



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

SEP 17 2008

CERTIFIED MAIL --
RETURN RECEIPT REQUESTED

Sheila Weimer, Esq.
U.S. Department of Veterans Affairs
Office of Regional Counsel
120 Le Brun Road
Buffalo, New York 14215

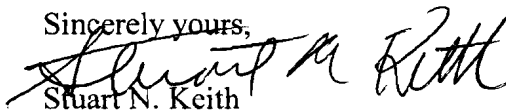
Re: **In the Matter of U.S. Veterans Administration.**
Docket No. RCRA-02-2008-7504

Dear Ms. Weimer:

Enclosed is a copy of the Consent Agreement and Final Order in the above-referenced proceeding, signed by the Regional Administrator of the United States Environmental Protection Agency.

Please arrange for payment of this penalty according to the instructions given in the Order.

Sincerely yours,



Stuart N. Keith
Assistant Regional Counsel
Waste & Toxic Substances Branch
Office of Regional Counsel

Enclosures
ccs:

Russ Brauksieck, Chief
Spill Prevention and Bulk Storage Section
NYSDEC
625 Broadway, 11th Floor
Albany, NY 12233

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2008 SEP 17 PM 4:47
REGIONAL HEARING
CLERK

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. ENVIRONMENTAL
PROTECTION AGENCY REGION 2
2008 SEP 17 PM 4:47
REGIONAL HEARING
CLERK

-----X
In the Matter of :
 :
United States Veterans Administration :
 : CONSENT AGREEMENT AND
 : FINAL ORDER
 :
Respondent. :
 : Docket No.
 : RCRA-02-2008-7504
 :
Proceeding Under Section 9006 :
of the Solid Waste Disposal Act, :
as amended :
-----X

PRELIMINARY STATEMENT

This administrative proceeding was instituted pursuant to Section 9006 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act ("RCRA"), the Hazardous and Solid Waste Amendments of 1984, the Superfund Amendments and Reauthorization Act of 1986, the Federal Facility Compliance Act of 1992, and the Energy Policy Act of 2005, 42 U.S.C. §6901 et seq. (collectively referred to as the "Act").

The Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance, Region 2, United States Environmental Protection Agency ("EPA" or "Complainant"), issued on March 28, 2008 a "Complaint, Compliance Order, and Notice of Opportunity for Hearing" to the United States Veterans Administration ("Respondent"). The

Veterans Administration is now called the Department of Veterans Affairs.

The Complaint alleged violations of Subtitle I of the Act and the regulations promulgated pursuant to that Section, Volume 40 of the Code of Federal Regulations (C.F.R.) Part 280. Specifically, the Complaint alleged that the Respondent failed to properly maintain records of release detection monitoring for an underground storage tank ("UST") system at a federal facility located in Canandaigua, New York in accordance with 40 C.F.R. § 280.34 and § 280.45(b).

The parties have reached an amicable resolution of this matter and agree, by entering into this Consent Agreement and Final Order ("CA/FO") pursuant to 40 C.F.R. Section 22.18, that settlement of this matter upon the terms set forth in this CA/FO is an appropriate means of resolving this case without further litigation.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent is the United States Veterans Administration.

2. Respondent is a department, agency or instrumentality of the executive branch of the federal government.

3. Respondent is a "person" as that term is defined Section 9001(6) of RCRA, 42 U.S.C. § 6991(6), and in 40 C.F.R. § 280.12.

4. Respondent owned and operated, and continues to own and operate, "underground storage tanks", as those terms are defined in Section 9001(1) and 9001(3) of the Act, 42 U.S.C. § 6991(1) and 6991(3), and in 40 C.F.R. § 280.12, located at 400 Fort Hill Avenue, Canandaigua, New York (the "facility").

5. On or about April 30, 2007, pursuant to Section 9005 of the Act, 42 U.S.C. Section 6991d, an authorized representative of EPA inspected the facility in order to determine whether the underground storage tanks at the Facility were in compliance with Subtitle I of the Act and 40 C.F.R. Part 280.

6. Pursuant to Section 9005 of the Act, 42 U.S.C. §6991d(a) and 40 C.F.R. §280.34, EPA sent to Respondent an Information Request Letter ("IRL") on or about June 28, 2007, to determine the status of Respondent's compliance with the Act and 40 C.F.R. Part 280, for USTs at its facility.

7. Respondent provided a response to the IRL on or about August 14, 2007, which contained information concerning the USTs that are owned and/or operated by Respondent at its facility.

8. Based on the inspection by EPA and the response to EPA's IRL, the Complainant issued a Complaint on March 28, 2008 which alleged that Respondent violated 40 C.F.R. Section 280.45(b), by failing to maintain records of release detection monitoring at its facility.

