



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

MAY 29 2012

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. and Mrs. James McDonald
605 South Market Street
Lancaster, South Carolina 29720

Re: Crossroads Convenience Store
Consent Agreement and Final Order
Docket No. RCRA-UST-04-2012-0018

Dear Mr. and Mrs. McDonald:

Enclosed please find a copy of the executed Consent Agreement and Final Order (CA/FO) as filed with the Regional Hearing Clerk (RHC) in the above-referenced matter. The CAFO is effective on the date it is filed with the RHC, and the penalty due date is calculated from that effective date.

If you have any questions, please feel free to contact me at (404) 562-9685.

Sincerely,

A handwritten signature in cursive script that reads "Colleen E. Michuda".

Colleen E. Michuda
Associate Regional Counsel
Office of Environmental Accountability

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:) Docket No.: RCRA-UST-04-2012-0018
)
Mr. James R. McDonald) Proceeding under Section 9006
Mrs. Cynthia T. McDonald) of the Resource Conservation
605 South Market Street) and Recovery Act, as amended
Lancaster, South Carolina 29720) 42 U.S.C. § 6991e
)
RESPONDENTS.)
_____)

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EPA REGION IV
2012 MAY 29 PM 2:35
HEARING CLERK

CONSENT AGREEMENT

I. NATURE OF THE ACTION

1. This is a civil administrative enforcement action, ordering compliance with the requirements of the State Underground Petroleum Environmental Response Bank Act (SUPERB), S.C. Code Ann. §§ 44-2-10 et seq. (Subtitle I of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §§ 6991 et seq.). This action is seeking injunctive relief and civil penalties pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e, for alleged violations of SUPERB and its corresponding regulations, set forth at S.C. Code Ann. Regs. 61-92, Part 280 (2000) (Subtitle I of RCRA and its corresponding regulations, set forth at Title 40 of the Code of Federal Regulations (40 C.F.R.), Part 280).

2. 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, provide that where the 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 (CAFO). 40 C.F.R. §§ 22.13 and 22.18(b)(2).

3. The parties have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18, and desire to settle this action. Accordingly, before any testimony has been taken upon the pleadings and without any admission of violation or adjudication of any issue of fact or law, and in accordance with 40 C.F.R. § 22.13(b), the parties have agreed to the execution of this CAFO, and Respondents hereby agree to comply with the terms of this CAFO.

II. THE PARTIES

4. Complainant is the Director, RCRA Division, Region 4, United States Environmental Protection Agency (EPA). Complainant is authorized to issue the instant CAFO pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e, and applicable delegations of authority.

5. Respondents are Mr. James R. McDonald and Mrs. Cynthia T. McDonald (Respondents), the owners of the underground storage tank (UST) systems located at Crossroads Convenience Store, 1667 Memorial Park Road, Lancaster, South Carolina 29720 (the Facility).

III. PRELIMINARY STATEMENTS

6. Pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c, the State of South Carolina (the State) received final authorization from EPA to carry out a state UST program in lieu of the federal UST program. The requirements of the authorized state program are found at S.C. Code Ann. Regs. 61-92, Part 280.

7. Although EPA has granted the State of South Carolina authority to enforce its own UST program, EPA retains jurisdiction and authority to initiate independent enforcement actions in South Carolina pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e. This authority is exercised by EPA in the manner set forth in the Memorandum of Agreement between EPA and the State.

8. Pursuant to Section 9006(a)(2) of RCRA, 42 U.S.C. § 6991e(a)(2), Complainant has given notice of this action to the State of South Carolina prior to issuing this CAFO.

9. Section 44-2-50 of the South Carolina Annotated Code, S.C. Code Ann. § 44-2-50 (Section 9003 of RCRA, 42 U.S.C. § 6991b), authorizes the promulgation of release detection, prevention, and corrective action regulations applicable to all owners and operators of USTs as may be necessary to protect human health and the environment. These regulations are found at S.C. Code Ann. Regs. 61-92, Part 280 (40 C.F.R. Part 280).

