

SUPPLEMENTAL CERTIFICATE OF SERVICE

I certify that on this 7th day of April, 2011, I sent a copy of the "Consent Agreement and Final Order, Docket No. RCRA-05-2010-0017," and the Certificate of Service attached to it, previously filed with the Regional Hearing Clerk, in the following manner to the addressees listed below:

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REGIONAL HEARING CLERK
U.S. EPA REGION 5
2011 APR -7 PM 3:51

Copy by UPS and Fax to:

Honorable Barbara A. Gunning
Administrative Law Judge
U.S. Environmental Protection Agency
Office of Administrative Law Judges
1099 14th Street N.W.
Washington, DC 20005
Fax (202) 565-0044

Paul B. Poracky
Koransky, Bower & Poracky, PC
425 Joliet Street, Suite 425
Dyer, Indiana 46311
Fax (219) 865-5840

4/7/2011
Dated



Elizabeth Rosado
Administrative Assistant
U.S. EPA/Region 5
77 W. Jackson Boulevard, C-14J
Chicago, IL 60604

cc (by hand delivery):

La Dawn Whitehead
Regional Hearing Clerk
U.S. EPA/Region 5
77 W. Jackson Boulevard, E-19J
Chicago, IL 60604-3590

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)
)
Sukhjinder S. Virk, Owner)
Virks Gas and Grocery)
)
Respondent)
_____)

Docket No. RCRA-05-2010-0017
Proceeding to Assess a Civil Penalty
Under Section 9006 of the Solid Waste
Disposal Act, 42 U.S.C. § 6991e(a)

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Consent Agreement and Final Order

I. Preliminary Statement

1. Complainant, the Director of the Land and Chemicals Division, United States Environmental Protection Agency (U.S. EPA), Region 5, brought this administrative action seeking a civil penalty under Section 9006(a) and 9006(d) of the Solid Waste Disposal Act (SWDA), 42 U.S.C. § 6991e(a) and (d).

2. On June 9, 2010, U.S. EPA filed the Complaint in this action against Respondent Sukhjinder S. Virk (Respondent). The Complaint alleges that Respondent violated Section 9003 of SWDA, 42 U.S.C. § 6991b, and 329 IAC 9-7-1(a)(1) and 329 IAC 9-7-2 [40 C.F.R. §§ 280.40(a)(1) and 280.41], at his facility in Michigan City, Indiana by failing to provide a release detection method capable of detecting a release from the underground storage tanks at the facility.

3. Respondent filed an Answer on August 13, 2010 and requested a hearing under Section 9006(b) of SWDA, 42 U.S.C. § 6991e(b), and 40 C.F.R. § 22.15.

II. Stipulations

4. Respondent admits the jurisdictional allegations in the Complaint and neither admits nor denies the factual allegations in the Complaint, other than those admitted in his Answer.

5. Respondent waives any right to contest the allegations in the Complaint and his right to appeal this Consent Agreement and Final Order (CAFO).

6. Respondent certifies that he is complying fully with Subchapter IX of SWDA, 42 U.S.C. § 6991 et seq., and 329 IAC Article 9, with respect to all underground storage tanks at his facility known as Virks Gas and Grocery, located at 702 IN Highway 212, Michigan City, Indiana (facility).

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

8. The parties agree that settling this action without further litigation, upon the terms of this CAFO, is in the public interest.

III. Civil Penalty

9. In consideration of the unique factors of this case, Complainant agrees to mitigate the proposed civil penalty of \$20,312 to \$16,500.

10. Within 30 days after the effective date of this CAFO, Respondent shall pay a civil penalty in the amount of \$16,500 by mailing a cashier's or certified check, payable to the "Treasurer, United States of America," by U.S. Postal Service Mail to:

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

The case title, the docket number of this CAFO and the billing document number (which will be assigned by U.S. EPA after the CAFO is filed) shall be clearly marked on the face of the check.

11. A transmittal letter stating Respondent's name, complete address, the case docket number and the billing document number must accompany the payment. Respondent must send

a copy of the check and transmittal letter to:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

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

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

12. This civil penalty is not deductible for federal tax purposes.
13. If Respondent does not timely pay the civil penalty or any stipulated penalties due under paragraph 18 below, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties, and the enforcement expenses of the United States for the collection action. The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.
14. 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 overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1). Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

IV. Compliance Agreement and Stipulated Penalties

15. Within 45 days of the effective date of this CAFO, Respondent must install and commence operation of new ATG equipment capable of fully satisfying the requirements of 329 IAC 9-7-1(a)(1) and 329 IAC 9-7-2 [40 C.F.R. §§ 280.40(a)(1) and 280.41].

