



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

JUN 30 2010

CERTIFIED MAIL- RETURN RECEIPT REQUESTED

Article Number: 7005 3110 0000 5937 5419

Andrew Quentzel
Davand Aviation, Inc.
379 Throop Avenue
Brooklyn, N.Y. 11221

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REGION 2
2010 JUL -9 AM 8:19
REGIONAL HEARING
CLERK

Re: **In the Matter of Davand Aviation, Inc., d/b/a Frankfort Highland Airport,
Respondent
Docket No. RCRA-02-2010-7504**

Dear Mr. Quentzel:

Enclosed is the Complaint, Compliance Order and Opportunity for Hearing in the above-referenced proceeding. The Complaint alleges violations of the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901 *et seq.*

You have the right to a formal hearing to contest any of the allegations in the Complaint and/or to contest the penalty proposed in the Complaint. If you wish to contest the allegations and/or the penalty proposed in the Complaint, you must file an Answer within **thirty (30)** days of your receipt of the enclosed Complaint with the Regional Hearing Clerk of the Environmental Protection Agency ("EPA"), Region 2, at the following address:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, New York 10007-1866

If you do not file an Answer within thirty (30) days of receipt of this Complaint and have not obtained a formal extension for filing an Answer from the Regional Judicial Officer of Region 2, a default order may be entered against you and the entire proposed penalty may be assessed.

Whether or not you request a formal hearing, you may request an informal conference with EPA to discuss any issue relating to the alleged violations and the amount of the proposed penalty.

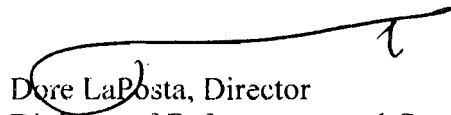
EPA encourages all parties against whom it files a Complaint to pursue the possibility of settlement and to have an informal conference with EPA. However, a request for an informal conference *does not* substitute for a written Answer, affect what you may choose to say in an Answer, or extend the thirty (30) days by which you must file an Answer requesting a hearing.

You will find enclosed a copy of the "Consolidated Rules of Practice," which govern this proceeding. (A brief discussion of some of these rules appears in the later part of the Complaint.) For your general information and use, I also enclosed both an "Information Sheet for U.S. EPA Small Business Resources" and a "Notice of SEC Registrants' Duty to Disclose Environmental Legal Proceedings" which may apply to you depending on the size of the proposed penalty and nature of your company.

EPA encourages the use of Supplemental Environmental Projects, where appropriate, as part of any settlement. I am enclosing a brochure on "EPA's Supplemental Environmental Projects Policy." Please note that these are only available as part of a negotiated settlement and are not available if this case has to be resolved by a formal adjudication.

If you have any questions or wish to schedule an informal conference, please contact the attorney whose name is listed in the Complaint.

Sincerely,



Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

Enclosures

cc: Karen Maples, Regional Hearing Clerk (without enclosures)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. ENVIRONMENTAL
PROTECTION AGENCY REGION 2
2013 JUN -8 AM 9:19
REGIONAL HEARING
CLERK

IN THE MATTER OF:

Davand Aviation, Inc. d/b/a
Frankfort Highland Airport
Frankfort, Herkimer County, N.Y.

Respondent

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

COMPLAINT, COMPLIANCE ORDER
AND
NOTICE OF OPPORTUNITY FOR HEARING

DOCKET NO. RCRA-02-2010-7504

COMPLAINT

1. 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. (the "Act").
2. Complainant in this proceeding, Dore LaPosta, Director, Division of Enforcement and Compliance Assistance of the United States Environmental Protection Agency, Region 2 ("EPA"), has been duly delegated the authority to institute this action.
3. Respondent is Davand Aviation, Inc. ("Respondent") which was and continues to be the owner of the Frankfort Highland Airport.
4. Respondent is a "person" within the meaning of Section 9001(6) of the Act, 42 U.S.C. § 6991(6), and 40 C.F.R. § 280.12.
5. Respondent was and continues to be an "owner" and "operator" of an existing 6,000 gallon fiberglass reinforced plastic ("FRP") tank with steel suction piping which is an "underground storage tank" ("UST") or "UST system," as defined in Section 9001 of the Act, 42 U.S.C. §6991, and 40 C.F.R. §280.12. The UST system is located at McIntyre and Gulf Roads, Frankfort, Herkimer County, New York (the "Facility").
6. Pursuant to §§ 2002, 9002, and 9003 of the Act, 42 U.S.C. §§ 6912, 6991a, and 6991b, EPA promulgated rules setting forth requirements for owners and operators of UST systems, codified at 40 C.F.R. Part 280.

