

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA

RAM, INC., an Oklahoma Corporation,)	
)	
Plaintiff,)	
)	
v.)	Case No. CIV 09-307-JHP
)	
UNITED STATES ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Defendant.)	

STIPULATION AND ORDER

WHEREAS, Plaintiff Ram, Inc. ("Ram"), has filed a complaint seeking judicial review of a decision of the Environmental Appeals Board ("EAB") assessing a penalty pursuant to section 9006 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §6991e, for violations of the State of Oklahoma's Underground Storage Tank Program, which was approved by the U.S. Environmental Protection Agency ("EPA") and incorporated by reference in the Code of Federal Regulations at 40 C.F.R. Part 282, Appendix A, in connection with Ram's ownership and/or operation of several gas stations in eastern Oklahoma;

WHEREAS, Defendant United States of America, on behalf of EPA, has filed a counterclaim in this action ("Counterclaim") pursuant to RCRA section 9006, 42 U.S.C. § 6991e, and 28 U.S.C. §§ 1331 and 1355, seeking payment of the penalty assessed by the EAB along with accrued interest and costs;

WHEREAS, the United States and the Plaintiff (the "Parties") agree that settlement of this action, without further litigation, is in the public interest;

WHEREAS, the Parties further agree that the Court's approval of this Stipulation is an appropriate means of resolving the claims in this action;

NOW THEREFORE, before the taking of any testimony, without adjudication or admission of any issue of fact or law, except as provided in Paragraph 1, below, and with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED AND DECREED as follows:

1. This Court has jurisdiction over the parties to, and the subject matter of, this action pursuant to the Administrative Procedure Act, 5 U.S.C. § 702. Venue properly lies in this district under 5 U.S.C. § 703. Defendant EPA submits to the Court's jurisdiction for purposes of this Stipulation.

2. Plaintiff Ram shall, within thirty (30) days of the date this Stipulation is entered by the Court, pay to the United States a civil penalty in the amount of Sixty-Five Thousand Dollars (\$65,000.00) (the "Settlement Amount").

3. The payment shall be made by FedWire Electronic Funds Transfer ("EFT") in accordance with current electronic funds transfer procedures, referencing DOJ Case Number 90-7-3-18603. The payment shall be made in accordance with instructions provided to Plaintiff by the Financial Management Unit of the U.S. Attorney's Office for the Eastern District of Oklahoma upon execution of this Stipulation by the parties. Any EFTs received at the DOJ lockbox after 4 p.m. Eastern Time will be credited on the next business day. Within five (5) business days of each payment, Ram shall provide written notice of payment, along with a statement showing the calculation of interest included in the payment if any interest for an overdue payment is due pursuant to Paragraph 4, and a copy of any transmittal documentation to DOJ and EPA at the below addresses.

As to DOJ:

Section Chief
Environmental Defense Section
Environmental and Natural Resources Division
U.S. Department of Justice
P.O. Box 23986
Washington, D.C. 20026-3986
DJ No. 90-7-3-18603

As to EPA:

Carl Edlund, Director
Multimedia Planning and Permitting Division
1445 Ross Avenue (6PD)
Dallas, TX 75202

4. If the civil penalty is not fully paid when due, Plaintiff Ram shall pay a stipulated penalty of \$1,000 per day for each day that the payment is delayed beyond the due date. Further, Plaintiff Ram shall pay interest on the overdue amount, from the original due date to the date of payment, at the statutory judgment rate in accordance with 28 U.S.C. § 1961. Further, Plaintiff Ram shall be liable for costs, including costs of attorney time, incurred by the United States to collect any amount due under this Stipulation.

5. All payments received pursuant to this Stipulation are penalties within the meaning of Section 162(f) of the Internal Revenue Code, 26 U.S.C. § 162(f), and are not a tax deductible expenditure for purposes of federal law.

6. Payment by the Settling Plaintiff of the Settlement Amount in accordance with this Stipulation shall constitute full settlement and satisfaction of the counterclaim asserted by the United States in the above-captioned action pursuant to 42 U.S.C. § 6991e and 28 U.S.C. § 1355 as alleged in the Counterclaim, through the date of lodging.

7. Entry of this Stipulation shall constitute full settlement of the claims asserted by Plaintiff Ram in the complaint in the above-captioned action.

8. The United States reserves, and this Stipulation is without prejudice to, all rights against Plaintiff Ram with respect to all other matters not asserted by the United States in the above-referenced Counterclaim, including but not limited to any criminal liability.

9. The Stipulation will terminate when Plaintiff Ram has paid the civil penalty and any stipulated penalties and interest required by this Stipulation.

10. Each party shall bear its own costs and attorney's fees in this matter, except as provided in Paragraph 4 above.

11. The undersigned representative of Plaintiff Ram and the Assistant Attorney General of the Environment and Natural Resources Division or his or her designee each certify that he or she is fully authorized to enter into the terms and conditions of this Stipulation and to execute and legally bind Plaintiff Ram and the United States, respectively, to it.

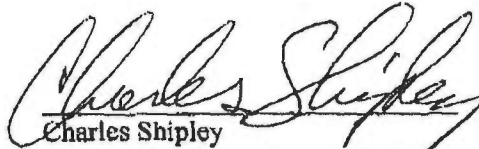
Judgement is hereby ENTERED in accordance with the forgoing Stipulation and Order this 11th day of April, 2011.



UNITED STATES DISTRICT JUDGE
Eastern District of Oklahoma

FOR PLAINTIFF RAM, INC.:

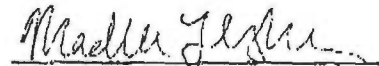
Date: 4/8/11


Charles Shipley
1800 S. Baltimore Ave., Suite 901
Tulsa, OK 74119
(918) 582-1720
Fax: (918) 584-7681

FOR DEFENDANT THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

IGNACIA S. MORENO
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

Date: 4/8/11


Madeline Fleisher
Environmental Defense Section
U.S. Department of Justice
P.O. Box 23986
Washington, D.C. 20026-3986
(202) 514-0242
Fax: (202) 514-8865