

U. S. ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
11201 RENNER BOULEVARD  
LENEXA, KANSAS 66219

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BEFORE THE ADMINISTRATOR

In the Matter of:

TFL, LLC,  
a/k/a MegaSaver,

Respondent.

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Docket No. RCRA-07-2018-0258

CONSENT AGREEMENT AND FINAL ORDER

This proceeding for the assessment of a civil penalty was initiated on or about November 7, 2018, pursuant to Section 9006 of the Solid Waste Disposal Act, as amended by Subtitle I of the Resource Conservation and Recovery Act of 1976 (RCRA), 42 U.S.C. § 6991e, when the United State Environmental Protection Agency (Complainant or EPA) issued a Complaint and Notice of Opportunity For Hearing (Complaint) to TFL, LLC a/k/a MegaSaver (Respondent).

The Complaint alleged that Respondent failed to comply with the regulatory requirements of Title 159 of the Nebraska Administrative Code (NAC), and the Nebraska Revised Statutes Section 81, as authorized by Section 9004 of RCRA, 42 U.S.C. § 6991c, and 40 C.F.R. Part 281, Subpart A.

The Complaint proposed a civil penalty of One Hundred Fifty-One Thousand One Hundred Eighty-Eight Dollars (\$151,188) for these violations. Complainant and Respondent subsequently entered negotiations in an attempt to settle the allegations in the Complaint. This Consent Agreement and Final Order is the result of such negotiations, and resolves the allegations contained in the Complaint.

CONSENT AGREEMENT

1. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:

- a. admits the jurisdictional allegations set forth in the Complaint;
- b. neither admits nor denies the specific factual allegations stated in the Complaint;
- c. consents to the assessment of a civil penalty, as stated herein;
- d. consents to the issuance of any specified compliance or corrective action order;
- e. consents to any conditions specified herein;
- f. waives any right to contest the allegations set forth herein; and

g. waives its rights to appeal the Final Order accompanying this Consent Agreement.

2. Respondent consents to the issuance of this Consent Agreement and Final Order and consents for the purposes of settlement to the payment of the civil penalty, and performance of the Supplemental Environmental Project (SEP) described below.

3. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

### **Penalty Payment**

4. EPA has considered the appropriateness of the penalty pursuant to Section 9661e(e) of RCRA, 42 U.S.C. 6991e(e), and has determined that the appropriate penalty for the violations is Sixteen Thousand Four Hundred Forty-Eight Dollars (\$16,448).

5. EPA has considered information provided by Respondent concerning its ability to pay the penalty and the time necessary for Respondent to obtain the above funds and has determined that it is appropriate that Respondent shall pay the penalty within sixty (60) days of the effective date of the Final Order. Such payment shall identify Respondent by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
PO Box 979077  
St. Louis, Missouri 63197-9000

or by alternate payment method described at <http://www.epa.gov/financial/makepayment>.

6. A copy of the check or other information confirming payment shall simultaneously be sent to the following:

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219; and

Raymond C. Bosch, Attorney  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219.

7. Respondent understands that its failure to timely pay any portion of the civil

penalty may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall begin to accrue on a civil or stipulated penalty from the date of delinquency until such civil or stipulated penalty and any accrued interest are paid in full. 31 C.F.R. § 901.9. Interest will be assessed at a rate of the United States Treasury Tax and loan rates in accordance with 31 U.S.C. § 3717. Additionally, a charge will be assessed to cover the costs of debt collection including processing and handling costs, and a non-payment penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. 31 U.S.C. § 3717(e)(2).

### **Supplemental Environmental Project**

8. In response to the violations of the Subtitle I of RCRA alleged in the Complaint filed in this case and in settlement of this matter, although not required by Subtitle I of RCRA or any other federal, state, or local law, Respondent shall complete the SEP described in this Consent Agreement and Final Order, which the parties agree is intended to secure significant environmental or public health protection and improvement.

9. Respondent shall complete the following SEP:

Respondent shall install a centralized Automatic Tank Gauge (ATG) System connecting 23 of its facilities to a centralized location. The SEP Shall be performed in accordance with Attachment 1 hereto and all other relevant provisions of this Consent Agreement and Final Order.

10. Respondent must expend a minimum of One Hundred Thirty-Three Thousand Dollars (\$133,000) on the completion of this SEP.

11. Respondent agrees that the SEP shall be completed within Twelve (12) months of the Effective Date of this Consent Agreement and Final Order. If, after Nine (9) months of the Effective Date of this Consent Agreement and Final Order, Respondent in good faith does not believe the project can be completed within the original 12 month time frame, it may request an additional Three (3) months to complete the project without penalty. The determination of what constitutes Respondent's good faith shall be within EPA's discretion.

