



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

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2008 JUN 27 PM 3:12
REGIONAL HEARING
CLERK

Kim & Bae
Attn: Arthur M. O'Leary, Esq.
2160 North Central Road, Suite 303
Fort Lee, New Jersey 07024

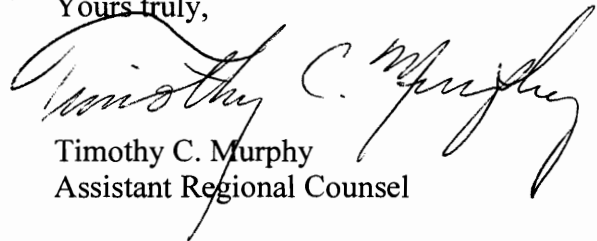
June 27, 2008

Subject: Frank H. Truck Corp., CWA 02-2008-3306

Dear Mr. O'Leary:

Enclosed herewith is a copy of the Consent Agreement/Final Order for the subject case. Please contact me at (212) 637-3236 if you have any questions with respect to this matter. Thank you.

Yours truly,



Timothy C. Murphy
Assistant Regional Counsel

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
Region 2**

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2008 JUN 27 PM 3:12
REGIONAL HEARING
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IN THE MATTER OF:
Frank H. Truck Corp.
7-02 154th Street
Whitestone, New York 11357

Respondent

Proceeding pursuant to §309(g) of the Clean
Water Act, 33 U.S.C. §1319(g)

CONSENT AGREEMENT
AND
FINAL ORDER

Docket No. CWA-02-2008-3306

I. Preliminary Statement

This is a civil administrative proceeding instituted pursuant to Section 309(g) of the Clean Water Act (the "Act"), 33 U.S.C. §1319(g).

The Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance ("DECA"), Region 2, United States Environmental Protection Agency ("EPA"), issued a "Complaint, Findings of Violation, Notice of Proposed Assessment of a Civil Penalty and Notice of Opportunity to Request a Hearing" (hereinafter, "Complaint") to Frank H. Truck Corp. in Whitestone, New York, (Respondent) on February 4, 2008.

The Complaint charged Frank H. Truck Corp. with violating the National Pollutant Discharge Elimination System ("NPDES") requirements pursuant to Section 402 of the Act, 33 U.S.C. § 1342, and Section 301(a) of the Act, 33 U.S.C. § 1311(a), at its facility located at 7-02 154th Street, Whitestone, New York.

II. Findings of Fact and Conclusions of Law

1. Frank H. Truck Corp. is a corporation organized under the laws of the State of New York and a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. §1362(5).

2. At all times relevant to this Administrative Complaint, Respondent operated a facility located at 7-02 154th Street, Whitestone, New York (the "facility") where it has a truck maintenance facility as well as a used truck and parts business. Respondent is a tenant at said location renting from Tropicana Products, Inc. (a subsidiary of PepsiCo Inc.).

3. The Respondent has discharged non-domestic waste water from its activities into a Tropicana Products, Inc. storm water discharge system which discharges into the East River, a navigable water of the United States pursuant to Section 502(7) of the Act, 33 U.S.C. § 1362(7). Respondent has been in operation since September 2004.

4. At all times relevant to this Administrative Complaint, Respondent was a "source" within the meaning of Section 306(a)(3) of the Act, 33 U.S.C. §1316(a)(3).

5. Section 301(a) of the Act, 33 U.S.C. § 1311(a), provides, in part that the discharge of any pollutants by any person from a point source to a navigable water of the United States shall be unlawful except in accordance with the terms and conditions of a duly issued permit. Respondent is subject to the National Pollutant Discharge Elimination System ("NPDES") Requirements pursuant to Section 402 of the Act, 33 U.S.C. § 1342 and Section 301(a) of the Act, 33 U.S.C. § 1311(a).

6. Section 308 of the Act, 33 U.S.C. § 1318, provides, in relevant part, that the Administrator of EPA may require the owner or operator of any point source to, among other things: maintain such records; make such reports; install, use and monitor such equipment; sample such effluents; and provide such other information as may reasonably be required in order to carry out Section 402 of the Act, 33 U.S.C. § 1342.

