



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

June 30, 2010

CERTIFIED MAIL/RETURN RECEIPT

Marc S. Gerstman, Esq.
313 Hamilton Street
Albany, NY 12210

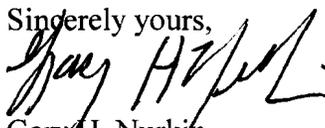
U.S. ENVIRONMENTAL
PROTECTION AGENCY
REGIONAL HEARING
CLERK
JUN 30 10 00 AM '10

Re: P.J.Hyde
Docket No. RCRA-02-2010-7501

Dear Mr. Gerstman:

Enclosed is a copy of the Consent Agreement and Final Order (“CA/FO”) in the above referenced proceeding signed by the Regional Administrator of the U.S. Environmental Protection Agency.

Please note that payment is due within forty-five (45) days of signature of the Final Order by the Regional Administrator. Please arrange for payment of this penalty according to the instructions given in that Order.

Sincerely yours,

Gary H. Nurkin
Assistant Regional Counsel

cc: DEC

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

-----X	:	
In the Matter of	:	
	:	
P. J. Hyde & Son, Inc.	:	CONSENT AGREEMENT AND FINAL ORDER
	:	
Respondent.	:	Docket No. RCRA-02-2010-7501
	:	
Proceeding Under Section 9006	:	
of the Solid Waste Disposal Act,	:	
as amended	:	
-----X	:	

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REGION 2
2010 JUN -9 PM 0:20
REGIONAL HEARINGS
OFFICE

PRELIMINARY STATEMENT

This is a civil administrative proceeding instituted pursuant to Section 9006 of the Solid Waste Disposal Act as amended (hereinafter, this statute shall be referred to as "the Act" or "RCRA").

Section 9006 of RCRA, 42 U.S.C. § 6991(e), authorizes the Administrator to enforce violations of the Act and the regulations promulgated or authorized pursuant to it. P. J. Hyde & Son, Inc. ("P. J. Hyde") has been the owner and operator of five service stations/convenience stores situated around Saranac Lake, Indian Lake and Tupper Lake, in New York State and one Inn situated in Lake Clear, NY. EPA inspected the P. J. Hyde facilities in March 2007 and January 2009 and determined: (a) at the five service stations/convenience stores, Respondent, prior to July 2, 2008, had not performed the requisite automatic line leak detection ("ALLD") tests in violation of 40 C.F.R. § 280.44(a), and (b) at the Inn, Respondent had not installed an ALLD and an overfill protection device in violation of 40 C.F.R. §§ 280.41(b)(1)(i) and 280.20(c)(1), respectively.

EPA and P. J. Hyde have subsequently engaged in settlement discussions with respect to the alleged violations that EPA discovered during the course of its inspections of P. J. Hyde's facilities and have agreed to address these issues without the need for EPA to issue a separate formal Complaint. Pursuant to 40 C.F.R. § 22.13(b), where 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") pursuant to 40 C.F.R. §§ 22.18(b)(2) and (3). The Complainant, the Director of EPA Region 2's Division of Enforcement and Compliance Assistance, and the Respondent, P. J. Hyde, have agreed that entering into this CA/FO is an appropriate means of resolving the alleged noncompliance by P. J. Hyde with RCRA requirements that EPA believes existed at the facilities without further litigation or other administrative action.

This CA/FO is being issued pursuant to, and under the authority of, 40 C.F.R. § 22.18(b). No adjudicated findings of fact or conclusions of law have been made. Respondent neither admits nor denies EPA's Findings of Fact and Conclusions of Law set forth below.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent is P. J. Hyde & Son, Inc.
2. Respondent is a corporation organized pursuant to the laws of the State of New York.
3. Respondent is a "person" within the meaning of Section 9001(5) of the Act, 42 U.S.C. § 6991(5), and 40 C.F.R. § 280.12.
4. Respondent was and is the "owner" and "operator" of "underground storage tanks," as those terms are defined in Section 9001 of the Act, 42 U.S.C. §6991, and in 40 C.F.R. § 280.12.
5. Pursuant to 40 C.F.R. § 280.12, EPA is the "implementing agency" responsible for enforcing the requirements of the Act and the regulations promulgated pursuant thereto which are the subject of this case.
6. Pursuant to Sections 2002, 9002, and 9003 of the Act, 42 U.S.C. §§ 6912, 6991a, and 6991b, EPA promulgated rules setting forth requirements applicable to owners and operators of underground storage tank (UST) systems; set forth at 40 C.F.R. Part 280.
7. Forty C.F.R. § 280.12 defines an underground storage tank or UST as any one or combination of tanks (including underground pipes connected thereto) that is used to contain an accumulation of regulated substances, and the volume of which (including the volume of underground pipes connected thereto) is 10 percent or more beneath the surface of the ground.
8. Pursuant to 40 C.F.R. § 280.44(a), an annual test of the operation of the ALLD for piping must be conducted in accordance with the manufacturer's requirements.
9. Pursuant to 40 C.F.R. § 280.41(b)(1)(i) pressurized pipes must be equipped with an ALLD operated in accordance with 40 C.F.R. § 280.44(a).
10. Pursuant to 40 C.F.R. § 280.20(c), to prevent spilling and overfilling associated with product transfer, owners and operators must use overfill protection equipment.
11. Respondent no longer owns or operates a service station/convenience store at an Inn in Lake Clear, NY, and continues to own and/or operate USTs at four service station/convenience store locations in and around Saranac, Tupper and Indian Lakes in New York State. Respondent removed USTs at one location in April 2009.