12. This SEP shall be performed in accordance with the requirements of this Consent Agreement and Final Order.

13. Within 30 days after the SEP completion date set forth in Paragraph 11 above, Respondent shall submit a SEP Completion Report to the EPA contact identified in Paragraph 16 below. The SEP Completion Report shall be subject to EPA review and approval as provided below. The SEP Completion Report shall contain the following information:

- (a) Detailed description of the SEP as implemented;
- (b) Description of any problems encountered in implementation of the

projects and the solution thereto;

- (c) Description of the specific environmental and/or public health benefits resulting from implementation of the SEP and to the extent feasible, quantify the benefits associated with the project and provide a report setting forth how the benefits were measured or estimated; and
- (d) Certification that the SEP has been fully implemented pursuant to the provisions of this Consent Agreement and Final Order.

14. In itemizing its costs in the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all SEP costs. For purposes of this paragraph, "acceptable documentation" includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Cancelled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.

15. The SEP Completion Report shall include the statement of Respondent, through an officer, signed and certifying under penalty of law the following:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

16. The SEP Completion Report shall be submitted on or before the due date specified above to:

Krystal Stotts  
Physical Scientist  
Chemical & Oil Release Prevention Branch  
Air and Waste Management Division  
U.S. Environmental Protection Agency, Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219.

17. SEP Completion Report Approval: The SEP Completion Report shall be reviewed in accordance with the procedures outlined in this paragraph. EPA will review the SEP Completion Report and may approve, approve with modifications, or disapprove and provide comments to Respondent. If the SEP Completion Report is disapproved with comments, Respondent shall incorporate EPA's comments and resubmit the SEP Completion Report within thirty (30) days of receipt of EPA's comments. If Respondent fails to revise the SEP Completion Report in accordance with EPA's comments, Respondent shall be subject to the stipulated

penalties as set forth below.

18. Any public statement, oral or written, in print, film, internet, or other media, made by Respondent making reference to the SEP under this Consent Agreement and Final Order from the date of its execution of this Consent Agreement and Final Order 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 to enforce federal laws.

19. With regard to the SEP, Respondent certifies the truth and accuracy of each of the following:

- (a) That all cost information provided to the EPA in connection with the EPA's approval of the SEP is complete and accurate and that Respondent in good faith estimates that the cost to implement the SEP will be at least One Hundred Thirty-Three Thousand Dollars (\$133,000);
- (b) That, as of the date of executing this Consent Agreement and Final Order, Respondent is not required to perform or develop the SEP by any federal, state, or local law or regulation and is not required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;
- (c) That the SEP is not a project that Respondent was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this Consent Agreement and Final Order;
- (d) That Respondent has not received and will not receive credit for the SEP in any other enforcement action;
- (e) That Respondent will not receive reimbursement for any portion of the SEP from another person or entity; and
- (f) Respondent is not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEP described in this CAFO.

20. Stipulated penalties for failure to complete SEP/Failure to spend agreed-on amount.

- (a) In the event Respondent fails to comply with any of the terms or provisions of this Agreement relating to the performance of the SEP, above, and/or to the extent that the actual expenditures for the SEP do not equal or exceed the cost of the SEP described in this Consent Agreement

and Final Order, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

- i. If the SEP has not been completed satisfactorily and timely pursuant to this Consent Agreement and Final Order, Respondent shall pay a stipulated penalty to the United States in the amount of One Hundred Fifty Thousand Dollars (\$150,000), minus any documented expenditures determined by EPA to be acceptable for the SEP.
  - ii. If the SEP is completed in accordance with this Consent Agreement and Final Order, but Respondent spent less than proposed SEP cost, Respondent shall pay a stipulated penalty to the United States which equals the difference between the proposed SEP amount as defined above and the actual cost of SEP.
  - iii. For failure to submit the SEP Completion Report or revise the Report in accordance with Paragraph 17, Respondent shall pay a stipulated penalty in the amount of One Hundred Fifty Dollars (\$150) for each day after the report was originally due until the report is submitted.
- (b) The determinations of whether the SEP has been satisfactorily completed and whether the Respondent has made a good faith, timely effort to implement the SEP shall be in the sole discretion of EPA.
  - (c) Stipulated penalties shall begin to accrue on the day after performance is due and shall continue to accrue through the final day of the completion of the activity or other resolution under this Consent Agreement and Final Order.
  - (d) Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions of the Penalty Payment section above. Interest and late charges shall be paid as stated in Paragraph 5 herein.
  - (e) 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.

- (f) The United States may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due under this Consent Agreement and Final Order.

### **Effect of Settlement and Reservation of Rights**

21. Full payment of the reduced penalty proposed, and completion of the SEP in this Consent Agreement shall only resolve Respondent's liability for federal civil penalties for the violations alleged herein. Complainant reserves the right to take any enforcement action with respect to any other violations of RCRA Subtitle I or any other applicable law.

22. The effect of settlement described in the immediately preceding paragraph is conditioned upon the accuracy of Respondent's representations to the EPA, as memorialized in paragraph directly below.

23. Respondent certifies by the signing of this Consent Agreement that it is presently in compliance with all requirements of RCRA Subtitle I and its implementing regulations.

24. Complainant reserves the right to enforce the terms and conditions of this Consent Agreement and Final Order.

### **General Provisions**

25. By signing this Consent Agreement, the undersigned representative of Respondent certifies that he or she is fully authorized to execute and enter into the terms and conditions of this Consent Agreement and has the legal capacity to bind the party he or she represents to this Consent Agreement.

