

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

In the Matter of:

Federal Bureau of Prisons

Respondent.

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

**CONSENT AGREEMENT AND
FINAL ORDER**

FCI OTISVILLE

Docket No. RCRA-02-2023-7501

PRELIMINARY STATEMENT

This is a civil administrative proceeding instituted pursuant to Section 9006 of the Solid Waste Disposal Act as amended, 42 U.S.C. § 6901, *et seq.* (“RCRA” or the “Act”) and the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22 (“CROP”). Complainant in this proceeding is the Director of the Enforcement and Compliance Assurance Division, United States Environmental Protection Agency, Region 2 (“EPA”), who has been delegated the authority to sign consent agreements in pre-filing settlements between EPA and a party against whom an administrative penalty is assessed for violations of UST requirements under RCRA and the corresponding federal regulations. Section 9006 of RCRA, 42 U.S.C. § 6991(e), authorizes the Administrator to enforce violations of the Act and the regulations promulgated pursuant to it. The Respondent, the Federal Bureau of Prisons (“Respondent” or “BOP”), has been the owner and/or operator of one federally regulated underground storage tank (“UST”), referred to as UST #10, that supplies diesel for an emergency generator at the Federal Correctional Institution, Otisville (“FCI Otisville”), located at 2 Mile Drive, Otisville, New York 10963.

Based on EPA inspection findings and Respondent’s response to EPA’s Notice of Violation and Request for Information, EPA determined that the Respondent failed to: meet requirements for periodic testing of spill prevention equipment, monitor UST #10 for releases every thirty (30) days during the period of July 2020 to December 2020, ensure that each designated Class C operator met training requirements by October 13, 2018, and maintain records of operation and maintenance walkthrough inspections for one year for UST #10.

Pursuant to Section 22.13(b) of the CROP, where the parties agree to settlement of one or more causes of action before the filing of an administrative complaint, a proceeding may be simultaneously commenced and concluded by issuance of a Consent Agreement and Final Order (“CA/FO”) pursuant to 40 C.F.R. Sections 22.18(b)(2) and 22.18(b)(3) of the CROP. The Complainant and the Respondent have reached an amicable resolution of this matter, and agree that settlement of this matter by entering into this CA/FO is an appropriate means of resolving this case without further litigation.

No adjudicated findings of fact or conclusions of law have been made. Respondent neither admits nor denies the EPA Findings of Fact and Conclusion of Law set forth below.

EPA'S FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent is a department, agency, or instrumentality of the executive branch of the Federal government.
2. Respondent is a "person" within the meaning of Sections 1004(15) and 9001(5) of the Act, 42 U.S.C §§ 6903(15) and 6991(5), and 40 C.F.R § 280.12.
3. The Respondent was and remains the "owner" and/or "operator" of at least one UST or "UST system," as those terms are defined in Section 9001 of the Act, 42 U.S.C § 6991, and/or in 40 C.F.R § 280.12, that is located at 2 Mile Drive, Otisville, New York.
4. Pursuant to Sections 2002, 9002, and 9003 of the Act, 42 U.S.C §§ 6912, 6991(a), and 6991(b), EPA promulgated rules setting forth requirements applicable to owners and operators of UST systems, codified at 40 C.F.R. Part 280. These rules include requirements related to operator training, walkthrough inspections, spill and overfill prevention equipment inspections, and leak detection.
5. 40 C.F.R § 280.12 defines an UST as "any one or combination of tanks (including underground pipes connected thereto) that is used to contain an accumulation of regulated substances, and the volume of which (including the volume of underground pipes connected thereto) is ten (10%) percent or more beneath the surface of the ground."
6. Pursuant to 40 C.F.R. § 280.35(a)(1), single-walled spill prevention equipment must be tested at least once every three years to ensure the equipment is liquid tight by using vacuum, pressure, or liquid testing in accordance with requirements developed by the manufacturer if such requirements exist or a code of practice developed by a nationally recognized association or independent testing laboratory.
7. Pursuant to 40 C.F.R. §280.41(a)(1), USTs installed on or before April 11, 2016 must be monitored for releases every thirty (30) days using one of the methods listed in 40 C.F.R. §280.43(d) through (i) (except for circumstances that do not apply for UST #10).
8. Pursuant to 40 C.F.R. § 280.242(c), UST system owners and operators must ensure each designated Class C operator is either trained by a Class A or Class B operator in accordance with paragraphs (c)(1) and (2) of this section; completes a training program in accordance with paragraphs (c)(1) and (2) of this section; or passes a comparable examination in accordance with paragraph (e) of this section.
9. Pursuant to 40 C.F.R. § 280.243(a), UST system owners and operators must ensure that designated Class C operators met the requirements in 40 C.F.R. § 280.242 not later than October 13, 2018.

