



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

SEP 6 2007

Certified Mail, Return Receipt Requested

David Franchina, Esq.
Kennedy Covington Lobdell and Hickman, LLP
Hearst Tower
214 Tryon Street., 47th Floor
Charlotte, North Carolina 28202

Dear Mr. Franchina:

Enclosed please find the fully executed Consent Agreement and Final Order settling the Circle K matter. Please note that payment of the civil penalty must be received by EPA no later than thirty (30) calendar days from the date the CAFO was filed with the Regional Hearing Clerk, as indicated by the date stamp on the document. Thank you for your help in concluding this matter.

Sincerely,

A handwritten signature in cursive script that reads "D. Benjamin".

Deborah S. Benjamin
Associate Regional Counsel

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

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HEARINGS CLERK

IN THE MATTER OF:)

Circle K Stores, Inc.)
2440 Whitehall Park Dr., Suite 800)
Charlotte, North Carolina 28273-3953)

) Docket No.
) RCRA-UST-07-2007-0001(b)

)
)
) Respondent.)

) Proceeding under Section 9006
) of the Resource Conservation
) and Recovery Act, as amended
) 42 U.S.C. §§ 6991e

CONSENT AGREEMENT

I. NATURE OF THE ACTION

1. This is a civil administrative enforcement action, ordering compliance with the requirements of Subtitle I of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6991 et seq., and the Oil Pollution and Hazardous Substance Control Act of 1978, 143 N.C. Gen. Stat. § 143-215.75 et seq. This action is seeking civil penalties pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e, for alleged violations 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, and the North Carolina Underground Storage Tank Rules, 15A N.C. Admin. Code 2N.0101 et seq. (2007).

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, (Consolidated Rules) 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 (CA/FO). 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

3. Complainant and Respondent 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), this CA/FO will simultaneously commence and conclude this matter. Complainant and Respondent have agreed to the execution of this CA/FO and Respondent hereby agrees to comply with the terms of this CA/FO.

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 CA/FO pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e, and applicable delegations of authority.

5. Respondent, Circle K Stores, Inc., owns underground storage tanks located at Circle K Store No. 2706330, 3308 Apex Highway 55, Durham, North Carolina.

III. PRELIMINARY STATEMENTS

6. Section 9003 of RCRA, 42 U.S.C. § 6991b, requires the Administrator to develop and promulgate release detection, prevention, and corrective action regulations applicable to all owners and operators of Underground Storage Tanks as may be necessary to protect human health and the environment. These regulations became effective on December 22, 1988, and are found at 40 C.F.R. Part 280, and 15A N.C. Admin. Code 2N.0101 et seq. (2007).

7. Pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c, in 2001, the State of North Carolina received final authorization from EPA to carry out certain portions of RCRA, including those recited herein, in lieu of the federal program. The North Carolina Department of Natural Resources (NC DENR) is charged with the statutory duty of enforcing the laws of the State of North Carolina relating to management of Underground Storage Tanks (USTs) pursuant to the Oil Pollution and Hazardous Substance Control Act of 1978, 143 N.C. Gen. Stat. § 143-215.75 et seq., and the North Carolina Underground Storage Tank Rules, 15A N.C. Admin. Code 2N, §§ .0101 et seq. (2007).

8. Although EPA has granted the State of North Carolina authority to enforce its own underground storage tank program, EPA retains jurisdiction and authority to initiate an independent enforcement action pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e. This authority is exercised by EPA in the manner set forth in the Memorandum of Agreement between EPA and the State of North Carolina.

9. Pursuant to Section 9006(a)(2) of RCRA, 42 U.S.C. § 6991e(a)(2), Complainant has given notice of this action to the State of North Carolina prior to issuing this CA/FO.

IV. EPA ALLEGATIONS AND DETERMINATIONS

10. Respondent is a "person" as defined in Section 9001(6) of RCRA, 42 U.S.C. § 6991(6), and 40 C.F.R. § 280.12, and in the North Carolina Underground Storage Tank Rules, 15A N.C. Admin. Code 2N.0203 (2007).

11. Respondent is an "owner" of "underground storage tanks" (USTs) as those terms are defined in 40 C.F.R. § 280.12, and in the North Carolina Underground Storage Tank Rules,

15A N.C. Admin. Code 2N.0203 (2007). The USTs are located at Circle K Store No. 2706330, 3308 Apex Highway 55, Durham, North Carolina.

