



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

DEC - 2 2008

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG.11
2008 DEC -4 PM 3:10
REGIONAL HEARING
CLERK

**CERTIFIED MAIL –
RETURN RECEIPT REQUESTED**

James T. King, Esq.
Office of the Staff Judge Advocate
Department of the Army – Fort Drum Base
141 Lewis Avenue
Fort Drum, NY 13602

Re: In the Matter of U.S. Department of the Army- Fort Drum Installation
CONSENT AGREEMENT AND FINAL ORDER
Docket No. RCRA-02-2009-7502

Dear Mr. King:

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, Region 2.

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

Sincerely,

Rudolph Perez
Assistant Regional Counsel

Enclosure

cc: Russ Brauksieck, Chief
Spill Prevention and Bulk Storage Section
NYSDEC
625 Broadway – 11th Floor
Albany, New York 12233

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

In the Matter of:

U.S. Department of the Army-
Fort Drum Installation
Respondent

Proceeding Under Section 9006
of the Solid Waste Disposal Act,
as amended.

**CONSENT AGREEMENT
AND FINAL ORDER**

Docket No. RCRA-02-2009-7502

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REGION 2
2009 DEC -4 PM 3:10
REGIONAL HEARING
CLERK

This is a civil administrative proceeding instituted pursuant to Section 9006 of the Solid Waste Disposal Act, as amended by various statutes including the Resource Conservation and Recovery Act, 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. (referred to collectively as the "Act" or "RCRA").

The Complainant in this proceeding is the Director of the Division of Enforcement and Compliance Assistance, United States Environmental Protection Agency ("EPA"), Region 2 ("Complainant"), who has been duly delegated the authority to institute and carry forward this proceeding. The Complainant alleges that the U.S. Department of the Army - Fort Drum Installation (the "Respondent") violated regulations regarding underground storage tank ("UST") systems promulgated pursuant to Sections 9002 and 9003 of the Act, 42 U.S.C. §§ 6991a, and 6991b, and set forth at 40 Code of Federal Regulations ("C.F.R.") Part 280 at the Fort Drum Army Installation in Fort Drum, New York.

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 simultaneously be 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).

The Complainant and Respondent agree that settling this matter by entering into this CA/FO pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) is an appropriate means of resolving this matter without further litigation.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Respondent is the U.S. Department of the Army-Fort Drum Installation (“Respondent”), a United States Army Installation. Respondent is a department, agency or instrumentality of the executive branch of the federal government.
2. For all times relevant to the allegations set forth herein, Respondent “owned” and/or “operated” the “underground storage tanks” (“UST”) systems, as those terms are defined in Section 9001 of the Act, 42 U.S.C. § 6991, and in 40 C.F.R. § 280.12, located at the Fort Drum Army Installation, Fort Drum, New York 13602-5000 (hereinafter the “Facility”).
3. Respondent is a “person” as defined in Section 9001(5) of RCRA, 42 U.S.C. § 6991, and in 40 C.F.R. § 280.12.
4. The USTs at the Facility are “petroleum UST systems”, as that term is defined in 40 C.F.R. §280.12, and they are subject to the regulatory requirements set forth at 40 C.F.R. Part 280.
5. The Respondent is subject to the requirements of the Act and its implementing regulations applicable to underground storage tanks.
6. On or about July 17, 18 and 19, 2007, duly designated representatives of the EPA inspected the Facility (the “EPA Inspection”) to determine compliance with the Act and 40 C.F.R. Part 280.

7. During the EPA Inspection, EPA found that Respondent was in violation of the spill prevention requirement in 40 C.F.R. §280.21 (d) which requires compliance with 40 C.F.R. §280.20 (c). Specifically, EPA found that Respondent did not provide adequate overfill protection for USTs numbers 884, 885, 886, 887, 888 and 917, as required by 40 C.F.R. §280.20 (c)(1)(i).
8. On or about May 8, 2008, EPA sent Respondent a letter highlighting the alleged violations and offering Respondent an opportunity to hold settlement discussions before issuing a formal civil administrative complaint.
9. EPA and Respondent have discussed settlement informally at a number of conferences and have agreed on the following Consent Agreement.