12. Pursuant to Section 9005 of the Act, 42 U.S.C. § 6991d, during March 2007 and January 2009, authorized representatives of EPA inspected P. J. Hyde's facilities to determine their compliance with respect to the Act and 40 C.F.R. Part 280.
13. Pursuant to Section 9005(a) of the Act, 42 U.S.C. § 6991d(a), and 40 C.F.R. § 280.34, EPA sent Information Request Letters dated May 16, 2008, July 2, 2008, and January 8, 2009, to Respondent to determine the status of its compliance with the Act and 40 C.F.R. Part 280, for USTs at all P.J Hyde service station/convenience store facilities in and around Saranac, Indian and Tupper Lakes of New York State as well as the Inn in Lake Clear, NY.
14. In EPA's Information Request Letters, EPA specifically requested that Respondent provide documentation for all USTs that contain pressurized fuel pipes that are equipped with an ALLD showing that the line leak detectors located at Respondent's facilities were tested each year dating back to the time of their installation.
15. In EPA's Information Request Letters, EPA specifically requested that Respondent provide documentation that the UST at Charlie's Inn in Lake Clear, NY was equipped with an ALLD.
16. In EPA's Information Request Letters, EPA specifically requested that Respondent provide documentation that the UST at Charlie's Inn in Lake Clear, NY was equipped with an overfill prevention device.
17. On or about June 16, 2008, August 11, 2008, and an unspecified date in February 2009, Respondent sent EPA its responses to the March 16, 2008, July 2, 2008 and January 8, 2009 Information Requests.
18. Respondent has owned and operated and, except as noted below, continues to own and operate USTs located at the following New York locations:
 - State ID: 5-136050: River Street Nice N Easy, 70 River St., Saranac Lake, NY 12983. (Tanks removed on April 14, 2009)
 - State ID: 5-262161: Jarvis' Quick Stop a.k.a. Wawbeek Quick Stop, 36 Wawbeek Ave., Tupper Lake, NY 12986.
 - State ID: 5-262188: Tupper Lake Quick Stop a.k.a. Nice N Easy Grocery Shoppe #5001, 75 Main St., Tupper Lake, NY 12986.
 - State ID: 5-600250: P. J. Hyde & Son, Inc. a.k.a. Lake Flower Mobil Mart a.k.a. Nice N Easy Grocery Shoppe #5005, 615 Lake Flower Avenue, Saranac Lake, NY 12983.

- State ID: 5-600591: Charlie's Inn, Junction Road, Lake Clear, NY 12945. (Facility sold on May 1, 2008.)
 - State ID: 6-600616: Adirondack One Stop, LLC, 31 Sabael Rd (Route 30), Indian Lake, NY 12842.
19. Based on EPA's inspections and Respondent's replies to the Information Request Letters, EPA determined that for a period of time between at least 2005 and 2009 Respondent failed:
- for at least one year to perform the required annual test of the ALLD on the pressurized pipes of the UST systems at the four service stations/convenience stores it currently owns, and at Charlie's Inn, which P.J. Hyde had operated through May 1, 2008, as listed in paragraph 18, *supra*, in violation of 40 C.F.R. § 280.44(a);
 - to have installed an ALLD at its UST situated at Charlie's Inn, as listed in paragraph 18, *supra*, in violation of 40 C.F.R. § 280.41(b)(1)(i); and
 - to have installed an overflow protection device for its new tank at its UST situated at Charlie's Inn, as listed in paragraph 18, *supra*, in violation of 40 C.F.R. § 280.20(c).
20. The parties have agreed to settle this matter and have agreed that this settlement will include a tripartite Supplemental Environmental Project, as described below, covering: (a) the four service stations Respondent still owns and/or operates as described in paragraph 18, *supra*; (b) the service station at Charlie's Inn which, as described in paragraph 18, *supra*, had been operated by Respondent and is now being operated by a third party; and (c) a service station known as Kickerville Station, situated at 1383 Tupper Road Route 30, Long Lake, New York which is owned and operated by a third party.