16. Commencing for the month in which a settlement becomes effective and continuing for a period of 8 months, Respondent must submit a monthly report in writing to U.S. EPA, reporting the results of ATG tests performed for each underground storage tank at the facility for the month, including the submission of ATG test receipts for each such tank for such month. Such report shall be submitted by U.S. Postal Service Mail, facsimile transmission, or email of a signed version of the report in PDF or similar format, no later than the 10th day of the month following the month for which the report is made.

17. In each report that Respondent submits pursuant to this CAFO, Respondent must certify that the report is true and complete by including and signing the following statement:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, it is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

18. Respondent must pay stipulated penalties for violations of the requirements of this Section IV to the United States as follows:

- a. For failure to timely install and commence operating new ATG equipment capable of fully satisfying the requirements of 329 IAC 9-7-1(a)(1) and 329 IAC 9-7-2 for each underground storage tank at the Respondent's facility, as required by paragraph 15: \$250 per day for the first 14 days of the failure and \$500 per day thereafter.
- b. For failure to timely submit a complete written monthly report, as required by paragraphs 16 and 17: \$100 per day that the failure continues.

19. Respondent's submission of monthly reports under paragraphs 16 and 17 shall be considered timely if they are received by U.S. EPA on or before the due date identified in paragraph 16, or if they are post-marked and mailed, faxed or emailed on or before the due date identified in paragraph 16. In computing any period of time under this Agreement, where the last day would fall on a Saturday, Sunday or federal holiday, the period shall run until the end of the next business day. Reports that are submitted by facsimile transmission shall be faxed to: Sandra Siler, (312) 582-5877. Reports that are submitted by email shall be emailed to: siler.sandra@epa.gov.

20. Whether or not Respondent has received notice of a violation of the requirements in this Section IV, stipulated penalties shall begin to accrue on the day a violation occurs, and shall continue to accrue until Respondent completes the task or submits the report required. Separate stipulated penalties for separate violations of this Order shall accrue simultaneously.

21. Respondent must pay any stipulated penalties required by this Section IV within 30 days of receiving U.S. EPA's written demand for the penalties. Respondent will use the method of payment specified in paragraphs 10 and 11, above, and will pay interest, handling charges, and nonpayment penalties on any overdue amounts, as specified in paragraphs 13 and 14 .

V. General Provisions

22. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the Complaint.

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

24. This CAFO does not affect Respondent's responsibility to comply with SWDA and

other applicable federal, state, local laws and permits.

25. This CAFO is a "final order" for purposes of 40 C.F.R. § 22.31 and U.S. EPA's Penalty Guidance for Violations of UST Regulations (1990), as amended.

26. The CAFO is effective commencing the day it is filed with the Regional Hearing Clerk, Region 5.

27. The terms of this CAFO bind Respondent, his successors, and assigns.

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

29. Each party agrees to bear their own costs and attorney's fees in this action.

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

By Respondent

3-19-11
Date

Sukhjinder S. Virk
Sukhjinder S. Virk

By United States Environmental Protection Agency, Complainant

3-28-11
Date


Richard C. Karl
Richard C. Karl
Acting Director
Land and Chemicals Division

In the Matter of:
Sukhjinder S. Virk, Owner
Virks Gas and Grocery
Docket No. RCRA-05-2010-0017

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.

3-30-2011
Date



Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5

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In the Matter of: Virks Gas and Grocery
Docket No. RCRA-05-2010-0017


BDH 2751142R007

Certificate of Service

I, Sandra Siler, certify that I hand delivered the original of the Consent Agreement And Final Order, docket number RCRA-05-2010-0017 to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, personally served a copy on the Regional Judicial Officer, and mailed a correct copy by first class, postage prepaid, certified mail, return receipt requested, to Virks Gas and Grocery by placing it in the custody of the United States Postal Service addressed as follows:

Sukhjinker Virk
Virks Gas and Grocery
702 IN Highway 212
Michigan City, Indiana 46360

on the 31st day of March, 2011


Sandra L. Siler, Enforcement Officer
U.S. Environmental Protection Agency
Land and Chemicals Division
77 W. Jackson Blvd.
Chicago, IL 60604
(312)886-0429