7. Section 402 of the Act, 33 U.S.C. § 1342, authorizes the Administrator of EPA to issue a NPDES permit for the discharge of any pollutant, or combination of pollutants, subject to certain requirements of the Act and conditions which the Administrator determines are necessary. Additionally, under the authority granted to the New York State Department of Environmental Conservation ("NYSDEC") by EPA under Section 402(b) of the Act, 33 U.S.C. § 1342(b), a State Pollutant Discharge Elimination System ("SPDES") permit is required to be issued to facilities in New York State by the NYSDEC for the discharge of pollutants from said facilities from a point source to a navigable water of the United States.

8. EPA conducted a compliance evaluation inspection of the facility on July 19, 2007, to determine compliance with the Clean Water Act requirements cited above.

9. During the inspection of July 19, 2007, the following information was obtained from facility personnel and inspection findings:

a) Respondent is primarily involved in maintenance/repair of trucks in addition to sale of used trucks and parts.

b) Facility personnel state that maintenance/repair operations are conducted in the building area. Trucks for sale and truck parts are stored outside on the facility site.

- c) The facility operated by Respondent is leased to the Respondent by Tropicana Products, Inc. (a subsidiary of Pepsico Inc.). Tropicana Products, Inc. operates a trucking terminal distribution facility adjacent to this site.
- d) Inspection observations identified floor drains in the maintenance building area.
- e) Inspection observations identified a sink in the maintenance building. The sink drains waste from washing machines located in the maintenance building in addition to other waste water that is discharged into the sink.
- f) Inspection observations identified the presence of a lavatory facility in the maintenance building.
- g) The waste conveyance systems indicated in d., e., and f. above, discharge directly to the East River via Tropicana Products, Inc. storm sewer system. (This was verified on July 20, 2007 via dye testing on-site).
- h) The discharge of waste water by the Respondent commenced on September 1, 2004.
- i) The waste waters noted in g. and h. above discharge directly to a navigable water of the United States (East River).
- j) Respondent failed to obtain a SPDES permit for the discharges noted in g. above.

10. The Respondent has violated federal NPDES requirements in contravention of the Act and its implementing regulations pursuant to § 301, § 308 and § 402 of the CWA.

11. The parties feel it is in the public interest to resolve EPA's Complaint and issues concerning Respondent's alleged violations of § 301, § 308(a) and § 402 of the Act, and its implementing pretreatment regulations without further litigation, and towards this end have agreed to the following settlement:

III. Consent Agreement

Based upon the foregoing, and pursuant to Section 309(g) of the Act, 33 U.S.C. §1319(g), and 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 by and between the parties and Respondent voluntarily and knowingly agrees as follows:

Jurisdiction

1. For the purpose of this proceeding, Respondent a) hereby expressly consents to the jurisdiction of EPA over it and the subject matter of this Consent Agreement and Final Order; and b) neither admits nor denies the specific factual allegations contained in the Complaint and Findings of Fact and it does not admit liability for the alleged violations.

Payment of Civil Penalty

2. Respondent shall pay, by cashier's or certified check, a civil penalty in the amount of twelve thousand five hundred dollars (\$12,500), payable to the "Treasurer of the United States of America.". The check shall be identified with a notation of the name and docket number of this case, set forth in the caption on the first page of this document. The check shall be mailed to:

U.S. EPA
26 W. Martin Luther King Drive
Attention: FINANCE
MS: NWD
Cincinnati, Ohio 45268

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

Timothy C. Murphy, Esq.
Office of Regional Counsel
U.S. Environmental Protection Agency
290 Broadway, 16th floor
New York, New York 10007

and

Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, New York 10007

Payment must be received at the above address on or before 45 calendar days after the date of signature of the Final Order at the end of this document (the date by which payment must be received shall hereafter be referred to as the "due date").

a. Failure to pay the penalty in full according to the above provisions will

result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection.

b. Further, if the payment is not received on or before the due date, interest will be assessed at the annual rate established by the Secretary of Treasury pursuant to the Debt Collection Act, 31 U.S.C. §3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling charge of \$15.00 will be assessed for each 30 day period (or any portion thereof) following the due date in which the balance remains unpaid. A 6% per annum penalty also will be applied on any principal amount not paid within 90 days of the due date.

c. In addition, pursuant to Section 309(g)(9) of the Clean Water Act, 33 U.S.C. §1319(g)(9), if payment is not received by the due date, a quarterly nonpayment penalty will be imposed for each calendar quarter during which such nonpayment persists. The quarterly nonpayment penalty is 20% of the aggregate amount of penalties and quarterly nonpayment penalties which are unpaid as of the beginning of such quarter. You also may be required to pay attorneys fees and costs for collection proceedings in connection with nonpayment.