CONSENT AGREEMENT

Based upon the foregoing, and pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991(e), and 40 C.F.R. § 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. Part 22, it is hereby agreed by and between Complainant and Respondent and voluntarily and knowingly accepted by Respondent, that Respondent for purposes of this Consent Agreement and in the interest of settling this matter expeditiously: (a) admits that EPA has jurisdiction over this matter as recited in the Preliminary Statement of the CA/FO; (b) neither admits nor denies the Findings of Fact or Conclusions of Law stated above; (c) consents to the assessment of the penalty and any stipulated penalties as set forth below; (d) consents to the issuance of the Final Order incorporating this Consent Agreement; and (e) waives its right to contest or appeal that Final Order.

Furthermore, it is hereby agreed by and between the Complainant and the Respondent that:

1. Respondent, by the signature of its representative, at the end of this Consent Agreement and Final Order, certifies that the information contained in paragraph 18, *supra*, of the Findings of Fact and Conclusions of Law is accurate and that Respondent is in compliance with the regulations cited in paragraph 19, *supra*, of the Finding of Facts and Conclusions of Law at the locations where it owned or operated USTs as of April 1, 2010.
2. Respondent shall pay by cashiers or certified check, a total civil penalty in the amount of sixteen thousand dollars (\$16,000). At the discretion of the Respondent, the penalty may be paid in one or two equal installments payable to the "Treasurer, United States of America." The check(s) shall be identified with a notation of the name and docket number of this case as follows: In the Matter of P. J. Hyde & Son, Inc., Docket No. RCRA 02-2010-7501. The check shall be mailed to:

United States Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO. 63197-9000

If Respondent chooses to make the penalty payment by EFT, then Respondent shall provide the following information to their 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: P.J. Hyde & Son, Inc.
- 7) Case Number: RCRA-02-2010-7501

If overnight delivery is preferred, Respondent may mail the check to the following address:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
Attn: USEPA Box #979077
St. Louis, MO. 63101

Respondent shall also send proof of payment to each of the following:

Gary H. Nurkin
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, N.Y. 10007-1866

and

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

The first or full 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, which is located on the last page of this Final Order (the date by which the first payment must be received shall hereafter be referred to as the “due date”).

The second payment, if necessary, must be received at the above address on or before one hundred eighty days (180) calendar days after the date of signature of the Final Order, which is located on the last page of this Final Order (the date by which the second payment must be received shall hereafter be referred to as the “second due date”) and shall include interest assessed at the rate described below.

- a. Failure to pay the penalty in full according to the provisions in this paragraph may result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection;
- b. Further, if any payment is not received on or before the due date in the full amount due, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, on the unpaid 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 payment for each thirty (30) day period (or any portion thereof) following the deadline for the payment should any balance remain unpaid. A 6% per annum penalty also will be applied on any principal amount not paid within ninety (90) days of the deadline for the payment; and
- c. The civil penalties and stipulated penalties provided for herein are penalties within the meaning of Title 26, Section 162(f) of the United States Code, 26 U.S.C. § 162(f), and are not deductible expenditures for purposes of federal or