10. Pursuant to 40 C.F.R. § 280.36(b), UST system owners and operators must maintain records of operation and maintenance walkthrough inspections for one year, which must include a list of every area checked, whether each area checked was acceptable or needed action to be taken, a description of actions taken to correct an issue, and delivery records if spill prevention equipment is checked less frequently than every thirty (30) days due to infrequent deliveries.
11. Pursuant to Section 9005 of the Act, 42 U.S.C. § 6991(d), on May 12, 2021, an authorized representative of EPA inspected the UST system owned and/or operated by Respondent to determine FCI Otisville's compliance with the Act and 40 C.F.R Part 280. EPA subsequently transmitted a copy of its inspection report to Respondent on or about June 16, 2021, which was subsequently followed on or about September 16, 2021, by EPA sending Respondent a Notice of Violation (NOV) and Request for Information (RFI).
12. On or about December 3, 2021, Respondent submitted a partial response to EPA's NOV/RFI. After further inquiries from EPA, Respondent submitted to EPA via e-mail invoices from Luzon Environmental Services on February 17 and 22, 2022, related to triennial spill and overfill prevention tests/inspections and repairs to the Respondent's tank monitoring system.
13. Based on EPA's UST inspection and Respondent's responses to the NOV/RFI submitted on December 3, 2021, February 17, 2022, and February 22, 2022, EPA issued a Notice of Potential Violations (NOPV) and Opportunity to Confer (NOPVOC) on June 23, 2022.
14. Based on the inspection report of FCI Otisville, along with Respondent's responses to EPA's (NOPVOC), EPA has determined that Respondent failed to:
 - a. Conduct the initial triennial test of UST #10's spill prevention equipment by October 13, 2018, to ensure the equipment was liquid tight;
 - b. Monitor UST #10 for releases at least every thirty (30) days from August 1, 2020 through December 3, 2020;
 - c. Train each designated Class C operator by October 13, 2018; and
 - d. Maintain documentation of periodic operation and maintenance walkthrough inspections of UST #10 for one year that contains a list of every area checked.
15. In discussions with EPA, the New York State Department of Environmental Conservation (NYSDEC), which is the implementing agency in New York State as that term is defined in 40 C.F.R. § 280.12 and used in 40 C.F.R. 280.244, agreed that Respondent was out of compliance and determined that its failure to conduct the initial 3-year test/inspection of UST #10's spill and overfill prevention equipment by October 13, 2018; to monitor UST #10 for releases every thirty (30) days; and to properly conduct walkthrough inspections as specified in 40 CFR § 280.36(a) requires retraining of the Class B operator at FCI Otisville per 40 C.F.R. § 280.244.

16. Since the June 2022 NOPVOC, the parties have engaged in settlement discussions on the EPA determinations described in Paragraph 14, *supra*, and have now agreed to settle this matter by entering into this Consent Agreement.

CONSENT AGREEMENT

Based upon the foregoing, and pursuant to Section 9006 of RCRA, 42 U.S.C § 6991(e), and 40 C.F.R. § 22.18 of the CROP, it is hereby agreed by and between the Complainant and the Respondent and voluntarily and knowingly accepted by the Respondent, that the Respondent, for purposes of this Consent Agreement: (a) admits the jurisdictional basis of this action; (b) neither admits nor denies the Findings of Fact and Conclusions of Law above; (c) consents to the assessment of the civil penalty set forth below; (d) consents to any and all conditions stated in the consent agreement; (e) consents to the issuance of the Final Order incorporating all the provisions of this Consent Agreement; and (f) waives its right to contest or appeal that Final Order.

It is further hereby agreed by and between Complainant and Respondent, and voluntarily and knowingly accepted by Respondent, that the Respondent shall comply with the following terms and conditions:

1. Commencing on the effective date of the Final Order, Respondent shall hereinafter maintain compliance at its facility with all regulations applicable to owners and operators of USTs as set forth at 40 C.F.R. Part 280 including but not limited to complying with the operator training, walkthrough inspections, spill and overfill prevention equipment triennial inspections, and leak detection requirements to the extent that these rules apply to UST System #10 and any other UST(s) being used at the facility to store regulated substances (including petroleum) to supply an emergency generator.
2. Respondent certifies that, as of the effective date of the CA/FO, to the best of its knowledge and belief, it is complying with all the UST requirements referenced in Paragraph 14 of EPA's Findings of Facts and Conclusions of Law of this CA/FO.
3. On or before thirty (30) calendar days after the effective date of the Final Order in this matter, unless another deadline is approved by EPA, Respondent shall certify and provide reasonable proof to the EPA individuals identified below in Paragraph 13 that the designated Class B operator at FCI Otisville has been retrained in accordance with 40 C.F.R. § 280.242, as required by 40 C.F.R. § 280.244. This certification should include the following statement:

"I certify under penalty of law that, based on information and belief formed after a reasonable inquiry, the statements and information contained in this document accurately reflect whether the above-described required retraining has occurred and are true, accurate, and complete."

