



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

SEP 10 2014

CERTIFIED MAIL --
RETURN RECEIPT REQUESTED

Leah Harary, Executive Director
Legal and Compliance
Morgan Stanley
1221 Avenue of the Americas, 35th Floor
New York, NY 10020

U.S. Environmental
Protection Agency-Reg 2
2014 SEP 10 AM 11:00
REGIONAL HEARING
CLERK

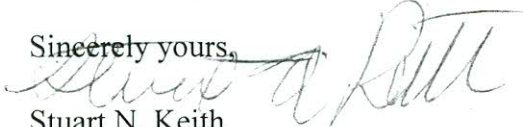
Re: **In the Matter of Morgan Stanley**
Docket No. RCRA-02-2014-7502

Dear Ms. Harary:

Enclosed is a copy of the Consent Agreement and Final Order in the above-referenced proceeding, signed by the Regional Judicial Officer of the United States Environmental Protection Agency.

Please arrange for payment of this penalty according to the instructions given in the Order.

Sincerely yours,


Stuart N. Keith
Assistant Regional Counsel
Waste & Toxic Substances Branch
Office of Regional Counsel

Enclosure

Cc: Russ Brauksieck, Chief
Facility Compliance Section
NYSDEC
625 Broadway -11th floor
Albany, NY 12233

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. Environmental
Protection Agency-Reg 2

2014 SEP 10 AM 11:00

REGIONAL HEARING
CLERK

In the Matter of:

Morgan Stanley,
Respondent

Proceeding Under Section 9006
of the Solid Waste Disposal Act,
as amended.

**CONSENT AGREEMENT
AND FINAL ORDER**

Docket No. RCRA-02-2014-7502

This is a civil administrative proceeding instituted pursuant to Section 9006 of the Solid Waste Disposal Act, as amended by 42 U.S.C. §6901 et seq. (referred to collectively as the "Act" or "RCRA").

The Complainant in this proceeding is the Director of the Division of Enforcement and Compliance Assistance, EPA Region 2, who has been duly delegated the authority to institute and carry forward this proceeding. The Respondent is Morgan Stanley, the "owner" of "underground storage tanks" ("USTs") or "UST Systems" as those terms are defined in Section 9001 of the Act, 42 U.S.C. §§ 6991, and 40 C.F.R. § 280.12, located at 2000 Westchester Avenue in the city of Purchase, New York ("facility") at times relevant to this action. Pursuant to 40 Code of Federal Regulations ("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 simultaneously be commenced and concluded by the issuance of a Consent Agreement and Final Order ("CA/FO") pursuant to 40 C.F.R. §§ 22.18.

The Complainant and Respondent agree that settling this matter by entering into this CA/FO pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) is an appropriate means of resolving this matter without further litigation.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent is Morgan Stanley.
2. Respondent has been and remains the owner of USTs located at 2000 Westchester Avenue in Purchase, New York (the “facility”). At times relevant to this action, Respondent was subject to the requirements of the Act and its implementing regulations codified at 40 C.F.R. Part 280 applicable to USTs.
3. On or about August 27, 2010, the Westchester County Department of Health (“WCDOH”) performed a UST inspection at the facility which was later referred to EPA for enforcement. Based on the WCDOH inspection, EPA issued to Morgan Stanley a Proposed Field Citation and Expedited Settlement (“Field Citation”) on March 29, 2011 for failure to install cathodic protection on the metal piping of USTs at the facility in violation of 40 C.F. R. §280.21 (c). The Field Citation included a proposed penalty. In its response to the Field Citation dated April 30, 2011, Morgan Stanley sent a check for the proposed penalty and indicated it was investigating a manner to cure the violation. On January 25, 2012, EPA withdrew the Field Citation and remitted the payment back to Morgan Stanley since it had not documented compliance in accordance with the conditions set forth in the Field Citation.
4. Pursuant to Section 9005 of RCRA, on or about January 25, 2012 and May 14, 2013, EPA sent Information Request Letters (“IRLs”) to Respondent in order to help determine more conclusively Respondent’s compliance with the regulations for the USTs at its facility.
5. Respondent timely submitted responses to EPA’s IRLs.
6. In its responses to EPA’s IRLs dated March 1, 2012 and June 13, 2013, Respondent indicated that it had not yet complied with the cathodic protection requirements for its UST piping.
7. Respondent has informed EPA that it completed replacement of the piping for the

“Lower Tanks” at the facility on about October 29, 2013.

8. Respondent has informed EPA that it took the “Upper Tank” system at the facility off-line in or about February 2014, at which time Respondent installed a temporary above-ground tank that was connected to fiberglass-reinforced plastic piping that does not require cathodic protection.

9. Thus, in or about February 2014 there no longer was a continuing violation of the cathodic protection requirements for the piping at Respondent’s facility.

10. Respondent has advised EPA that it is completing its installation of fiberglass-reinforced piping and a new tank for the “Upper Tank” system, and will remove the temporary above-ground tank when that installation is complete.

11. Based on Respondent’s responses to the IRLs and later information supplied by Respondent, EPA determined that during the period from at least August 27, 2010 until in or about February 2014, Respondent failed to install cathodic protection for its UST piping at the facility.

12. The failure to install the cathodic protection as described in paragraph 11, above, is a violation of 40 C.F.R. § 280.21(c).

