



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

January 6, 2010

BY CERTIFIED MAIL –
RETURN RECEIPT REQUESTED

Connie R. Kane, Esq.
Office of Assistant Chief Counsel
U.S. Customs and Border Protection
6650 Telecom Drive, Ste 100
Indianapolis, IN 46278

U.S. ENVIRONMENTAL
PROTECTION AGENCY REGION 2
2010 JAN -6 11 31 34
REGIONAL HEARING
OFFICE

In the Matter of U.S. Department of Homeland Security
Docket No. RCRA-02-2009-7505

Dear Ms. Kane

Please find enclosed a copy of the Consent Agreement and Final Order (“CA/FO”) in the above-referenced matter signed by the Regional Administrator of the U.S. Environmental Protection Agency, Region 2 on December 30, 2009.

The schedule for payment of the penalty is set forth in Paragraph 4 of the Consent Agreement. Kindly arrange for the payment in accordance with the terms of the CA/FO. Thank you in advance for your cooperation in this matter.

If you have any questions, please contact me at (212) 637-3167.

Sincerely yours,

Beverly Kolenberg
Assistant Regional Counsel
Office of Regional Counsel

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

In the Matter of:

U.S. DEPARTMENT OF
HOMELAND SECURITY

Respondent

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

**CONSENT AGREEMENT
AND FINAL ORDER**

Docket No. RCRA-02-2009-7505

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REGION 2
2010 JAN -6 PM 3:35
REGIONAL HEARING
CLERK

This administrative proceeding was instituted pursuant to Section 9006 of the Solid Waste Disposal Act, as amended, 42 U.S.C. § 6901 *et. seq* (referred to collectively as the "Act" or "RCRA"). The Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance, United States Environmental Protection Agency ("EPA"), Region 2 ("EPA" or "Complainant"), issued a "Complaint, Compliance Order, and Notice of Opportunity for Hearing" to the U.S. Department of Homeland Security ("DHS" or "Respondent") on June 30, 2009 for alleged violations at the facility of its component entity Customs and Border Protection ("CBP") located in San Juan, at #1 La Puntilla St., Old San Juan, Puerto Rico 00901 (the "Facility"). The Complaint alleged violations of the Act and the Commonwealth of Puerto Rico's approved regulations, called the "Puerto Rico Underground Storage Tank Regulations" (hereinafter "PRUSTR") promulgated by the Commonwealth of Puerto Rico Environmental Quality Board pursuant to the Puerto Rico Public Policy Environmental Act of 1970. (The Commonwealth of Puerto Rico received approval for its underground storage tank program on January 30, 1998).

The Complainant and Respondent have reached an amicable resolution of this matter and

agree, by entering into this Consent Agreement and Final Order (“CA/FO”) pursuant to 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, including, specifically, 22.18(b)(2) and (3), that settlement of this matter upon the terms set forth in this CA/FO is an appropriate means of resolving this case.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Respondent is the U.S. Department of Homeland Security on behalf of its component entity CBP. Respondent is a department of the executive branch of the federal government.
2. Respondent is a "person" within the meaning of Section 9001(5) of the Act, 42 U.S.C. § 6991(5), and Rule 105 of PRUSTR.
3. For all times relevant to the allegations set forth in the Complaint, Respondent “owned” and/or “operated” one “underground storage tank” (“UST”) system, as those terms are defined in Section 9001 of the Act, 42 U.S.C. § 6991, and in Rule 105 of PRUSTR, that is located at the Facility of CBP.
4. Respondent’s UST system was installed at the Facility in 1992. The UST system is a “new tank system” (as the term is defined in Rule 105 of PRUSTR) and is subject to the requirements set out in Rule 201 of PRUSTR.
5. On or about May 22, 2008, pursuant to Section 9005 of the Act, 42 U.S.C. § 6991d, representatives of EPA (“EPA Representatives”) inspected the Facility. During the inspection (“May 2008 Inspection”) and for all time periods relevant to the allegations set forth in the Complaint, the UST system at the Facility stored diesel fuel for an emergency

generator. The UST system has been and remains subject to the UST requirements set forth in PRUSTR, with the exception of release detection requirements.

