

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION 7

In the matter of:)	
)	
)	
The United States Air Force)	Consent Agreement and Final Order
F.E. Warren Air Force Base)	
Wyoming 82005-5000)	U.S. EPA Docket No.:
)	RCRA-07-2012-0027
Respondent.)	
)	
)	Proceeding under Section 9006
)	of the Resource Conservation and
)	Recovery Act, as amended,
)	42 U.S.C. § 6991e

The United States Environmental Protection Agency (EPA), Region 7 (Complainant) and The United States Air Force (Respondent) have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules of Practice), 40 Code of Federal Regulations (C.F.R.) §§ 22.13(b) and 22.18(b)(2).

Jurisdiction

This administrative action is being conducted pursuant to Section 9006 of the Solid Waste Disposal Act, commonly referred to as the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984 (collectively "RCRA"), 42 U.S.C. § 6991e, and the Consolidated Rules of Practice.

1. This Consent Agreement and Final Order (CAFO) serves as notice that the EPA has reason to believe that Respondent has violated Subtitle I of RCRA, 42 U.S.C. §§ 6991-6991i, the regulations promulgated thereunder set forth at 40 C.F.R. Part 280 and the authorized regulations of the State of Nebraska, at twelve of Respondent's facilities located in Banner, Cheyenne and Kimball Counties in Nebraska (collectively, "Facilities"). Section 9006 of RCRA, 42 U.S.C. § 6991e, authorizes EPA to take enforcement action, including issuing a compliance order and assessing a civil penalty, whenever it is determined that a person is in violation of any requirement of RCRA Subtitle I, EPA's regulations thereunder, or any regulation of a state underground storage tank (UST) program which has been authorized by EPA.

Parties

2. The Complainant is the Director of the Air and Waste Management Division of the EPA, Region 7, as duly delegated from the Administrator of the EPA.

3. The Respondent, the United States Air Force, is a branch of the United States federal government. Respondent is a "person" as defined in 159 Neb. Admin. Code 1-003.36 and Section 9001(5) of RCRA, 42 U.S.C. Section 6991(5).

Statutory and Regulatory Framework

4. Effective September 18, 2002, pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c, and 40 C.F.R. Part 281, Subpart A, the state of Nebraska was granted final authorization to administer a state UST management program in lieu of the Federal UST management program. The provisions of the Nebraska UST management program, through this final authorization, have become requirements of Subtitle I of RCRA and are, accordingly, enforceable by EPA pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e. Nebraska's authorized UST program is implemented jointly and regulations are set forth in the Nebraska Revised Statute Section 81-1575-77, 118, which designates the Nebraska State Fire Marshal as the agency responsible for conducting preventative activities. These regulations can be found at Title 159 of Nebraska's State Fire Marshal's Rules and Regulations (hereinafter "159 Neb. Admin. Code," followed by the applicable section of the regulations). Because these allegations and conclusions set forth in this CAFO refer or relate to facts that arose on or after September 18, 2002, the provisions of the state of Nebraska's authorized UST regulations are cited as the basis for EPA's action, and the analogous provisions of the Federal UST regulations are also cited.

5. EPA has previously given the state of Nebraska prior notice of the issuance of this CAFO in accordance with Section 9006(a) of RCRA, 42 U.S.C. § 6991e(a)(2).

6. Section 9006 of RCRA, 42 U.S.C. § 6991e, authorizes EPA to assess a civil penalty of not more than \$10,000 per day against any owner or operator of an UST who fails to comply with, inter alia, any requirement or standard promulgated under Section 9003 of RCRA, 42 U.S.C. § 6991b (40 C.F.R. Part 280) or any requirement or standard of a state UST program that has been approved by EPA pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c. This figure has been adjusted upward for inflation pursuant to the Civil Monetary Penalties Inflation Adjustment Rule, 40 C.F.R. Part 19, so that penalties of up to \$11,000 per day are now authorized for violations of Subtitle I of RCRA that occur after March 15, 2004 through January 12, 2009. For violations of Subtitle I of RCRA that occur after January 12, 2009, penalties of up to \$16,000 per day are now authorized.