9. Complainant and Respondent participated in an Informal Settlement Conference on June 20, 2008 and agreed to enter into this Consent Agreement and Final Order ("CA/FO") pursuant to 40 C.F.R. subsections 22.18(b)(2) and (3) of the revised Consolidated Rules of Practice, pursuant to the terms and conditions set forth below.

CONSENT AGREEMENT

Based upon the foregoing, and pursuant to Section 9006 of the Act, 42 U.S.C. §6991e, and Section 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. §22.18, it is hereby agreed that:

1. Within thirty (30) calendar days of the Regional Administrator's signature of the Final Order in this settlement, Respondent shall provide a written certification to EPA that Respondent is maintaining records of release detection

monitoring in accordance with the requirements at 40 C.F.R. Section 280.45(b).

2. The certification submitted pursuant to paragraph 1 above shall include the following language:

I certify that, to the best of my knowledge and belief, the information contained in this written certification and in any documents accompanying this certification is true, accurate and complete. In making this statement, I have not made an independent review of all statements contained therein and have relied in good-faith on information, statements, and representations furnished to me by employees or contractors of the United States Department of Veterans Affairs. Based on my inquiry of the person or persons (or the supervisors of such persons) directly responsible for gathering the information contained in this written certification and in any documents accompanying this certification, this document is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant potential penalties for submitting materially false information, including the possibility of fines and imprisonment for knowing violations.

3. Respondent shall hereafter maintain compliance with all applicable provisions of federal UST laws and regulations.

4. If in the future EPA believes that any of the information certified pursuant to Paragraphs 1 and 2 is inaccurate, EPA will advise Respondent of its belief and its basis for such, and will afford Respondent an opportunity to respond to EPA. If EPA determines that the certification is materially inaccurate, EPA may pursue any and all civil and/or criminal remedies in accordance with applicable law.

5. If the Respondent fails to provide, in a timely manner, the certification required by paragraphs 1 and 2, above, then Respondent shall be liable to EPA for a stipulated penalty in accordance with the following schedule, commencing on the first day of noncompliance and continuing through the date upon which compliance is achieved:

<u>Period of Failure to Comply</u>	<u>Penalty Per Day Per UST System</u>
1 st to 10 th day	\$500
11 th to 30 th day	\$1,000
31 st to 60 th day	\$2,000
Each day in excess of 60 days	\$3,000

6. Unless Respondent provides EPA with a writing pursuant to Paragraph 7, below, all stipulated penalties are due and

payable within thirty (30) calendar days of the Respondent's receipt from EPA of a written demand for payment of the penalties. All stipulated penalty payments shall be made in accordance with the payment instructions in Paragraph 10 of this Consent Agreement.

7. After receipt of a demand from EPA for stipulated penalties pursuant to the preceding paragraph, Respondent shall have twenty (20) calendar days in which to provide Complainant with a written explanation of why it believes that a stipulated penalty is not appropriate for the cited violation(s) of this Consent Agreement.

8. The Director of the Division of Enforcement and Compliance Assistance may, in his or her sole discretion, reduce or eliminate any stipulated penalty due if Respondent has in writing demonstrated to EPA's satisfaction good cause for such action by EPA. If Complainant determines that Respondent has failed to comply with the provisions of this Consent Agreement, and Complainant does not, in his or her sole discretion, eliminate the stipulated penalties demanded by EPA, Complainant will notify Respondent, in writing, that either the full stipulated penalty or a reduced stipulated penalty must be paid by the Respondent. Respondent shall pay the stipulated penalty amount indicated in EPA's notice within thirty (30) calendar

days of its receipt of such written notice from EPA. Any penalty owed pursuant to this paragraph shall be paid in accordance with the instructions set forth in paragraph 10, below. Failure to pay the stipulated penalty in full will result in referral of this matter to the United States Department of Justice or the United States Department of Treasury for collection or other appropriate action.

9. For purposes of this proceeding, Respondent (a) admits the jurisdictional allegations of the Complaint, and (b) neither admits nor denies specific factual allegations and conclusions of law contained in the Complaint, (c) consents to the issuance of the final order, and (d) consents to the conditions specified in the Consent Agreement.

10. Respondent shall pay, by cashier's or certified check, a civil penalty in the amount of **Eight Thousand Seven Hundred Dollars (\$8,700.00)**, payable to the "Treasurer, United States of America." The check shall be identified with a notation of the name and docket number of this case as follows: In the Matter of: United States Veterans Administration, Docket No. RCRA-02-2008-7504. The check shall be mailed to:

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

If Overnight delivery is preferred, Respondent may mail the check to the following address:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
Attn: USEPA Box #979077
St. Louis, MO 63101

Respondent shall also send copies of this payment to each of the following:

Stuart N. Keith
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, N.Y. 10007-1866

and

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, N.Y. 10007-1866
Attn: Karen Maples

The payment must be received at the above address on or before 45 calendar days after the date of signature of the Final Order, which is located at the end of this CA/FO (the date by which payment must be received shall hereafter be referred to as the "due date"). A late payment handling charge of fifteen dollars (\$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.