6. During the May 2008 Inspection and for all time periods relevant to this Complaint, the UST system at the Facility was a "petroleum UST system" as that term is defined in Rule 105 of PRUSTR.
7. The purpose of the May 2008 Inspection was in part to determine the Respondent's compliance with the Act and the Rules in Parts 1 through 12 of PRUSTR.
8. On or about October 20, 2008, EPA sent CBP a letter, as well as an Information Request Letter ("IRL") and a Notice of Violation ("NOV") for the Facility, which were issued pursuant to Sections 9005(a) and 9006 of the Act, 42 U.S.C. §§ 6991d(a) and 6991e.
9. EPA's IRL sought general information about the UST system owned and/or operated by the Respondent at the Facility, information about any actions taken to correct the violations that were identified during the May 2008 Inspection, and information about measures to prevent recurrence of the violations cited in the NOV.
10. On or about November 26, 2008, CBP submitted to EPA a response to the NOV and IRL ("November 26, 2008 Response").
11. Based on the May 2008 Inspection and Respondent's November 26, 2008 Response, the Complaint alleged that Respondent committed the following violations at the Facility:
 - (i) Failure to provide corrosion protection for metal piping in contact with the ground in violation of Rule 201 (B) of PRUSTR, and
 - (ii) Failure to have overfill protection in violation of Rule 201(C) of PRUSTR.
12. Respondent submitted to EPA a written report and photographs titled "San Juan Customhouse Underground Storage Tank Upgrade and Secondary Containment

Installation Report,” dated January 2009. Respondent also provided a certification, dated July 22, 2009, confirming that it had removed and replaced the metal piping in the Facility’s UST system with steel-in-fiberglass piping and had installed overfill protection to bring the UST into compliance with Rules 201 (B) and (C) of PRUSTR.

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 of this action and neither admits nor denies the Findings of Fact and Conclusions of Law set forth above. Respondent agrees not to contest EPA’s jurisdiction with respect to the execution of this Consent Agreement and the issuance of the attached Final Order.
2. Respondent consents to the payment of a civil penalty as set forth in this Consent Agreement and agrees to comply with the compliance provisions of this Consent Agreement, and its conditions.
3. This Consent Agreement and Final Order shall not relieve Respondent from its continuing obligation to comply with all applicable provisions of federal, Commonwealth and local environmental laws.
4. Respondent shall pay, by cashier’s or certified check or by Electronic Fund Transfer (EFT), a civil penalty for settlement of the violations described above, in the amount of **forty thousand nine hundred and eighty dollars (\$40,980.00)**. If the payment is made by check, the check shall be payable to the “Treasurer of the United States of America”

and shall be mailed to:

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

The check shall be identified with a notation of both the name and docket number of this case as: In the Matter of the U.S. Department Homeland Security, Docket Number RCRA-02-2009-7505. 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”).

a. 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: In the Matter of the U.S. Department of Homeland Security.
- 7) Case Number: RCRA-02-2009-7505.

Such EFT must be received on or before forth-five (45) calendar days after the Effective Date of this CA/FO.

b. Whether the payment is made by check or by ETF, Respondent shall promptly furnish reasonable proof that the payment has been made to:

Beverly Kolenberg
Assistant Regional Counsel,
U.S. Environmental Protection Agency
290 Broadway, 17^h Floor

New York, New York, 10007-1866

and

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

c. Failure to pay the amount in full within the time period set forth above will result in further action for collection or other appropriate action.

d. Further, if timely payment is not received on or before the due date, 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.

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.

f. The civil penalty constitutes a penalty within the meaning of 26 U.S.C. § 162(f).

5. Compliance Provisions

a. To the extent it has not already done so, Respondent shall:

(i) Achieve compliance, within thirty (30) calendar days after the Regional Administrator's signature of the Final Order, and maintain compliance with all applicable provisions of PRUSTR at the Facility.