7. 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 10 percent or more beneath the surface of the ground.
8. 40 C.F.R. § 280.12 defines an existing tank system as a tank system used to contain an accumulation of regulated substances or for which installation has commenced on or before December 22, 1988.
9. Pursuant to 40 C.F.R. § 280.40, owners and operators of new and existing UST systems must provide a method, or combination of methods, of release detection that meets the requirements of 40 C.F.R. 280, Subpart D in accordance with the Schedule for Phase-in of Release Detection at Subsection 280.40(c).
10. Pursuant to Section 9005 of the Act, 42 U.S.C. § 6991d, on December 16, 2008, an authorized representative of EPA inspected the existing UST system located at the Facility, to determine its compliance with the Act and 40 C.F.R. Part 280.
11. Pursuant to Section 9005(a) of the Act, 42 U.S.C. § 6991d(a), and 40 C.F.R. § 280.34, on or about March 10, 2009, EPA sent an Information Request Letter (“IRL”) to Respondent to determine the status of its compliance with the Act and 40 C.F.R. Part 280, for the UST system at the Facility.
12. At the time of EPA’s inspection, the UST system at the Facility was in use. It did not meet the performance standards set forth at 40 C.F.R. § 280.21, and it had not been closed pursuant to the regulations at 40 C.F.R. §§ 280.70 - 280.74.

Count 1 - Failure to Upgrade Existing UST System, Meet the New UST System Performance Standards, or Close the UST System at the Facility, as Required by 40 C.F.R. § 280.21.

13. Complainant realleges each allegation contained in Paragraphs “1” through “12” with the same force and effect as if fully set forth herein.
14. Pursuant to 40 C.F.R. § 280.21, not later than December 22, 1998, all existing UST systems had to comply with the upgrading requirements in paragraphs (b) through (d) of that section, the new performance standard requirements set forth in 40 C.F.R. § 280.20, or the closure requirements set forth in 40 C.F.R. §§ 280.70 - 280.74.
15. Pursuant to 40 C.F.R. § 280.21(b), steel tanks must be upgraded by internal lining or cathodic protection, or both.
16. At the time of EPA’s inspection, the existing UST system was not upgraded by internal lining or cathodic protection, or both, and did not meet the standards set forth 40 C.F.R. § 280.21.

17. At the time of EPA's inspection, the existing UST system was not upgraded with spill and overfill prevention equipment or corrosion protection on the steel components, as required by 40 C.F.R. §§ 280.21(c) and (d).
18. At the time of EPA's inspection of the Facility, EPA requested records of any upgrades made to the UST system, but Respondent did not produce records demonstrating that the UST system had been upgraded in accordance with the requirements of 40 C.F.R. §§ 280.21(b) through (d).
19. Respondent's April 6, 2009 response to EPA's IRL ("IRL Response") admitted that Respondent was the owner of the 6,000-gallon FRP and steel UST system that was installed on December 1, 1986 and was still in use at the Facility.
20. Respondent's IRL Response admitted that the UST system at the Facility was used for storage of 100 octane low lead aviation fuel.
21. Respondent's IRL Response admitted that the UST system at the Facility did not have cathodic protection at the time of EPA's inspection or any upgrade, in violation of 40 C.F.R. Part 280, Subpart C.
22. Respondent's IRL Response admitted that the UST system at the Facility did not have spill or overfill prevention equipment at the time of EPA's inspection. Overfill prevention was subsequently installed on or about January 20, 2009. Spill prevention and corrosion protection were installed on or about June 15, 2009.
23. Respondent's failure, from December 22, 1998 through June 11, 2009, to comply with the upgrade requirements specified in 40 C.F.R. § 280.21, the performance standards set forth in 40 C.F.R. § 280.20, or the closure requirements set forth in 40 C.F.R. §§ 280.70 - 280.74 constitutes a violation of 40 C.F.R. Part 280.

Count 2 – Failure to Provide a Method of Release Detection that Can Detect a Release from the UST System and Failure to Maintain and Provide Records of Compliance with Release Detection, as Required by 40 C.F.R. Part 280, Subpart D.

