



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

MAR 24 2011

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

George B. Hyler, Jr.
Hyler and Lopez, PA
33 Orange Street
Asheville, North Carolina 28801

RE: J.H. Duncan Oil, Inc.
Consent Agreement and Final Order (CAFO)
Docket No. RCRA-UST-04-2011-0001(b)

Dear Mr. Hyler:

Enclosed please find a copy of the executed CAFO as filed with the Regional Hearing Clerk (RHC) in the above-referenced matter. The CAFO is effective on the date it is filed with the RHC, and the penalty due date is calculated from the effective date.

Also enclosed, please find a copy of a document entitled "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings." This document puts J.H. Duncan Oil, Inc. on notice of its potential duty to disclose to the Securities Exchange Commission (SEC) any environmental actions taken by the United States Environmental Protection Agency.

If you have any questions, please feel free to contact me at (404) 562-9705.

Sincerely,

A handwritten signature in black ink, appearing to read "Alfred R. Politzer".

Alfred R. Politzer
Assistant Regional Counsel
Office of Environmental Accountability

Enclosures

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

IN THE MATTER OF:)	DOCKET NO.: RCRA-UST-04-2011-0001(b)
)	
J.H. DUNCAN OIL, INC.)	PROCEEDING UNDER SECTION 9006
543 EAST MAIN STREET)	OF THE RESOURCE CONSERVATION
FRANKLIN, NORTH CAROLINA 28734)	AND RECOVERY ACT, 42 U.S.C. § 6991e
)	
RESPONDENT)	

CONSENT AGREEMENT

I. NATURE OF THE ACTION

1. This is a civil administrative enforcement action, ordering compliance with the requirements of Subtitle I of the Resource Conservation and Recovery Act (RCRA), 42 United States Code (U.S.C.) §§ 6991, *et seq.*, and Chapter 143 of the North Carolina General Statutes (N.C. GEN. STAT.) §§ 143-215.94A *et seq.* This action is seeking injunctive relief and civil penalties pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e, for violations of RCRA and the corresponding regulations at Title 40 of the Code of Federal Regulations (C.F.R.) Part 280; and Chapter 143 of the North Carolina General Statutes and the corresponding regulations at Title 15A of the North Carolina Administrative Code (N.C. ADMIN. CODE) Chapter 2, Subchapter 2N.
2. 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, provide that where the parties agree to settlement before the filing of a complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order (CAFO). 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).
3. The parties have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to settle this action. Accordingly, before any testimony has been taken upon the pleadings and without any admission of violation or adjudication of any issue of fact or law and in accordance with 40 C.F.R. § 22.13(b), the parties have agreed to the execution of this CAFO, and Respondent agrees to comply with the terms of this CAFO.

II. THE PARTIES

4. Complainant is the Director, RCRA Division, Region 4, United States Environmental Protection Agency (EPA).
5. Respondent is J.H. Duncan Oil, Inc., doing business at 543 East Main Street, Franklin, North Carolina 28734, and 555 North 4th Street, Highlands, North Carolina 28906.

III. PRELIMINARY STATEMENTS

6. Section 9003 of RCRA, 42 U.S.C. § 6991b, and N.C. GEN. STAT. §§ 143-215.94A *et seq.*, authorizes the promulgation of release detection, prevention, and corrective action regulations applicable to owners and operators of USTs. These regulations are found at 40 C.F.R. Part 280 and 15A N.C. ADMIN. CODE 02N.0101 *et. seq.*
7. Pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991(c), North Carolina has received final authorization to carry out an underground storage tank (UST) program in lieu of the federal program. The requirements of the authorized state program are found in N.C. GEN. STAT. §§ 143-215.94A *et seq.* and 15A N.C. ADMIN. CODE 02N.0101 *et. seq.*
8. Although EPA has granted North Carolina the authority to enforce its own UST program, EPA retains the authority to initiate an independent enforcement action in North Carolina pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e. EPA exercises this authority as set forth in the Memorandum of Agreement between EPA and North Carolina.
9. Pursuant to Section 9006(a)(2) of RCRA, 42 U.S.C. § 6991e(a)(2), Complainant has notified North Carolina prior to issuing this CAFO.
10. Pursuant to 40 C.F.R. §§ 280.20(c) and 280.21(d), and 15A N.C. ADMIN. CODE 02N.0301 and 02N.0302, UST systems must include overfill prevention equipment as specified in 40 C.F.R. § 280.20(c) to prevent overfilling during a fuel transfer of 25 gallons or more.
11. Pursuant to 40 C.F.R. § 280.31(b) and 15A N.C. ADMIN. CODE 02N.0402, a steel UST's cathodic protection (CP) system must be inspected by a qualified tester every three years.
12. Pursuant to 40 C.F.R. § 280.31(c) and 15A N.C. ADMIN. CODE 02N.0402, a steel UST's impressed current CP system must be inspected every 60 days.
13. Pursuant to 40 C.F.R. § 280.20(a)(2)(iv) and 15A N.C. ADMIN. CODE 02N.0301, a steel UST's CP system must be operated and maintained in accordance with 40 C.F.R. § 280.31 (requiring adherence to national industry code standards).