state taxes. For federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

3. As part of the settlement of this matter, Respondent agrees to implement a Supplemental Environmental Project ("SEP") in accordance with the "EPA Supplemental Environmental Projects Policy" ("SEP Policy") which became effective on May 1, 1998. The implementation of the SEP, which is set forth in the following paragraphs, is expected to cost approximately sixty-five thousand dollars (\$65,000). Respondent must spend at least ten thousand dollars (\$10,000) on the first element of the SEP and at least fifty thousand dollars (\$50,000) on the second and third elements of the SEP as described below in paragraph 5, *infra*, ("Required SEP Expenditures").
4. Respondent agrees to implement the SEP in accordance with the terms and the schedule set forth in this Final Order. For purposes of this Consent Agreement, days shall mean calendar days. Any proposed changes to the SEP or the schedule for its completion must be approved by EPA.
5. Respondent shall perform a SEP in accordance with the following requirements: The first element of the SEP involves Respondent undertaking two annual independent third party environmental audits of the four service stations it operates, as noted in paragraph 18, *supra*, of the Findings section, and one independent third party environmental audit of the service stations situated at both Charlie's Inn and Long Lake, as noted in paragraphs 18 and 20, *supra*, of the Findings section, to determine the compliance of the USTs at these locations with federal and state regulations. The second element of the SEP involves Respondent's replacement of their ALLDs on their pressurized pipes with electronic line leak detectors at: (a) the four currently owned service stations and at Charlie's Inn as noted in paragraph 18, *supra*, of the Findings section, and (b) the service station at Long Lake as noted in paragraph 20, *supra*, of the Findings section. For the four facilities owned and operated by Respondent, the ELLDs must be operated for at least one year and must be capable of continually conducting self functionality tests, as well as continually testing for catastrophic leaks, and sensitive leak tests of 0.1 gallon per hour ("gph") and 0.2 gph to satisfy current federal requirements for monthly and yearly piping integrity tests, provide immediate shut-off of dispenser pumps upon detection of a leak, and provide immediate notification of any leak detected to the operator. The third element of this SEP is the installation and operation for at least one year of a centralized monitoring system for the four facilities owned and operated by Respondent so all release detection test results shall be electronically recorded each month and maintained in a centralized unit. Test results from the ELLDs and the preexisting electronic interstitial monitoring sensors shall be continuously recorded for each facility via the centralized monitoring system. In addition, monthly printout slips from the release detector showing the test results shall be maintained at each UST location or at a readily available alternative site.

6. Respondent shall have installed the ELLDs for each of the six facilities, identified in the preceding paragraph, and the centralized monitoring system for each of the four facilities, identified in the preceding paragraph, on or before July 31, 2010.
7. Respondent shall provide EPA with annual Progress Reports in a form approved by EPA starting one year after the date of the Regional Administrator's signature of the Final Order and continuing until the SEP is completed. The Progress Reports shall inform EPA of Respondent's efforts to implement the SEP, shall identify any issues or problems that have arisen in the implementation of the SEP and how issues or problems were addressed, and shall itemize and document the expenditures that Respondent has made in connection with the SEP. Unless otherwise approved by EPA, copies of all invoices and a copy of documents related to the SEP and created or paid or received by Respondent during the reporting period shall be enclosed with the Progress Reports when transmitted to EPA. Respondent shall send the Progress Reports to the addressees in paragraph 8, *infra*.
8. Respondent shall provide EPA with annual progress reports and a SEP Completion Report for the SEP, documenting the completion of the SEP and the expenditures made in connection with the performance of the SEP. Said documentation shall be mailed to:

Paul Sacker
Corrective Action Specialist
RCRA Compliance Branch, UST Team
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency, Region 2
290 Broadway, 20th Floor
New York, N.Y. 10007-1866

and

Gary H. Nurkin, Esq.
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency- Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866.

9. The SEP Completion Report, which shall be submitted to EPA (to the addressees in paragraph 8, *supra*), on or before June 1, 2012, (or by another date if completion of the SEP is delayed and an extension to the schedule approved by EPA pursuant to paragraph 4, *supra*), shall contain the following information:
 - a) Detailed description of the SEP as implemented;
 - b) Description of any problems encountered and the solutions thereto;

