



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:

LR-8J

**Via First Class Mail, Return Receipt Requested**

Marney DeVroom  
Flying J. Inc.  
1104 Country Hills Drive  
Ogden, Utah 84403

Re: Consent Agreement and Final Order  
*In re* Flying J., Inc., Docket No. RCRA-05-2008-0004

Dear Ms. DeVroom:

Enclosed please find one of two original signed copies of a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. We filed the originals with the Regional Hearing Clerk on APR 7 2008.

Please pay the civil penalty in the amount of \$32,600 in the manner prescribed in the CAFO, and reference your check with the number BD 2750842R006 and docket number RCRA-05-2008-0004. Your payment is due within 30 days after the effective date.

Thank you for your cooperation in resolving this matter.

Sincerely,

Willie H. Harris, P.E.  
Chief, RCRA Branch  
Land and Chemicals Division

Enclosures

Cc: Sandra L. Siler, (UST)  
Regional Hearing Clerk

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

**In the Matter of:**

**Flying J Inc.  
Ogden, Utah,**

**Respondent.**

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)  
) **Docket No. RCRA-05-2008-0004**  
)  
) **Proceeding to Assess a Civil Penalty Under**  
) **Section 9006 of the Solid Waste Disposal**  
) **Act, as amended, 42 U.S.C. § 6991e**  
)  
)

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**Consent Agreement and Final Order  
Preliminary Statement**

1. This is an administrative action commenced and concluded under Section 9006 of the Solid Waste Disposal Act, as amended (SWDA), 42 U.S.C. § 6991e, and Sections 22.13(b) and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules) as codified at 40 C.F.R. Part 22.

2. The Complainant is, by lawful delegation, the Director, Land and Chemicals Division, United States Environmental Protection Agency (U.S. EPA), Region 5.

3. Respondent is Flying J Inc., a corporation doing business in the State of Indiana.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

### **Jurisdiction and Waiver of Right to Hearing**

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

### **Statutory and Regulatory Background**

9. Subchapter IX of SWDA, 42 U.S.C. § 6991 *et seq.*, regulates the installation and use of underground storage tanks (USTs), which are defined in Section 9001(1) of SWDA, 42 U.S.C. § 6991(1), and 40 C.F.R. § 280.12.

10. Section 9003 of SWDA, 42 U.S.C. § 6991b, requires the Administrator to promulgate release detection, prevention and correction regulations applicable to all owners and operators of USTs. These regulations are codified in 40 C.F.R. Part 280.

11. Under Section 9004 of SWDA, 42 U.S.C. § 6991c, the Administrator of U.S. EPA (the Administrator) may approve a state program to administer the UST program in lieu of the federal program when the Administrator finds that the state program meets certain conditions. Any violation of regulations promulgated pursuant to Sections 9001 through 9010 of SWDA (Subtitle IX), 42 U.S.C. §§ 6991 through 6991i, or of any state provision approved under SWDA Section 9004, constitutes a violation of SWDA subject to the assessment of civil penalties and issuance of compliance orders as provided in Section 9006 of SWDA, 42 U.S.C. § 6991e.

12. Pursuant to Section 9004 of SWDA, 42 U.S.C. § 6991c, the Administrator of U.S. EPA approved the State of Indiana's application to administer a state UST program in lieu of the federal program effective August 11, 2006. 71 Fed. Reg. 39213. The U.S. EPA-authorized Indiana regulations are codified at 329 Indiana Administrative Code (IAC)

Article 9.

13. Section 9006 of SWDA, 42 U.S.C. § 6991e, authorizes U.S. EPA to assess a civil penalty of up to \$10,000 for each tank for each day of violation of any requirement or standard of a state program approved under Section 9004 of SWDA, 42 U.S.C. § 6991c. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and its implementing regulations at 40 C.F.R. Part 19 increased the statutory maximum penalty to \$11,000 per tank per day of violation that occurred after January 30, 1997.

**Factual Allegations and Alleged Violations**

14. Respondent, Flying J Inc., is a “person,” as defined in 329 IAC 9-1-35.2 [40 C.F.R. § 280.12].

15. Respondent is the “owner,” as defined in 329 IAC 9-1-35.1 [40 C.F.R. § 280.12], of the Flying J Inc., J-Care facility (Lowell facility), Facility I.D. # 11394, at 3231 181<sup>st</sup> Street, Lowell, Indiana, and the Flying J Inc., J-Care facility (Lake Station facility), Facility I.D. #11393, at 1401 Ripley Street, Lake Station, Indiana.