CONSENT AGREEMENT

Based upon the foregoing, and pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e, 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, the parties hereby agree, as follows:

1. Respondent admits the jurisdictional allegations contained herein and neither admits nor denies the Findings of Fact and Conclusions of Law set forth above.
2. Respondent consents to the payment of a civil penalty as set forth in this Consent Agreement and agrees to comply with the compliance provisions of this Consent Agreement, and to its conditions.
3. This Consent Agreement and Final Order shall not relieve Respondent from its continuing obligation to comply with all applicable provisions of federal, state or local environmental laws.
4. Respondent shall pay, by cashier's or certified check, a civil penalty for settlement of the

violations described above, in the amount of **fifteen thousand dollars** (\$15,000.00). The payment instrument shall be payable to the “Treasurer of the United States of America” and shall be mailed to:

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

Or by **OVERNIGHT MAIL:**

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

Contact: Natalie Pearson
314-418-4087

The check shall be identified with a notation of both the name of this case as:

In the Matter of U.S. Department of the Army – Fort Drum Installation, Docket Number RCRA-02-2009-7502. Respondent shall also send a copy of the check to both Rudolph Perez, Assistant Regional Counsel, U.S. Environmental Protection Agency, 290 Broadway, 16th Floor, New York, New York, 10007-1866 and Karen Maples, Regional Hearing Clerk, at the same address.

- a. The payment must be received at the above address on or before forty-five (45) calendar days after the date of signature of the Final Order at the end of this document (the “due date”).

- b. If timely payment is not received on or before the due date, a late payment handling charge of \$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.
- c. The effective date of this Consent Agreement and Final Order shall be the date of its filing with the Regional Hearing Clerk, Region 2, New York, New York.

5. Compliance Provisions

- a. To the extent it has not already done so, Respondent shall, within thirty (30) calendar days after the Regional Administrator's signature of the Final Order:
 - i) Maintain compliance with all applicable provisions of federal UST-regulations set forth at 40 C.F.R. Part 280, including the spill prevention requirements found at 40 C.F.R. §§ 280.21(d) and 280.20(c)(1)(i), as well as applicable provisions of state and local regulations.
 - ii) Comply with any future EPA requests, pursuant to Section 9005 and/or 40 C.F.R. § 280.34, for information relating to any or all of the UST systems owned and/or operated by Respondent.
 - iii) Submit, within fifteen (15) calendar days of the effective date of this CA/FO, records documenting compliance with 40 C.F.R. §§ 280.21(d) and 280.20(c)(1)(i).
 - iv) In all documents and reports submitted to EPA pursuant to this CA/FO, Respondent shall, by an authorized officer, certify under penalty of law that the information contained in such document or report is true, accurate and not misleading, by including and signing the following statement:

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 and contractors of Fort Drum. 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.

- b. Respondent shall submit copies of any communications or reports with respect to the Compliance Provisions of this CA/FO to:

Frank Spina
Environmental Protection Specialist
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency, Region 2
290 Broadway, 20th Floor
New York, N.Y. 10007-1866

6. If Respondent fails to comply with the spill prevention requirements and reporting requirements that are specified in paragraph 5(a) above, it shall pay a stipulated penalty for each day that it fails to meet these requirements as follows:

<u>Period of Failure to Comply</u>	<u>Penalty Per Day Per Violation</u>
1 st to 10 th day	\$500
11 th to 30 th day	\$1000
31 to 60 days	\$2000
Each day in excess of 60 days	\$3000

7. Respondent shall perform the requirements of this agreement within the time frames set forth herein unless the performance is prevented or delayed by events which constitute a force majeure. A force majeure is defined as any event arising from causes not reasonably foreseeable and beyond the control of Respondent which cannot be overcome by due diligence. A force majeure shall mean any event arising from causes beyond the control of a party that causes a delay in or prevents the performance of any obligation under this agreement, including but not limited to: acts of God; fire; war; insurrection; civil disturbance; explosion; unanticipated breakage or accident to machinery, equipment or lines of pipe despite reasonably diligent maintenance; adverse weather conditions that could not be reasonably anticipated; unusual delay in transportation; restraint by court order or order of public authority; inability to obtain, at reasonable cost and after exercise of reasonable diligence, any necessary authorizations, approvals, permits or licenses due to action or inactions of any governmental agency or authority other than Respondent; delays caused by compliance with applicable statutes or regulations governing contracting, procurement or acquisition procedures, despite the exercise of reasonable diligence; and insufficient availability of appropriated funds, if Respondent shall have made timely request for such funds as part of the budgetary process. A force majeure

shall also include any strike or other labor dispute, whether or not within the control of a party affected thereby. Force majeure shall not include increased costs or expenses of an action, whether or not anticipated at the time of the action was initiated. If the parties to this Consent Agreement agree that delay or noncompliance has been or will be caused by events, conditions, or circumstances entirely beyond the control of Respondent and if the parties to this Consent Agreement further agree that Respondent could not have prevented such delay or noncompliance by the exercise of due diligence, the time for performance of such requirement shall be extended for a period not to exceed the actual delay resulting from such circumstances and stipulated penalties for such delay or noncompliance shall not accrue for such period. Respondent shall bear the burden of proving to EPA by a preponderance of the evidence, through a written submission to EPA, that any delay was caused by circumstances entirely beyond the control of Respondent and that Respondent could not have prevented such delay by the exercise of due diligence. In the event that EPA does not agree that a delay has been or will be caused by circumstances beyond the control of Respondent, EPA will notify Respondent in writing of its decision.