11. This Consent Agreement and Final Order shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state, or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

12. This Consent Agreement and Final Order is being voluntarily and knowingly entered into by the parties to resolve (upon full payment of the civil penalty and any stipulated penalty that comes due) the civil and administrative claims alleged in the Complaint. Furthermore, resolution of this matter is conditioned on EPA being satisfied that any certification submitted by Respondent pursuant to paragraphs 1 and 2 above is deemed to be accurate by EPA. 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.

13. Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable and consents to the issuance and its terms. Respondent consents to the issuance of the accompanying Final Order. Respondent agrees that all terms of settlement are set forth herein.

14. Respondent explicitly and knowingly consents to the assessment of the civil penalty as set forth in this Consent Agreement and agrees to pay these penalties in accordance with the terms of this Consent Agreement.

15. By executing this Consent Agreement, Respondent explicitly waives its right to request or to seek any Hearing on the Complaint or on any of the allegations therein asserted, on this Consent Agreement or on the Findings of Fact and Conclusions of Law herein, or on the accompanying Final Order.

16. By executing this Consent Agreement, Respondent waives its right to appeal the proposed Final Order accompanying the Consent Agreement.

17. This Consent Agreement and Final Order 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 or achieve compliance with the terms of this Consent Agreement and its accompanying Final Order.

18. Each undersigned signatory to this Consent Agreement certifies that he or she 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.

19. The provisions of this CA/FO shall be binding upon Respondent, its officials, officers, agents, authorized representatives and successors or assigns.

20. Nothing in this Consent Agreement shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341, or other applicable law.

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

22. Respondent consents to service upon Respondent of a copy of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk.

23. Pursuant to 40 C.F.R. §22.13(b), the effective date of the Final Order herein shall be the date when it is filed with the Regional Hearing Clerk of the United States Environmental Protection Agency, Region 2.

In the Matter of United States Veterans Administration,
Docket No. RCRA-02-2008-7504

RESPONDENT: United States Veterans Administration

BY: Craig S. Howard

(signature)

NAME: Craig S. Howard

(Please Print)

TITLE: Medical Center Director

DATE: September 12, 2008

In the Matter of United States Veterans Administration,
Docket No. RCRA-02-2008-7504

COMPLAINANT: United States Environmental Protection Agency

Region 2

BY: _____

Dore LaPosta, Director

Division of Enforcement

and Compliance Assistance

U.S. Environmental Protection

Agency - Region 2

290 Broadway

New York, N.Y. 10007-1866

DATE: SEPTEMBER 15, 2008

PATRICK D. HENRY
12/12

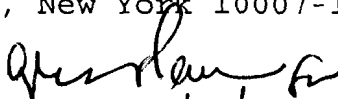
Docket No. RCRA-02-2008-7504

FINAL ORDER

The Regional Administrator of the U.S. Environmental Protection Agency, Region 2, ratifies the foregoing Consent Agreement. The Consent Agreement, entered into by the parties to this matter, is hereby approved, incorporated herein, and issued as an Order pursuant to Section 9006 of RCRA and 40 C.F.R. Section 22.18(b)(3). The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, U.S. EPA, Region 2, New York, New York.

Alan J. Steinberg
Regional Administrator
U.S. Environmental Protection
Agency - Region 2
290 Broadway
New York, New York 10007-1866

DATE: _____


9/15/08

In the Matter of Unites States Veterans Administration, Docket No. RCRA-02-2006-7504

CERTIFICATE OF SERVICE

I certify that I have on this day caused to be sent the foregoing Consent Agreement and Final Order, bearing the above-referenced docket number, in the following manner to the respective addressees below:

Original and one copy by hand to:

Office of the Regional Hearing Clerk.
U.S. EPA- Region II
290 Broadway, 16th floor
New York, New York 10007-1866

Copy by Pouch Mail :

Barbara A. Gunning
Office of Administrative Law Judges
U.S. Environmental Protection Agency
Mail Code 1900L
1200 Pennsylvania Ave, NW
Washington, DC 20460-2001

Copy by Certified Mail Return Receipt Requested:

Sheila Q. Weimer, Esq.
Office of Regional Counsel
U.S. Department of Veterans Affairs
120 Le Brun Road
Buffalo, NY 14215

Dated: SEP 17 2008
New York, New York

Mildred N. Baer