BY: 
(Signature)

Date: 03/17/2023
(Please Print)

NAME: AARON CHURCHILL
(Please Print)

TITLE: FACILITIES MANAGER

4. Respondent shall pay a civil penalty to EPA in the total amount of **SEVENTY-SIX THOUSAND, FOUR HUNDRED AND NINETY-SEVEN DOLLARS AND FORTY CENTS (\$76,497.40)**. Such payment shall be made by cashier's check, certified check or by electronic fund transfer (EFT).

5. If the payment is made by check, then the check shall be: (a) made payable to the "Treasurer, United States of America;" (b) identified with a notation thereon listing the following: "In the Matter of Federal Bureau of Prisons, Docket Number RCRA 02-2023-7501;" and (c) mailed to:

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

6. Alternatively, if Respondent chooses to make the payment by EFT, Respondent shall then provide the following information to its remitter bank:

- a. Amount of Payment (**\$76,497.40**).
- b. SWIFT address: **FRNYUS33, 33 Liberty Street, New York, New York 10045**
- c. Account Code for Federal Reserve Bank of New York receiving payment: **68010727**
- d. Federal Reserve Bank of New York ABA routing number: **021030004**
- e. Field Tag 4200 of the Fedwire message should read: **D 68010727 Environmental Protection Agency**
- f. Name of Respondent: **Federal Bureau of Prisons**
- g. Case docket number: **RCRA-02-2023-7501**

7. Payment by Respondent may also be made using the Intra Governmental Payment and Collection application (IPAC), using the Agency's Location Code (ALC) 68-01-0727. Please include the docket number of this action in the description field of the IPAC. The customer service representative is Peter Hendrickson, telephone number 513-487-2086.

8. Whether Respondent makes payment by cashier's check, certified check or by the EFT method, Respondent shall, promptly when payment has been made, furnish reasonable proof that the required payment has been made, and such proof shall be furnished to the EPA individuals identified below in Paragraph 13.
9. The payment must be received at the above address (or account of EPA) on or before thirty (30) calendar days of the effective date of the Final Order, as discussed in Paragraph 25 below.
10. Full payment of the penalty described in Paragraph 4 of this Consent Agreement shall only resolve Respondent's liability for federal civil penalties for the violation(s) described in Paragraph 14 of EPA's Findings of Fact and Conclusions of Law. Full payment of this penalty shall not in any case affect the right of EPA or the United States from pursuing appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.
11. Respondent shall seek all existing funds to meet the requirements of the CA/FO. Failure to obtain adequate funds or appropriations from Congress does not release Respondent from its obligation to comply with RCRA, the applicable regulations thereunder, or with this CA/FO. Nothing in this CA/FO shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341.
12. Complainant shall e-mail to Respondent (to the representative designated in Paragraph 13 of this Consent Agreement, *infra*) a copy of the fully executed CA/FO. Respondent consents to service of the CA/FO by email and consents to service by an employee of EPA other than the Regional Hearing Clerk of EPA, Region 2.
13. Except as the parties may agree otherwise in writing, all documentation and information required to be submitted in accordance with the terms and conditions of this Consent Agreement shall be sent by e-mail to:

Ronald Lockwood
Enforcement and Compliance Assurance Division
US Environmental Protection Agency, Region 2
290 Broadway, 21st Floor
New York, New York 10007-1866
lockwood.ronald@epa.gov

and

Suzanne Englot, Assistant Regional Counsel
Office of Regional Counsel
US Environmental Protection Agency, Region 2
290 Broadway, 16th Floor

New York, New York 10007-1866
englot.suzanne@epa.gov

Unless the above-named EPA contacts are later advised otherwise in writing, EPA shall send any future written communications related to this matter (including any correspondence related to payment of the penalty) to Respondent by email to:

Aaron Churchill
Facilities Manager
Federal Bureau of Prisons
Federal Correctional Institution, Otisville
2 Mile Drive
Otisville, NY 10963
achurchill@bop.gov