CONSENT AGREEMENT

Based upon the foregoing, and pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e, 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, the parties hereby agree, as follows:

1. Respondent admits the jurisdictional basis for this action and neither admits nor denies the Findings of Fact and Conclusions of Law set forth above.

2. Respondent shall comply with the applicable requirements found in 40 C.F.R. Part 280

for any UST Systems it has owned or operated or that it owns or operates at the facility.

3. Respondent consents to the payment of a civil penalty as set forth in this Consent Agreement, and agrees to comply with the compliance provisions and other terms of this Consent Agreement.

4. Respondent shall pay, by cashier's or certified check, a civil penalty in the amount of **Ten Thousand Dollars** (\$10,000.00). The payment instrument shall be payable to the "Treasurer of the United States of America" and shall be mailed to:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

Or by **OVERNIGHT MAIL:**

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
Attn: USEPA Box No. 979077
St. Louis, MO 63101

Contact: Natalie Pearson
314-418-4087

If Respondent chooses to make the payment by EFT, then Respondent shall provide the following information to its 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: Morgan Stanley
- 7) Case Number: RCRA-02-2014-7502.

The check shall be identified with a notation of the name and docket number of this case as: In the Matter of Morgan Stanley, RCRA-02-2014- 7502. Respondent shall also send a copy of the check to both Stuart Keith, Assistant Regional Counsel, United States Environmental Protection Agency, 290 Broadway, 16th Floor, New York, New York 10007-1866, and Karen Maples, Regional Hearing Clerk, at the same address.

- a. The 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 at the end of this document (the “due date”).
- b. Failure to pay the full amount, according to the above provisions may result in the referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection.
- c. Further, if timely payment is not received on or before the due date, interest will be assessed, at the annual rate established by the Secretary of the Treasury pursuant to 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 thirty (30) day period, or any portion thereof, following the due date in which the balance remains unpaid.
- d. A 6% per annum penalty will also be applied on any principal amount not paid within 90 days of the due date.
- e. The effective date of this Consent Agreement and Final Order shall be the date of its filing with the Regional Hearing Clerk, Region 2, New York, New York.

5. This Consent Agreement and Final Order shall not relieve Respondent from its continuing obligation to comply with all applicable provisions of federal, state or local environmental laws.
6. This Consent Agreement is being voluntarily and knowingly entered into by Respondent and EPA to resolve (upon full payment of the civil penalty) Respondent's liability pursuant to Section 9006 for civil penalties for the violation specifically described in paragraphs 11 and 12 of the Findings of Fact and Conclusions of Law section in this CA/FO. Nothing herein shall be read to preclude EPA or the United States, however, from pursuing appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.
7. Respondent has read the foregoing Consent Agreement, understands its terms, finds it to be reasonable and consents to the issuance of the accompanying Final Order. The parties agree that all terms of settlement are set forth herein.
8. Respondent hereby waives its right to request or to seek any Hearing on any of the terms of this Consent Agreement or the Findings of Fact and Conclusions of Law herein, or on the accompanying Final Order.
9. Respondent waives any rights 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, the Deputy Regional Administrator, or the Regional Judicial Officer 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.
10. Respondent certifies that its signatory 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.
11. Each party hereto agrees to bear its own costs and fees in this matter.

12. Respondent consents to service upon Respondent of a copy of this CA/FO by an EPA employee other than the Regional Hearing Clerk.

13. 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 or legal proceeding, except one to enforce the terms of this CA/FO.

14. The provisions of this Consent Agreement shall be binding upon Respondent, its officials, authorized representatives and successors or assigns and upon Complainant.

RESPONDENT:

BY:

Name (Print)



Richard Chalker, Managing Director
Morgan Stanley

DATE:

8/18/14

COMPLAINANT:

BY:


Dore LaPosta, Director
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency -
Region 2

DATE:

AUGUST 27, 2014

FINAL ORDER

The Regional Judicial Officer of the U.S. Environmental Protection Agency, Region 2, concurs in the foregoing Consent Agreement in the case of In the Matter of Morgan Stanley, bearing Docket No. RCRA-02-2014-7502. The Consent Agreement, having been duly accepted and entered into by the parties to this matter, is hereby ratified, and incorporated into this Final Order, which is hereby issued and shall take effect when filed with the Regional Hearing Clerk of EPA, Region 2. 40 C.F.R. Section 22.31(b). This Final Order is being entered pursuant to the authority of 40 C.F.R. Section 22.18(b)(3) and shall constitute an order issued under authority of Section 9006 of RCRA, 42 U.S.C. Section 6991e.



Helen Ferrara
Regional Judicial Officer
U.S. Environmental Protection Agency -
Region 2
290 Broadway
New York, New York 10007-1866

DATE: September 4, 2014

CERTIFICATE OF SERVICE

I certify that I have caused to be sent the foregoing CONSENT AGREEMENT and its accompanying FINAL ORDER bearing the docket number RCRA-02-2014-7502, in the following manner to the respective addressees listed below:

Copy by
Certified Mail/
Return Receipt Requested:

Leah Harary Executive Director
Legal and Compliance
Morgan Stanley
1221 Avenue of the Americas – 35th Floor
New York, NY 10020

Original and One Copy
by Hand:

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

Dated: SEP 10 2014, 2014
New York, New York

