



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

U.S. Environmental
Protection Agency-Reg 2
2014 JUL 29 PM 2:16
REGIONAL HEARING
CLERK

JUL 29 2014

CERTIFIED MAIL/RETURN REQUESTED

Patrick J. Raymond, Esq.
Law Offices of Patrick J. Raymond
66 Hawley Street
Binghamton, NY 13901

Re: Murray's Auto Service, Inc.
Docket No. RCRA-02-2014-7503

Dear Mr. Raymond:

Enclosed is a copy of the Consent Agreement and Final Order ("CA/FO") in the above referenced proceeding signed by the Regional Administrator of the U.S. Environmental Protection Agency.

Please note that payment is due within forty-five (45) days of signature of the Final Order by the Regional Administrator. Please arrange for payment of this penalty according to the instructions given in that Order.

Sincerely yours,

Gary H. Nurkin
Assistant Regional Counsel

cc: Russ Brauksieck, Chief
Facility Compliance Section
Bureau of Technical Support
NYSDEC
625 Broadway- 11th Floor
Albany, New York 12233-7020

Randall Austin, Regional Spill Engineer
NYSDEC-Region 2
47-40 21st Street
Long Island City, New York 11101

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. Environmental
Protection Agency-Reg 2
2014 JUL 29 PM 2: 16
REGIONAL HEARING
CLERK

-----X
In the Matter of :
 :
 :
Murray's Auto Service, Inc. :
 Respondent. :
 :
 :
Proceeding Under Section 9006 :
 of the Solid Waste Disposal Act, :
 as amended :
-----X

CONSENT AGREEMENT/ FINAL ORDER
Docket No. RCRA-02-2014-7503

PRELIMINARY STATEMENT

This is a civil administrative proceeding instituted pursuant to Section 9006 of the Solid Waste Disposal Act, as amended, 42 U.S.C. §6901 et seq. (hereinafter referred to as the "Act" or "RCRA").

Section 9006 of RCRA, 42 U.S.C. § 6991(e), authorizes the Administrator to enforce violations of the Act and the regulations promulgated pursuant to it. Murray's Auto Service, Inc. ("Murray") has been the owner and operator of a service station situated at 6 South Washington Street, Binghamton, New York 13903.

Based on an EPA inspection and Respondent's responses to an EPA Notice of Violation ("NOV") and Information Request Letter ("IRL"), EPA determined that for a period of time between at least December 2012 and March 2013, Murray, as the owner and operator of three steel USTs equipped with cathodic protection systems failed to have that system tested at least every three years by a qualified cathodic protection tester as required by 40 C.F.R. § 280.31(b).

EPA and Murray have subsequently engaged in settlement discussions with respect to the alleged violations that EPA discovered during the course of its March inspection of Murray's service station and have agreed to address the issues without the need for EPA to issue a formal Complaint. Pursuant to 40 C.F.R. § 22.13(b), where parties agree to settlement of one or more causes of action before the filing of a Complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order ("CA/FO") pursuant to 40 C.F.R. §§ 22.18(b)(2) and (3). Both the Complainant, the Director of EPA Region 2's Division of Enforcement and Compliance Assistance, and the Respondent, Murray, have agreed that entering into this CA/FO is an appropriate means of resolving the alleged noncompliance with RCRA requirements that EPA believes existed at Murray without further litigation or other administrative action.

This CA/FO is being issued pursuant to, and under the authority of, 40 C.F.R. § 22.18(b). No adjudicated findings of fact or conclusions of law have been made. Respondent neither admits nor denies the Findings of Fact and Conclusions of Law set forth below.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent is Murray.
2. Respondent is a corporation organized pursuant to the laws of the State of New York.
3. Respondent is a “person” within the meaning of Section 9001(5) of the Act, 42 U.S.C. § 6991(5), and 40 C.F.R. § 280.12.
4. Respondent has been and remains the “owner” and “operator” of “USTs” as those terms are defined in Section 9001 of the Act, 42 U.S.C. § 6991, and in 40 C.F.R. § 280.12.
5. Respondent has owned and operated and continues to own and operate three USTs located at 6 Washington Street, Binghamton, New York 13903.
6. Pursuant to 40 C.F.R. § 280.12, EPA is the “implementing agency” responsible for enforcing the requirements of the Act and the regulations promulgated pursuant thereto which are the subject of this case.
7. Pursuant to Sections 2002, 9002, and 9003 of the Act, 42 U.S.C. §§ 6912, 6991a, and 6991b, EPA promulgated rules setting forth requirements applicable to owners and operators of UST systems, codified at 40 C.F.R. Part 280.
8. Forty C.F.R. § 280.12 defines an “underground storage tank or UST” as “any one or combination of tanks (including underground pipes connected thereto) that is used to contain an accumulation of regulated substances, and the volume of which (including the volume of underground pipes connected thereto) is 10 percent or more beneath the surface of the ground.”
9. Pursuant to 40 C.F.R. § 280.21(c), owners and operators of existing UST systems had to upgrade metallic piping with corrosion protection by no later than December 22, 1998.
10. Pursuant to 40 C.F.R. § 280.31(b), UST systems equipped with cathodic protection systems must be tested at least every three years by a qualified cathodic protection tester.
11. Pursuant to Section 9005 of the Act, 42 U.S.C. § 6991d, on or about March 13, 2013, authorized representatives of EPA inspected the USTs located at Murray’s facility to determine compliance with respect to the Act and 40 C.F.R Part 280.
12. Pursuant to Section 9005(a) of the Act, 42 U.S.C. § 6991d(a), and 40 C.F.R. § 280.34, EPA sent a Notice of Violation (“NOV”) and an Information Request Letter (“IRL”) to

