

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2**

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In the Matter of:	:	
	:	
Falleti Motors, Inc.	:	
	:	
	:	<u>CONSENT AGREEMENT AND</u>
	:	<u>FINAL ORDER</u>
Respondent.	:	
	:	Docket No. RCRA-02-2017-7501
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 Falleti Motors, Inc. ("Respondent") on March 31, 2017.

The Complaint alleged a violation 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 tank ("UST").

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 Falleti Motors, Inc.
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 the “owner” and an “operator” of an “underground storage tank” (“UST”) and “UST system” as those terms are defined in Section 9001 of the Act, 42 U.S.C. §6991, and/or 40 C.F.R. § 280.12.
4. Respondent’s UST system was located at 504 Ellicott Street, Batavia, NY 14020 (the “Facility”).
5. On or about September 23, 2015, a duly designated representative of EPA conducted an UST inspection of Respondent’s federally regulated UST system pursuant to Section 9005 of the Act, 42 U.S.C. § 6991d (hereinafter referred to as the “Inspection”). The purpose of the inspection was to determine whether Respondent was in compliance with the Act and UST regulations.
6. On January 14, 2016, a proposed “Field Citation” (“FC”) (II-UST-FC-1131EC) was sent to Respondent, for its alleged non-compliance with 40 C.F.R. §280.70(c) which involved a failure to permanently close or upgrade a temporarily closed UST system after 12 months and with 40 C.F.R. §280.93(a) which involved a failure to comply with financial responsibility requirements. Postal records show the FC was received on January 19, 2016. A written response was requested by February 19, 2016.

7. 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 the thirty days.

8. When no written response was received by EPA on or before February 19, 2016, an EPA representative left telephone messages at Respondent's offices on April 1 and April 4, 2106. No response to the telephone messages was received by EPA.

9. In a letter dated May 19, 2016, the EPA issued a "2<sup>nd</sup> Notice – Response Overdue" letter, regarding the proposed Field Citation to Falleti Motors, Inc., which was received by Falleti Motors, Inc. on May 23, 2016. The response to this letter was due within five (5) days of receipt of the letter (by May 28, 2016). No response was received.

10. In a letter dated July 14, 2016, EPA sent a "Withdrawal Without Prejudice of Proposed Field Citation: 1131EC" letter to Falleti Motors, Inc., which was received by the company on July 18, 2016.

11. On September 2, 2016, EPA, pursuant to RCRA § 9005 and 40 C.F.R. Section 280.34, sent a Notice of Violation and Information Request Letter ("NOV/IRL") to Respondent in order to confirm conclusively whether it was in compliance with the Act and 40 C.F.R. Part 280. The NOV/IRL required the submittal of information by October 6, 2016 on all UST systems owned and/or operated by Respondent.

12. EPA received a "green card" confirmation from the U.S. Postal Service that the NOV/IRL had been delivered to Respondent on September 6, 2016.



13. Respondent failed to respond to the IRL by October 6, 2016.

14. On November 17, 2016, pursuant to Section 9005 of RCRA, 42 U.S.C. Section 6991d, and 40 C.F.R. Section 280.34, EPA sent a “2<sup>nd</sup> Notice – Response Overdue “to Respondent requiring submittal of clarifying and additional information so that EPA could complete its assessment of the compliance status of Respondent’s USTs. The “green card” confirmation indicated that this letter was received by Respondent on November 23, 2016.

15. The 2<sup>nd</sup> Notice required an answer within thirty (30) calendar days of receipt of the letter (by December 23, 2016).

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

17. Respondent’s failure to respond to the NOV/IRL, from October 6, 2016 to the date of issuance of the Complaint (March 31, 2017), constitutes a violation of 40 C.F.R. Section 280.34 and Section 9005 of the Act, 42 U.S.C. Section 6991d.

18. 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) neither admits nor denies 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 **TWO THOUSAND EIGHT HUNDRED AND THREE DOLLARS (\$2,803.00)**. 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 Falleti Motors, Inc., Docket No. RCRA-02-2017-7501**. 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: **Falleti Motors, Inc.**
  - 7) Case Number: **RCRA-02-2017-7501**
- a. The payment must be received at the above address on or before thirty (30) 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.

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. Sections 280.34, as well as Section 9005 of the Act, 42 U.S.C. Section 6991d.

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. Full payment of the penalty described in paragraph 2 of the Consent Agreement, shall only resolve Respondent's liability for federal civil penalties for the violation(s) and facts alleged in the Complaint issued in this matter. Full payment of this penalty shall not in any case 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.

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. Any responses, documentation, and other communication submitted in

connection with this Consent Agreement shall be sent to:

Edward J. Guster III  
Environmental Scientist  
Division of Enforcement and Compliance Assistance  
U.S. Environmental Protection Agency – Region 2  
290 Broadway, 21<sup>st</sup> Floor  
New York, New York 10007

and

Stuart Keith,  
Assistant Regional Counsel  
Office of Regional Counsel  
U.S. Environmental Protection Agency – Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, New York 10007-1866

Unless the above-named EPA contacts are later advised otherwise in writing, EPA shall address any written future correspondence (including any correspondence related to payment of the penalty) to Respondent at the following address:

Frank Falleti  
Falleti Motors, Inc.  
504 Ellicott Street  
Batavia, New York 14020

16. 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 Falleti Motors, Inc.**  
**Docket No. RCRA-02-2017-7501**

**RESPONDENT: Falleti Motors, Inc.**


BY:  \_\_\_\_\_


Name (print): Frank P. Falleti

Title: President

Date: April 12, 2018

**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: APR 16 2018

connection with this Consent Agreement shall be sent to:

Edward J. Guster III  
Environmental Scientist  
Division of Enforcement and Compliance Assistance  
U.S. Environmental Protection Agency – Region 2  
290 Broadway, 21<sup>st</sup> Floor  
New York, New York 10007

and

Stuart Keith,  
Assistant Regional Counsel  
Office of Regional Counsel  
U.S. Environmental Protection Agency – Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, New York 10007-1866

Unless the above-named EPA contacts are later advised otherwise in writing, EPA shall address any written future correspondence (including any correspondence related to payment of the penalty) to Respondent at the following address:

Frank Falleti  
Falleti Motors, Inc.  
504 Ellicott Street  
Batavia, New York 14020

16. 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 Falletti Motors, Inc.**  
**Docket No. RCRA-02-2017-7501**

**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: *April 17, 2018*



**In the Matter of Falleti Motors, Inc.**  
**Docket No. RCRA-02-2017-7501**

**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:

Frank P. Falleti  
Falleti Motors, Inc.  
504 Ellicott Street  
Batavia, NY 14020

Dated: April 18, 2018  
New York, New York

Yolanda Majette  
Yolanda Majette, Branch Secretary