(ii) In any documents and reports submitted to EPA pursuant to this CA/FO or related to technical work in this case, Respondent shall, by an authorized officer, certify under

penalty of law that the information contained in such document or report is true, accurate and not misleading, by including and signing the following statement:

I certify that, to the best of my knowledge and belief, the information contained in this written certification and in any documents accompanying this certification is true, accurate and complete. In making this statement, I have not made an independent review of all statements contained therein and have relied in good faith on information, statements, and representations furnished to me by employees and contractors of the U.S. Department of Homeland Security and/or Customs and Border Protection. Based on my inquiry of the person or persons (or the supervisors of such persons) directly responsible for gathering the information contained in this written certification and in any documents accompanying this certification, this document is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant potential penalties for submitting materially false information, including the possibility of fines and imprisonment for knowing violations.

- b. Respondent shall submit copies of any communications or reports with respect to the Compliance Provisions of this CA/FO to:

Charles Zafonte
Multimedia Enforcement Coordinator
Compliance Assistance & Program Support Branch
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency, Region 2
290 Broadway, 21st Floor
New York, N.Y. 10007-1866

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 violations of federal UST requirements specifically alleged in the Complaint issued in this case. 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. 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 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.
8. 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.
9. Respondent certifies that he or she 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.
10. Each party hereto agrees to bear its own costs and fees in this matter.
11. Nothing in this Consent Agreement shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. §1341, or other applicable law.

12. Respondent consents to service 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. Nothing in this document is intended or shall be construed to be a ruling on or determination of any issue related to a federal or Commonwealth permit.
15. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present a potential for 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 right set forth in 40 C.F.R. §22.18(c). Further, 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 CAFO, following its filing with the Regional Hearing Clerk. Respondent reserves all available rights and defenses it may have, consistent with the terms of this CA/FO, to defend itself in any such action.
16. The provisions of this Consent Agreement shall be binding upon Respondent, its officials, authorized representatives and successors or assigns and upon Complainant.

U.S. Department of Homeland Security
Docket Number RCRA-02-2009-7505

RESPONDENT:

BY:



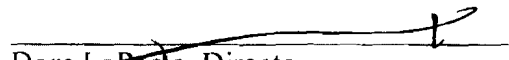
Eugene H. Schied, Assistant Commissioner
Office of Administration
U.S. Customs and Border Protection,
Department of Homeland Security

DATE:

12/23/09

COMPLAINANT:

BY:



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

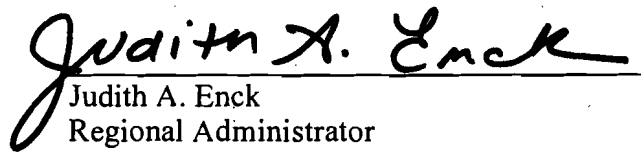
DATE:

December 29, 2009

U.S. Department of Homeland Security
Docket Number RCRA-02-2009-7505

FINAL ORDER

The Regional Administrator (or anyone duly delegated to act on her behalf) of the U.S. Environmental Protection Agency, Region 2, concurs in the foregoing Consent Agreement in the case of In the Matter of the U.S. Department of Homeland Security, Docket Number RCRA-02-2009-7505. 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 pursuant to 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.



Judith A. Enck
Regional Administrator
U.S. Environmental Protection Agency -
Region 2
290 Broadway
New York, New York 10007-1866

DATE: 12/30/09

U.S. Department of Homeland Security
Docket Number RCRA-02-2009-7505

CERTIFICATE OF SERVICE

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

Copy by
Certified Mail/
Return Receipt Requested:

Connie R. Kane
Office of Assistant Chief Counsel
U.S. Customs and Border Protection
6650 Telecom Drive, Ste. 100
Indianapolis, IN 46278

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: JAN - 6, 2010
New York, New York

Suzanne M. Bae