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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF:)	
)	
)	EPA Docket No. RCRA 10-2011-0037
JULIUS TEMPLETON)	
and T & A, L.L.C.)	CONSENT AGREEMENT
)	AND FINAL ORDER
)	
Respondents.)	
_____)	

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 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 re delegated this authority to the Regional Judicial Officer.

1.2. Respondents are Julius Templeton and T & A, L.L.C.

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.

1.4. Effective October 8, 1993, pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c, and 40 C.F.R. Part 281, Subpart A, EPA granted final authorization to the State of Washington to administer a state underground storage tank (“UST”) management program to operate in lieu of the federal UST program established in Subtitle I of RCRA. The provisions of the Washington UST program, through this final authorization, are enforceable by EPA pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e.

1.5. The State of Washington’s authorized UST program is set forth in the Revised Code of Washington (“RCW”) Chapter 90.76 and its implementing regulations are set forth in the Washington Administrative Code (WAC), Chapter 173-360.

1.6. EPA has given Washington prior notice of this enforcement action in accordance with Section 9006(a)(2) of RCRA, 42 U.S.C. § 6991e(a)(2).

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 Julius Templeton is the Governing Member of T & A, L.L.C.

3.2. Respondent T & A, L.L.C. is a Washington limited liability company which owns and/or operates the Central Valley Grocery located at 10400 Central Valley Road NE, in Poulsbo, Washington.

3.3. Central Valley Grocery has three USTs: one 12,000-gallon UST containing regular gasoline, one 10,000-gallon UST containing diesel, and one 8,000-gallon UST containing super or premium gasoline. These USTs were installed in 1982 and upgraded by internal lining in June 1998.

3.4. 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 WAC 173-360-120.

3.5. Respondents are each the “owner” and/or “operator” of an “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.

3.6. 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.

3.7. As an owner and/or operator of three USTs, each Respondent is required to meet the release detection requirements for petroleum UST systems described in WAC 173-360-335.

3.8. WAC 173-360-335(2)(a) requires that tanks be monitored at least every 30 days for releases using one of the methods listed in WAC 173-360-345(6) including daily inventory control as described in (6)(a) and automatic tank gauging as described in (6)(e).

3.9. Pursuant to WAC 173-360-345(2), owners and operators of an upgraded UST system may use inventory control for up to 10 years after upgrade of the UST.

3.10. On December 11, 2008, EPA conducted an inspection of Central Valley Grocery (the "facility"). During the inspection, Respondents' representatives informed the EPA inspector that the facility used daily inventory control as the primary release detection method for its tanks. The EPA inspector reviewed inventory control records for the previous 12 months and observed that reconciliation of the product volume in each tank was not conducted on a monthly basis and the level of fuel in each tank was not being measured to one-eighth inch as required by WAC 173-360-345(6)(a). Respondents used inventory control as the release detection method for the facility's tanks after June 2008, i.e., more than 10 years after the tanks were upgraded by lining. Respondents' representatives also informed the inspector that the facility used an automatic tank gauge (ATG) as a secondary release detection method for the tanks. The inspector observed that a Veeder-Root TLS-250 ATG was installed at the facility, but that it was not operating.

3.11. On September 21, 2009, Respondents replaced the non-operational ATG with a refurbished Veeder-Root TLS-250 ATG. However, Respondents produced no tank leak test

reports from this ATG documenting release detection for the regular and premium tanks and the tank leak test reports produced for the diesel tank could not be validated because there were no inventory reports to confirm that the product levels in the tank were at least 50 percent full so the probe could read properly.

3.12. Respondents failed to conduct release detection in accordance with WAC 173-360-335(2)(a) from at least December 11, 2007 through at least June 11, 2010.

3.13. A leak test conducted by the ATG on July 1, 2010, showed passing test results for each tank, but there is no inventory report to validate the passing test results.

3.14. On November 29, 2010, Respondents installed a Veeder-Root TLS 350 ATG with continuous statistical leak detection (CSLD) and three magnetostrictive probes and documented valid passing release detection test results for all three tanks.

3.15 On March 28, 2011, Respondents documented valid passing release detection test results for all three tanks for December 2010, January 2011, February 2011 and March 2011.

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 ELEVEN THOUSAND THREE HUNDRED FIFTY-SIX DOLLARS (\$11,356).

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 plus interest in the amount of ONE HUNDRED FOURTEEN DOLLARS (\$114) in accordance with the following schedule:

(a) Within 30 days of the effective date of the Final Order, Respondents shall make an initial payment of \$2,839.

(b) Within 120 days of the effective date of the Final Order, Respondents shall make a second payment of \$2,896 (\$2,839 plus \$57 interest).

(c) Within 240 days of the effective date of the Final Order, Respondents shall make a third payment of \$2,877 (\$2,839 plus \$38 interest).

(d) Within 360 days of the effective date of the Final Order, Respondents shall make a fourth and final payment of \$2,858 (\$2,839 plus \$19 interest).

4.7. If Respondents elect to pay the penalty in full within 30 days of the effective date of this Order, then the penalty amount due will be \$11,356. If Respondents elect to accelerate

the partial penalty payments described in paragraph 4.6 above, then they must contact EPA to determine the remaining penalty amount due as of the date Respondents propose advanced payment.

4.8 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 which can be provided by EPA upon request.

4.9 Respondents shall serve a photocopy of the check or documentation of the wire transfer described above to 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

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

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4.10. 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.

4.11. 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.

4.12. 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.

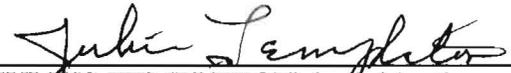
4.13. Each party shall bear its own costs, fees, and disbursements in this action.

4.14. 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.

4.15. 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



JULIUS TEMPLETON, individually, and as
Governing Member of T & A, L.L.C.

Dated: April 11, 2011

U.S. ENVIRONMENTAL PROTECTION AGENCY



EDWARD J. KOWALSKI
Director
Office of Compliance and Enforcement

Dated: 4/29/2011

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.

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5.2. Based on the findings contained in the Consent Agreement, Respondents are also ordered to comply with the following requirements pursuant to Section 9006(a) of RCRA, 42 U.S.C. § 6991e(a):

- (a) Respondents shall immediately comply with the release detection requirements in WAC 173-360-335(2)(a) for the USTs at the facility.
- (b) Within 30 days of the effective date of this Order, Respondents shall provide copies of release detection compliance documents for each UST for April 2011.
- (c) Within 60 days of the effective date of this Order, Respondents shall provide copies of release detection compliance documents for each UST for May 2011.
- (d) Compliance documentation shall be provided to the following address:

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

5.3. 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.

5.4. This Final Order shall become effective upon filing.

SO ORDERED this 3rd day of May, 2011



THOMAS JAHNKE
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-10-2011-0037 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:

Heidi J. Abrams
Sherrard McGonagle Tizzano
19717 Front Street NE
Poulsbo, Washington 98370

and a true and correct copy was delivered to:

Deborah Hilsman
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, Suite 900, ORC-158
Seattle, Washington 98101

May 3, 2011
DATE

Carol D. Kennedy
NAME
Regional Hearing Clerk
TITLE