12. On August 8, 2006, a duly designated representative of EPA conducted a Compliance Inspection of Respondent's USTs located at Circle K Store No. 2706330.

13. Pursuant to 40 C.F.R. § 280.20(c), and the North Carolina Underground Storage Tank Rules, 15A N.C. Admin. Code 2N.0301 (2007), owners and operators of petroleum UST systems must use the spill and overfill prevention equipment specified in that regulatory section. At the time of the inspection Respondent's overfill prevention system was disabled. Therefore Respondent was in violation of 40 C.F.R. § 280.20(c), and the North Carolina Underground Storage Tank Rules, 15A N.C. Admin. Code 2N.0301 (2007) at the time of the inspection.

V. TERMS OF AGREEMENT

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

14. Within ten (10) calendar days of receipt of a final copy of this CA/FO, Respondent shall submit to EPA a certification signed by a responsible corporate representative stating that the facility is in compliance with 40 C.F.R. § 280.20(c), and the North Carolina Underground Storage Tank Rules, 15A N.C. Admin Code 2N.0301 (2007). This certification shall be sent to John K. Mason at the address in paragraph 27 below. The certification shall read as follows:

"I certify under penalty of law that, to the best of my knowledge and belief, the UST systems owned by Circle K Stores, which were the subject of Consent Agreement and Final Order, Docket No. RCRA-07-2007-0001(b) (CA/FO), are in compliance with the spill and overfill prevention equipment requirements of 40 C.F.R. § 280.20(c) and the North Carolina Underground Storage Tank Rules at 15A N.C. Admin. Code 2N.0301 (2007).

All work was done under my direction or supervision according to a system designed to assure that qualified personnel implemented and completed the required tasks. This certification is based on my inquiry of the person(s) who performed the tasks, or those persons directly responsible for the person(s) who performed the tasks. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

15. For the purposes of this CA/FO, Respondent admits the jurisdictional allegations set forth above pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e.

16. Respondent neither admits nor denies the factual allegations set forth above.
17. Respondent waives any right to contest the EPA allegations and its right to appeal the CA/FO.
18. Respondent waives its right to challenge the validity of this CA/FO and the settlement of the matters addressed in this CA/FO on the basis of any issue related to the Paperwork Reduction Act.
19. 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 CA/FO.
20. The parties agree that the settlement of this matter is in the public interest and that this CA/FO is consistent with the applicable requirements of RCRA.
21. The parties agree that compliance with the terms of this CA/FO shall resolve the violations of RCRA Subtitle I alleged in this CA/FO.
22. Each party will pay its own costs and attorney's fees.

Civil Penalty

23. Respondent consents to the assessment of and agrees to pay the civil penalty set forth below.
24. Pursuant to Section 9006 of RCRA and 40 C.F.R. § 22.18, given the nature of the violations and taking into account the seriousness of the violations and any good faith efforts to comply with the applicable requirements, Respondent shall pay a civil penalty in the amount of **two thousand, five hundred dollars (\$2,500)**.
25. **Payment of the \$2,500 civil penalty must be received by EPA no later than thirty (30) calendar days from the effective date of this CA/FO.**
26. Payments shall be made by cashier's or certified check payable to: **Treasurer, United States of America**. The facility name and the docket number for this matter shall be referenced on the face of the check. Payment shall be tendered to:

U.S. Environmental Protection Agency
Cincinnati Accounting Operations
Mellon Lockbox 371099M
Pittsburgh, PA 15251-7099

27. Respondent shall submit a copy of the payment to:

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:

Mr. John K. Mason, Chief
Underground Storage Tank Section
RCRA Management Division
U.S. Environmental Protection Agency, Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

28. If payment is not received by the due date specified in Paragraph 25 above, interest shall begin to accrue at the current U.S. Treasury rate, and handling charges and late-payment penalties will begin to accrue as set forth in 30 U.S.C. § 3717 and 40 C.F.R. § 13.11(b) and (c), and Respondent will be deemed in violation of this CAFO. 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 or stipulated 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 or stipulated 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 or stipulated penalty more than ninety (90) calendar days past due, Respondent must pay a non-payment penalty of six percent per annum, which will accrue from the date the penalty payment became due and is not paid. This non-payment is in addition to charges which accrue or may accrue under subparagraphs (a) and (b).