24. Complainant realleges each allegation contained in Paragraphs "1" through "23" with the same force and effect as if fully set forth herein.
25. Pursuant to 40 C.F.R. § 280.41, owners and operators of petroleum UST systems must provide a method of release detection that meets the requirements of 40 C.F.R. Part 280, Subpart D for tanks and piping.
26. Owners and operators of tanks of 550 gallons or more must provide a method or combination of methods of release detection that meets the requirements at 40 C.F.R. §§ 280.41(a) and 280.43.

27. Owners and operators of tanks with underground piping that routinely contains regulated substances must provide a method or combination of methods of release detection that meets the requirements at 40 C.F.R. §§ 280.41(b) and 280.44.
28. Pursuant to 40 C.F.R. § 280.45, owners and operators of UST systems must maintain records in accordance with 40 C.F.R. § 280.34 demonstrating compliance with all applicable requirements of 40 C.F.R. Part 280, Subpart D.
29. At the time of EPA's inspection of the UST system at the Facility, the UST system was in use, and Respondent did not meet the requirements for monitoring the tank for release detection at least every thirty days pursuant to 40 C.F.R. § 280.41.
30. Respondent stated in its IRL Response that it conducted daily inventory monitoring of the tank. Respondent did not provide any inventory monitoring records.
31. Since the UST system at the Facility did not meet the performance standards at 40 C.F.R. §280.20 and §280.21, Respondent, pursuant to 40 C.F.R. §280.41(a)(2), was not eligible to utilize the monthly inventory control method set forth at 40 C.F.R. § 280.43 for release detection.
32. Respondent stated in its IRL Response that it conducted tank tightness tests and its most recent test was done on February 27, 2007. Respondent provided a copy of the results in response to the IRL. However, pursuant to 40 C.F.R. §280.41(a)(1), Respondent was not eligible to utilize tank tightness testing (or another test of equivalent performance) for release detection because the tank had not been upgraded.
33. Respondent failed to conduct either a line tightness at least every three years in accordance with § 280.44(b) or to use a monthly monitoring method in accordance with § 280.44(c) for the suction piping that is part of its petroleum UST system at the Facility.
34. Respondent also failed to maintain and provide records demonstrating compliance with release detection requirements, as required by 40 C.F.R. §§ 280.34 and 280.45.
35. Respondent's failure to implement a required method of release detection that can detect a release from any portion of the petroleum UST system at the Facility, and to maintain records for at least one year demonstrating compliance with the release detection requirement constitutes a violation of 40 C.F.R. Part 280, Subpart D.

PROPOSED CIVIL PENALTY

9006(d)(2)(A) of the Act, 42 U.S.C. § 6991e (d)(2)(A), authorizes the assessment of a civil penalty up to \$10,000 for each tank for each day of violation of any requirement or standard promulgated by the Administrator. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection and Improvement Act of 1996, Pub. L. No. 104-34, 110 Stat. 1321 (1996), required EPA to adjust its penalties for inflation on a periodic basis. EPA issued a Civil Monetary Penalty Inflation Adjustment Rule on December 31, 1996, see 61 Fed. Reg.

69360 (1996); on February 13, 2004, see 69 Fed. Reg. 7121 (2004); and on December 11, 2008, see 73 Fed. Reg. 239 (2008), codified at 40 C.F.R. Part 19.

Under Table I of the Civil Monetary Penalty Inflation Adjustment Rule, the maximum civil penalty under 42 U.S.C. Section 6991e(d)(2) for each tank for each day of violation occurring between January 30, 1997 and January 12, 2009, is \$11,000. The maximum civil penalty for violations occurring after January 12, 2009 was increased to \$16,000.

The penalties are calculated using to the “U.S. EPA Penalty Guidance for Violations of UST Requirements,” dated November 1990 (“UST guidance”). The penalty amounts in this UST guidance were amended by a September 21, 2004 document entitled, “Modifications to EPA Penalty Policies to implement the Civil Monetary Penalty Inflation Rule (pursuant to the Debt Collection Improvement Act of 1996, Effective October 1, 2004),” and a December 29, 2008 document entitled, “Amendments to EPA’s Civil Penalty Policies to Implement the 2008 Civil Monetary Penalty Inflation Adjustment Rule (Effective January 12, 2009).” A more specific guidance entitled “Revision to Adjusted Penalty Policy Matrices Issued on November 16, 2009” was issued on April 6, 2010. (These documents are available upon request.) This UST guidance provides a rational, consistent, and equitable calculation methodology for applying the statutory penalty factors to particular cases.