10. Pursuant to S.C. Code Ann. Regs. 61-92.280.21(d), which requires compliance with S.C. Code Ann. Regs. 61-92.280(c)(1)(i) (40 C.F.R. § 280.21(d), which requires compliance with 40 C.F.R. § 280.20(c)(1)(i)), in order to prevent spilling associated with product transfer to the UST system, all existing tank systems must utilize spill prevention equipment that will prevent release of product to the environment when the transfer hose is detached from the fill pipe.

IV. ALLEGATIONS AND DETERMINATIONS

11. Respondents are "persons" as defined in S.C. Code Ann. Regs. 61-92.280.12 (40 C.F.R. § 280.12).

12. Respondents are "owners" of "underground storage tanks" used as "petroleum UST systems" as those terms are defined in S.C. Code Ann. Regs. 61-92.280.12 (40 C.F.R. § 280.12).

13. The USTs at the Facility are "existing tank systems" as defined in S.C. Code Ann. Regs. 61-92.280.12 (40 C.F.R. § 280.12).

14. Gasoline and kerosene are "regulated substances" as defined in S.C. Code Ann. Regs. 61-92.280.12 (40 C.F.R. § 280.12).

15. On March 7, 2011, EPA conducted a compliance inspection (CI) of Respondents' petroleum UST systems located at Crossroads Convenience Store, 1667 Memorial Park Road, Lancaster, South Carolina 29720. Crossroads Convenience Store is a gasoline service station with four (4) single-walled USTs installed on June 24, 1986. Tanks #1-3 are 8,000-gallon gasoline USTs; Tank #4 is a 2,000-gallon kerosene UST.

16. At the time of the CI, the spill prevention equipment (spill bucket) installed on Tank #4 had a broken seal and could therefore cause product to seep into the ground in the event that product is released during the delivery of product into Tank #4.

17. EPA therefore alleges that Respondents violated Section 44-2-50 of the South Carolina Annotated Code, S.C. Code Ann. § 44-2-50 (Section 9003 of RCRA, 42 U.S.C. § 6991b), and S.C. Code Ann. Regs. 61-92.280.21(d), which requires compliance with S.C. Code Ann. Regs. 61-92.280.20(c)(1)(i) (40 C.F.R. § 280.21(d), which requires compliance with 40 C.F.R. § 280.20(c)(1)(i)), by failing to have adequate spill prevention equipment on Tank #4.

V. TERMS OF AGREEMENT

Based on the foregoing, the parties agree to the following:

18. Respondents have submitted information demonstrating that the spill bucket has been repaired on Tank #4.

Within thirty (30) calendar days of receipt of the executed copy of this CAFO, Respondents shall submit to EPA a certification signed by an authorized representative stating that the Facility is in compliance with federal and state UST regulations. This certification shall read as follows:

"I certify under penalty of law that, to the best of my knowledge and belief, the USTs located at Crossroads Convenience Store, 1667 Memorial Park Road, Lancaster, SC 29720, which are the subject of this CAFO, Docket No. RCRA-04-2012-0018, are in compliance with the UST system spill prevention requirements of S.C. Code Ann. Regs., R. 61-92.280.20(c)(1)(i) (40 C.F.R. § 280.20(c)(1)(i)).

All work was done under my direction or supervision according to a system designed to assure that qualified personnel implemented and completed the required tasks. This certification is based on my inquiry of the person(s) who performed the tasks, or those persons directly responsible for the person(s) who performed the tasks. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

This certification shall be sent to EPA at the address below:

William E. Truman
Chief, Underground Storage Tank Section
U.S. Environmental Protection Agency, Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, Georgia 30303
(404) 562-9457

19. For the purposes of this CAFO, Respondents admit the jurisdictional allegations set forth above pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e.

20. Pursuant to 40 C.F.R. § 22.18(b)(2), Respondents neither admit nor deny the factual allegations set forth above.

21. Pursuant to 40 C.F.R. § 22.18(b)(2), Respondents waive any right to contest the EPA allegations and their right to appeal the CAFO.

