

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2

August 22, 2023 @ 3:30 pm

USEPA – Region II

Regional Hearing Clerk

In the Matter of:

Dutchess Terminals, Inc., ANK Realty  
Inc. and Fair Oak, Inc.

Respondents.

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

**CONSENT AGREEMENT AND  
FINAL ORDER**

Docket No. RCRA-02-2023-7506

**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 and the Revocation/Termination or Suspension of Permits, 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 enforcement action is taken for violations of 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. Each Respondent, Dutchess Terminals, Inc. (“Dutchess”), ANK Realty Inc. (“ANK Realty”) and Fair Oak, Inc. (“Fair Oak”) (all together referred to as “Respondents” or the “Companies”), has been, during all the relevant times, the owner and/or operator of one or more regulated underground storage tank (“UST”), at one or more of the eleven (11) facilities located in New York State and listed in Paragraph 15, below.

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's Findings of Fact and Conclusions of Law set forth below.

### **EPA'S FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. Respondents are Dutchess Terminals, Inc., ANK Realty Inc. and Fair Oak, Inc. Each Respondent is a corporation under the laws of New York State and located at 66 Prospect Street, Poughkeepsie, New York 12601.
2. Each 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. Each Respondent was and remains the "owner" and/or "operator" of USTs or "UST systems," 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 are located at the facilities listed in Paragraph 15, below.
4. Pursuant to Sections 2002, 9002 and 9003 of the Act, 42 U.S.C. §§ 6912, 6991a, 6991b, and 6991d, EPA promulgated rules setting forth requirements for owners and operators of UST systems, codified at 40 C.F.R. Part 280. These rules include but are not limited to requirements related to: (a) financial responsibilities; (b) periodic inspections of spill and overfill prevention equipment; (c) performance of line tightness tests or monthly monitoring of pressurized piping systems; (d) annual testing of the automatic line leak detectors for the piping associated with the USTs; (e) periodic testing of containment sumps; and (f) record keeping of compliance with release detection.
5. Pursuant to 40 C.F.R. § 280.12, EPA is the "implementing agency" responsible for enforcing the requirements of the Act and the regulations promulgated pursuant thereto which are the subject of this case.
6. 40 C.F.R. § 280.12 defines an "underground storage tank or 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."
7. Pursuant to 40 C.F.R. § 280.34, owners and operators of UST systems must cooperate fully with inspections by the implementing agency, as well as requests for document submission, testing, and monitoring by the owner or operator pursuant to Section 9005 of Subtitle I of RCRA.
8. Pursuant to 40 C.F.R. § 280.35(a)(2) owners and operators of UST systems are required to inspect overfill prevention equipment at least once every three years.
9. Pursuant 40 C.F.R. § 280.35(a)(1)(ii) owners and operators of UST systems are required to test the spill prevention equipment at least once every three years.

10. Pursuant to 40 C.F.R. § 280.44(a) owners and operators of UST systems are required to perform an annual test of the operation of the automatic line leak detectors in accordance with § 280.40(a)(3).
11. Pursuant to 40 C.F.R. § 280.41(b)(1)(i)(B) owners and operators of UST systems are required to conduct a line tightness test or provide monthly monitoring of pressurized piping system.
12. Pursuant to 40 C.F.R. § 280.35(a)(1) owners and operators of UST systems are required perform periodic testing of containment sumps.
13. Pursuant to 40 C.F.R. § 280.93, owners or operators of USTs are required to demonstrate financial responsibility for taking corrective action and for compensating third party bodily injury and property damage caused by accidental releases arising from the operation of USTs that they own or operate.
14. Pursuant to 40 C.F.R. § 280.34(c), owners and operators of UST systems are required to keep the records required either: (1) at the UST site and immediately available for inspection by the implementing agency; or (2) at a readily available alternative site and be provided for inspection to the implementing agency.
15. Pursuant to Section 9005 of the Act, 42 U.S.C. § 6991d, over the period of June 13, 2018, and April 11, 2019, EPA authorized representatives inspected UST systems at the following Respondents' facilities in the State of New York to determine their compliance with the Act and 40 C.F.R. Part 280.
  - (a) Kingston Citgo ("Kington Citgo"), 370 Albany Avenue, Kingston, NY 12401 (owned by ANK Realty);
  - (b) Carpenter Valero (Carpenter Valero"), 28 Carpenter Road, Middletown, NY 10941 (owned by ANK Realty);
  - (c) Pine Bush Citgo ("Pine Bush Citgo"), 111 Main Street, Pine Bush, NY 12566 (owned by Dutchess);
  - (d) Fishkill Citgo ("Fishkill Citgo"), 1528 Route 52, Fishkill, NY 12524 (owned by ANK Realty);
  - (e) LaGrange Valero ("LaGrange Valero"), 1144 Route 55, Lagrangeville, NY 12540 (owned by ANK Realty);
  - (f) Route 9D Citgo ("Route 9D Citgo"), 2087 Route 9D, Wappingers Falls, NY 12590 (owned by ANK Realty);
  - (g) Wickham Citgo ("Wickham Citgo"), 139-147 Wickham Avenue, Middletown, NY 10940 (owned by ANK Realty);
  - (h) Saugerties Citgo ("Saugerties Citgo"), 3 Mt. Airy Road, Saugerties, NY 12477 (owned by Dutchess);
  - (i) Poughkeepsie Valero ("Poughkeepsie Valero"), 813 Main Street, Poughkeepsie, NY 12603 (owned by Dutchess);