Allegations Common to All of the Facilities

7. During the month of September 2010, pursuant to RCRA Subtitle I, 42 U.S.C. §§ 6991-6991i, and the 159 Neb. Admin. Code 12, EPA representatives conducted an UST Compliance Inspection of each of the Facilities listed below, each of which is located within the state of Nebraska. From before the time of these September 2010 inspections, through the present, Respondent owned and operated the USTs and USTs systems containing diesel fuel at these facilities.

- a) Launch Facility Charlie 3, NSFM no. 328, Banner County, Bayard, Nebraska
- b) Launch Facility Charlie 4, NSFM no. 394, Banner County, Harrisburg, Nebraska
- c) Launch Facility Charlie 7, NSFM no. 391, Banner County, Harrisburg, Nebraska
- d) Launch Facility Delta 3, NSFM no. 338, Banner County, Harrisburg, Nebraska
- e) Launch Facility Delta 11, NSFM no. 323, Kimball County, Albin, Nebraska
- f) Launch Facility Echo 5, NSFM no. 378, Kimball County, Bushnell, Nebraska
- g) Launch Facility Golf 3, NSFM no. 388, Cheyenne County, Gurley, Nebraska
- h) Launch Facility Golf 6, NSFM no. 374, Cheyenne County, Huntsman, Nebraska
- i) Launch Facility Golf 9, NSFM no. 371, Cheyenne County, Potter, Nebraska
- j) Launch Facility Golf 11, NSFM no. 369, Cheyenne County, Dalton, Nebraska
- k) Launch Facility Hotel 9, NSFM no. 380, Cheyenne County, Gurley, Nebraska
- l) Launch Facility India 4, NSFM no. 385, Cheyenne County, Lodgepole, Nebraska

Description of the Facilities

8. Launch Facility Charlie 3, NSFM no. 328, is a missile launch facility located in Bayard, NE (Banner County). Currently, and at the time of the September 2010 EPA inspection, the facility had a 4,000 gallon fiberglass UST with fiberglass piping, all of which was installed in 1993.

9. Launch Facility Charlie 4, NSFM no. 394, is a missile launch facility located in Harrisburg, NE (Banner County). Currently, and at the time of the September 2010 EPA inspection, the facility had a 4,000 gallon fiberglass UST with fiberglass piping, all of which was installed in 1993.
10. Launch Facility Charlie 7, NSFM no. 391, is a missile launch facility located in Harrisburg, NE (Banner County). Currently, and at the time of the September 2010 EPA inspection, the facility had a 4,000 gallon fiberglass UST with fiberglass piping, all of which was installed in 1993.
11. Launch Facility Delta 3, NSFM no. 338, is a missile launch facility located in Harrisburg, NE (Banner County). Currently, and at the time of the September 2010 EPA inspection, the facility had a 14,500 gallon steel UST with fiberglass piping, the UST was installed in 1964 and the piping was installed in 1996. The steel UST is protected with an impressed current cathodic protection system that was installed in 1996.
12. Launch Facility Delta 11, NSFM no. 323, is a missile launch facility located in Albin, NE (Kimball County). Currently, and at the time of the September 2010 EPA inspection, the facility had a 14,500 gallon steel UST with fiberglass piping, the UST was installed in 1964 and the piping was installed in 1996. The steel UST is protected with an impressed current cathodic protection system that was installed in 1996.
13. Launch Facility Echo 5, NSFM no. 378, is a missile launch facility located in Bushnell, NE (Kimball County). Currently, and at the time of the September 2010 EPA inspection, the facility had a 4,000 gallon fiberglass UST with fiberglass piping, all of which was installed in 1992.
14. Launch Facility Golf 3, NSFM no. 388, is a missile launch facility located in Gurley, NE (Cheyenne County). Currently, and at the time of the September 2010 EPA inspection, the facility had a 14,500 gallon steel UST with fiberglass piping, all of which was installed in 1964. The steel UST is protected with an impressed current cathodic protection system that was installed in 1996.
15. Launch Facility Golf 6, NSFM no. 374, is a missile launch facility located in Huntsman, NE (Cheyenne County). Currently, and at the time of the September 2010 EPA inspection, the facility had a 14,500 gallon steel UST with fiberglass piping, all of which was installed in 1964. The steel UST is protected with an impressed current cathodic protection system that was installed in 1996.
16. Launch Facility Golf 9, NSFM no. 371, is a missile launch facility located in Potter, NE (Cheyenne County). Currently, and at the time of the September 2010 EPA inspection,