- c) Itemization of costs incurred which Respondent feels are eligible for SEP credit, accompanied by copies of invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and services for which payment is being made (if the itemization and documentation have been previously provided with a Progress Report, it will suffice to refer to the prior submittal);
 - d) Certification that the SEP has been fully implemented pursuant to the provisions of this Consent Agreement and Final Order; and,
 - e) Description of the environmental and public health benefits resulting from implementation of the SEP.
10. Respondent agrees that failure to timely submit the Progress Reports or SEP Completion Report for the SEP shall be deemed a violation of this Consent Agreement and Final Order, and Respondent may become liable for stipulated penalties as provided in paragraph 16.B, *infra*.
11. Following receipt of any Progress Report and the SEP Completion Report, EPA will:
- a) accept the report; or
 - b) reject the report, notify Respondent in writing of deficiencies in the report and grant Respondent an additional thirty (30) days in which to correct any deficiencies and to resubmit the report to EPA. If EPA, after allowing Respondent thirty (30) days to correct any deficiencies, finds that the same type of deficiencies remain, then EPA may seek stipulated penalties in accordance with paragraph 16.B, *infra*.
12. If EPA elects to exercise option 11(b) above, EPA shall permit Respondent the opportunity to object in writing to the notification of deficiency pursuant to this paragraph within ten (10) days of receipt of such notification. EPA and Respondent will have an additional thirty (30) days (or such time as the parties may agree to) from the due date of Respondent's notification of objection to reach agreement. If agreement cannot be reached on any such issue within this thirty (30) day period, Respondent may ask that the Complainant or his or her representative review the matter. Thereafter, EPA shall provide a written statement of its decision to Respondent, which decision shall be final and binding upon Respondent. In the event the SEP is not completed as contemplated herein, stipulated penalties shall be due and payable by Respondent to EPA in accordance with paragraph 16, *infra*.
13. In all documents or reports, including without limitation, Progress Reports for the SEP and the SEP Completion Report, which are submitted to EPA pursuant to this CA/FO, the following certification shall be signed by a responsible agency official (*i.e.*, officer) of Respondent:

I certify that, to the best of my knowledge and belief, the information contained in this written certification and in any documents accompanying this certification is true, accurate and complete. In making this statement, I have not made an independent review of all statements contained therein and have relied in good-faith on information, statements, and representations furnished to me by employees or contractors. Based on my inquiry of the person or persons (or the supervisors of such persons) directly responsible for gathering the information contained in this written certification and in any documents accompanying this certification, this document is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant potential penalties for submitting materially false information, including the possibility of fines and imprisonment for knowing violations.

14. Whether Respondent has complied with the terms of this Consent Agreement and Final Order through the implementation of the SEP project as herein required, whether the SEP has been satisfactorily completed, whether the Respondent has made good faith, timely effort to implement the SEP, and whether costs expended are creditable to the SEP shall be the sole determination of EPA. Should EPA have any concerns about the satisfactory completion of the SEP, EPA will communicate those concerns to Respondent and provide it with an opportunity to respond, and/or correct the deficiencies. If EPA makes a determination that the SEP has been satisfactorily completed, it will provide Respondent with written confirmation of the determination within a reasonable amount of time.
15. Respondent shall maintain in one central location legible copies of documentation concerning the development, implementation, and financing of the SEP and documentation supporting information in documents or reports submitted to EPA pursuant to this CA/FO, including the reports required to be submitted for the SEP, such as the Annual Progress Reports and the SEP Completion Report for the SEP required pursuant to this CA/FO. Respondent shall grant EPA and its authorized representatives access to such documentation and shall provide copies of such documentation to EPA within thirty (30) days of Respondent's receipt of a request by EPA for such information, or within such additional time as is approved by EPA in writing. The provisions of this paragraph shall remain in effect for five (5) years from the effective date of this CA/FO or from three (3) years from the satisfactory completion of the required SEP, whichever is later.
16. Stipulated penalties for non-compliance with the SEP will be calculated as follows:
 - A. In the event that EPA determines, in its sole discretion, that Respondent failed to comply with any of the terms or provisions of this Consent Agreement and Final Order relating to the performance of the SEP described in paragraphs 5 and 6, *supra*, (but excluding the violations specifically described in paragraph 16.B) and/or to the extent that the actual creditable expenditures for the SEP do not equal or exceed the Required

SEP Expenditures, Respondent shall be liable for stipulated penalties (except as provided in subparagraphs (ii) and (iii), immediately below) according to the following provisions:

