



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NEW YORK 10007-1866

OCT 01 2014

U.S. Environmental
Protection Agency-Reg 2
2014 OCT -1 AM 10:52
REGIONAL HEARING
CLERK

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Diane Russell
Diane's Downtown Automotive LLC
435 West State St.
Ithaca, NY 14850

Re: Diane's Downtown Automotive LLC
Docket No. RCRA-02-2014-7504

Dear Ms. Russell:

Enclosed please find a fully executed Final Order issued by the Regional Judicial Officer. Please note that the first payment is due forty-five (45) calendar days after the date of signature of the Final Order.

Thank you for your cooperation.

Sincerely,

A handwritten signature in black ink, appearing to read "Carl R. Howard".

Carl R. Howard
Assistant Regional Counsel

Enc.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. Environmental
Protection Agency-Reg 2
2014 OCT - 1 AM 10: 52
REGIONAL HEARING
CLERK

In the Matter of:

Diane's Downtown Automotive LLC,
Respondent

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

**CONSENT AGREEMENT
AND FINAL ORDER**

Docket No. RCRA-02-2014-7504

This is a civil administrative proceeding instituted pursuant to Section 9006 of the Solid Waste Disposal Act, as amended by 42 U.S.C. §6901 *et seq.* (referred to collectively as the "Act" or "RCRA").

The Complainant in this proceeding is the Director of the Division of Enforcement and Compliance Assistance, EPA Region 2, who has been duly delegated the authority to institute and carry forward this proceeding. The Respondent is Diane's Downtown Automotive LLC, the "owner" of "underground storage tanks" ("USTs") or "UST Systems" as those terms are defined in Section 9001 of the Act, 42 U.S.C. §§ 6991, and 40 C.F.R. § 280.12. Pursuant to 40 Code of Federal Regulations ("C.F.R.") § 22.13(b), where parties agree to settlement of one or more causes of action before the filing of a Complaint, a proceeding may simultaneously be commenced and concluded by the issuance of a Consent Agreement and Final Order ("CA/FO") pursuant to 40 C.F.R. §§ 22.18.

The Complainant and Respondent agree that settling this matter by entering into this CA/FO pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) is a means of resolving this matter without further litigation.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent is Diane's Downtown Automotive LLC.
2. Respondent has been and remains the owner of USTs located at 435 West State Street, Ithaca, New York (the "facility"). At times relevant to this action, Respondent was subject to the requirements of the Act and its implementing regulations codified at 40 C.F.R. Part 280, which is applicable to these USTs.
3. On or about November 8, 2006, EPA performed a UST inspection at the facility. Based on this inspection, EPA offered to enter into Field Citation 89EC for violations of 40 C.F.R. Sections 280.41(b)(1)(ii) and 280.44(a). Respondent brought itself into compliance, paid the penalty, and signed the Field Citation's compliance agreement. The Field Citation was formally issued by EPA on April 27, 2009 settling the matter.
4. On or about April 2, 2010, EPA performed a second UST inspection at the facility. Based on this inspection, EPA offered to issue EPA Field Citation 729 EC for a violation of 40 C.F.R. Section 280.43(d). Respondent demonstrated compliance with this regulation, paid the penalty, and signed the Field Citation's compliance agreement. The Field Citation was issued by EPA on June 10, 2011, resolving the alleged violation.
5. On or about September 27, 2011, EPA, through its UST inspection contractor, performed a third UST inspection and found violations of 40 C.F.R. § 280.41(b)(1)(ii) (failure to conduct annual line tightness tests or to provide monthly monitoring of a pressurized piping system), and of 40 C.F.R. § 280.44(a) (failure to conduct test of adequate line leak detector system for underground piping).
6. Pursuant to Section 9005 of RCRA, on November 15, 2011, EPA issued to Respondent a Notice of Violation and Request for Information Letter (NOV/IRL) in order to help determine

more conclusively whether Respondent was in compliance with the regulations for the USTs at its facility.