Based upon the facts alleged in this Complaint and taking into account factors such as the seriousness of the violations and any good faith efforts by the Respondents to comply with the applicable requirements, Complainant proposes, subject to receipt and evaluation of further relevant information, that the following civil penalty be assessed:

Count 1: A civil penalty of **\$55,376.50** for Respondent’s failure to upgrade or close the existing UST system at the Facility, as required by 40 C.F.R. §280.21.

Count 2: A civil penalty of **\$28,187.50** for Respondent’s failure to provide a method of release detection and to maintain records demonstrating compliance, as required by 40 C.F.R. Part 280, Subpart D.

The Total Proposed Penalty Amount for these violations is \$83,564.00

The Penalty Computation Worksheets explaining the rational for the proposed civil penalties in this specific case are attached to this Complaint.

COMPLIANCE ORDER

Based on the foregoing, and pursuant to the authority of Section 9006 of the Act, 42 U.S.C. § 6991e, Complainant issues the following Compliance Order against Respondent, which shall take effect thirty (30) days after service of this Order (i.e., the effective date), unless by that date, the Respondent has requested a hearing pursuant to 40 C.F.R. § 22.15. See 42 U.S.C. § 6991(e)(b) and 40 C.F.R. §§ 22.37(b) and 22.7(c):

1. Respondent shall, within thirty (30) days after the effective date of this Order, comply, to the

extent it has not already done so, with all applicable upgrade requirements of 40 C.F.R. § 280.21 for the UST system at the Respondent's Facility, or meet new UST system performance standards in 40 C.F.R. § 280.20, or, in the alternative, cease operation and permanently close the UST systems at this Facility in accordance with the requirements specified under 40 C.F.R. §§ 280.70 - 74.

2. Respondent shall, within thirty (30) days after the effective date of this Order, comply, to the extent it has not already done so, with all applicable release detection and release reporting requirements of 40 C.F.R. Part 280, Subpart D for the UST system at the Respondent's Facility.

3. Respondent shall, within forty-five (45) calendar days after the effective date of this Order, submit to EPA written notice of its compliance (accompanied by a copy of all appropriate supporting documentation) or noncompliance for each of the requirements set forth herein. If the Respondent is in noncompliance with a particular requirement, the notice shall state the reasons for noncompliance and shall provide a schedule for achieving expeditious compliance with the requirement. Such written notice shall contain the following certification:

I certify that the information contained in this written notice and the accompanying documents is true, accurate and complete. As to the identified portions of this response for which I cannot personally verify their accuracy, I certify under penalty of law that this response and all attachments were prepared in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

Signature: _____

Name: _____

Title: _____

Respondent shall submit the notice required to be submitted pursuant to this paragraph to:

Dennis McChesney, Ph.D., MBA, Team Leader
UST Team
Division of Enforcement and Compliance Assistance
RCRA Programs Branch
290 Broadway, 20th Floor
New York, NY 10007

NOTICE OF LIABILITY FOR ADDITIONAL CIVIL PENALTIES

Pursuant to Section 9006(a)(3) of the Act, 42 U.S.C. §6991e(a)(3), and in accordance with the

Debt Collection and Improvement Act of 1996, Pub. L. No. 104-34, 110 Stat. 1321 (1996) and the regulations promulgated there under (see the Civil Monetary Inflation Rule), codified at 40 C.F.R. Part 19), a violator failing to comply with a Compliance Order that has taken effect within the time specified in the Order is liable for a civil penalty up to \$37,500 for each day of continued noncompliance.

PROCEDURES GOVERNING THIS ADMINISTRATIVE LITIGATION

The rules of procedure governing this civil administrative litigation have been set forth in 64 Fed. Reg. 40138 (July 23, 1999), entitled, "CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENTS OF CIVIL PENALTIES, ISSUANCE OF COMPLIANCE OR CORRECTIVE ACTION ORDERS, AND THE REVOCATION, TERMINATION OR SUSPENSION OF PERMITS" (hereinafter "Consolidated Rules"), and which are codified at 40 C.F.R. Part 22. A copy of these rules accompanies this "Complaint, Compliance Order, and Notice of Opportunity for Hearing" (hereinafter the "Complaint").