the facility had a 14,500 gallon steel UST with fiberglass piping, the UST was installed in 1986 and the piping was installed in 1996. The steel UST is protected with an impressed current cathodic protection system that was installed in 1996.

17. Launch Facility Golf 11, NSFM no. 369, is a missile launch facility located in Dalton, NE (Cheyenne County). Currently, and at the time of the September 2010 EPA inspection, the facility had a 14,500 gallon steel UST with fiberglass piping, the UST was installed in 1986 and the piping was installed in 1996. The steel UST is protected with an impressed current cathodic protection system that was installed in 1996.

18. Launch Facility Hotel 9, NSFM no. 380, is a missile launch facility located in Gurley, NE (Cheyenne County). Currently, and at the time of the September 2010 EPA inspection, the facility had a 4,000 gallon fiberglass UST with fiberglass piping, all of which was installed in 1992.

19. Launch Facility India 4, NSFM no. 385, is a missile launch facility located in Lodgepole, NE (Cheyenne County). Currently, and at the time of the September 2010 EPA inspection, the facility had a 14,500 gallon steel UST with fiberglass piping, the UST was installed in 1964 and the piping was installed in 1997. The steel UST is protected with an impressed current cathodic protection system that was installed in 1997.

COUNT I

Failure to Provide Overfill Protection for Existing Tank Charlie 3 Facility

20. The allegations of Paragraphs 1 through 19 of the CAFO are incorporated herein by reference as though fully set forth at length.

21. Pursuant to 159 Neb. Admin. Code 5-004 and 40 C.F.R. § 280.12(d), all existing UST systems must comply with the new UST system spill and overfill prevention equipment requirements specified in 159 Neb. Admin. Code 4-004.08 and 40 C.F.R. § 280.20(c).

22. At the time of the September 2010 Inspection, which for this facility took place on September 16, 2010, the Charlie 3 Facility's audible overspill alarm for the facility's spill and overfill protection system was not working.

23. Because the audible overspill alarm at the Charlie 3 Facility was not working at the time of the September 16, 2010 inspection, the Charlie 3 Facility failed to comply with 159 Neb. Admin. Code 5-004 and 40 C.F.R. §280.21(d), in that it did not have a working overfill prevention system.

COUNT II
Failure to Provide Overfill Protection for Existing Tank
Charlie 4 Facility

24. The allegations of Paragraphs 1 through 19 of the CAFO are incorporated herein by reference as though fully set forth at length.

25. Pursuant to 159 Neb. Admin. Code 5-004 and 40 C.F.R. § 280.12(d), all existing UST systems must comply with the new UST system spill and overfill prevention equipment requirements specified in 159 Neb. Admin. Code 4-004.08 and 40 C.F.R. § 280.20(c).

26. At the time of the September 2010 Inspection, which for this facility took place on September 17, 2010, the Charlie 4 Facility's audible overspill alarm for the facility's overfill protection system was not working.