26. This Consent Agreement shall not dispose of the proceeding without a final order from the Regional Judicial Officer or Regional Administrator ratifying the terms of this Consent Agreement. This Consent Agreement and Final Order shall be effective upon the filing of the Final Order by the Regional Hearing Clerk for the EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

27. The reduced penalty specified herein shall represent civil penalties assessed by the EPA and shall not be deductible for purposes of Federal, State and local taxes.

28. This Consent Agreement and Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms, or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

**RESPONDENT**  
**TFL, INC a/k/a Mega Saver**

Date: 03/18/2019

By:



KAMOL SAMIEV

Print Name

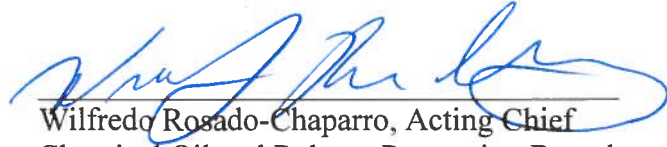
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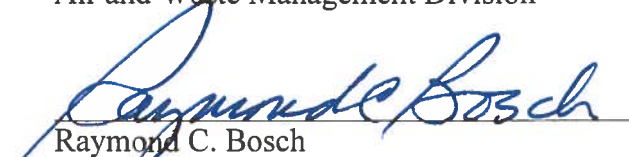


**COMPLAINANT**  
**U. S. Environmental Protection Agency**

Date: 3/18/2019

  
\_\_\_\_\_  
Wilfredo Rosado-Chaparro, Acting Chief  
Chemical Oil and Release Prevention Branch  
Air and Waste Management Division

Date: 3/18/2019

  
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Raymond C. Bosch  
Office of Regional Counsel

**FINAL ORDER**

Pursuant to Section 9006 of the Solid Waste Disposal Act, as amended by Subtitle I of the Resource Conservation and Recovery Act of 1976 (RCRA), 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, 40 C.F.R. Part 22, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

Karina Borromeo  
Karina Borromeo  
Regional Judicial Officer

March 21, 2019  
Date

## **Attachment 1**

### **Description of the Supplemental Environmental Project for TFL/Mega Saver**

**Pursuant to the Consent Decree and Final Order in this matter Respondent will implement the following for fuel monitoring and reporting systems at its 23 retail facilities:**

- A. Centralized reporting of Automatic Tank Gage systems
- B. Incorporate existing ATG systems with updated technology
- C. Install new ATG systems when updating existing ATG system not feasible
- D. Addition of back office software for the monitoring and reporting of fuel storage, deliveries and dispensing

Replacement of ATG systems not compatible with fuel management monitoring modules

**Inventory management modules for ATG systems will include:**

- A. Centralized reporting and monitoring of fuel storage and dispensing systems in company.
  - 1. Monitoring of fuel dispensing thru a Business Inventory Reconciliation module
  - 2. Monitoring of fuel storage system thru a Continuous Statistical Leak Detection module
- B. Improved monitoring and accuracy of delivery of fuels to stations using the BIR module
  - 1. Real time reports are available on accuracy of the fuel deliveries
  - 2. Accurate reports on the dispensing of fuel through individual dispensers
- C. Improved monitoring and accuracy of fuel levels in the storage tanks using the CSLD module
  - 1. Constant monitoring of fuel inventories in the storage tanks
  - 2. Immediate status of fuel level declines or gains
  - 3. Greater oversight and understanding of potential fuel level losses or gains

**Inventory software applications for Back office operations will include:**

- A. Addition of software for the monitoring and reporting of fuel management

**Equipment, Hardware and Software that will be utilized for the Project:**

**A. Automatic Tank Gaging monitor**

- a. Veeder Root TLS 350
- b. Veeder Root TLS-450 Plus

**B. Expansion Modules**

- a. Veeder Root TLS – 350 Business Inventory Reconciliation software
- b. Veeder Root TLS-350 Dispenser Interface Module
- c. Veeder Root TLS-450 Plus Business Inventory Reconciliation software
- d. Veeder Root TLS-450 Plus Dispenser Interface Module
- e. Veeder Root TLS-350 TCP/IP Ethernet card
- f. Veeder Root TLS – 350 E-CPU upgrade

**C. Probes and Float kits**

- a. Veeder Root Mag Plus
- b. 4" Fuel floats with water detecting floats

**CERTIFICATE OF SERVICE**

I certify that that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy via Email to Complainant:

Raymond C. Bosch, Attorney  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219  
[bosch.raymond@epa.gov](mailto:bosch.raymond@epa.gov)

Copy via Email to James Carson, the attorney for Respondent at:

[jamescarson.attorney@gmail.com](mailto:jamescarson.attorney@gmail.com)

AND

Copy via first class mail to James Carson, the attorney for Respondent at:

James D. Carson  
Attorney at Law  
13435 Pine Street  
Omaha, NE 68144

Dated this 21 day of March, 2019.

  
Signed \_\_\_\_\_