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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF:)
)
)
DEVENDRA MALIK,)
MAHADEV, INC., PRIYANA, INC.,)
And TM INVESTMENT CO.)
)
RESPONDENTS)
_____)

EPA Docket No.
RCRA-10-2011-0033
**CONSENT AGREEMENT
AND FINAL ORDER**

I. AUTHORITY

1.1. This Consent Agreement and Final Order (“CAFO”) is issued under the authority vested in the Administrator of the United States Environmental Protection Agency (“EPA”) by Section 9006 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6991e. The Administrator has delegated the authority to issue the Final Order contained in Part IV of this CAFO to the Regional Administrator of EPA Region 10. The Regional Administrator of EPA Region 10 has redelegated this authority to the Regional Judicial Officer.

1.2. Respondents are Devendra Malik, Mahadev, Inc., Priyana, Inc., and TM Investments Co.

1.3. Pursuant to Section 9006(d) of RCRA and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA hereby issues, and Respondents hereby consent to the issuance of, the Final Order contained in Part IV of this CAFO.

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. § 22.13(b), issuance of this CAFO commences this proceeding, which will conclude when the Final Order contained in Part V of this CAFO becomes final.

2.2. A concise statement of the factual basis for alleging violations of RCRA, together with specific references to the provisions of RCRA and the implementing regulations Respondents are alleged to have violated, appears in Part III of this CAFO.

III. ALLEGATIONS

3.1. Respondent Malik is the President of Mahadev, Inc., Priyana, Inc., and TM Investments Co.

3.2. Respondent Malik also represents himself as and conducts business under the name "David Malik."

3.3. Respondent Mahadev, Inc. is a Washington corporation which owns and/or operates the Kent Shell located at 1208 N. Central in Kent, Washington.

3.4. The Kent Shell has two underground storage tanks ("USTs"): one UST with a single compartment and one UST with two compartments.

3.5. Priyana, Inc. is a Washington corporation which owns and/or operates the Renton 76 located at 300 Rainier Avenue S. in Renton, Washington. The Renton 76 also conducts business under the name "Renton BP."

3.6. The Renton 76 has two USTs: one UST with a single compartment and one UST with two compartments.

3.7. Respondent TM Investment Company is a Washington corporation which owns and/or operates the Kangly Chevron located at 26220 116th Avenue SE in Kent, Washington.

3.8. The Kangly Chevron has two USTs: one UST with a single compartment and one UST with two compartments.

3.9. Each Respondent is a “person” as that term is defined in Section 9001(6) of RCRA, 42 U.S.C. § 6991(6), 40 C.F.R. § 280.12, and Washington Administrative Code (“WAC”) 173-360-120.

3.10. Respondents are each the “owner” and/or “operator” of “underground storage tank(s)” as these terms are defined under Section 9001 of RCRA, 42 U.S.C. § 6991, 40 C.F.R. § 280.12, and WAC 173-360-120.

3.11. These USTs are used to store “regulated substance(s),” as defined in Section 9001(2), 42 U.S.C. § 6991(2), 40 C.F.R. § 280.12, and WAC 173-360-120.

3.12. Section 9005(a) of RCRA, 42 U.S.C. § 6991d(a), and 40 C.F.R. § 280.34 require an owner or operator of an UST, upon request by any duly designated representative of EPA, to furnish information with regard to such UST. Revised Code of Washington (“RCW”) 90.76.060 and WAC 173-360-210 contain similar provisions requiring an UST owner or operator to submit relevant information or documents requested by an authorized representative of the State of Washington.

3.13. On September 11, 2009, EPA mailed to Respondent Malik, individually, and as president of Mahadev, Inc., Priyana, Inc., and TM Investments Co., an Information Request issued pursuant to Section 9005(a) of RCRA, 42 U.S.C. § 6991d(a).

3.14. The Information Request was mailed by certified mail, return receipt requested to Respondent Malik at his business address: 26220 116th Ave SE, Suite 201, Kent, Washington 98030.

A person at that address accepted delivery of the Information Request on September 12, 2009.

3.15. Respondents failed to respond to the September 11, 2009 Information Request.

3.16. Respondents' failure to respond to the September 11, 2009 Information Request is a violation of Section 9005(a) of RCRA, 42 U.S.C. § 6991d(a).

3.17. On December 14, 2009, EPA issued a Compliance Order to Respondents ordering them to respond to the Information Request within 14 days of the effective date of the Compliance Order.

3.18. The Compliance Order was filed with the Regional Hearing Clerk and a copy mailed by certified mail, return receipt to Respondent Malik in his personal capacity and as president of Mahadev, Inc., Priyana, Inc., and TM Investments Co. at the Kent business address referenced in paragraph 3.14, above. A person at that address accepted delivery of the Compliance Order on December 16, 2009.

3.19. Respondents did not request a hearing and the Compliance Order became final and effective on January 15, 2010.

3.20. Respondents partially responded to the Compliance Order on January 15, 2010; January 29, 2010; March 21, 2010; April 12, 2010; April 26, 2010; May 26, 2010; and June 8, 2010.