- i) If EPA determines, in its sole discretion, that the SEP has not been completed satisfactorily, as defined below, Respondent shall pay a stipulated penalty as follows:
 - (a) in the amount of five thousand dollars (\$5,000), for failure to fully complete two annual independent third party environmental audits at the four service stations it operates and an independent third party environmental audit at the service stations situated at both Charlie's Inn and at Long Lake; and/or
 - (b) in the amount of forty thousand dollars (\$40,000), for failure to: (a) fully install ELLDs at all six facilities, (b) have the four facilities Respondent operates linked to a centralized monitoring system for release detection, and (c) have operated that system and the ELLDs at the four facilities for at least one year.Payment shall be transmitted using the same procedure specified in paragraph 2, *supra*.
- ii) If EPA determines, in its sole discretion, that the SEP is not completed satisfactorily, but:
 - (a) EPA determines that Respondent made good faith and timely efforts to complete the project; and
 - (b) Respondent certifies, with supporting documentation, that at least ninety (90) percent of the amount of money which was required pursuant to paragraph 3, *supra*, to be spent was expended on element 1 of the SEP and on elements 2 and 3 of the SEP and EPA accepts that such expenditures are creditable for the SEP, then Respondent shall not pay any stipulated penalty.
- iii) If EPA determines, in its sole discretion, that the SEP is satisfactorily completed, but:
 - (a) Respondent spent less than ninety (90) percent of the amount of money required to be spent for element 1 of the SEP and elements 2 and 3 of the SEP, and
 - (b) Respondent certifies, with supporting documentation, the costs that were expended on the SEP and EPA accepts that such expenditures are creditable for the SEP, then: Respondent shall pay a stipulated penalty in an amount equal to two (2) times the difference between the Required SEP Expenditures as set forth in paragraph 3, *supra*, and the amount the Respondent has expended that EPA determines is properly credited toward the different elements of the SEP.
- iv) The SEP shall be deemed by EPA to be complete when:
 - (a) two annual independent third party environmental audits have been conducted at each of the four (4) facilities Respondent operates and an independent third party environmental audit has been conducted at the service stations situated at both Charlie's Inn and Long Lake; and
 - (b) Respondent has installed at the six facilities fully functional ELLDs and has set up a centralized monitoring system for the four (4) facilities it operates and Respondent has operated each ELLD and the centralized monitoring system at the four facilities Respondent operates for at least one (1) full year following the complete installation of each ELLD and the centralized monitoring system.

B. Notwithstanding any other provision of this Consent Agreement, stipulated penalties shall accrue per day per violation for the following types of matters: failure to comply with any schedule to submit records and documentation, including but not limited to reports (including progress report(s) and completion report(s)), and failure to include the required certifications or public statement and/or to revise any documents on schedule following receipt of comments; and/or failure to maintain and/or provide records. If deviation from the due dates/schedule in this Consent Agreement for the documents/reports/records described in this paragraph, has not been approved by EPA in writing pursuant to paragraph 4, *supra*, and if EPA determines Respondent to be liable for a stipulated penalty, such liability shall commence on the first day of noncompliance and continue through the final date of completion of the activity for which compliance is achieved. Simultaneous penalties shall accrue for separate violations of the Consent Agreement. The stipulated penalties shall accrue as follows:

STIPULATED PENALTY AMOUNTS

<u>Period of Failure to Comply</u>	<u>Penalty Per Day</u>
1st to 10th day	\$100
11 th to 30 th day	\$300
31st to 60th day	\$2,000
Each day in excess of 60 days	\$3,000

C. Unless Respondent provides EPA with a written explanation in accordance with subparagraph D, below, all stipulated penalties are due and payable within sixty (60) calendar days of the Respondent's receipt from EPA of a written demand for payment of the penalties. Respondent agrees that such demand may be mailed to Respondent via its counsel, Marc S. Gerstman, The Law Office of Marc S. Gerstman, 313 Hamilton Street, Albany, New York 12210 and to Respondent. All stipulated penalty payments shall be made in accordance with the payment instructions in paragraph 2, *supra*, of this Consent Agreement. Penalties shall accrue as provided above regardless of whether EPA has notified the Respondent of the violation or made a demand for payment, but need only be paid upon demand.

D. After receipt of a demand from EPA for stipulated penalties pursuant to the preceding paragraph, Respondent shall have twenty (20) calendar days in which to provide Complainant with a written explanation of why it believes that a stipulated penalty is not appropriate for the cited violation(s) of this Consent Agreement (including any technical, financial or other information that Respondent deems relevant). Pursuant to paragraph 17, *infra*, EPA shall evaluate the written explanation provided by the Respondent.

17. The Complainant may, at her sole discretion, reduce or eliminate any stipulated penalty due if Respondent has, in writing, demonstrated to EPA's satisfaction good cause for such action by EPA. If, after review of Respondent's submission pursuant to the preceding paragraph, Complainant determines that Respondent has failed to comply with the provisions of this Consent Agreement, and Complainant does not, in her sole discretion, eliminate the stipulated penalties demanded by EPA, Complainant will notify

Respondent, in writing, that either the full stipulated penalty or a reduced stipulated penalty must be paid by Respondent. Respondent shall pay the stipulated penalty amount indicated in EPA's notice within thirty (30) calendar days of its receipt of such written notice from EPA. Failure of Respondent to pay any stipulated penalty demanded by EPA pursuant to this Consent Agreement may result in referral of this matter to the United States Department of Justice or the Department of the Treasury for collection.

