



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Darroll L. Talbott
Branch Manager
Guttman Oil Company
US Routes 250 and 219 South
Elkins, West Virginia 26241

June 30, 2011

Re: CONSENT AGREEMENT AND FINAL ORDER
Guttman Oil Co. Routes 250 and 219 South
Elkins, West Virginia 26241

Dear Darroll:

I have enclosed for your files the signed Consent Agreement and Final Order (SCAFO) and the memorandum to the Regional Judicial Officer requesting her to execute the Final Order. Note that the effective date of the SCAFO is today so the date for compliance with the line leak detection is one hundred eighty days from today or December 27, 2011. If you have any questions, please contact me at (215) 814-2495.

Sincerely,

A handwritten signature in black ink, appearing to read "Philip Yeany".

Philip Yeany
Senior Assistant
Regional Counsel

Enclosures

cc: Melissa Toffel

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029**

In the Matter of:

Guttman Oil Company
200 Speers Street
Belle Vernon, PA 15012
RESPONDENT

Guttman Oil Company
Routes 250 and 219 South
Elkins, WV 26241
FACILITY

U.S. EPA Docket Number
RCRA-03-2011-0202

Consent Agreement

CONSENT AGREEMENT

I. PRELIMINARY STATEMENT

1. This Consent Agreement is filed pursuant to Section 9006 of the Solid Waste Disposal Act, 42 U.S.C. § 6991e and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules"), 40 C.F.R. Part 22. The Solid Waste Disposal Act is commonly referred to as the Resource Conservation and Recovery Act of 1976 and was amended by the Hazardous and Solid Waste Amendments of 1984 (collectively referred to hereinafter as "RCRA"). The Complainant is the Director, Land and Chemicals Management Division, United States Environmental Protection Agency, Region III ("Complainant").

2. Pursuant to Section 22.13(b) of the Consolidated Rules, this Consent Agreement and the attached Final Order ("CAFO") both commence and conclude an administrative proceeding against Guttman Oil Company ("Respondent"), brought under Section 9006 of RCRA, 42 U.S.C. § 6991e, to resolve alleged violations of Subtitle I of RCRA at Respondent's facility at Routes 250 and 219 South, Elkins, WV 26241 (the "Facility").
3. Effective February 10, 1998, pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c, and 40 C.F.R. Part 281, Subpart A, the State of West Virginia was granted final authorization to administer a state underground storage tank management program ("West Virginia Authorized UST Management Program") *in lieu* of the Federal underground storage tank management program established under Subtitle I of RCRA, 42 U.S.C. §§ 6991-6991m. *See 62 Fed. Reg.* 49620 (September 23, 1997) *and 63 Fed. Reg.* 6667 (February 10, 1998). Through this final authorization, the provisions of the West Virginia Authorized UST Management Program became requirements of RCRA Subtitle I and are now, accordingly, enforceable by EPA pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e.
4. The factual allegations and legal conclusions in this CAFO are based upon the provisions of the West Virginia Authorized UST Management Program, as set forth in Title 33, Series 30 of West Virginia's Hazardous Waste Management Regulations, which incorporates by reference the federal underground storage tank program regulations set forth at 40 C.F.R. Part 280 (1995 edition), with some modifications. These regulations, the West Virginia authorized underground storage tank regulations ("WVUSTR"), will hereinafter be cited as WVUSTR, §§ 33-30-1, *et seq.* All references to the provisions of 40 C.F.R. Part 280 which are incorporated by reference in the WVUSTR are to such regulations as set forth in the 1995 edition of the Code of Federal Regulations.

5. Complainant has given the State of West Virginia, through the West Virginia Division of Environmental Protection ("WVDEP"), prior notice of the issuance of this CAFO in accordance with Section 9006(a)(2) of RCRA, 42 U.S.C. § 6991(a)(2).
6. This Consent Agreement is entered into by Complainant and Respondent to resolve EPA's claims for civil penalties based upon the violations alleged in the Findings of Fact, as set forth below.
7. For the purposes of this proceeding, Respondent admits the jurisdictional allegations of this Consent Agreement.
8. Respondent neither admits nor denies the Findings of Fact contained in this Consent Agreement, except as provided in Paragraph 7, above.
9. Respondent neither admits nor denies the Conclusions of Law contained in this Consent Agreement, except as provided in Paragraph 7, above.
10. For the purposes of this proceeding only, Respondent hereby expressly waives its right to a hearing on any issue of law or fact set forth in this Consent Agreement, and any right to appeal the accompanying Final Order.
11. The settlement agreed to by the parties in this Consent Agreement reflects the desire of the parties to resolve this matter without continued litigation.
12. Respondent consents to the issuance of this Consent Agreement and to the attached Final Order and agrees to comply with their terms. Respondent agrees not to contest Complainant's jurisdiction with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement thereof.

13. This Consent Agreement and Final Order resolve only EPA's claims for civil penalties for the specific violations alleged in the Findings of Fact and Conclusions of Law, below. EPA reserves the right to commence action against any person, including Respondent, in response to any condition that EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules.

