

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region 2

In the Matter of:

U.S. General Services Administration

Respondent.

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

CONSENT AGREEMENT AND
FINAL ORDER

Docket No. RCRA-02-2021-7501

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.* (hereinafter referred to as “RCRA” or the “Act”) and the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22 (hereinafter “CROP”). Complainant in this proceeding is the Director of the Enforcement and Compliance Assurance Division, United States Environmental Protection Agency, Region 2 (“EPA”). 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 U.S. General Services Administration, has been the owner and/or operator of at least one or more underground storage tanks (“USTs”) at four (4) facilities in New York and New Jersey: Robert A. Roe Federal Building (Roe FB) in Patterson, NJ, and the Martin Luther King, Jr. Federal Building and U.S. Courthouse (MLK FBCH) in Newark, New Jersey; and the Silvio J. Mollo Federal Building (Mollo FB) in New York City, New York and the Alfonse M. D’Amato U.S. Courthouse (D’Amato CH) in Central Islip, New York.

Based on EPA inspections and Respondent’s response to EPA’s inspection reports and Notice of Potential Violation and Opportunity to Confer, EPA has determined that the Respondent failed to ensure that all the Class A, B and/or C operators at the four facilities met operator training requirements; that the required documentation of periodic walkthrough inspections were maintained at three of the facilities (Roe FB, MLK CH and D’Amato CH); and that the initial 3-year inspection of the overfill prevention equipment located at the D’Amato CH was conducted by October 13, 2018.

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 a resolution of this matter and

agree that settlement of this matter by entering into this CA/FO pursuant to 40 C.F.R. Sections 22.18(b)(2) and 22.18(b)(3) 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 or denies the EPA Findings of Fact and Conclusions of Law set forth below.

EPA'S FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The General Services Administration, (hereinafter "GSA" or "Respondent"), is a department, agency, or instrumentality 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(e), and 40 C.F.R. § 280.12.
3. The Respondent has been and remains the "owner" and/or "operator" of at least one or more "underground storage tanks" ("USTs") or "UST system," as those terms are defined in Section 9001 of the Act, 42 U.S.C. § 6991(e), and in 40 C.F.R. § 280.12 that are located at the two (2) facilities in the State of New Jersey and the two (2) facilities in the State of 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 inspection records and overfill prevention equipment triennial inspections.
5. Forty 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 10 percent or more beneath the surface of the ground."
6. Pursuant to 40 C.F.R. § 280.242, UST system owners and operators must ensure Class A, Class B, and Class C operators meet the operator training requirements of this section.
7. Pursuant to 40 C.F.R. § 280.36(b), owners and operators must maintain records of operation and maintenance walkthrough inspections for one year. Records must include a list of each area checked, whether each area checked was acceptable or needed action 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.
8. Pursuant to 40 C.F.R. § 280.35(a)(2), overfill prevention equipment must be inspected at least once every three years. At a minimum, the inspection must ensure that overfill prevention equipment is set to activate at the correct level specified in § 280.20(c) and will activate when regulated substance reaches that level. Inspections must be conducted 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.

9. Pursuant to 40 C.F.R. § 280.35(b), the initial overfill prevention equipment inspection must occur no later than October 13, 2018 for USTs systems in use on or before October 13, 2015. For UST systems brought into use after October 13, 2015, the requirement applies at installation.
10. Pursuant to 40 C.F.R. § 280.35(c)(1), all records of inspections of overfill prevention equipment must be maintained for three years.
11. Pursuant to 40 C.F.R. § 280.244, Class A and Class B operators of USTs determined by the implementing agency to be out of compliance must complete a training program or comparable examination in accordance with the requirements in § 280.242, which, at a minimum, must cover the area(s) determined to be out of compliance no later than thirty (30) days from the date the implementing agency determines the facility to be out of compliance unless such retraining is waived by the implementing agency, at its discretion, for the Class A or Class B operator or both.
12. Pursuant to Section 9005 of the Act, 42 U.S.C. § 6991d, on various dates in the Fall/Winter of 2019/2020, an authorized representative of EPA inspected four (4) of the Respondent's facilities that have underground storage tanks in the State of New York and New Jersey (i.e., Roe FB, MLK FBCH, Mollo FB and D'Amato CH) to determine Respondent's compliance with the Act and 40 C.F.R. Part 280. EPA subsequently transmitted copies of its inspection reports to Respondent within seventy (70) days of its inspections, which included summaries of EPA's findings and requested that Respondent submit a response regarding those findings.
13. Based on EPA's UST inspections and Respondent's response to the findings in EPA's inspection reports, EPA issued a Notice of Potential Violation (NOPV) and Opportunity to Confer on December 17, 2020.
14. Based on the UST inspections and Respondent's response to EPA's NOPV and Opportunity to Confer on January 27, 2021, EPA determined that the Respondent failed to: (a) ensure that all the Class A, B and/or C operators at the four facilities (Roe FB, MLK FBCH, Mollo FB, and D'Amato CH) met operator training requirements from October 13, 2018 to December 20, 2020; (b) maintain required documentation of periodic walkthrough inspections at three of the facilities (Roe FB, MLK FBCH, and D'Amato CH) from October 13, 2018 to October 1, 2020; and (c) conduct the initial 3-year inspection of the overfill prevention equipment located at one facility (D'Amato CH) by October 13, 2018.
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 per 40 C.F.R. § 280.12, agreed that these operators were out of compliance and determined that the failure to ensure required documentation of periodic walkthrough inspections was maintained and that the initial 3-year inspection of the overfill prevention

equipment at the D'Amato CH was conducted by October 13, 2018 requires retraining of the Class B operator at D'Amato CH per 40 C.F.R. § 280.244.