IV. EPA ALLEGATIONS AND DETERMINATIONS

14. Respondent is a "person." 40 C.F.R. § 280.12; 15A N.C. ADMIN. CODE 02N.0203.
15. Respondent is an "owner" and "operator" of "underground storage tanks" used as a "petroleum UST system." 40 C.F.R. § 280.12; 15A N.C. ADMIN. CODE 02N.0203.
16. Gasoline, diesel, and kerosene are "regulated substances." 40 C.F.R. § 280.12; 15A N.C. ADMIN. CODE 02N.0203.

17. On September 24, 2009, EPA conducted a compliance inspection (CI) of Respondent's petroleum UST systems located at 543 East Main Street, Franklin, NC 28734 (facility #1), and 555 North 4th Street, Highlands, NC 28906 (facilities #2 and #3).
18. Facility #1 is a bulk fueling station consisting of two steel gasoline USTs and one steel diesel UST.
19. Facility #2 is a bulk fueling station consisting of one steel kerosene UST and one steel gasoline UST.
20. Facility #3 is a gasoline service station consisting of one steel off-road diesel UST, one steel diesel UST, and two steel gasoline USTs.
21. At the time of the CI, Respondent had failed to install overfill prevention equipment on the diesel UST at facility #1 and the off-road diesel UST at facility #3.
22. EPA alleges that Respondent violated Section 9003 of RCRA, 42 U.S.C. § 6991b; 40 C.F.R. §§ 280.20(c), 280.21(d); and 15A N.C. ADMIN. CODE 02N.0301, 02N.0302.
23. At the time of the CI, Respondent had failed to inspect the CP system every three years for the gasoline USTs at Facility #1 and all the USTs at facilities #2 and #3.
24. EPA alleges that Respondent violated Section 9003 of RCRA, 42 U.S.C. § 6991b; 40 C.F.R. § 280.31(b); and 15A N.C. ADMIN. CODE 02N.0402.
25. At the time of the CI, Respondent had failed to inspect the impressed current CP system every 60 days for all the USTs at facilities #2 and #3.
26. EPA alleges that Respondent violated Section 9003 of RCRA, 42 U.S.C. § 6991b; 40 C.F.R. § 280.31(c); and 15A N.C. ADMIN. CODE 02N.0402.
27. On October 6, 2009, Respondent conducted a CP test on the CP system for the gasoline USTs at facility #1. The test failed because the diesel UST at facility #1 was potentially being damaged by improper operation of the CP system due to stray electric currents.
28. EPA alleges that Respondent violated Section 9003 of RCRA, 42 U.S.C. § 6991b; 40 C.F.R. § 280.20(a)(2)(iv); and 15A N.C. ADMIN. CODE 02N.0301.

V. TERMS OF AGREEMENT

Based on the foregoing, the parties agree to the following:

29. Within thirty (30) calendar days of receipt of the executed copy of this CAFO, Respondent shall submit a certification signed by an authorized representative stating that facilities #1, #2, and #3 are in compliance with RCRA. This certification shall be submitted to EPA and North Carolina and state as follows:

"I certify under penalty of law, to the best of my knowledge and belief, that the facilities addressed in this CAFO are in full compliance with RCRA. All work was done under my direction or supervision according to a system designed to assure that qualified personnel implemented and completed the required tasks. This certification is based on my inquiry of the person(s) who performed the tasks, or those persons directly responsible for the person(s) who performed the tasks. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment."

In addition, within thirty (30) calendar days of receipt of the executed copy of this CAFO, Respondent must state the steps taken to correct the improper operation of the CP system described in paragraphs 27 and 28, and provide documentation of the CP system recertification by a qualified corrosion engineer.