- (j) Parker Ave Citgo (“Parker Ave Citgo”), 150 Parker Avenue, Poughkeepsie, NY 12601 (owned by Fair Oak); and
- (k) Rhinebeck Valero (“Rhinebeck Valero”), 6365 Mill Street, Rhinebeck, NY 12572 (owned by Fair Oak).

16. Pursuant to Section 9005 of the Act, 42 U.S.C. § 6991d, and 40 C.F.R. Section 280.34, EPA sent a first Notice of Violation and Information Request Letter (“First NOV/IRL”), dated February 25, 2019, to Respondent Dutchess in order to determine the Companies’ compliance with the Act and 40 C.F.R. Part 280. EPA received Dutchess’ response on or about April 8, 2019.
17. Pursuant to Section 9005 of the Act, 42 U.S.C. § 6991d, and 40 C.F.R. Section 280.34, EPA sent a second Notice of Violation and Information Request Letter (“Second NOV/IRL”), dated August 8, 2019, to Mr. Russo Vosoughi, President of each of the Respondents in order to determine Respondents’ compliance with the Act and 40 C.F.R. Part 280. After two extensions of the response deadline, EPA received a response on January 21, 2020.
18. After the January 21, 2020, response, EPA and Respondents exchanged follow up e-mails and on July 14, 2020, EPA received an addendum to the January 21, 2020, response.
19. Based on the EPA’s UST inspection reports and Respondents’ responses to EPA’s NOV/IRLs, and follow up e-mails, EPA determined that in varying time periods between November 2017 and April 2019 at the:
  - a. Kingston Citgo facility, ANK Realty failed to comply with the financial responsibility requirement for UST systems (40 C.F.R. § 280.93);
  - b. Carpenter Valero facility, ANK Realty failed to properly and periodically inspect overfill prevention equipment (40 C.F.R. § 280.35(a)(2)); and failed to comply with the financial responsibility requirement for UST systems (40 C.F.R. § 280.93);
  - c. Pine Bush Citgo facility, Dutchess failed to conduct a line tightness test or to provide monthly monitoring of the pressurized piping system (40 C.F.R. § 280.41(b)(1)(i)(B));
  - d. Fishkill Citgo facility, ANK Realty failed to properly and periodically inspect overfill prevention equipment (40 C.F.R. § 280.35(a)(2)); failed to test annually the automatic line leak detectors for the piping associated with the USTs (40 C.F.R. § 280.44(a)); and failed to comply with the financial responsibility requirement for UST systems (40 C.F.R. § 280.93);
  - e. La Grange Valero facility, ANK Realty failed to properly and periodically inspect overfill prevention equipment (40 C.F.R. § 280.35(a)(2)); failed to properly and periodically test spill prevention equipment (40 C.F.R. § 280.35(a)(1)); failed to perform periodic testing of containment sumps (40 C.F.R. § 280.35(a)(1)); failed to test annually the automatic line leak detectors for the piping associated with the

