

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 2  
290 Broadway  
New York, New York 10007-1866

REGIONAL HEARING  
CLERK

2014 AUG -7 AM 7:28

U.S. Environmental  
Protection Agency-Reg 2

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IN THE MATTER OF :  
: Proceeding to Assess Class  
Dan's Supreme Super Markets, Inc. : Civil Penalty under Section  
DBA Key Food : 309(g) of the Clean Water Act  
153-55 Cross Island Parkway :  
Whitestone, NY 11357 : Docket No. CWA-02-2014-3301  
:  
Proceeding pursuant to §309(g) of the :  
Clean Water Act, 33 U.S.C. §1319(g) :  
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**CONSENT AGREEMENT AND FINAL ORDER**

Complainant, the United States Environmental Protection Agency ("EPA"), having issued the Complaint herein on December 26, 2013, against Dan's Supreme Super Markets, Inc. DBA Key Food ("Respondent"), and Complainant and Respondent having agreed that settlement of this matter is in the public interest, and that entry of this Consent Agreement and Final Order without further litigation is the most appropriate means of resolving this matter;

NOW, THEREFORE, before the taking of any testimony, upon the pleadings, without adjudication of any issue of fact or law, and upon consent and agreement of the Parties, it is hereby agreed and ordered as follows:

**I. PRELIMINARY STATEMENT**

1. EPA initiated this proceeding for the assessment of a civil penalty, pursuant to Section 309 of the Clean Water Act, 33 U.S.C. §1319.
2. The Complaint alleges that Respondent violated Section 301(a) of the Act, 33 U.S.C. §1311(a) and federal National Pollutant Discharge Elimination System requirements.
3. This action was public noticed. No public comment was received.

**II. TERMS OF SETTLEMENT**

4. This Consent Agreement and Final Order shall apply to and be binding upon Respondents, its officers, directors, employees, successors and assigns, including, but not limited to, subsequent purchasers.
5. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in the Complaint and that the Complaint states a claim upon which relief can be granted against Respondent.

6. Respondent waives any defenses it might have as to jurisdiction and venue, and, without admitting or denying the factual or legal allegations contained in the Complaint, consents to the terms of this Consent Agreement and Final Order.
7. Respondent hereby waives their right to a judicial or administrative hearing or appeal on any issue of law or fact set forth in the Complaint.
8. Pursuant to §309(g) of the Clean Water Act, 33 U.S.C. §1319(g), the nature of the violations and other relevant factors, EPA has determined that an appropriate civil penalty to settle this action is in the amount of *Seven Thousand Five Hundred Dollars (\$7,500.00)*.
9. For purposes of settlement, Respondent consents to the issuance of this Consent Agreement and consents to the payment of the civil penalty cited in the foregoing Paragraph.

### III. PAYMENT OF PENALTY

10. Respondent shall pay a civil penalty in the amount of *Seven Thousand Five Hundred Dollars (\$7,500.00)*, to the "Treasurer of the United States of America."
11. Respondent agrees to pay the above stated amount within forty-five (45) calendar days from the effective date of this CA/FO. The effective date of this CA/FO shall be the date of filing with the Regional Hearing Clerk, U.S. EPA Region 2, New York, NY.
12. Payments can be made by debit/credit card, check, or electronically. Electronic payments fall into two categories: wires and Automated Clearinghouse (ACH). Wires are same day and more costly. ACH is the next day or any future scheduled day and is less expensive. Please note that wires and ACH payments must be conducted through the sender's bank. The checks (cashier's or certified checks only) shall be identified with a notation of the name and docket number of this case, set forth in the caption on the first page of this document. Payment methods are described below:

Type of Payment	Payment Information		
Debit and Credit Card Payments	<a href="https://www.pay.gov/paygov/">https://www.pay.gov/paygov/</a>		
Checks from U.S. Banks		U.S. Postal Service	UPS, Federal Express, or Overnight Mail
Finance Center Contacts: Craig Steffen (513-487-2091)	Check Payments – Fines and Penalties	US Environmental Protection Agency Fines and Penalties Cincinnati Finance Center PO Box 979077 St. Louis, MO 63197-9000	U.S. Bank Government Lockbox 979077 US EPA Fines & Penalties 1005 Convention Plaza SL-MO-C2-GL St. Louis, MO 63101 314-418-1028 Contact: Natalie Pearson 314-418-4087
Checks drawn on foreign banks with no USA branches (any currency)	Cincinnati Finance US EPA, MS-NWD 26 W ML King Drive Cincinnati, OH 45268-0001		

Wire Transfers (any currency)	Federal Reserve Bank of New York ABA: 021030004 Account Number: 68010727 SWIFT address: FRNYUS33 33 Liberty Street New York, NY 10045 Field Tag 4200 of the Fedwire message should read: "D 68010727 Environmental Protection Agency"
ACH - Automated Clearinghouse for receiving US currency Finance Center Contacts:  John Schmid (202-874-7026)  REX (Remittance Express), 1-866-234-5681	US Treasury REX / Cashlink ACH Receiver ABA: 051036706 Account Number: 310006, Environmental Protection Agency CTX Format Transaction Code 22 – checking  Physical location of US Treasury facility: 5700 Rivertech Court Riverdale, MD 20737

**ON LINE PAYMENT:**

There is now an On Line Payment Option, available through the Department of Treasury. This payment option can be accessed from the information below: [WWW.PAY.GOV](http://WWW.PAY.GOV). Enter sfo 1.1 in the search field. Open form and complete required fields.


