subpart H for each tank at the Facility within 30 days of the effective date of this Compliance Order. Within 30 days of the start of the next method used to demonstrate financial responsibility, Respondent shall submit copies of the financial assurance used to satisfy 40 C.F.R. part 280, Subpart H for each tank at the Facility.

3.11.3. Respondent shall submit copies of any fuel tank alarms that occur within six months of the effective date of this Compliance Order, with a description of the action taken to resolve the alarm. The copy of the fuel tank alarm and the description of the

action taken to resolve the alarm must be postmarked within 30 days of the date the alarm occurred.

3.11.4. Upon request by EPA, Respondent shall provide EPA access to all records and documentation related to the conditions at the Facility and to all results and data pertaining to the UST systems under this Compliance Order.

3.11.5. The information requested in this Compliance Order is not subject to the Paperwork Reduction Act of 1980, 44 U.S.C. §§ 3501-3521.

3.12. Respondent shall provide compliance documentation required to the following address:

Katherine Griffith, Compliance Officer
U.S. Environmental Protection Agency
Region 10, Mail Stop OCE-101
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101
Tel: 206-553-2901
Email: griffith.katherine@epa.gov

3.13. The penalty described in Paragraphs 3.3 and 3.4, including any additional costs incurred under Paragraphs 3.9 and 3.10, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

3.14. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondent to this document.

3.15. Except as described in Paragraphs 3.9 and 3.10, each party shall bear its own costs and attorneys fees in bringing or defending this action.

3.16. Respondent expressly waives any right to contest the allegations contained in the Complaint and to appeal the Final Order.

3.17. Respondent waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Consent Agreement and the Final Order, including any right of judicial review under Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

3.18. The provisions of this Consent Agreement and the Final Order shall bind Respondent and its agents, servants, employees, successors, and assigns.

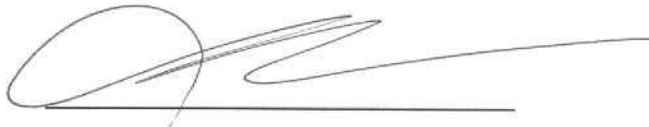
3.19. Respondent consents to the issuance of any specified compliance or corrective action order, and to any stated permit action.

3.20. The above provisions in Part III are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

10/2/15

FOR RESPONDENT:



ARASH ABEDINI, Member
76 X-Press, LLC

DATED:

10/3/2015

FOR COMPLAINANT:



EDWARD J. KOWALSKI, Director
Office of Compliance and Enforcement
EPA Region 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

76 X-PRESS, LLC,

Tigard, Oregon,

Respondent.

DOCKET NO. RCRA-10-2015-0108

FINAL ORDER

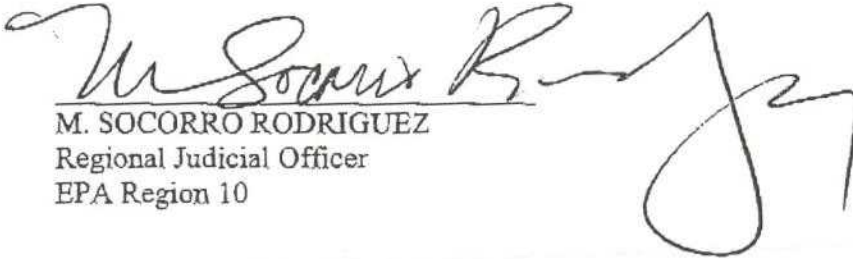
1.1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of EPA Region 10, who has re delegated this authority to the Regional Judicial Officer in EPA Region 10.

1.2. The terms of the foregoing Consent Agreement are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

1.3. The Consent Agreement and this Final Order constitute a settlement by EPA of all claims for civil penalties under RCRA for the violations alleged in the Complaint. In accordance with 40 C.F.R. § 22.31(a), nothing in this Final Order shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of RCRA and regulations promulgated or permits issued thereunder.

1.4. This Final Order shall become effective upon filing with the Regional Hearing Clerk.

SO ORDERED this 8th day of October, 2015.


M. SOCORRO RODRIGUEZ
Regional Judicial Officer
EPA Region 10