18. At any time prior to Respondent's payment of stipulated penalties, the Director, may, for good cause as independently determined by her, reduce or eliminate the stipulated penalty(ies). If the Director makes such determination, EPA shall notify Respondent in writing of any such action.
19. Any public statement, oral or written, made by Respondent making reference to the SEP shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for violations of regulations concerning the management of underground storage tanks."
20. Delays:
 - a) If any event occurs which causes or may cause delays in the completion of the SEP as required under this Consent Agreement, Respondent shall notify EPA in writing within thirty (30) days of the delay or Respondent's knowledge of the anticipated delay, whichever is earlier. The notice shall describe in detail the anticipated length of delay, the precise cause of delay, the measures taken by Respondent to prevent or minimize delay, and the timetable by which those measures will be implemented. Respondent shall adopt all reasonable measures to avoid or minimize any such delay. Failure by Respondent to comply with the notice requirements of this paragraph shall render this paragraph void and of no effect as to the particular incident involved and may constitute a waiver of Respondent's right to request an extension of its obligation under this Consent Agreement based on such incident.
 - b) If the parties agree that the delay or anticipated delay in the completion of the SEP has been or will be caused by circumstances beyond the control of Respondent, the time for performance hereunder may be extended for a period no longer than the delay resulting from such circumstances. In such event, the parties shall stipulate to such extension of time.
 - c) In the event that EPA does not agree that a delay in completing the SEP in accordance with the requirements of this Consent Agreement has been or will be caused by circumstances beyond the control of Respondent, EPA will notify Respondent in writing of its decision and any delays in completion of the SEP shall not be excused.
 - d) The burden of proving that any delay is caused by circumstances entirely beyond the control of Respondent shall rest with Respondent. Increased cost or expenses associated with performance of the SEP under this Consent Agreement shall not, in any event, be a basis for changes in this Consent Agreement or extensions of

time under section b) of this paragraph. Delay in achievement of one interim step shall not necessarily justify or excuse delay in achievement of subsequent steps.

21. The SEP to be completed by Respondent, described in paragraphs 3 and 5, *supra*, of this Consent Agreement, has been accepted by Complainant solely for purposes of settlement of this civil administrative proceeding.
22. EPA Region 2 may grant an extension of the date(s) of performance or such other dates as are established in this Consent Agreement with regard to any of the SEP elements, if Respondent has first demonstrated in writing good cause for such extension. If Respondent submits a request for extension, such request shall be accompanied by supporting documentation and submitted to EPA no later than thirty (30) calendar days prior to any due date set forth in this Consent Agreement, or other deadline established pursuant to this Consent Agreement. Such extension, if any, shall be approved in writing.
23. Respondent hereby certifies that, as of the date of this Consent Agreement and Final Order, Respondent is not required to perform or develop the SEP described in paragraph 5, *supra*, by any federal, state law, local law, or regulation; nor is Respondent required to perform or develop the SEP by agreement, grant, or as injunctive relief in this or any other case or in compliance with state or local requirements. Respondent further certifies that Respondent has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP. Respondent certifies that it had not committed to perform the SEP prior to the commencement of EPA's enforcement action. Respondent also certifies that it has not received, is not receiving, and will not receive, directly or indirectly, any monetary or in kind payment for any of the SEP work described in paragraph 5, *supra*, being performed at Charlie's Inn and Long Lake.
24. If EPA determines that Respondent's certification in paragraph 23, *supra*, is inaccurate, then Respondent shall pay a stipulated penalty in the amount of sixty thousand dollars (\$60,000). Payment shall be transmitted using the same procedure specified in paragraph 2, *supra*.
25. If in the future EPA believes that any of the information certified to, pursuant to paragraphs 1 and 13, *supra*, is inaccurate, EPA will advise Respondent of its belief and its basis for such, and will afford Respondent an opportunity to respond to EPA. If the certification is materially inaccurate with respect to compliance, EPA may initiate a separate criminal investigation pursuant to 18 U.S.C. § 1001 *et seq.*, or any other applicable law.
26. This Consent Agreement is being voluntarily and knowingly entered into by the Complainant and Respondent to resolve the civil and administrative claims described in paragraph 19, *supra*, of the above Findings of Fact and Conclusions of Law, (upon full payment of the penalty and any stipulated penalty that comes due and the performance of obligations set forth in the Consent Agreement). Nothing herein shall be read to preclude

EPA or the United States, on behalf of EPA, however, from pursuing the remedies mentioned in 40 C.F.R. § 22.18(c) for any violations of law.