The penalty to be paid is a civil penalty assessed by the EPA and shall not be deductible from Respondent's federal or state taxes.

General Provisions

1. This Consent Agreement is being voluntarily and knowingly entered into by the parties in full and final settlement of the civil liabilities that might have attached as a result of the allegations contained in the Complaint and any facts actually known by EPA in connection with the discharge of wastewater from the facility, including, but not limited to, the presence of acetone in such wastewater. Respondents have read the Consent Agreement, understands its terms, finds it to be reasonable and consents to its 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.

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

3. Respondent knowingly and explicitly waives its right under CWA Section 309(g)(2) and (8), 33 U.S.C. §1319(g)(2) and (8), to request or to seek any Hearing on or Judicial Review of the Complaint or on any of the allegations therein asserted, on this Consent Agreement or the Findings of Fact and Conclusions of Law herein, or on the accompanying

Final Order.

4. Respondent waives any right 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 Director 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 accompanying Final Order.

5. Issuance of the Consent Agreement and Final Order does not constitute a waiver by EPA of its right to enforce the substantive legal requirements underlying this penalty assessment, either administratively or judicially pursuant to Sections 309(a), (b) and (c) of the Act, 33 U.S.C. §§1319(a), (b) and (c) for violations that occur subsequent to the date of this Final Order but EPA is waiving its right to enforce substantive legal requirements, either administratively or judicially, for any violations by the Respondents of which EPA had actual knowledge of the facts giving rise to such violations prior to the effective date of the Final Order. Pursuant to Section 309(g)(7) of the Act, 33 U.S.C. §1319(g)(7), issuance or compliance with this Consent Agreement Final Order does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable requirements of the Clean Water Act, of regulations promulgated thereunder and of any legal order or permit issued thereunder.

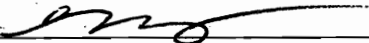
6. Each undersigned signatory to this Consent Agreement certifies that he or she is duly and fully authorized to enter into and ratify this Consent Agreement and all the terms and conditions set forth in this Consent Agreement.

7. The provisions of this Consent Agreement and Final Order shall be binding upon the Respondent, its officers, directors, agents, servants, authorized representatives and successors or assigns.

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

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

RESPONDENT: Frank H Truck Corp

BY: 
(Signature)

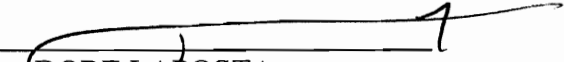
DATE: _____

Yeung Hwang
Name (Please print)

President
Title

COMPLAINANT:

BY:

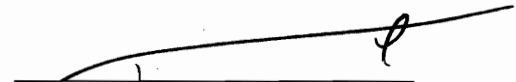

DORE LAPOSTA,
Director,
Division of Enforcement and
Compliance Assistance
United States Environmental
Protection Agency - Region 2
290 Broadway
New York, New York 10007-1866

DATE: JUNE 25, 2003

IV. Final Order

The Director, Division of Enforcement and Compliance Assistance of the U.S. Environmental Protection Agency, Region 2, ratifies the foregoing Consent Agreement. The Agreement entered into by the parties is hereby approved, incorporated herein, and issued as an Order. 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.

DATE: JUNE 25, 2003



DORE LAPOSTA,
Director, Division of
Enforcement and Compliance
Assistance
United States Environmental
Protection Agency-Region 2
290 Broadway
New York, New York 10007

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

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Respondent

Proceeding pursuant to §309(g) of the
Clean Water Act, 33 U.S.C. §1319(g)

DOCKET NO. CWA-02-2008-3306

CERTIFICATE OF SERVICE

I certify that, on the date noted below, I caused to be mailed, by certified mail, return-receipt-requested, a copy of this "CONSENT AGREEMENT AND FINAL ORDER" to the following person at the address listed below:

Frank H. Truck Corp.
7-02 154th Street
Whitestone, New York 11357

I further certify that, on the date noted below, I caused to be mailed, by EPA internal mail (pouch), the original and a copy of this "CONSENT AGREEMENT AND FINAL ORDER" to the following person at the address listed below:

Regional Hearing Clerk
U.S. Environmental Protection Agency
290 Broadway, 17th floor
New York, New York 10007-1866

Date: 6-27-08

Ana Madera
(Signature)

Ana Madera
(Print Name)

Branch Secretary
(Title)