16. Over the past several months, EPA and Respondent held several informal settlement conferences to discuss the EPA determinations described in Paragraph 14, *supra*, and agreed to settle this matter by entering into this Consent Agreement.

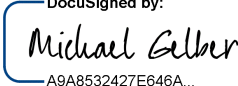
CONSENT AGREEMENT

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 Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. Part 22, 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 EPA civil penalty as set forth below; (d) consents to the issuance of the Final Order incorporating all the provisions of this Consent Agreement; and (e) waives its right to contest or appeal the 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 facilities 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 requirements pertaining to operator training, walkthrough inspection records, and overfill prevention equipment triennial inspection for its UST systems at all of its facilities in New York and New Jersey.
2. Respondent certifies that, as of the effective date of the CA/FO, to the best of its knowledge and belief, it is in compliance with all the UST requirements referenced in Paragraph 14 of EPA's Findings of Facts and Conclusions of Law of this CA/FO.
3. Respondent shall certify and provide reasonable proof to the EPA individuals identified below in Paragraph 12 that the designated Class B operator at D'Amato CH has been retrained in accordance with 40 C.F.R. § 280.242, as required by 40 C.F.R. § 280.244, on or before thirty (30) calendar days after the effective date of the Final Order. 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 the compliance status of this facility and are true, accurate, and complete.”

DocuSigned by:

BY: _____
(Signature)
DATE: 8/25/2021
NAME: Michael Gelber
(Please Print)
TITLE: Regional Commissioner (2P)

4. Respondent shall pay a civil penalty to EPA in the total amount of **ONE HUNDRED SIX THOUSAND SEVEN HUNDRED AND FORTY-ONE DOLLARS AND FIFTY CENTS (\$106,741.50)**, which broken down by facility is: Roe FB - \$19,094; MLK FBCH - \$19,080; Mollo FB - \$18,700.50; and D'Amato CH - \$49,867. 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 the U.S. General Services Administration, Docket Number RCRA 02-2021-7501;"** 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 **(\$106,741.50)**
 - 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: **U.S. General Services Administration**
 - g. Case docket number: **RCRA-02-2021-7501**

7. 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 12.
8. The payment must be received at the above address (or account of EPA) on or before thirty (30) calendar days after the date of the signature of the Final Order, which is located at the end of this CA/FO.
9. Full payment of the penalty described in Paragraph 4 of the 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.
10. 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.
11. Complainant shall e-mail to Respondent (to the representative designated in Paragraph 12 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 upon such representative 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:

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

And

William K. Sawyer, Branch Chief
Waste & Toxic Substances Branch
Office of Regional Counsel
US Environmental Protection Agency, Region 2
290 Broadway, 16th Floor

New York, New York 10007-1866
Sawyer.William@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:

Richard Owen Hughes, Esq.
Senior Assistant Regional Counsel
Northeast and Caribbean Region
U.S. General Services Administration
Richard.Hughes@gsa.gov

13. 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.
14. 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. Respondent agrees not to contest the validity of any term of this CA/FO in any action brought by EPA to enforce this CA/FO.
16. 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 its right to confer with the Administrator pursuant to Section 6001(b)(2) of RCRA, 42 U.S.C. § 6961(b)(2).
17. 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 proceeding, but Respondent agrees not to contest the terms of this Consent Agreement and Final Order in an action or proceeding to enforce or seek compliance with this Consent Agreement and its accompanying Final Order.
18. Nothing in this CA/FO shall be construed as a release from any other action under any law and/or regulation administered by EPA.
19. 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.
20. 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.

21. The provisions of this CA/FO shall be binding upon both EPA and the Respondent, its 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. Each undersigned signatory of this Consent Agreement 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 General Services Administration
Docket Number RCRA-02-2021-7501

RESPONDENT:

DocuSigned by:
BY: Michael Gelber
A9A8532427E646A...
(Signature)

NAME: Michael Gelber
(Please Print)

TITLE: Regional Commissioner (2P)

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

**In the Matter of General Services Administration.
Docket Number RCRA-02-2021-7501**

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

Walter Mugdan
Acting Regional Administrator
U.S. Environmental Protection Agency - Region 2
290 Broadway, 26th Floor
New York, NY 10007

DATE: _____

In the Matter of General Services Administration
Docket Number RCRA-02-2021-7501

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, 16th Floor
New York, New York 10007-1866
Maples.Karen@epa.gov

Copy by EMAIL:

Richard Owen Hughes, Esq.
Senior Assistant Regional Counsel
Northeast and Caribbean Region
U.S. General Services Administration
Richard.Hughes@gsa.gov

Yolanda Majette
Waste and Toxic Substances Branch Secretary
U.S. Environmental Protection Agency- Region 2
290 Broadway, 16th Floor
New York, New York 10007-1866
Majette.Yolanda@epa.gov