The certification shall be mailed to the following individuals:

William E. Truman
Chief, Underground Storage Tank Section
US EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

Michael Phelps
NCDENR Winston-Salem Regional Office
Division of Waste Management, UST Section
585 Waughtown St.
Winston-Salem, North Carolina 27107

30. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set out in the above paragraphs pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e.
31. Respondent neither admits nor denies the above factual allegations and determinations.
32. Respondent waives any right to contest the allegations and its right to appeal the CAFO.
33. Respondent waives its right to challenge the validity of this CAFO and the settlement of the matters addressed in this CAFO based on the Paperwork Reduction Act.
34. Respondent waives any right pursuant to 40 C.F.R. § 22.8 to participate in any communication addressed to EPA officials where the purpose of such communication is to persuade such official to accept and issue this CAFO.
35. Settlement of this matter is in the public interest and is consistent with RCRA. Compliance with the terms of this CAFO shall resolve all of Respondent's liability for civil penalties for the violations and facts alleged and stipulated to in this CAFO.
36. Each party will pay its own costs and attorney's fees.

VI. PAYMENT OF CIVIL PENALTY

37. Respondent consents to the payment of a civil penalty in the amount of **seventeen thousand, six hundred, thirty-nine dollars (\$17,639)** divided into eight installment payments that include interest, as set forth below in paragraph 38.
38. **Seven payments of \$1480.74 and an eighth payment of \$7480.74** are due to EPA. **One payment of \$1480.74** must be received by each of the following dates: **May 1, 2011; August 1, 2011; November 1, 2011; February 1, 2012; May 1, 2012; August 1, 2012; and November 1, 2012.** The eighth payment of \$7480.74 is due on **February 1, 2013.**
39. Payment shall be made by cashier's check, certified check, by electronic funds transfer (EFT), or by Automated Clearinghouse (ACH) (also known as REX or remittance express). If paying by check, the check shall be payable to: Treasurer, United States of America, and the docket number and facility name shall be referenced on the face of the check. If Respondent utilizes the US Postal Service, the payment shall be addressed to:

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

If Respondent utilizes non-US Postal express mail delivery, the payment shall be sent to:

United States Bank
Government Lockbox 979077
United States Environmental Protection Agency
Fines and Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, Missouri 63101
(314) 418-1028

If paying by EFT, the Respondent shall transfer the payment to:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

If paying by ACH, the Respondent shall remit payment to:

PNC Bank
ABA: 051036706
Account Number: 310006
CTX Format Transaction Code 22 – checking
United States Environmental Protection Agency
808 17th Street, N.W.
Washington, D.C. 20074
Contact: Jesse White, (301) 887-6548

40. Respondent shall submit a copy of the payment to the following individuals:

Patricia Bullock, Regional Hearing Clerk
US EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

William E. Truman
Chief, Underground Storage Tank Section
US EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

41. If Respondent fails to remit the civil penalty as agreed to herein, EPA is required to assess interest, penalties, and a charge to cover the costs of processing and handling the delinquent claim. Interest, at the statutory judgment rate provided in 31 U.S.C. § 3717, will begin to accrue on the civil penalty if not paid as specified above. Pursuant to 31 U.S.C. § 3717, Respondent must pay the following amounts on any amount overdue:

- a. Interest. Any unpaid portion of a civil penalty or stipulated penalty must bear interest at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1). Interest will therefore begin to accrue on a civil penalty or stipulated penalty if it is not paid by the last date required. Interest will be assessed at the rate of the United States Treasury tax and loan rate.
- b. Monthly Handling Charge. Respondent must pay a late payment handling charge of fifteen dollars (\$15.00) on any late payment, with an additional charge of fifteen dollars (\$15.00) for each subsequent thirty (30) calendar-day period over which an unpaid balance remains.
- c. Non-Payment Penalty. On any portion of a civil penalty or a stipulated penalty more than ninety (90) calendar days past due, Respondent must pay a non-payment penalty of six percent (6%) per annum, which will accrue from the date the penalty payment became due and is not paid. This non-payment is in addition to charges which may accrue under subparagraphs (a) and (b).

42. Penalties paid pursuant to this CAFO are not tax deductible under 26 U.S.C. § 162(f).

VII. PARTIES BOUND

43. This CAFO shall be binding on Respondent and its successors and assigns. Respondent shall cause its officers, directors, employees, agents, and all persons, including independent contractors, contractors, and consultants acting under or for Respondent, to comply with the provisions hereof in connection with any activity subject to this CAFO.
44. No change in ownership, partnership, corporate or legal status relating to the facility will in any way alter Respondent's obligations and responsibilities under this CAFO.
45. The undersigned representative of Respondent hereby certifies that she or he is fully authorized to enter into this CAFO and to execute and legally bind Respondent to it.