27. Because the audible overspill alarm at the Charlie 4 Facility was not working at the time of the September 17, 2010 inspection, the Charlie 4 Facility failed to comply with 159 Neb. Admin. Code 5-004 and 40 C.F.R. §280.21(d), in that it did not have a working overfill prevention system.

COUNT III
Failure to Provide Overfill Protection for Existing Tank
Charlie 7 Facility

28. The allegations of Paragraphs 1 through 19 of the CAFO are incorporated herein by reference as though fully set forth at length.

29. Pursuant to 159 Neb. Admin. Code 5-004 and 40 C.F.R. § 280.12(d), all existing UST systems must comply with the new UST system spill and overfill prevention equipment requirements specified in 159 Neb. Admin. Code 4-004.08 and 40 C.F.R. § 280.20(c).

30. At the time of the September 2010 Inspection, which for this facility took place on September 16, 2010, the Charlie 7 Facility's audible overspill alarm for the facility's overfill protection system was not working.

31. Because the audible overspill alarm at the Charlie 7 Facility was not working at the time of the September 16, 2010 inspection, the Charlie 7 Facility failed to comply with 159 Neb. Admin. Code 5-004 and 40 C.F.R. §280.21(d), in that it did not have a working overfill prevention system.

COUNT IV
Failure to Provide Overfill Protection for Existing Tank
Echo 5 Facility

32. The allegations of Paragraphs 1 through 19 of the CAFO are incorporated herein by reference as though fully set forth at length.

33. Pursuant to 159 Neb. Admin. Code 5-004 and 40 C.F.R. § 280.12(d), all existing UST systems must comply with the new UST system spill and overfill prevention equipment requirements specified in 159 Neb. Admin. Code 4-004.08 and 40 C.F.R. § 280.20(c).

34. At the time of the September 2010 Inspection, which for this facility took place on September 30, 2010, the Echo 5 Facility's audible overspill alarm on the facility's overfill protection system was not working due to a faulty automatic tank gauge.

35. Because the audible overspill alarm at the Echo 5 Facility was not working at the time of the September 30, 2010 inspection, the Echo 5 Facility failed to comply with 159 Neb. Admin. Code 5-004 and 40 C.F.R. §280.21(d), in that it did not have a working overfill prevention system.

COUNT V
Failure to Provide Overfill Protection for Existing Tank
Golf 3 Facility

36. The allegations of Paragraphs 1 through 19 of the CAFO are incorporated herein by reference as though fully set forth at length.

37. Pursuant to 159 Neb. Admin. Code 5-004 and 40 C.F.R. § 280.12(d), all existing UST systems must comply with the new UST system spill and overfill prevention equipment requirements specified in 159 Neb. Admin. Code 4-004.08 and 40 C.F.R. § 280.20(c).

38. At the time of the September 2010 Inspection, which for this facility took place on September 24, 2010, the Golf 3 Facility's audible overspill alarm on the facility's overfill protection system was not working due to a faulty automatic tank gauge.

39. Because the audible overspill alarm at the Golf 3 Facility was not working at the time of the September 24, 2010 inspection, the Golf 3 Facility failed to comply with 159 Neb. Admin. Code 5-004 and 40 C.F.R. §280.21(d), in that it did not have a working overfill prevention system.

COUNT VI
Failure to Provide Overfill Protection for Existing Tank
Golf 11 Facility

40. The allegations of Paragraphs 1 through 19 of the CAFO are incorporated herein by reference as though fully set forth at length.

41. Pursuant to 159 Neb. Admin. Code 5-004 and 40 C.F.R. § 280.12(d), all existing UST systems must comply with the new UST system spill and overfill prevention equipment requirements specified in 159 Neb. Admin. Code 4-004.08 and 40 C.F.R. § 280.20(c).

42. At the time of the September 2010 Inspection, which for this facility took place on September 28, 2010, the Golf 11 Facility's audible overspill alarm for the facility's overfill protection system was not working.