22. Respondents waive their right to challenge the validity of this CAFO and the settlement of the matters addressed in this CAFO on the basis of any issue related to the Paperwork Reduction Act.

23. Respondents waive any right they may have pursuant to 40 C.F.R. § 22.8, to participate in any communication addressed to EPA officials, where the purpose of such communication is to persuade such officials to accept and issue this CAFO.

24. The parties agree that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of SUPERB (RCRA Subtitle D).

25. The parties agree that compliance with the terms of this CAFO shall resolve Respondents' liability for civil penalties for the violations and facts alleged and stipulated to in this CAFO.

26. The parties agree that they will pay their own costs and attorney's fees.

VI. PAYMENT OF CIVIL PENALTY

27. Respondents consent to the payment of a civil penalty in the amount of **THREE THOUSAND, FIVE HUNDRED, FIFTEEN DOLLARS (\$3,515)**, payable within thirty (30) calendar days of the effective date of this CAFO.

28. Payment shall be made by cashier's or certified check, or by Automated Clearing House (ACH) (also known as REX or remittance express). If paying by check, the check shall be payable to: **Treasurer, United States of America**. The Facility name and the docket number for this matter shall be referenced on the face of the check. If Respondents send payment by the U.S. Postal Service, payment shall be sent to:

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

If Respondents send payment by non-U.S. Postal express mail delivery, the payment shall be sent to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, Missouri 63101
(314) 418-1028

If paying by ACH, Respondents shall remit payment to:

PNC Bank
ABA: 051036706
Account Number: 310006
CTX Format Transaction Code 22 - checking
Environmental Protection Agency
808 17th Street, NW
Washington, D.C. 20074
Contact: Jesse White, (301) 887-6548

29. Respondents shall submit a copy of the payment to:

Patricia A. Bullock
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, Georgia 30303

and to:

William E. Truman
Chief, Underground Storage Tank Section
U.S. Environmental Protection Agency, Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, Georgia 30303

30. If Respondents fail to remit the civil penalty as agreed to herein, EPA is required to assess interest, penalties, and a charge to cover the costs of processing and handling the delinquent claim. Interest, at the statutory judgment rate provided for in 31 U.S.C. § 3717, will begin to accrue on the civil penalty if not paid as specified above. Pursuant to 31 U.S.C. § 3717, Respondents must pay the following amounts on any amount overdue:

- (a) Interest. Any unpaid portion of a civil penalty or stipulated penalty must bear interest at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1). Interest will therefore begin to accrue on a civil penalty or stipulated penalty if it is not paid by the last date required. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 4 C.F.R. § 102.13(c).
- (b) Monthly Handling Charge. Respondents must pay a late payment handling charge of \$15.00 on any late payment, with an additional charge of \$15.00 for each subsequent thirty (30) calendar-day period over which an unpaid balance remains.
- (c) Non-Payment Penalty. On any portion of a civil penalty or stipulated penalty more than ninety (90) calendar days past due, Respondents must pay a non-payment penalty of six percent (6%) per annum, which will accrue from the date the penalty payment became due and is not paid. This non-payment is in addition to charges which may accrue under subparagraphs (a) and (b).

31. Penalties paid pursuant to this CAFO are not tax deductible under 26 U.S.C. § 62(f).

VII. PARTIES BOUND

32. This CAFO shall be binding upon Respondents and their successors and assigns. Respondents shall cause their officers, directors, employees, agents, and all persons, including independent contractors, contractors, and consultants acting under or for Respondents, to comply with the provisions hereof in connection with any activity subject to this CAFO.

33. No change in ownership, partnership, corporate, or legal status relating to the Facility will in any way alter Respondents' obligations and responsibilities under this CAFO.

34. The undersigned representative of Respondents hereby certifies that she or he is fully authorized to enter into this CAFO and to execute and legally bind Respondents to it.

VIII. RESERVATION OF RIGHTS

35. Notwithstanding any other provision of this CAFO, an enforcement action may be brought pursuant to Section 9003(h) of RCRA, 42 U.S.C. § 6991b(h), or other statutory authority, should EPA find that the release of regulated substances from a UST may have occurred and implementation of any corrective action is needed to address such release.