16. There are three tanks at the Lowell facility: one 8,000-gallon underground tank for holding used petroleum oil and two 8,000-gallon underground tanks for holding new petroleum oil.

17. The three tanks at the Lowell facility are “underground storage tanks,” as defined in 42 U.S.C. § 6991(1) and 329 IAC 9-1-47.1 [40 C.F.R. § 280.12].

18. There are two tanks at the Lake Station facility: one 8,000-gallon underground tank for holding used petroleum oil and one 8,000-gallon underground tank for holding new petroleum oil.

19. The two USTs at the Lake Station facility are “underground storage tanks,” as

defined in 42 U.S.C. § 6991(1) and 329 IAC 9-1-47.1 [40 C.F.R. § 280.12].

20. On October 18, 2006, Respondent hired Protanic, Inc., to conduct compliance testing at the Lowell facility.

21. The Indiana Department of Environmental Management (IDEM) inspected the Lowell facility on March 8, 2007.

22. IDEM inspected the Lake Station facility on March 13, 2007.

23. U.S. EPA conducted compliance inspections at the Lake Station and Lowell facilities on April 12, 2007, and June 14, 2007.

24. U.S. EPA conducted a third compliance inspection at the Lowell facility on September 21, 2007.

25. Pursuant to Section 9006 of SWDA, 42 U.S.C. § 6991e, and based on the information alleged in this Complaint, Respondent violated Section 9003 of SWDA, 42 U.S.C. § 6991b, and its implementing regulations.

26. As required by Section 9006(a)(2), 42 U.S.C. § 9661e(a)(2), U.S. EPA provided notice of this action to the State of Indiana prior to filing this CAFO.

27. 329 IAC 9-3.1-2(1) [40 C.F.R. § 280.31(a)] requires that the owner or operator of a steel UST system with corrosion protection operate and maintain the corrosion protection system to continuously provide corrosion protection to the metal components of that portion of the tank and piping that routinely contain regulated substances and are in contact with the ground.

28. All three of the tanks at the Lowell facility have steel piping; an on-site rectifier is designed to provide impressed current to the steel piping to prevent corrosion.

29. The piping associated with the USTs at the Lowell facility routinely contains petroleum.

30. Petroleum is a regulated substance under 329 IAC 9-1-38.2 [40 C.F.R. § 280.12].

31. The piping associated with the USTs at the Lowell facility is in contact with the ground.

32. On October 18, 2006, the impressed current system at the Lowell facility was not working properly. Protanic, Inc., recommended that Respondent hire a contractor to look into problems with the Lowell facility's impressed current system.

33. At the time of the IDEM inspection, the impressed current system at the Lowell facility was not turned on or functioning properly.

34. At the time of the IDEM inspection, Respondent had not addressed Protanic's October 18, 2006, recommendations for the impressed current system at the Lowell facility.

35. At the time of U.S. EPA's April 12, 2007, inspection, the impressed current rectifier at the Lowell facility was turned off, with no source of electrical current provided to the unit. The rectifier unit was dirty and covered with dust and cobwebs.

36. At the time of the April 12, 2007, inspection, the Lowell facility manager stated to U.S. EPA that the rectifier had not been working for over a year.

37. At the time of the April 12, 2007, inspection, the Lowell facility manager stated to U.S. EPA that he had notified Respondent that the impressed current system was not working and that no one had been out to fix the system.

38. At the time of U.S. EPA's June 14, 2007, inspection, the impressed current system at the Lowell facility was turned off with no electricity feeding the unit. The rectifier unit was extremely dirty and covered with cobwebs.

39. At the time of U.S. EPA's September 21, 2007, inspection, the rectifier unit had been cleaned and electrical current restored to it; however, a sign stating, "Do Not Touch, Don't

Turn on Rectifier,” was affixed to the outside of the rectifier box.

40. At the time of the September 21, 2007, inspection, the rectifier system had not been repaired.

41. Respondent’s failure to operate and maintain the impressed current corrosion protection system to continuously provide corrosion protection to the metal components of piping that routinely contain regulated substances and are in contact with the ground at the Lowell facility violates 329 IAC 9-3.1-2(1) [40 C.F.R. § 280.31(a)] and Section 9003 of SWDA, 42 U.S.C. § 6991b.