43. Because the audible overspill alarm at the Golf 11 Facility was not working at the time of the September 28, 2010 inspection, the Golf 11 Facility failed to comply with 159 Neb. Admin. Code 5-004 and 40 C.F.R. §280.21(d), in that it did not have a working overfill prevention system.

COUNT VII
Failure to Provide Overfill Protection for Existing Tank
Hotel 9 Facility

44. The allegations of Paragraphs 1 through 19 of the CAFO are incorporated herein by reference as though fully set forth at length.

45. Pursuant to 159 Neb. Admin. Code 5-004 and 40 C.F.R. § 280.12(d), all existing UST systems must comply with the new UST system spill and overfill prevention equipment requirements specified in 159 Neb. Admin. Code 4-004.08 and 40 C.F.R. § 280.20(c).

46. At the time of the September 2010 Inspection, which for this facility took place on September 20, 2010, the Hotel 9 Facility's audible overspill alarm for the facility's overfill protection system was not working due to a faulty automatic tank gage.

47. Because the audible overspill alarm at the Golf 11 Facility was not working at the time of the September 20, 2010 inspection, the Hotel 9 Facility failed to comply with 159 Neb. Admin. Code 5-004 and 40 C.F.R. §280.21(d), in that it did not have a working overfill prevention system.

COUNT VIII
Failure to conduct annual inspections of corrosion protection system
Delta 11 Facility

48. The allegations of Paragraphs 1 through 19 of the CAFO are incorporated herein by reference as though fully set forth at length.

49. Pursuant to 159 Neb. Admin. Code 6-002.02, all UST systems equipped with cathodic protection systems must be inspected for proper operation by a qualified cathodic protection tester annually for impressed current cathodic protection systems using the National Association of Corrosion Engineers Standard, RP-02-85.

50. The UST at the Delta 11 Facility is, and at all times relevant hereto was, constructed of steel and utilizes an impressed cathodic protection system to protect it against corrosion.

51. At the time of the September 2010 inspection at the Delta 11 Facility, which for this Facility took place on September 13, 2010, Respondent had not had its cathodic protection system tested at this facility in the prior one year period, in violation of the annual testing requirements of 159 Neb. Admin. Code 6-002.02.

COUNT IX
Failure to conduct annual inspections of corrosion protection system
Golf 6 Facility

52. The allegations of Paragraphs 1 through 19 of the CAFO are incorporated herein by reference as though fully set forth at length.

53. Pursuant to 159 Neb. Admin. Code 6-002.02, all UST systems equipped with cathodic protection systems must be inspected for proper operation by a qualified cathodic protection tester annually for impressed current cathodic protection systems using the National Association of Corrosion Engineers Standard, RP-02-85.

54. The UST at the Golf 6 Facility is, and at all times relevant hereto was, constructed of steel and utilizes an impressed cathodic protection system to protect it against corrosion.

55. At the time of the September 2010 inspection at the Golf 6 Facility, which for this Facility took place on September 24, 2010, Respondent had not had its cathodic protection system tested at this facility in the prior one year period, in violation of the annual testing requirements of 159 Neb. Admin. Code 6-002.02.

COUNT X

**Failure to conduct annual inspections of corrosion protection system
Golf 9 Facility**

56. The allegations of Paragraphs 1 through 19 of the CAFO are incorporated herein by reference as though fully set forth at length.

57. Pursuant to 159 Neb. Admin. Code 6-002.02, all UST systems equipped with cathodic protection systems must be inspected for proper operation by a qualified cathodic protection tester annually for impressed current cathodic protection systems using the National Association of Corrosion Engineers Standard, RP-02-85.

58. The UST at the Golf 9 Facility is, and at all times relevant hereto was, constructed of steel and utilizes an impressed cathodic protection system to protect against corrosion.

59. At the time of the September 2010 inspection at the Golf 9 Facility, which for this Facility took place on September 28, 2010, Respondent had not had its cathodic protection system tested at this facility in the prior one year period, in violation of the annual testing requirements of 159 Neb. Admin. Code 6-002.02.