14. EPA reserves any rights and remedies available to it under RCRA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this Consent Agreement and Final Order, following its filing with the Regional Hearing Clerk. Respondent reserves all available rights and defenses it may have to defend itself in any such action.

15. Respondent is hereby notified that failure to comply with any of the terms of this Compliance Order may subject it to imposition of a civil penalty of up to \$37,500 for each day of continued noncompliance, pursuant to Section 9006(a)(3) of RCRA, 42 U.S.C. § 6991e(a)(3), the Debt Collection Improvement Act of 1996, and the Adjustment of Civil Monetary Penalties for Inflation regulation, codified at 40 C.F.R. Part 19.

16. Nothing in this Consent Agreement and Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations.

17. Respondent is aware that the submission of false or misleading information to the United States government may subject it to separate civil and/or criminal liability. Complainant reserves

the right to seek and obtain appropriate relief if Complainant obtains evidence that the information provided and/or representations made by Respondent to Complainant regarding the matters at issue in the Findings of Fact and Conclusions of Law are false or, in any material respect, inaccurate.

18. Each party shall bear its own costs and attorney's fees in connection with this proceeding.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

19. This section represents the Findings of Fact and Conclusions of Law made by Complainant in this matter. As set forth in Paragraphs 8 and 9 above, Respondent neither admits nor denies these Findings of Fact and Conclusions of Law, but agrees to this settlement to avoid further litigation, as set forth in Paragraph 11, above.

20. Respondent is a "person" as defined in Section 9001 of RCRA, 42 U.S.C. § 6991, and in 40 C.F.R. § 280.12, as incorporated by reference in WVUSTR by § 33-30-2.1.

21. From at least five years prior to the date of this Consent Agreement to the effective date of this Consent Agreement, Respondent has been the "owner" and "operator" of "underground storage tanks" ("USTs") and "UST systems," as those terms are defined in Section 9001 of RCRA, 42 U.S.C. § 6991, and 40 C.F.R. § 280.12, as incorporated by reference into WVUSTR by § 33-20-2.1, located at the Facility.

22. The UST systems consist of 10 20,000-gallon USTs ("the Tanks). Tanks 1, 2, and 3 are connected to a common manifold with a single line leak detector. Tanks 8, 9, and 10 are connected to a different common manifold with a single line leak detector.

23. From at least five years prior to the date of this Consent Agreement, the Tanks at the Facility have been used to store kerosene, two grades of gasoline, and diesel fuel, which are

petroleum products. All are "regulated substances" as that term is defined in Section 9001 of RCRA, 42 U.S.C. § 6991, and 40 C.F.R. § 280.12, as incorporated by reference into WVUSTR by § 33-20-2.1. The Tanks at the Facility and their associated piping therefore constitute "petroleum UST systems" as that term is defined in 40 C.F.R. § 280.12, as incorporated by reference into WVUSTR by § 33-20-2.1.

COUNT 1

24. Pursuant to 40 C.F.R. § 280.41(b)(1)(i), as incorporated by reference into WVUSTR by § 33-20-2.1, underground piping, which is part of a petroleum UST system, that routinely contains regulated substances and conveys regulated substances under pressure must be equipped with an automatic line leak detector in accordance with 40 C.F.R. § 280.44(a). Pursuant to 40 C.F.R. § 280.44(a), an automatic line leak detector may be used to comply with 40 C.F.R. § 280.41(b)(1)(i) only if it is capable of detecting a leak of 3 gallons per hour at 10 pounds per square inch line pressure within 1 hour at any point in the entire line. The line leak detectors installed at the Facility are not capable of meeting this standard.

25. From at least five years prior to the effective date of this Consent Agreement, Respondent violated 40 C.F.R. § 280.41(b)(1)(i), as incorporated by reference into WVUSTR by § 33-20-2.1, by failing to equip the underground piping associated with the Tanks at the Facility with automatic line leak detection capable of meeting the performance standards set forth in 40 C.F.R. § 280.44(a).

III. COMPLIANCE ORDER

26. Pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e, Respondent is hereby ordered to complete the following Compliance Task:

a. Within 180 (one hundred eighty) days after the Effective Date of this CAFO, the Respondent shall comply with the line leak detection requirements of 40 C.F.R. § 280.41(b)(1)(i), as incorporated by reference into WVUSTR by § 33-20-2.1, at the Facility.

27. Within 30 (thirty) days after the date specified in Paragraph 26.a, the Respondent shall submit to EPA all necessary invoices, reports, and documents to demonstrate the Facility's return to compliance as well as a declaration that the Respondent has completed the Compliance Task and it is currently in compliance with the requirements of RCRA Subtitle I and WVUSTR § 33-20-2.1. The Respondent shall include with any invoice, report, document, and declaration that it submits to EPA a certification in the form set forth in Paragraph 28.