36. Complainant reserves the right to take enforcement action against Respondents for any future violations of RCRA or SUPERB and their implementing regulations and to enforce the terms and conditions of this CAFO.

37. Except as provided above, nothing in this CAFO shall constitute a release from any claim (civil or criminal), cause of action, or demand in law or equity for any liability Respondents may have arising out of or relating in any way to Respondents' management of the USTs located at the Facility.

38. This CAFO may be amended or modified only by written agreement executed by both EPA and Respondents.

39. The provisions of this CAFO shall be deemed satisfied when Respondents have fully fulfilled the payment and certification obligations required by this CAFO.

IX. OTHER APPLICABLE LAWS

40. All actions required to be taken pursuant to this CAFO shall be undertaken in accordance with the requirements of all applicable laws and regulations. Respondents shall obtain or cause their representatives to obtain all necessary permits and approvals as required.

X. SERVICE OF DOCUMENTS

41. A copy of any legal documents that Respondents file in this action should be sent to the following attorney who represents EPA in this matter and who is authorized to receive service for EPA in this proceeding:

Colleen E. Michuda
Associate Regional Counsel
U.S. Environmental Protection Agency, Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, Georgia 30303

XI. SEVERABILITY

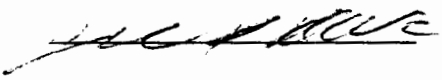
42. It is the intent of the parties that the provisions of this CAFO are severable. If any provision or authority of this CAFO or the application of this CAFO to any party or circumstance is held by any judicial or administrative authority to be invalid or unenforceable, the application of such provisions to other parties or circumstances and the remainder of the CAFO shall remain in force and shall not be affected thereby.

XII. EFFECTIVE DATE

43. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO:

Mr. James R. McDonald
Mrs. Cynthia T. McDonald, Respondents

By:  Dated: 4-24-12
Print Title: Owner

U.S. Environmental Protection Agency, Complainant

By:  Dated: 5/14/12
G. Alan Farmer, Director
RCRA Division
U.S. EPA, Region 4

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

IN THE MATTER OF:)	Docket No.: RCRA-UST-04-2012-0018
)	
Mr. James R. McDonald)	Proceeding under Section 9006
Mrs. Cynthia T. McDonald)	of the Resource Conservation
605 South Market Street)	and Recovery Act, as amended
Lancaster, South Carolina 29720)	42 U.S.C. § 6991e
)	
RESPONDENTS.)	
_____)	

FINAL ORDER

The foregoing Consent Agreement is hereby approved, ratified and incorporated by reference into this Final Order in accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules of Practice), 40 C.F.R. Part 22. The Respondents are hereby ORDERED to comply with all of the terms of the foregoing Consent Agreement effective immediately upon filing of this Consent Agreement and Final Order with the Regional Hearing Clerk. This Order disposes of matters under RCRA Subtitle I pursuant to 40 C.F.R. §§ 22.18 and 22.31.

BEING AGREED, IT IS SO ORDERED this 29th day of May, 2012

BY: Susan B. Schub
Susan B. Schub
Regional Judicial Officer
United States Environmental Protection Agency, Region 4

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing Consent Agreement and the attached Final Order (CAFO), in the Matter of Mr. James R. McDonald and Mrs. Cynthia T. McDonald, Docket Number: RCRA-UST-04-2012-0018, on the parties listed below in the manner indicated:

Colleen E. Michuda,
Associate Regional Counsel
U.S. Environmental Protection Agency
Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, Georgia 30303

(Via EPA's internal mail)

Quantindra Smith
RCRA Division
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

(Via EPA's internal mail)

Mr. James R. McDonald
Mrs. Cynthia T. McDonald
605 South Market Street
Lancaster, South Carolina 29720

(Via Certified Mail- Return Receipt
Requested)

Date

5-29-12



Patricia Bullock, Regional Hearing Clerk
U.S. Environmental Protection Agency
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
(404) 562-9511