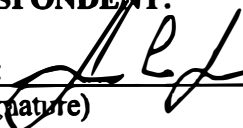
14. Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable and consents to the issuance and its terms. Respondent consents to the issuance of the accompanying Final Order. Respondent agrees that all the terms of the settlement are set forth herein.
15. Respondent explicitly and knowingly consents to the assessment of the civil penalty as set forth in this Consent Agreement and agrees to pay the civil penalty in accordance with the terms of the Consent Agreement.
16. Respondent agrees not to contest the validity of any term of this CA/FO in any action, suit or proceeding brought by the United States, including EPA, to enforce this CA/FO or to enforce a judgment relating to this CA/FO.
17. Respondent waives its right to request a hearing on this Consent Agreement, or the Final Order included herein, including any right to contest any of EPA's Findings of Fact and Conclusions of Law contained within this document. In addition, Respondent expressly waives any right to contest the EPA determinations contained in this CA/FO and to appeal the Final Order of this CA/FO, including any right to confer with the EPA Administrator under 40 C.F.R. § 22.31(e) with regard to this case. Respondent expressly waives its right to confer with the Administrator pursuant to Section 6001(b)(2) of RCRA, 42 U.S.C. § 6961(b)(2), on any issue of fact or law set forth in this CA/FO.
18. This CA/FO does not relieve Respondent of its obligations to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or a determination of, any issue related to any federal, state or local permit. This CA/FO does not waive, extinguish, or otherwise affect Respondent's obligation to comply with applicable provisions of the Act and the regulations promulgated thereunder.
19. Nothing in this document is intended nor shall it be construed to waive, prejudice or otherwise affect the right of EPA, or the United States, from pursuing any appropriate remedy, sanction or penalty prescribed by law against Respondent for having made any

material misrepresentations or for having provided materially false information in any document in connection with this proceeding.

20. Nothing herein shall be construed to limit the power of the EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.
21. The provisions of this CA/FO shall be binding upon both EPA and the Respondent, their officers, agents, authorized representatives and successor agencies, departments or instrumentalities.
22. Each party hereto agrees to bear its own costs and fees in connection with this proceeding.
23. The undersigned signatory for Respondent certifies that: (a) he or she is duly and fully authorized to enter into this Consent Agreement and all the terms, conditions and requirements set forth in this Consent Agreement; and b) he or she is duly and fully authorized to bind the party on behalf of which he or she is entering this Consent Agreement to comply with and abide by all the terms, conditions and requirements of this Consent Agreement.
24. EPA and Respondent agree that the parties may use electronic signatures for this matter.
25. Pursuant to 40 C.F.R. Section 22.13(b), the effective date of this CA/FO shall be the date when it is filed with the Regional Hearing Clerk of the United States Environmental Protection Agency, Region 2.

**In the Matter of Federal Bureau of Prisons
Docket Number RCRA-02-2023-7501**

RESPONDENT:

BY: 
(Signature)

NAME: J. L. Jamison
(Please Print)

TITLE: Warden

COMPLAINANT

for Dore F. LaPosta, Director
Enforcement and Compliance Assurance Division
Environmental Protection Agency - Region 2
290 Broadway, 21st Floor
New York, NY 10007-1866

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FINAL ORDER

The Regional Administrator of the U.S. Environmental Protection Agency, Region 2, ratifies the foregoing Consent Agreement. The Consent Agreement, entered into by the Complainant and the Respondent, is hereby approved, incorporated herein, and issued as an Order pursuant to Section 9006 of the Act and 40 C.F.R. § 22.18(b)(3). The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, U.S. EPA, Region 2, New York, New York.

Lisa F. Garcia
Regional Administrator
U.S. Environmental Protection Agency - Region 2
290 Broadway, 26th Floor
New York, NY 10007-1866

DATE: _____

In the Matter of Federal Bureau of Prisons
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CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing fully executed CONSENT AGREEMENT and FINAL ORDER, bearing the above-referenced docket number, in the following manner to the respective addressees below:

Original and One Copy by EMAIL:

Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency- Region 2
290 Broadway, 17th Floor
New York, New York 10007-1866
maples.karen@epa.gov

Copy by EMAIL:

Aaron Churchill
Facilities Manager
Federal Bureau of Prisons
Federal Correctional Institution, Otisville
2 Mile Drive
Otisville, NY 10963
achurchill@bop.gov

and

Toni Wills, Esq.
Assistant General Counsel
Federal Bureau of Prisons
320 First Street, NW, Room 990-E
Washington, DC 20534
Twills@bop.gov

Signed:

Date:

New York, NY