COUNT XI

**Failure to conduct annual inspections of corrosion protection system
India 4 Facility**

60. The allegations of Paragraphs 1 through 19 of the CAFO are incorporated herein by reference as though fully set forth at length.

61. Pursuant to 159 Neb. Admin. Code 6-002.02, all UST systems equipped with cathodic protection systems must be inspected for proper operation by a qualified cathodic protection tester annually for impressed current cathodic protection systems using the National Association of Corrosion Engineers Standard, RP-02-85.

62. The UST at the India 4 Facility is, and at all times relevant hereto was, constructed of steel and utilizes an impressed cathodic protection system to protect it against corrosion.

63. At the time of the September 2010 inspection at the India 4 Facility, which for this Facility took place on September 23, 2010, Respondent had not had its cathodic protection system tested at this facility in the prior one year period, in violation of the annual testing requirements of 159 Neb. Admin. Code 6-002.02.

COUNT XII
Failure to report a suspected release to the implementing agency
Delta 3 Facility

64. The allegations of Paragraphs 1 through 19 of the CAFO are incorporated herein by reference as though fully set forth at length.

65. Pursuant to 159 Neb. Admin. Code 8-001.01 through .03, and 40 CFR §280.50(b) and (c), owners and operators of UST systems must report to the Nebraska State Fire Marshal the following:

(a) The discovery by owners and operators or others of released regulated substances at the UST site or in the surrounding area;

(b) Unusual operating conditions observed by owners and operators, including the sudden loss of product from the UST system, unless system equipment is found to be defective but not leaking, and is immediately repaired or replaced; and,

(c) Monitoring results from an approved release detection method required that indicates a release may have occurred unless the monitoring device is found to be defective, and is immediately repaired, recalibrated or replaced, and additional monitoring does not confirm the initial result.

66. Pursuant to 159 Neb. Admin. Code 1-003.39(B) and 40 C.F.R. § 280.12, the term "regulated substance" means any petroleum product, which includes diesel fuel.

67. At the time of the September 2010 inspection at the Delta 3 Facility, which for this Facility took place on September 15, 2010, the amount of diesel fuel in the UST at the Facility was 13,863.34 gallons. Respondent subsequently conducted a routine maintenance visit at the Facility on November 30, 2010, which showed the amount of diesel fuel in the UST to be 12,372.65 gallons, constituting an unexplained loss of fuel in the amount of 1,490.69 gallons. The amount of diesel fuel in the tank was measured at all times by an approved and fully operational automatic tank gage system at the Facility. Respondent could not account for this loss of diesel fuel and did not report it to the Nebraska State Fire Marshall or any other authority. The loss of diesel fuel was eventually discovered by EPA on April 4, 2012 during a review of the Facility's records by EPA personnel.

68. At the time of the November 2010 maintenance visit at the Delta 3 Facility, Respondent failed to comply with Neb. Admin. Code 8-001.01 through .03, and 40 CFR §280.50(b) and (c), in that Respondent did not report to the Nebraska State Fire Marshal a suspected release of a regulated substance from the facility, unusual operating conditions which included the sudden loss of fuel or monitoring results from an approved release detection method, that being a fully operational automatic tank gage system at the Facility, which indicated that a release of a regulated substance may have occurred.