Respondent dated January 17, 2014, notifying Murray of the potential UST regulatory violations observed at its facility and seeking evidence of Respondent's financial responsibility for that facility.

13. On or about February 2, 2014, Murray sent EPA its responses to the January 17, 2014 NOV and IRL.
14. Based on EPA's UST inspections and Respondent's replies to both the NOV and the IRL, EPA determined that for a period of time between at least December 22, 2012 to October 3, 2013, Murray failed to test its cathodic protection system for its three USTs in accordance with the requirements of 40 C.F.R. § 280.31(b).

CONSENT AGREEMENT

Based upon the foregoing, and pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991(e), and 40 C.F.R. § 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. Part 22, Murray for purposes of this Consent Agreement: (a) admits that EPA has jurisdiction over this matter as stated in the Preliminary Statement of the CA/FO; (b) neither admits nor denies the Findings of Fact and Conclusions of Law above; (c) consents to the assessment of the civil penalty as set forth below; (d) consents to the issuance of the Final Order incorporating this Consent Agreement; and (e) waives its right to contest or appeal that Final Order.

It is further hereby agreed by and between Complainant and Murray, and voluntarily and knowingly accepted by Murray, that the Respondent shall comply with the following terms and conditions:

1. Commencing on the effective date of the Order, Respondent shall hereinafter maintain compliance at its 6 Washington Street, Binghamton, New York facility with all applicable regulations for owners and operators of USTs as set forth at 40 C.F.R. Part 280 including but not limited to conducting cathodic protection tests for its UST systems as required.
2. Respondent hereby certifies, at the time of its signature to this document, that, to the best of its knowledge and belief, it is in compliance with all of the requirements of 40 C.F.R. § 280.31 (b).
3. This CA/FO is not intended, and shall not be construed, to waive, extinguish or otherwise affect Murray's obligation to comply with all applicable federal, state and local laws and regulations relating to the technical standards and corrective action requirements for Owners and operators of USTs.
4. Nothing in this document is intended nor shall it be construed, to waive, prejudice or otherwise affect the right of EPA, or the United States, from pursuing any appropriate

remedy, sanction or penalty prescribed by law against Murray for having made any material misrepresentations or for having provided materially false information in any document.

5. Murray shall pay a civil penalty to EPA in the total amount of SIX THOUSAND DOLLARS (\$6,000). Such payment shall be made by cashier's or certified check or by Electronic Fund Transfer (EFT). If the payment is made by check, then the check shall be made payable to the "**Treasurer, United States of America,**" and shall be mailed to:

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

The check shall be identified with a notation thereon listing the following: *IN THE MATTER OF MURRAY'S AUTO SERVICE, INC.* and shall bear the Docket Number *RCRA-02-2014-7503*. Payment of the penalty must be *received* at the above address on or before forty-five (45) calendar days after the Effective Date of this CA/FO (the "Due Date").

If Murray chooses to make the payment by EFT, then Murray shall provide the following information to its remitter bank:

- 1) Amount of Payment.
- 2) SWIFT address: FRNYUS33, 33 Liberty Street, New York, NY 10045.
- 3) Account Code for Federal Reserve Bank of New York receiving payment: 68010727.
- 4) Federal Reserve Bank of New York ABA routing number: 021030004.
- 5) Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency."
- 6) Name of Respondent: Murray's Auto Service, Inc.
- 7) Case Number: RCRA-02-2014-7503

Such EFT must be received on or before forty-five (45) calendar days after the Effective Date of this CA/FO.