29. If Respondent fails to meet the requirements of Paragraphs 25 and 26, or fails to timely submit the documentation required by Paragraphs 14, and 27, Respondent shall pay to the

United States a stipulated penalty of \$100 for each calendar day Respondent is late.

VI. RESERVATION OF RIGHTS

30. Notwithstanding any other provision of this CA/FO, 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 U.S. Environmental Protection Agency find that the release of regulated substances from an UST may have occurred and implementation of any corrective action is needed to address such release.

31. Complainant reserves the right to take enforcement action against Respondent for any future violations of RCRA and the implementing regulations and to enforce the terms and conditions of this CA/FO.

32. Except as expressly provided herein, nothing in this CA/FO shall constitute or be construed as prohibiting, altering, or in any way limiting the ability of 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 CA/FO or of the statutes and regulations upon which this CA/FO is based, or for Respondent's violation of any applicable provisions of law. Compliance with this CA/FO shall not be a defense against any actions subsequently commenced pursuant to federal laws and regulations administered by EPA, and it is the responsibility of the Respondent to comply with such laws and regulations.

33. Except as expressly provided herein, nothing in this CA/FO 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 his facilities.

34. This CA/FO may be amended or modified only by written agreement executed by both the U.S. Environmental Protection Agency and Respondent.

35. The provisions of this CA/FO shall be deemed satisfied upon a determination by Complainant that Respondent has fully completed the actions required in this CA/FO.

36. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.

VII. PARTIES BOUND

37. This CA/FO 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 CA/FO.

38. 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 CA/FO.

39. The undersigned representative of Respondent hereby certifies that she or he is fully authorized to enter into this CA/FO and to execute and legally bind Respondent to it.

VIII. SERVICE OF DOCUMENTS

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

Deborah Benjamin
Associate Regional Counsel
U.S. Environmental Protection Agency, Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, Georgia 30303
(404) 562-9561

41. A copy of any documents that Complainant files in this action shall be sent to the following person who represents Respondent in this matter and who is authorized to receive service for Respondent in this proceeding:

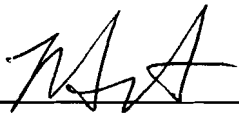
David Franchina, Esq.
Kennedy, Covington, Lobdell, and Hickman, LLP
Hearst Tower
214 N. Tryon St., 47th floor
Charlotte, NC 28202
(704) 331-7543

IX. EFFECTIVE DATE

42. The effective date of this CA/FO shall be the date on which the CA/FO is filed with the Regional Hearing Clerk.


AGREED AND CONSENTED TO:

Circle K Stores, Inc., Respondent

By: 
Larry Hunter
Division Environmental Manager
Circle K Stores, Inc.

Dated: 8-3-07

U.S. Environmental Protection Agency, Complainant

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

Dated: 8/28/08

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

IN THE MATTER OF:)

Circle K Stores, Inc.)
2440 Whitehall Park Dr., Suite 800)
Charlotte, North Carolina 28273-3953)

Respondent.)

) Docket No.
) RCRA-UST-07-2007-0001(b)
)
)
) Proceeding under Section 9006
) of the Resource Conservation
) and Recovery Act, as amended
) 42 U.S.C. §§ 6991e

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 6th day of Sept., 2007

BY: _____

Susan B. Schub
Susan B. Schub
Regional Judicial Officer

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 (CA/FO), in the Matter of Circle K Stores, Inc., Docket Number: RCRA-UST-07-2007-0001(b), on the parties listed below in the manner indicated:

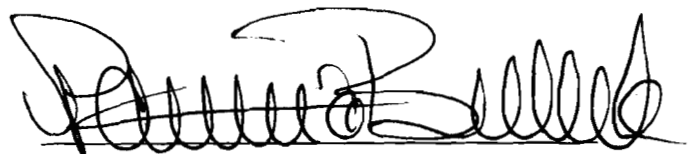
Deborah Benjamin, Associate Regional Counsel (Via EPA's internal mail)
U.S. Environmental Protection Agency
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

Mallory Miller (Via EPA's internal mail)
RUST Branch
U.S. Environmental Protection Agency
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

David Franchina, Esq. (Via Certified Mail - Return Receipt
Kennedy Covington Lobdell and Hickman, LLP Requested)
Hearst Tower
214 Tryon Street., 47th Floor
Charlotte, North Carolina 28202

Date

9-6-07



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