7. On January 10, 2012, EPA issued Respondent a 2nd Notice – Response Overdue letter.

8. Respondent's subsequent replies to EPA's Request for Information were dated March 30, 2012 and May 1, 2012.

9. Based on the September 27, 2011 inspection and Respondent's NOV/IRL responses, EPA issued Respondent a pre-filing invitation to settle letter, dated January 29, 2014, citing Respondent for two violations: 1) failure to comply with the testing requirement for pressurized piping, 40 C.F.R. §280.41(b)(1)(ii); and 2) failure to meet the annual testing requirement for the automatic line leak detectors (ALLDs) for piping, 40 C.F.R. § 280.44(a).

10. EPA's January 29, 2014 pre-filing letter proposed a penalty of \$30,168.

11. In a letter dated March 21, 2014, counsel for Respondent submitted line tightness and ALLD test results dated September 26, 2013, and noted that no tests for 2012 had been conducted. Line tightness tests and ALLD tests had been required to be performed by October 12, 2012. Thus, Respondent failed to satisfy these regulatory testing requirements from October 12, 2012 to September 26, 2013.

12. Respondent submitted its 2011, 2012 and 2013 federal tax returns on August 27, 2014, and additional financial documents on September 11, 2014 in an effort to demonstrate its limited ability to pay a significant civil penalty.

13. Based on discussions and the information that Respondent submitted to EPA, the parties have agreed to resolve this matter without the need to issue a formal complaint.

CONSENT AGREEMENT

Based upon the foregoing, and pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e, 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, the parties hereby agree, as follows:

1. Respondent admits the jurisdictional basis for this action and admits the Findings of Fact and Conclusions of Law set forth above.
2. Respondent shall comply with the applicable requirements found in 40 C.F.R. Part 280, including but not limited to 40 C.F.R. §§ 280.41(b)(1) and 280.44(a) for any UST systems it owns or operates.
3. Respondent consents to the payment of a civil penalty as set forth in this Consent Agreement, and agrees to comply with the compliance provisions and other terms of this Consent Agreement.
4. Respondent shall pay, by cashier's certified check, or electronic funds transfer (EFT) a civil penalty in the amount of **Seven Thousand Nine Hundred Dollars** (\$7,900.00). Payments shall be made in two equal installments of \$3,950 dollars as detailed, below. The payment instruments shall be payable to the "Treasurer of the United States of America" and shall be mailed to:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

Or by **OVERNIGHT MAIL:**

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
Attn: USEPA Box No. 979077
St. Louis, MO 63101

Contact: Natalie Pearson
314-418-4087

If Respondent chooses to make the payments by EFT, then Respondent shall provide the following information to its remitter bank:

- 1) Amount of Payment.
- 2) SWIFT address: FRNYUS33, 33 Liberty Street, New York, NY 10045.
- 3) Account Code for Federal Reserve Bank of New York receiving payment: 68010727.
- 4) Federal Reserve Bank of New York ABA routing number: 021030004.
- 5) Field Tag 4200 of the Fedwire message should read D 68010727 Environmental Protection Agency.
- 6) Name of Respondent: Diane's Downtown Automotive LLC
- 7) Case Number: RCRA-02-2014-7504

The checks shall be identified with a notation of the name and docket number of this case as: In the Matter of Diane's Downtown Automotive, LLC, RCRA-02-2014- 7504.

Respondent shall also send a copy of the checks or other proof of payment to both Carl Howard, Assistant Regional Counsel, United States Environmental Protection Agency, 290 Broadway, 16th Floor, New York, New York 10007-1866, and Karen Maples, Regional Hearing Clerk, at the same address.

- a. The first payment must be received at the above address (or by EFT) on or before forty-five (45) calendar days after the date of signature of the Final Order at the end of this document (the "due date"). The second payment must be received at the above address (or by EFT) on or before three hundred and sixty-five days (one year) after the due date ("second due

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date”).

- b. Failure to pay the full amounts, according to the above provisions may result in the referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection.
- c. Further, if timely payments are not received on or before the due dates, interest will be assessed, at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, on the overdue amount from the applicable due date through the date of payment. In addition, a late payment handling charge of \$15.00 will be assessed for each thirty (30) day period, or any portion thereof, following the due date in which the balance remains unpaid.
- d. A 6% per annum penalty will also be applied on any principal amount not paid within 90 days of the applicable due date.
- e. The effective date of this Consent Agreement and Final Order shall be the date of its filing with the Regional Hearing Clerk, Region 2, New York, New York.