28. Submissions to EPA: Any notice, certification, data presentation, or other document submitted by a Respondent pursuant to this Consent Agreement which discusses, describes, demonstrates, or supports any finding or makes any representation or declaration concerning Respondent's compliance or noncompliance with any requirements of this Consent Agreement shall be certified, by a "responsible corporate officer" as that terms is defined at 40 C.F.R. § 270.11. The aforesaid certification shall provide the following statement above the signature of the responsible person signing the certification on behalf of a Respondent:

I certify under penalty of law that this document and all attachments are true, accurate, and complete. As to [the/those] identified portions of this [type of submission] for which I cannot personally verify [its/their] accuracy, I certify under penalty of law that this [type of submission] and all attachments were prepared in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

that a release of a regulated substance from any UST at the Facility may have occurred, Respondent may be required to undertake corrective action pursuant to applicable requirements in West Virginia law.

30. As provided in 40 C.F.R. § 22.18(c), this settlement, which 40 C.F.R. § 22.18(b) authorizes, only resolves the Respondent's liability for Federal civil penalties for the violations and facts alleged in this Consent Agreement.

31. The term "days" as used herein shall mean calendar days unless specified otherwise.

IV. PARTIES BOUND

32. This Consent Agreement and the accompanying Final Order shall apply to and be binding upon the EPA, the Respondent, Respondent's officers and directors (in their official capacity) and Respondent's successors and assigns. By his or her signature below, the person signing this Consent Agreement on behalf of Respondent acknowledges that he or she is fully authorized to enter into this Consent Agreement and to bind the Respondent to the terms and conditions of this Consent Agreement and the accompanying Final Order.

VI. EFFECTIVE DATE

33. The effective date of this Consent Agreement and Final Order is the date on which it is filed with the Regional Hearing Clerk after signature by the Regional Judicial Officer or Regional Administrator.

Signature: _____
Name: _____
Title: _____

Respondent shall submit Documents to EPA by certified mail, return receipt requested to the attention of:

Melissa Toffel
Land and Chemicals Division (3LC70)
U.S. Environmental Protection Agency - Region III
1650 Arch Street
Philadelphia, PA 19103-2029

and

Philip Yeany
Senior Assistant Regional Counsel (3RC50)
U.S. Environmental Protection Agency - Region III
1650 Arch Street
Philadelphia, PA 19103-2029

One copy of all documents submitted to EPA shall also be sent by regular mail to the attention of:

Ruth M. Porter
UST Program Manager
WV Department of Environmental Protection
601 57th Street SE
Charleston, WV 25304

29. With regard to the allegations contained in this CAFO, EPA is not aware that any leaks from the petroleum UST systems at the Facility have occurred or that the current leak detection system employed by Respondent has alerted Respondent to any leaks in the petroleum UST systems at the Facility. As provided in 40 C.F.R. § 22.18(c), this settlement, which 40 C.F.R. § 22.18(b) authorizes, does not 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. If activities undertaken by the Respondent in connection with this Consent Agreement and Final Order or otherwise indicate

For Respondent Guttman Oil Company:

Date: 6/10/11

By: Darroll L. Talbott, BRANCH MANAGER

Darroll L. Talbott
Guttman Oil Company

For Complainant
United States Environmental Protection Agency
Region III:

Date: 6/15/11

By: *Philip Yeany*
Philip Yeany
Senior Assistant
Regional Counsel

After reviewing the foregoing Consent Agreement and other pertinent information, the Director, Land and Chemical Management Division, EPA Region III, recommends that the Regional Administrator or the Regional Judicial Officer issue the Final Order attached hereto.

Date: 6/17/11

By: *Abraham Ferdas*
Abraham Ferdas, Director
Land and Chemicals
Management Division

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
 REGION III
 1650 Arch Street
 Philadelphia, Pennsylvania 19103-2029**

In the Matter of:

Guttman Oil Company
 200 Speers Street
 Belle Vernon, PA 15012
RESPONDENT

Guttman Oil Company
 Routes 250 and 219 South
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FACILITY

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FINAL ORDER

The Director, Land and Chemicals Management Division, U.S. Environmental Protection Agency - Region III ("Complainant"), and Guttman Oil Company ("Respondent"), have executed a document entitled "Consent Agreement" which I hereby ratify as a Consent Agreement in accordance with 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. The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated herein as if set forth at length.

NOW THEREFORE, pursuant to Section 9006(a) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6991e(a), Respondent Guttman Oil Company is hereby ordered to comply with the terms and conditions of the Consent Agreement.

The effective date of this document is the date on which it is filed with the Regional Hearing Clerk after signature by the Regional Administrator or Regional Judicial Officer.

Date:

6/30/11

By:

Renee Sarajian

Renee Sarajian
Regional Judicial Officer
U.S. EPA, Region III

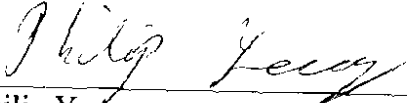
CERTIFICATE OF SERVICE

I hereby certify that on this day, I filed with the Regional Hearing Clerk, EPA Region III, the original Consent Agreement and Final Order. I sent a copy of these document to the following individual in the manner described below:

By certified mail, return receipt requested:

Darroll L. Talbott
Branch Manager
Guttman Oil Company
US Routes 250 and 219 South
Elkins, West Virginia 26241

Date: 6/30/11


Philip Yeany
Senior Assistant Regional Counsel
US EPA Region III