- USTs (40 C.F.R. § 280.44(a)); and failed to comply with the financial responsibility requirement for UST systems (40 C.F.R. § 280.93);
- f. Route 9D Citgo facility, ANK Realty failed to maintain documentation of compliance with release detection requirements (40 C.F.R. § 280.34(b)(7)); failed to properly and periodically inspect overfill prevention equipment (40 C.F.R. § 280.35(a)(2)); failed to conduct a line tightness test or to provide monthly monitoring of the pressurized piping system (40 C.F.R. § 280.41(b)(1)(i)(B)); failed to test annually the automatic line leak detectors for the piping associated with the USTs (40 C.F.R. § 280.44(a)); and failed to comply with the financial responsibility requirement for UST systems (40 C.F.R. § 280.93);
  - g. Wickham Citgo facility, ANK Realty failed to properly and periodically inspect overfill prevention equipment (40 C.F.R. § 280.35(a)(2)); failed to test annually the automatic line leak detectors for the piping associated with the USTs (40 C.F.R. § 280.44(a)); and failed to comply with the financial responsibility requirement for UST systems (40 C.F.R. § 280.93);
  - h. Saugerties Citgo facility, Dutchess failed to properly and periodically inspect overfill prevention equipment (40 C.F.R. § 280.35(a)(2));
  - i. Poughkeepsie Valero facility, Dutchess failed to properly and periodically inspect overfill prevention equipment (40 C.F.R. § 280.35(a)(2)); failed to properly and periodically test spill prevention equipment (40 C.F.R. § 280.35(a)(1)); failed to perform periodic testing of containment sumps (40 C.F.R. § 280.35(a)(1)); and failed to test annually the automatic line leak detectors for the piping associated with the USTs (40 C.F.R. § 280.44(a));
  - j. Parker Ave Citgo facility, Fair Oak failed to comply with the financial responsibility requirement for UST systems (40 C.F.R. § 280.93); and
  - k. Rhinebeck Valero facility, Fair Oak failed to comply with the financial responsibility requirement for UST systems (40 C.F.R. § 280.93).
20. Based on EPA's UST inspections and Respondents' responses to the NOV/IRLs and follow up e-mails, EPA issued a Notice of Potential Violations and Opportunity to Confer on June 23, 2022.
21. Since August 18, 2022, the parties have engaged in settlement discussions. During this time, the Respondents produced certain documentation to address some of the alleged violations described in Paragraph 19 above and as a result, EPA recalculated the initial proposed penalty based upon the additional documentation provided. The parties 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 Respondents and voluntarily and knowingly accepted by each of the Respondents, that each of the Respondents, for purposes of this Consent Agreement:

- a. admits the jurisdictional basis of this action;
- b. neither admits nor denies EPA's 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 including the assessment of the EPA civil penalty as set forth below;
- 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 Respondents, and voluntarily and knowingly accepted by each Respondent, that each 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: (a) financial responsibilities requirements; (b) periodic inspections of spill and overfill prevention equipment; (c) performance of line tightness tests or the conduct of monthly monitoring of pressurized piping systems; (d) annual testing of the automatic line leak detectors for the piping associated with the USTs, (e) periodic testing of containment sumps; and (f) record keeping of compliance with release detection requirements.
2. By signing this consent agreement each Respondent certifies under penalty of law that, as of the effective date of the CA/FO, to the best of its knowledge and belief, it is complying with all the applicable UST requirements including all the requirements referenced in Paragraph 19 of EPA's Findings of Facts and Conclusions of Law of this CA/FO.
3. Respondents shall pay a civil penalty to EPA in the total amount of **ONE HUNDRED FIFTY THOUSAND DOLLARS (\$150,000.00)**. Such payment shall be made by cashier's check, certified check or by electronic fund transfer (EFT).
4. If 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 Dutchess Terminals, Inc., ANK Realty Inc. and Fair Oak, Inc, Docket Number RCRA 02-2023-7506;"** and (c) mailed to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979078  
St. Louis, Missouri 63197-9000