A. Answering the Complaint

Where Respondent intends to contest any material fact upon which the Complaint is based, to contend that the proposed penalty and/or the compliance order is inappropriate or to contend that Respondent is entitled to judgment as a matter of law, Respondent must file with the Regional Hearing Clerk of EPA, Region 2, both an original and one copy of a written answer to the Complaint, and such Answer must be filed within 30 days after service of the Complaint. 40 C.F.R. §§ 22.15(a) and 22.7(c). The address of the Regional Hearing Clerk of EPA, Region 2, is:

**Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, New York 10007-1866**

Respondent shall also then serve one copy of the Answer to the Complaint upon Complainant and any other party to the action. 40 C.F.R. § 22.15(a).

Respondent's Answer to the Complaint must clearly and directly admit, deny, or explain each of the factual allegations that are contained in the Complaint and with regard to which Respondent has any knowledge. 40 C.F.R. § 22.15(b). Where Respondent lacks knowledge of a particular factual allegation and so states in its Answer, the allegation is deemed denied. 40 C.F.R. § 22.15(b). The Answer shall also set forth: (1) the circumstances or arguments that are alleged to constitute the grounds of defense; (2) the facts that Respondent disputes (and thus intends to place at issue in the proceeding); and (3) whether Respondent requests a hearing. 40 C.F.R. § 22.15(b).

Respondent's failure to affirmatively raise in the Answer facts that constitute or that might constitute the grounds of its defense may preclude Respondent, at a subsequent stage in this proceeding, from raising such facts and/or from having such facts admitted into evidence at a hearing.

B. Opportunity to Request a Hearing

If requested by Respondent in its Answer, a hearing upon the issues raised by the Complaint and Answer may be held. 40 C.F.R. § 22.15(c). If, however, Respondent does not request a hearing, the Presiding Officer (as defined in 40 C.F.R. § 22.3) may hold a hearing if the Answer raises issues appropriate for adjudication. 40 C.F.R. § 22.15(c). With regard to the Compliance Order in the Complaint, unless Respondent requests a hearing pursuant to 40 C.F.R. § 22.15 within 30 days after such Order is served, such Order shall automatically become final. 40 C.F.R. § 22.37.

Any hearing in this proceeding will be held at a location determined in accordance with 40 C.F.R. § 22.21(d). A hearing of this matter will be conducted in accordance with the provisions of the Administrative Procedure Act, 5 U.S.C. §§ 551-59, and the procedures set forth in Subpart D of 40 C.F.R. Part 22.

C. Failure to Answer

If Respondent fails in its Answer to admit, deny, or explain any material factual allegation contained in the Complaint, such failure constitutes an admission of the allegation. 40 C.F.R. § 22.15(d). If Respondent fails to file a timely [i.e. in accordance with the 30-day period set forth in 40 C.F.R. § 22.15(a)] Answer to the Complaint, Respondent may be found in default upon motion. 40 C.F.R. § 22.17(a). Default by Respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations. 40 C.F.R. § 22.17(a). Following a default by Respondent for a failure to timely file an Answer to the Complaint, any order issued therefore shall be issued pursuant to 40 C.F.R. § 22.17(c).

Any penalty assessed in the default order shall become due and payable by Respondent without further proceedings 30 days after the default order becomes final pursuant to 40 C.F.R. § 22.27(c). 40 C.F.R. § 22.17(d). If necessary, EPA may then seek to enforce such final order of default against Respondent, and to collect the assessed penalty amount. Any default order requiring compliance action shall be effective and enforceable against Respondent without further proceedings on the date the default order becomes final under 40 C.F.R. § 22.27(c). 40 C.F.R. § 22.17(d).

D. Exhaustion of Administrative Remedies

Where Respondent fails to appeal an adverse initial decision to the Environmental Appeals Board pursuant to 40 C.F.R. § 22.30, and that initial decision thereby becomes a final order pursuant to the terms of 40 C.F.R. § 22.27(c), Respondent waives its right to judicial review. 40 C.F.R. § 22.27(d).

In order to appeal an initial decision to the Agency's Environmental Appeals Board [EAB; see 40 C.F.R. § 1.25(e)], Respondent must do so "Within thirty (30) days after the initial decision is served" upon the parties. 40 C.F.R. § 22.30(a). Pursuant to 40 C.F.R. § 22.7(c), where service is effected by mail, "...5 days shall be added to the time allowed by these Consolidated Rules of Practice for the filing of a responsive document". Note that the 45-day period provided for in 40

C.F.R. § 22.27(c) [discussing when an initial decision becomes a final order] does not pertain to or extend the time period prescribed in 40 C.F.R. § 22.30(a) for a party to file an appeal to the EAB of an adverse initial decision.