13. Payment must be received pursuant to paragraph 12, above, after the effective date of this Order (see "Final Order" at the end of this document which states that the effective date shall be the date of filing with the Regional Hearing Clerk, U.S. EPA Region 2, New York, NY). The date by which payment must be received shall hereafter be referred to as the "due date".
- a. failure to pay the penalty in full according to the above provisions will result in a referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection;
  - b. further, if the payment is not received on or before the due date, interest will be assessed at the annual rate established by the Secretary of 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 \$15.00 will be assessed for each 30 day period (or any portion thereof) following the due date in which the balance remains unpaid. A 6% per annum penalty also will be applied on any principal amount not paid within 90 days of the due date;
  - c. in addition, pursuant to Section 309(g)(9) of the Clean Water Act, 33 U.S.C. §1319(g)(9), if payment is not received by the due date, a quarterly nonpayment penalty will be imposed for each calendar quarter during which such nonpayment persists. The quarterly nonpayment penalty is 20% of the aggregate amount of penalties and quarterly nonpayment penalties which are unpaid as of the beginning of such quarter;

- d. Respondent also may be required to pay attorneys fees and costs for collection proceedings in connection with nonpayment.
14. The penalty to be paid is a civil penalty assessed by the EPA and shall not be deductible from the Respondent's federal or state taxes.

#### **IV. GENERAL PROVISIONS**

15. The Respondent waives any right they 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 Director or the Regional Administrator 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 accompanying Final Order.
16. Nothing in this agreement shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this agreement or of the statutes and regulations upon which this agreement is based, or for Respondent's violation of any applicable provision of law.
17. This Consent Agreement and Order shall not relieve Respondent of their 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.
18. This Consent Agreement and Final Order constitute a settlement by EPA of all claims for civil penalties pursuant to the Clean Water Act for the violations alleged in the Complaint. Nothing in this Consent Agreement and Final Order is intended to nor shall be construed to operate in any way to resolve any criminal liability of the Respondent. Compliance with this Consent Agreement and Final Order shall not be a defense to any actions subsequently commenced pursuant to Federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with such laws and regulations.
19. Each undersigned representative of the parties to this Consent Agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this Consent Agreement and to execute and legally bind that party to it.
20. Each party shall bear its own costs and attorneys' fees in connection with the action resolved by this Consent Agreement and Order.

**FOR RESPONDENT, Dan's Supreme Super Markets Inc. DBA Key Food:**

BY:   
Mr. Richard Grobman, President  
Dan's Supreme Super Markets Inc.  
DBA Key Food  
474 Fulton Ave.

DATE: 5/9/14

Hempstead, New York 1550

**FOR COMPLAINANT U.S. EPA, REGION 2:**

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



Dore LaPosta, Director  
Division of Enforcement and  
Compliance Assistance  
U.S. EPA, Region 2  
290 Broadway, 21<sup>st</sup> Floor  
New York, New York 10007-1866

DATE: 8/6/14

**V. FINAL ORDER**

The Regional Administrator of the United States Environmental Protection Agency, Region 2, vested by authority delegated by the Administrator of the United States Environmental Protection Agency ("EPA") and having further re-delegated such authority to the Director of the Division of Enforcement and Compliance Assistance, Region 2, EPA, ratifies the foregoing Consent Agreement. The Agreement entered into by the parties is hereby approved, incorporated herein, and issued as an Order. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, United States Environmental Protection Agency, Region 2, New York, New York.

DATED: 8/6/14

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

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ENVIRONMENTAL PROTECTION AGENCY  
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CERTIFICATE OF SERVICE

I certify that, on the date noted below, I caused to be mailed, by certified mail, return receipt requested, a copy of the foregoing "**CONSENT AGREEMENT AND FINAL ORDER**" to the following persons at the addresses listed below:

Mr. Richard Grobman, President  
Dan's Supreme Super Markets Inc.  
DBA Key Food  
474 Fulton Ave.  
Hempstead, New York 11550

I [hand carried / mailed] the original and a copy of the foregoing Complaint to the office of the Regional Hearing Clerk, United States Environmental Protection Agency, Region 2.

Date: 8/6/14  
New York, New York

  
[Signature of Sender]  
[NOTE: must be over 18]