CONSENT AGREEMENT

1. Respondent and EPA agree to the terms of this Consent Agreement and Final Order and Respondent agrees to comply with the terms of the Final Order portion of this Consent Agreement and Final Order.
2. Respondent admits the jurisdictional allegations of this Consent Agreement and Final Order and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order portion of this Consent Agreement and Final Order set forth below.
3. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this Consent Agreement and Final Order.
4. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above, and its right to appeal the proposed Final Order portion of the Consent Agreement and Final Order.
5. Respondent and Complainant agree to conciliate the matters set forth in this Consent Agreement and Final Order without the necessity of a formal hearing and to bear their respective costs and attorney's fees.
6. Nothing contained in the Final Order portion of this Consent Agreement and Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.
7. This Consent Agreement and Final Order addresses all civil administrative claims for the violations of the authorized regulations of the State of Nebraska identified above, and of RCRA Subtitle I identified above. Complainant reserves the right to take any enforcement action with respect to any other violations of RCRA Subtitle I or any other applicable law.
8. The effect of settlement described in this CAFO above is conditioned upon the accuracy of Respondent's representations to EPA, as memorialized in this CAFO.
9. Respondent certifies that by signing this Consent Agreement and Final Order that to best of its knowledge, Respondent's facilities listed in this CAFO are in compliance with all requirements of Subtitle I of RCRA, 42 U.S.C. §§ 6991-6991i *et. seq.* and all regulations promulgated thereunder.
10. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this CAFO and to execute and legally bind Respondent to it.

11. Respondent agrees that, in settlement of the claims alleged in this CAFO, Respondent shall pay a penalty of Twelve Thousand Eight Hundred Twenty-Three Dollars (\$12,823) as set forth in Paragraph 1 of the Final Order portion of this CAFO, below.

12. The penalty specified in the paragraph above shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal, State and local taxes.

13. Respondent consents to the issuance of this CAFO and consents for the purposes of settlement to the payment of the civil penalty cited in the immediately preceding paragraph.

14. Late Payment Provisions: Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on a civil or stipulated penalty if it is not paid by the date required. Interest will be assessed at a rate of the United States Treasury Tax and loan rate in accordance with 31 C.F.R. § 901.9(b). A charge will be assessed to cover the costs of debt collection including processing and handling costs and attorney fees. In addition, a non-payment penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. Any such non-payment penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid. 31 C.F.R. § 901.9(c) and (d).

15. Respondent understands that failure to pay any portion of the civil penalty on the date the same is due may result in the commencement of a civil action in Federal District Court to collect said penalty, along with interest thereon at the applicable statutory rate.

Effective Date

16. This CAFO shall be effective upon filing of the Final Order by the Regional Hearing Clerk for EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

Reservation of Rights

17. Notwithstanding any other provision of this CAFO, EPA reserves the right to enforce the terms of the Final Order portion of this CAFO by initiating a judicial or administrative action under Section 9006 of RCRA, 42 U.S.C. § 6991e, and to seek penalties against Respondent in an amount not to exceed Thirty-Seven Thousand Five Hundred Dollars (\$37,500) per day per violation pursuant to Section 3008(c) of RCRA, for each day of non-compliance with the terms of the Final Order, or to seek any other remedy allowed by law.

18. Complainant reserves the right to take enforcement action against Respondent for any future violations of Subtitle I of RCRA, 42 U.S.C. §§ 6991-6991i and its implementing regulations, and to enforce the terms and conditions of this CAFO.

19. Except as expressly provided herein, nothing in this CAFO shall constitute or be construed as a release from any claim (civil or criminal), cause of action, or demand in law or equity by or against any person, firm, partnership, entity, or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from Respondent's facility.

20. Notwithstanding any other provisions of the CAFO, an enforcement action may be brought pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or other statutory authority, should EPA find that the future handling, storage, treatment, transportation, or disposal of solid waste or hazardous waste at Respondent's facilities may present an imminent and substantial endangerment to human health and the environment.

21. The headings in this CAFO are for convenience of reference only and shall not affect interpretation of this CAFO.

22. The provisions of this CAFO shall be deemed satisfied upon a written determination by Complainant that Respondent has fully implemented the actions required in the Final Order

FINAL ORDER

Pursuant to the authority of Section 9006 of RCRA, 42 U.S.C. § 6991e, and according to the terms of this CAFO, IT IS HEREBY ORDERED THAT:

A. Payment of Civil Penalty

1. Within thirty (30) days of the effective date of this CAFO, Respondent will pay a civil penalty of Twelve Thousand Eight Hundred Twenty-Three Dollars (\$12,823).