VIII. RESERVATION OF RIGHTS

46. Notwithstanding any other provision of this CAFO, an enforcement action may be brought pursuant to Section 9003(h) of RCRA, 42 U.S.C. § 6991b(h), or other statutory authority, should EPA find that the release of regulated substances from a UST may have occurred and implementation of any corrective action is needed to address such release.
47. Complainant reserves the right to take enforcement action against Respondent for any future violations of RCRA and to enforce the terms and conditions of this CAFO.
48. Except as provided above, nothing in this CAFO constitutes a release from a civil or criminal claim, cause of action, or demand in law or equity for any liability Respondent may have arising out of, or relating to, the management of USTs at its facilities.
49. This CAFO may be amended only by written agreement between EPA and Respondent.

IX. OTHER APPLICABLE LAWS

50. All actions required to be taken pursuant to this CAFO shall be undertaken in accordance with the requirements of all applicable laws and regulations. Respondent shall obtain or cause its representatives to obtain all permits and approvals necessary as required.

X. SERVICE OF DOCUMENTS

51. A copy of any documents that Respondent files in this action shall be sent to the following attorney who is authorized to receive service for EPA:

Alfred Politzer
Assistant Regional Counsel
US EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

52. A copy of any documents that Complainant files in this action shall be sent to the following attorney who is authorized to receive service for Respondent:

George B. Hyler, Jr.
Hyler and Lopez, PA
33 Orange Street
Asheville, North Carolina 28801

XI. SEVERABILITY

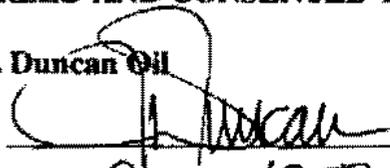
53. It is the intent of the parties that the provisions of this CAFO are severable. If any provision or authority of this CAFO or the application of this CAFO to any party or circumstances is held by any judicial or administrative authority to be invalid or unenforceable, the application of such provisions to other parties or circumstances and the remainder of the CAFO shall remain in force and shall not be affected thereby.

XII. EFFECTIVE DATE

54. The effective date of this CAFO is the date it is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO:

J.H. Duncan Oil

By: 

Dated: MARCH 2, 2011

Print Title: Owner/CEO

US Environmental Protection Agency

By: 

Dated: 3/8/11

G. Alan Farmer/Director
RCRA Division, US EPA Region 4

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

IN THE MATTER OF:)	DOCKET NO.: RCRA-UST-04-2011-0001(b)
)	
J.H. DUNCAN OIL, INC.)	PROCEEDING UNDER SECTION 9006
543 EAST MAIN STREET)	OF THE RESOURCE CONSERVATION
FRANKLIN, NORTH CAROLINA 28734)	AND RECOVERY ACT, 42 U.S.C. § 6991e
)	
RESPONDENT)	
_____)	

FINAL ORDER

The foregoing Consent Agreement is hereby approved, ratified and incorporated by reference into this Final Order in accordance with 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. Respondent is hereby ORDERED to comply with all of the terms of the foregoing Consent Agreement effective immediately upon filing of this Consent Agreement and Final Order with the Regional Hearing Clerk. This Order disposes of this matter pursuant to 40 C.F.R. §§ 22.18 and 22.31.

BEING AGREED, IT IS SO ORDERED this 23rd day of March, 2011.

BY: 
Susan B. Schub
Regional Judicial Officer
United States Environmental Protection Agency, Region 4

CERTIFICATE OF SERVICE

I hereby certify that I have this day filed the original and a true and correct copy of the foregoing Consent Agreement and the attached Final Order (CAFO), in the Matter of J.H. Duncan Oil, Inc., Docket Number: RCRA-UST-04-2011-0001(b), on MAR 24 2011, and on MAR 24 2011, served the parties listed below in the manner indicated:

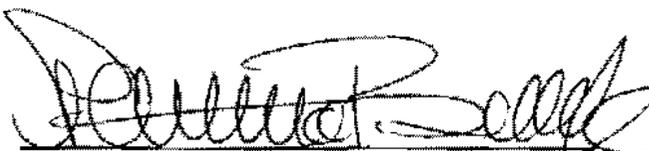
Alfred Politzer (Via EPA Internal Mail)
Assistant Regional Counsel
US EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

Quantindra Smith (Via EPA Internal mail)
RCRA Division
US EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

George B. Hyler, Jr. (Via Certified Mail – Return Receipt Requested)
Hyler and Lopez, PA
33 Orange Street
Asheville, North Carolina 28801

Date:

3-24-11



Patricia A. Bullock, Regional Hearing Clerk
US EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
(404) 562-9511