5. This Consent Agreement and Final Order shall not relieve Respondent from its continuing obligation to comply with all applicable provisions of federal, state or local environmental laws.

6. This Consent Agreement is being voluntarily and knowingly entered into by Respondent and EPA to resolve (upon full payment of the civil penalty) Respondent’s liability pursuant to Section 9006 for civil penalties for the violations specifically described in paragraphs 9 and 11 of the Findings of Fact and Conclusions of Law section in this CA/FO. Nothing herein shall be read

to preclude EPA or the United States, however, from pursuing appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

7. Respondent has read the foregoing Consent Agreement, understands its terms, and consents to the issuance of the accompanying Final Order. The parties agree that all terms of settlement are set forth herein.

8. Respondent hereby waives its right to request or to seek any Hearing on any of the terms of this Consent Agreement or the Findings of Fact and Conclusions of Law herein, or on the accompanying Final Order.

9. Respondent waives any rights it may have pursuant to 40 C.F.R. § 22.8 to be present during discussions with or to be served with and to reply to any memorandum or communication addressed to the Regional Administrator, the Deputy Regional Administrator, or the Regional Judicial Officer where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the attached Final Order.

10. Respondent certifies that its signatory is duly and fully authorized to enter into and ratify this Consent Agreement and all the terms and conditions set forth in this Consent Agreement.

11. Each party hereto agrees to bear its own costs and fees in this matter.

12. Respondent consents to service upon Respondent of a copy of this CA/FO by an EPA employee other than the Regional Hearing Clerk.

13. 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 or legal proceeding, except one to enforce the terms of this CA/FO.

14. The provisions of this Consent Agreement shall be binding upon Respondent, its

officials, authorized representatives and successors or assigns and upon Complainant.

15. Respondent agrees that the penalties due and owing in settlement of this matter will not be deducted from any State or Federal taxes due and/or paid following settlement of this matter.

RESPONDENT: BY: Diane Russell
Name (Print)
Diane Russell
Diane Russell
Diane's Downtown Automotive LLC

DATE: 9/26/14

COMPLAINANT: BY: Dore LaPosta
Dore LaPosta, Director
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency -
Region 2

DATE: 9/29/14

FINAL ORDER

The Regional Judicial Officer of the U.S. Environmental Protection Agency, Region 2, concurs in the foregoing Consent Agreement in the case of In the Matter of Diane's Downtown Automotive LLC, bearing Docket No. RCRA-02-2014-7504. The Consent Agreement, having been duly accepted and entered into by the parties to this matter, is hereby ratified, and incorporated into this Final Order, which is hereby issued and shall take effect when filed with the Regional Hearing Clerk of EPA, Region 2. 40 C.F.R. Section 22.31(b). This Final Order is being entered pursuant to the authority of 40 C.F.R. Section 22.18(b)(3) and shall constitute an order issued under authority of Section 9006 of RCRA, 42 U.S.C. Section 6991e.



Helen Ferrara
Regional Judicial Officer
U.S. Environmental Protection Agency -
Region 2
290 Broadway
New York, New York 10007-1866

DATE: September 30, 2014

In the Matter of Diane's Downtown Automotive LLC
Docket No. RCRA-02-2014-7504

CERTIFICATE OF SERVICE

I certify that I have caused to be sent the foregoing CONSENT AGREEMENT and its accompanying FINAL ORDER bearing the above-referenced docket number, in the following manner to the respective addressees listed below:

Copy by
Certified Mail/
Return Receipt Requested:

Diane Russell
Diane's Downtown Automotive LLC
435 West State St.
Ithaca, NY 14850

Original and One Copy
by Hand:

Karen Maples
Office of Regional Hearing Clerk
U. S. Environmental Protection Agency
Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866

Dated: 10/11, 2014
New York, New York