3.21. Respondents failed to substantially comply with the Compliance Order until June 8, 2010.

IV. CONSENT AGREEMENT

The parties to this action hereby stipulate as follows:

4.1. Respondents admit the jurisdictional allegations contained in Part I, above.

4.2. Respondents neither admit nor deny the specific factual allegations in Part III, above.

4.3. Respondents waive their right to request an adjudicatory hearing on any issue addressed in this CAFO.

4.4. Respondents represent that they are duly authorized to execute this CAFO and that the party signing this CAFO on their behalf is duly authorized to bind Respondents to the terms of this CAFO.

4.5. Pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e, taking into account the seriousness of the violation and Respondents' good faith efforts to comply, EPA and Respondents agree that an appropriate penalty to settle this action is THREE THOUSAND DOLLARS (\$3,000).

4.6. Respondents consent to the issuance of the Final Order in Part V below and to payment of the civil penalty cited in the foregoing paragraph within thirty (30) days of the effective date of the Final Order.

4.7. Payments under this CAFO shall be made by cashier's check or certified check, payable to the order of "Treasurer, United States of America" and shall be delivered to the following address:

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

Respondents shall note on the check the title and docket number of this case. Respondents also may make the penalty payment by wire transfer or credit card in accordance with instructions provided by EPA.

4.8. Respondents shall serve a photocopy of the check or documentation of the wire transfer described above on the Regional Hearing Clerk and EPA at the following two addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
1200 Sixth Avenue, Suite 900, Mail Stop ORC-158
Seattle, Washington 98101-3140

Katherine Griffith
U.S. Environmental Protection Agency
1200 Sixth Avenue, Suite 900, Mail Stop OCE-082
Seattle, Washington 98101-3140

4.9. If Respondents fail to pay the penalty assessed in this CAFO, Respondents may be subject to an administrative action to collect payment under the federal Debt Collection Act of 1982, as amended, or to a civil action to collect the assessed penalty plus interest, handling charges, and nonpayment penalties as set forth below. In any collection action, the validity, amount, and appropriateness of the penalty are not subject to review.

4.10. Pursuant to 31 U.S.C. § 3717, Respondents shall pay the following amounts:

(a) Interest. Any unpaid penalties shall bear interest at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the date a conformed copy of this CAFO is mailed to Respondents for the civil penalty, provided, however, no interest shall be payable on any portion of the penalties paid within 30 days.

(b) Handling Charge. Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of \$15 shall be paid if any portion of the assessed or stipulated penalty is more than 30 days past due.

(c) Nonpayment Penalty. Pursuant to 31 U.S.C. § 3717(e)(2), a nonpayment penalty of 6% per annum shall be paid on any portion of the assessed or stipulated penalty that is more than 90 days past due, which nonpayment penalty shall be calculated as of the day the underlying penalty first becomes past due.

4.11. The penalty described in paragraph 4.5 of this CAFO shall represent civil penalties assessed by EPA and shall not be deductible for purposes of federal taxes.


4.12. Each party shall bear its own costs, fees, and disbursements in this action.

4.13. Respondents expressly waive any right to contest the allegations and to appeal the Final Order contained herein and, without admitting or denying the factual allegations contained in the Final Order, consent to the terms of this CAFO.

4.14. Pursuant to 40 C.F.R. § 22.18(c), full payment of the penalty assessed in this CAFO resolves Respondents' liability for federal civil penalties for the violations and facts alleged in Part III of this CAFO.

STIPULATED AND AGREED:


RESPONDENTS



DEVENDRA MALIK, individually and as President of
Mahadev, Inc., Priyana, Inc., and TM Investments Co.

Dated: JAN 13. 2011
11-13-11 *DM*

U.S. ENVIRONMENTAL PROTECTION AGENCY



EDWARD J. KOWALSKI
Director
Office of Compliance and Enforcement

Dated: 1-25-11

V. FINAL ORDER

5.1. The terms of the foregoing Consent Agreement are hereby ratified and incorporated by reference into this Final Order. Respondents are hereby ordered to comply with the foregoing terms of settlement.

5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to RCRA for the violations and facts alleged in the Consent Agreement above. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This CAFO does not waive, extinguish, or otherwise affect Respondents' obligation to comply with all applicable provisions of RCRA and regulations and permits issued thereunder.

5.3. This Final Order shall become effective upon filing.

SO ORDERED this 28th day of January, 2011



THOMAS JANHKE
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 10

CERTIFICATE OF SERVICE

I hereby certify that the original of the foregoing Consent Agreement and Final Order, Docket No. RCRA-10-2011-0033 and one true and correct copy have been filed with the Region 10 Hearing Clerk at:

Carol D. Kennedy
Regional Hearing Clerk
U.S. Environmental Protection Agency Region 10
1200 Sixth Avenue, Suite 900, ORC-158
Seattle, Washington 98101

I also certify that a true and correct copy of the Consent Agreement and Final Order was sent by Certified Mail, Return Receipt Requested, to:

Devendra (David) Malik, individually, and as
President of Mahadev Inc., Priyana Inc. and TM Investment Co.
26220 116th Avenue SE, Suite 201
Kent, Washington 98030

11/28/11
DATE


NAME

TITLE