INFORMAL SETTLEMENT CONFERENCE

Whether or not Respondent requests a formal hearing, EPA encourages settlement of this proceeding consistent with the provisions of the Act and its applicable regulations. 40 C.F.R. § 22.18(b). At an informal conference with a representative(s) of Complainant, Respondent may comment on the charges made in this Complaint, and Respondent may also provide whatever additional information that it believes is relevant to the disposition of this matter, including: (1) actions Respondent has taken to correct any or all of the violations herein alleged; (2) any information relevant to Complainant's calculation of the proposed penalty; (3) the effect the proposed penalty would have on Respondent's ability to continue in business; and/or (4) any other special facts or circumstances Respondent wishes to raise.

Complainant has the authority to modify the amount of the proposed penalty, where appropriate, to reflect any settlement agreement reached with Respondent, to reflect any relevant information previously not known to Complainant, or to dismiss any or all of the charges, if Respondent can demonstrate that the relevant allegations are without merit and that no cause of action as herein alleged exists. Respondent is referred to 40 C.F.R. § 22.18.

Any request for an informal conference or any questions that Respondent may have regarding this Complaint should be directed to:

Beverly Kolenberg
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 17th floor
New York, New York 10007-1866
(212) 637-3167 (phone)
(212) 637-3104 (fax)

The parties may engage in settlement discussions irrespective of whether Respondent has requested a hearing. 40 C.F.R. § 22.18(b)(1). Respondent's requesting a formal hearing does not prevent it from also requesting an informal settlement conference; the informal conference procedure may be pursued simultaneously with the formal adjudicatory hearing procedure. A request for an informal settlement conference constitutes neither an admission nor a denial of any of the matters alleged in the Complaint. Complainant does not deem a request for an informal settlement conference as a request for a hearing as specified in 40 C.F.R. § 22.15(c).

A request for an informal settlement conference does not affect Respondent's obligation to file a timely Answer to the Complaint pursuant to 40 C.F.R. § 22.15. No penalty reduction, however, will be made simply because an informal settlement conference is held.

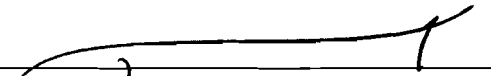
Any settlement that may be reached as a result of an informal settlement conference shall be embodied in a written consent agreement. 40 C.F.R. § 22.18(b)(2). In accepting the consent agreement, Respondent waives its right to contest the allegations in the Complaint and waives its right to appeal the final order that is to accompany the consent agreement. 40 C.F.R. § 22.18(b)(2). In order to conclude the proceeding, a final order ratifying the parties' agreement to settle will be executed. 40 C.F.R. § 22.18(b)(3).

Respondent's entering into a settlement through the signing of such Consent Agreement and its complying with the terms and conditions set forth in the such Consent Agreement terminates this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint. Respondent's entering into a settlement does not extinguish, waive, satisfy or otherwise affect its obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

RESOLUTION OF THIS PROCEEDING WITHOUT HEARING OR CONFERENCE

If, instead of filing an Answer, Respondent wishes not to contest the Compliance Order in the Complaint and wants to pay the total amount of the proposed penalty within thirty (30) days after receipt of the Complaint, Respondent should promptly contact the Assistant Regional Counsel identified above.

Dated: JUNE 30, 2010



Dore LaPosta, Director
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency -Region 2
290 Broadway
New York, NY 10007-1866

To: Andrew Quentzel, Chairman
Davand Aviation, Inc.
379 Throop Avenue
Brooklyn, N.Y. 11221

cc: Russ Brauksieck, Chief
Spill Prevention and Bulk Storage Section
NYSDEC
625 Broadway, 11th Floor
Albany, N.Y. 12233

CERTIFICATE OF SERVICE

This is to certify that I have this day caused to be mailed a copy of the foregoing Complaint, Compliance Order, and Notice of Opportunity for Hearing, bearing docket number RCRA-02-2010-7504, and a copy of the Consolidated Rules of Practice, 40 C.F.R. Part 22, by certified mail, return receipt requested, to:

Andrew Quentzel, Chairman
Davand Aviation, Inc.
379 Throop Avenue
Brooklyn, N.Y. 11221

I hand-carried the original and a copy of the foregoing Complaint to the Office of Regional Hearing Clerk, United States Environmental Protection Agency, Region 2.

Dated: JUL - 8 2010
New York, New York

Smildred N. Bay