2. Payment of the penalty shall be made by cashier or certified check, by wire transfer, or on-line. The Payment shall reference the Docket Number on the check or wire transfer. If made by cashier or certified check, the check shall be made payable to "Treasurer of the United States" and remitted to:

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

Wire transfers shall be directed to the Federal Reserve Bank of New York as follows:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read
"D 68010727 Environmental Protection Agency"

On-line payments are available through the Department of Treasury:

www.pay.gov
Enter "sfo 1.1" in the search field.
Open the form and complete required files.

3. A copy of the check, transfer, or on-line payment confirmation shall simultaneously be sent to the following:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 7
901 North 5th Street
Kansas City, Kansas 66101; and

Raymond C. Bosch Attorney
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 7
901 North 5th Street
Kansas City, Kansas 66101.

4. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this CAFO shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

B. Compliance Actions

5. Respondent shall take the following actions within the time periods specified, according to the terms and conditions specified below.

6. Send reports of tank stick readings and printouts of Veeder Root TLS-350 Tank Inventory Reports for those days when annual maintenance visits are completed for each facility. These reports and printouts will be due after a single cycle of annual maintenance visits is finished after the effective date of the CAFO.

7. Send results of impressed current cathodic protection tests for those days when annual maintenance visits are completed for each facility. These reports and printouts will be due after a single cycle of annual maintenance visits is finished after the effective date of the CAFO.

8. Regarding Launch Facility Delta 3:

(a) No later than sixty (60) days after the effective date of this CAFO, Respondent shall perform a tank tightness test required for a system test, as set out in 40 C.F.R. § 280.52(a). The results of the test shall be provided to EPA within 30 days after the test has been performed, and;

(b) If it is determined by either EPA or Respondent that there has been a release of a regulated substance from the UST at Launch Facility Delta 3, Respondent shall address the release pursuant to the regulations found at 40 C.F.R. Part 280, Subpart F.

9. Respondent shall submit all documentation generated to comply with the requirements as set forth in this section of the Final Order to the following address:

Michael L. Pomes, Ph.D., L.G.
Environmental Scientist
Storage Tanks and Oil Pollution Branch
EPA Region 7, AWMD/STOP
901 N. 5th Street
Kansas City, Kansas 66101
pomes.michael@epa.gov

C. Parties Bound

10. The Final Order portion of this CAFO shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms, or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this CAFO.

FOR COMPLAINANT:

U.S. ENVIRONMENTAL PROTECTION AGENCY

9/26/12
Date

Becky Weber
Becky Weber
Director
Air and Waste Management Division

Sept. 26, 2012
Date

Raymond C. Bosch
Raymond C. Bosch
Assistant Regional Counsel

FOR RESPONDENT,
UNITED STATES AIR FORCE

26 SEP 12
Date

C. A. Coffelt
Christopher A. Coffelt, Colonel
United States Air Force
Commander, 90th Missile Wing

IT IS SO ORDERED. This Final Order shall become effective upon filing.

Sept. 27, 2012
Date

Robert Patrick
Robert Patrick
Regional Judicial Officer

IN THE MATTER OF The United States Air Force F.E. Warren Air Force Base, Respondent
Docket No. RCRA-07-2012-0027

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Orders were sent this day in the following manner to the addressees:

Copy hand delivered to
Attorney for Complainant:

Raymond Bosch
Assistant Regional Counsel
Region 7
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by First Class Certified Mail to:

Stanley P. Jaskiewicz, Esq
Spector Gadon & Rosen P.C.
1635 Market St
7th Floor
Philadelphia, Pennsylvania 19103

Dated: 9/27/12


Kathy Robinson
Hearing Clerk, Region 7