5. Alternatively, if Respondents choose to make the payment by EFT, Respondents shall then provide the following information to its remitter bank:
  - a. Amount of Payment (**\$150,000**).
  - 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 Respondents: **Dutchess Terminals, Inc., ANK Realty Inc. and Fair Oak, Inc**
  - g. Case docket number: **RCRA-02-2023-7506**
6. Whether Respondents make the payment by cashier's check, certified check or by the EFT method, Respondents 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 in Paragraph 12 below.
7. The total 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 24 below.
8. Failure to pay the amount in full within the time period set forth above may result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection or other appropriate action.
9. Furthermore, if payment is not made on or before the Due Date, interest for said payment shall 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 said payment was to have been made through the date said payment has been received. In addition, a late payment handling charge of \$15.00 will be assessed for each thirty (30) calendar day period or any portion thereof, following the date the payment was to have been made, in which payment of the amount remains in arrears. In addition, a 6% per annum penalty will be applied to any principal amount that has not been received by the EPA within ninety (90) calendar days of the date by which the payment was required hereto to have been made.
10. Full payment of the penalty described in Paragraph 3 of this Consent Agreement shall only resolve Respondent's liability for federal civil penalties for the violation(s) described in Paragraph 19 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. Complainant shall e-mail to Respondents (to the representative designated in Paragraph 12 of this Consent Agreement, below) a copy of the fully executed CA/FO. Respondents consent to service of the CA/FO by email and consent to service by an employee of EPA other than the Regional Hearing Clerk of EPA, Region 2.
12. 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:

Gaetano LaVigna  
Enforcement and Compliance Assurance Division  
RCRA Compliance Branch  
US Environmental Protection Agency, Region 2  
290 Broadway, 21st Floor  
New York, New York 10007-1866  
[LaVigna.Gaetano@epa.gov](mailto:LaVigna.Gaetano@epa.gov)

and

Rudolph Perez, Assistant Regional Counsel  
Office of Regional Counsel  
US Environmental Protection Agency, Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, New York 10007-1866  
[Perez.Rudolph@epa.gov](mailto:Perez.Rudolph@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 Respondents by email to:

K. Russo Vosoughi, President  
Dutchess Terminals; ANK Realty Inc.; and Fair Oak Realty Inc.  
66 Prospect Street  
Poughkeepsie, New York 12601  
[Russo@dutchessterminals.com](mailto:Russo@dutchessterminals.com)

13. Each Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable and consent to the issuance and its terms. Each Respondent consents to the issuance of the accompanying Final Order. Each Respondent agrees that all the terms of the settlement are set forth herein.
14. Each 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.
15. Each 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.

16. Each 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, each 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.
17. This CA/FO does not relieve Respondents of their 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 Respondents' obligation to comply with applicable provisions of the Act and the regulations promulgated thereunder.
18. 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 any of the Respondents for having made any material misrepresentations or for having provided materially false information in any document in connection with this proceeding.
19. Nothing herein shall be construed to limit the power of the EPA to undertake any action against any of the Respondents or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.
20. The provisions of this CA/FO shall be binding upon EPA and each Respondent, their officers, agents, authorized representatives, and successor agencies, departments or instrumentalities.
21. Each party hereto agrees to bear its own costs and fees in connection with this proceeding.
22. The undersigned signatory for each 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.
23. EPA and each Respondent agrees that the parties may use electronic signatures for this matter.
24. 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 Dutchess Terminals, Inc., ANK Realty Inc. and Fair Oak, Inc.**  
**Docket Number RCRA-02-2023-7506**

**RESPONDENTS:**


**Dutchess Terminals, Inc.**

BY:   
(Signature)

NAME: Russo Vosoughi  
(Please Print)

TITLE: President

**ANK Realty Inc.**

BY:   
(Signature)

NAME: Russo Vosoughi  
(Please Print)

TITLE: President

**Fair Oak, Inc.**

BY:   
(Signature)

NAME: Russo Vosoughi  
(Please Print)

TITLE: President

**In the Matter of Dutchess Terminals, Inc., ANK Realty Inc. and Fair Oak, Inc.**  
**Docket Number RCRA-02-2023-7506**

**COMPLAINANT**

---

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

**In the Matter of Dutchess Terminals, Inc., ANK Realty Inc. and Fair Oak, Inc.**  
**Docket Number RCRA-02-2023-7506**

**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 Respondents, 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, 26<sup>th</sup> Floor  
New York, NY 10007-1866

DATE: \_\_\_\_\_

**In the Matter of Dutchess Terminals, Inc., ANK Realty Inc. and Fair Oak, Inc.**  
**Docket Number RCRA-02-2023-7506**

**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:

K. Russo Vosoughi, President  
Dutchess Terminals; ANK Realty Inc.; and  
Fair Oak Realty Inc.  
66 Prospect Street  
Poughkeepsie, New York 12601  
Russo@dutchessterminals.com

Dated: \_\_\_\_\_, 2023 \_\_\_\_\_  
New York, New York