Whether the payment is made by check or by EFT, Murray shall promptly thereafter furnish reasonable proof that such payment has been made, to both:

Gary H. Nurkin, Esq.
Assistant Regional Counsel
Environmental Protection Agency, Region 2
290 Broadway, Room 1623
New York, New York 10007-1866

and

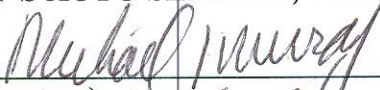
Karen Maples, Regional Hearing Clerk
Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, New York 10007-1866

- a. Failure to pay the amount in full within the time period set forth above may result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection.
 - b. Furthermore, if payment is not made on or before the date specified in this document, interest for said payment shall be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, on the overdue amount from the date said payment was to have been made through the date said payment has been received. In addition, a late payment handling charge of \$15.00 will be assessed for each thirty (30) calendar day period or any portion thereof, following the date the payment was to have been made, in which payment of the amount remains in arrears. In addition, a 6% per annum penalty will be applied to any principal amount that has not been received by the EPA within ninety (90) calendar days of the date for which the payment was required hereto to have been made.
 - c. The civil penalties provided for herein are penalties within the meaning of Title 26, Section 162(f) of the United States Code, 26 U.S.C. § 162(f), and are not deductible expenditures for purposes of federal or state taxes.
6. This Consent Agreement is being voluntarily entered into by the parties in full and final settlement of all civil liabilities that attach or might have attached under the Act to Murray as a result of the violations described in paragraph "14" of the above Findings of Fact and Conclusions of Law. 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 violation of law.
 7. The provisions of this Consent Agreement shall be binding upon both Complainant and Murray and their authorized representatives and successors or assigns.
 8. Murray explicitly waives its right to request or to seek any Hearing on the terms and conditions set forth in the Consent Agreement and its accompanying Final Order and/or the Findings of Fact/Conclusions of Law, above.
 9. Murray waives any rights 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 Regional Administrator, the Deputy Regional Administrator, or the Regional Judicial Officer where the purpose of such discussion,

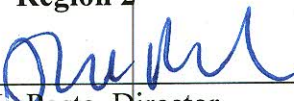
memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the attached Final Order.

10. The undersigned signatory for Murray certifies that it is duly and fully authorized to enter into this Consent Agreement and all the terms and conditions set forth in this Consent Agreement.
11. Murray consents to the service of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk.
12. The effective date of this Consent Agreement and Final Order shall be the date that it is filed with the Regional Hearing Clerk, U.S. EPA Region 2, New York, New York.
13. Each party hereto agrees to bear its own costs and fees in this matter.

RESPONDENT: MURRAY'S AUTO SERVICE, INC.

BY: 
(signature)
NAME MICHAEL MURRAY
(Please Print)
TITLE: pres
DATE: 7-22-14

**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: 7/28/14

In the Matter of Murray's Auto Service, Inc.
Docket No. RCRA-02-2014-7503

FINAL ORDER

The Regional Judicial Officer of the U.S. Environmental Protection Agency, Region 2, ratifies the foregoing Consent Agreement. The Consent Agreement, entered into by the Complainant and Respondent Murray's Auto Service, Inc. is hereby approved, incorporated herein, and issued as an Order pursuant to Section 9006 of the Act and 40 C.F.R. § 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.

Helen Ferrera

Helen Ferrera
Regional Judicial Officer
U.S. Environmental Protection
Agency – Region 2
290 Broadway
New York, New York 10007-1866

DATE: *July 29, 2014*

**In the Matter of Murray's Auto Service, Inc.,
Docket No. RCRA-02-2014-7503**

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing fully executed 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:

Office of Regional Hearing Clerk
U.S. Environmental Protection
Agency - Region 2
290 Broadway, 16th floor
New York, New York 10007-1866

Copy by Certified Mail,
Return Receipt Requested:

Patrick Raymond, Esq
Attorney for Respondent
66 Hawley Street
Binghamton, New York 13901

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF: Murray's Auto Service Inc.

CONSENT AGREEMENT AND
FINAL ORDER
DOCKET NO.: RCRA-02-2014-7503

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing Consent Agreement and Final Order, dated July 29, 2014, and bearing the above referenced docket number, in the following manner to the respective addressees below:

ORIGINAL AND COPY HAND DELIVERED TO:

Karen Maples, Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 2
290 Broadway, 16th Floor
New York, New York 10007-1866
maples.karen@epa.gov

COPY CERTIFIED MAIL – RETRUN RECEIPT

Patrick Raymond, Esq
Attorney for Respondent
66 Hawley Street
Binghamton, New York 13901

July 29, 2014
Date

Lynn Hawley
Signature