42. 329 IAC 9-7-1(a)(1) [40 C.F.R. § 280.40(a)(1)] requires owners and operators to provide a release detection method capable of detecting a release from tank or piping that routinely contains product.

43. The piping associated with the USTs at the Lake Station facility routinely contains petroleum.

44. Petroleum is “product,” as defined in 329 IAC 9-1-38.1.

45. The leak detection system for the two USTs at the Lake Station facility consists of an OMNTEC automatic tank gauging system.

46. At the time of the IDEM inspection, the probes on the tank gauging system were not working properly and Respondent had no form of leak detection for the USTs at the Lake Station facility.

47. At the time of U.S. EPA’s April 12, 2007, inspection, the probes on the tank gauging system were not working properly and Respondent had no form of leak detection for the USTs at the Lake Station facility.

48. At the time of U.S. EPA’s June 14, 2007, inspection, the probes on the tank gauging

system were not working properly and Respondent had no form of leak detection for the USTs at the Lake Station facility.

49. Respondent's failure to provide a release detection method capable of detecting a release from tank or piping that routinely contains product for the USTs at the Lake Station facility violates 329 IAC 9-7-1(a)(1) [40 C.F.R. § 280.40(a)(1)] and Section 9003 of SWDA, 42 U.S.C. § 6991b.

#### **Civil Penalty**

50. In consideration of the extent and gravity of the violations, Respondent's cooperation, and other unique factors, U.S. EPA has determined that an appropriate civil penalty to settle this action is \$32,600.

51. Within 30 days after the effective date of this CAFO, Respondent must pay the \$32,600 civil penalty for the violations. Respondent must pay the penalty by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

The check must note the following: the case name (In the Matter of: Flying J, Inc.), the docket number of this CAFO and the billing document number 2750842R006.

52. For payment by check, a transmittal letter, stating Respondent's name, the case name, Respondent's complete address, the case docket number and the billing document must accompany the payment. Respondent must send a copy of the check and transmittal letter to:



Regional Hearing Clerk, (E-13J)  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

Sandra Siler, (LR-8J)  
RCRA Program Section  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

Ann Coyle, (C-14J)  
Office of Regional Counsel  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

53. This civil penalty is not deductible for federal tax purposes.

54. If Respondent does not timely pay the civil penalty, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action. The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

55. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, U.S. EPA will assess a 6 percent per year penalty on any principal amount 90 days past due.

#### **General Provisions**

56. This CAFO only resolves Respondent's liability for federal civil penalties for the violations and facts alleged in the CAFO.

57. This CAFO does not affect the right of the U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

58. Respondent certifies that it is complying with Section 9003 of SWDA, 42 U.S.C. § 6991b.

59. This CAFO does not affect Respondent's responsibility to comply with SWDA and other applicable federal, state and local laws, and regulations.

60. The terms of this CAFO bind Respondent and its successors, and assigns.

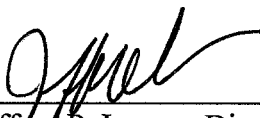
61. Each person signing this consent agreement certifies that he or she has the authority to sign this consent agreement for the party whom he or she represents and to bind that party to its terms.

62. Each party agrees to bear its own costs and fees, including attorneys' fees, in this action.

63. This CAFO constitutes the entire agreement between the parties.

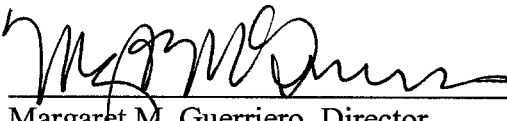
**Flying J, Inc., Respondent**

2-25-08  
Date

  
\_\_\_\_\_  
Jeffrey P. Larsen, Director of Health, Safety and  
Environmental  
Flying J Inc.

**U.S. Environmental Protection Agency, Complainant**

3/31/08  
Date

  
\_\_\_\_\_  
Margaret M. Guerriero, Director  
Land and Chemicals Division

RCRA-05-2008-0004

**In the Matter of: Flying J, Inc.**  
**Docket No. RCRA-05-2008-0004**

**Final Order**

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

4/1/08  
Date

Walter W. Karalich  
for  
Mary A. Gade  
Regional Administrator  
U.S. Environmental Protection Agency  
Region 5

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