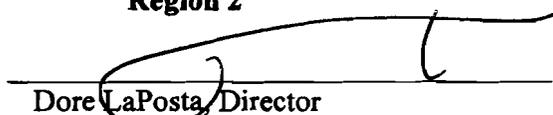
27. Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable and consents to the issuance and its terms. Respondent consents to the issuance of the accompanying Final Order. Respondent agrees that all terms of settlement are set forth herein.
28. Respondent explicitly and knowingly consents to the assessment of the civil penalty and stipulated penalties as set forth in this Consent Agreement and agrees to pay these penalties in accordance with the terms of this Consent Agreement.
29. Respondent explicitly waives its right to request or to seek any Hearing on the provisions of this Consent Agreement or on the Findings of Fact and Conclusions of Law herein, or on the accompanying Final Order.
30. Respondent waives its right to appeal the proposed Final Order accompanying the Consent Agreement.
31. This Consent Agreement and any provision herein shall not be construed as an admission of liability in any criminal or civil action or other administrative proceeding, except in an action or proceeding to enforce or seek compliance with this Consent Agreement and its accompanying Final Order.
32. Respondent explicitly waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during discussions with or to be served with and to reply to any memorandum or communication addressed to the Regional Administrator, Deputy Regional Administrator, or Regional Judicial Officer for Region 2, where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the attached Final Order.
33. This Consent Agreement and Final Order does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable provisions of Federal, State, or local law concerning USTs, nor shall it be construed to be a ruling on or determination of any issue related to a federal or State or local permit.
34. Each undersigned signatory to this Consent Agreement certifies that he or she 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.
35. The provisions of this Consent Agreement and Final Order shall be binding upon both EPA and Respondent, its officers, directors, officials, agents, servants, authorized representatives and successors or assigns.

36. Each party hereto agrees to bear its own costs and fees in this matter.
37. Respondent consents to service upon itself of a copy of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk.
38. Pursuant to 40 C.F.R. § 22.31(b), the effective date of the Final Order herein shall be the date when filed with the Regional Hearing Clerk of the United States Environmental Protection Agency, Region 2.

RESPONDENT: P. J. HYDE & SON, INC.

BY: 
(signature)
NAME F. Thomas Hyde
(Please Print)
TITLE: President
DATE: 6/17/10

COMPLAINANT: United States Environmental Protection Agency
Region 2

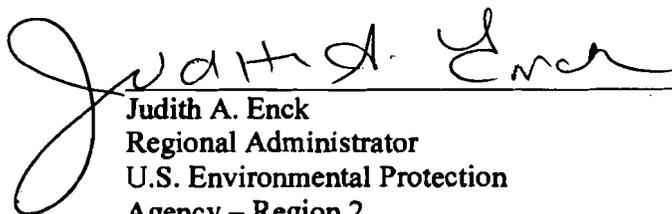
BY: 
Dore LaPosta Director
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection
Agency - Region 2
290 Broadway
New York, N.Y. 10007-1866

DATE: JUNE 24, 2010

In the Matter of P. J. Hyde & Son, Inc.
Docket No. RCRA-02-2010-7501

FINAL ORDER

The Regional Administrator of the U.S. Environmental Protection Agency, Region 2, ratifies the foregoing Consent Agreement. The Consent Agreement, entered into by the Complainant and Respondent P. J. Hyde & Son, Inc. 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 filing with the Regional Hearing Clerk, U.S. EPA, Region 2, New York, New York.



Judith A. Enck
Regional Administrator
U.S. Environmental Protection
Agency – Region 2
290 Broadway
New York, New York 10007-1866

DATE: 6/28/10

**In the Matter of P. J. Hyde & Son, Inc.,
Docket No. RCRA-02-2010-7501**

CERTIFICATE OF SERVICE

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

Office of Regional Hearing Clerk
U.S. Environmental Protection
Agency - Region 2
290 Broadway, 16th floor
New York, New York 10007-1866

Copy by Certified Mail,
Return Receipt Requested:

Marc S. Gerstman, Esq.
Attorney for Respondent
313 Hamilton Street
Albany, NY 12210

JUN 28 2010

Mildred N. Baez