8. Complainant may, in 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, after review of Respondent's submission, Complainant determines that Respondent has failed to comply with the provisions of this Consent Agreement, and Complainant does not, in 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 "4" of the Consent Agreement, above. Failure to pay the stipulated penalty in full will result in further action for collection or other appropriate action.


9. This Consent Agreement is being voluntarily and knowingly entered into by Respondent and EPA to resolve (upon full payment of the civil penalty and any stipulated penalty that comes due) Respondent's liability pursuant to Section 9006 for civil penalties for the violations of federal UST requirements specifically set forth in the Findings of Fact and Conclusions of Law in this CA/FO. Respondent has read the foregoing Consent Agreement, understands its terms, finds it to be reasonable and consents to the issuance of the accompanying Final Order. The parties agree that all terms of settlement are set forth herein. 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.
10. Respondent hereby waives its right to request or to seek any Hearing on any of the terms of this Consent Agreement or the Findings of Fact and Conclusions of Law herein, or on the accompanying Final Order.
11. Respondent 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 or the Deputy Regional Administrator 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.

12. Respondent 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.
13. Each party hereto agrees to bear its own costs and fees in this matter.
14. 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. It is the anticipation of the Parties to this Consent Agreement and Final Order that all obligations of Respondent arising under this agreement will be fully funded. Respondent agrees to seek sufficient funding to fulfill its obligations under this agreement. However, any requirement for the payment or obligation of funds by Respondent established by the terms of this agreement shall be subject to the availability of funds, and no provision herein shall be interpreted to require obligation of funds in violation of the Anti-Deficiency Act, 31 U.S.C. §1341. In cases where payment or obligation of funds would constitute a violation of the Anti-Deficiency Act, the dates established requiring the payment or obligation of such funds shall be appropriately adjusted.
15. Respondent consents to service upon Respondent of a copy of this CA/FO by an EPA employee other than the Regional Hearing Clerk.
16. This Consent Agreement 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 the terms of this CA/FO.

17. The provisions of this Consent Agreement shall be binding upon Respondent, its officials, authorized representatives and successors or assigns and upon Complainant.

RESPONDENT:

BY: 

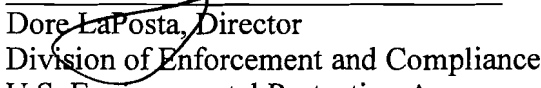
COL Kenneth H. Riddle
Garrison Commander
U.S. Department of the Army – Fort Drum

DATE: 30 Oct 08

In the Matter of U.S. Department of the Army- Fort Drum Installation
Docket Number RCRA-02-2009-7502

COMPLAINANT:

BY:



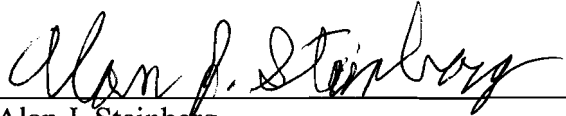
Dore LaPosta, Director
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency -
Region 2

DATE: NOVEMBER 24, 2008

In the Matter of U.S. Department of the Army- Fort Drum Installation
Docket Number RCRA-02-2009-7502

FINAL ORDER

The Regional Administrator (or anyone duly delegated to act on his behalf) of the U.S. Environmental Protection Agency, Region 2, concurs in the foregoing Consent Agreement in the case of In the Matter of the U.S. Department of the Army – Fort Drum Base, bearing Docket No. RCRA-02-2009-7502. The Consent Agreement, having been duly accepted and entered into by the parties to this matter, is hereby ratified, and incorporated into this Final Order, which is hereby issued and shall take effect when filed with the Regional Hearing Clerk of EPA, Region 2. 40 C.F.R. Section 22.31(b). This Final Order is being entered pursuant to the authority of 40 C.F.R. Section 22.18(b)(3) and shall constitute an order issued under authority of Section 9006 of RCRA, 42 U.S.C. Section 6991e.



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

DATE: 11-28-08

In the Matter of U.S. Department of the Army- Fort Drum Installation
Docket Number RCRA-02-2009-7502

CERTIFICATE OF SERVICE

I certify that I have caused to be sent the foregoing CONSENT AGREEMENT and its accompanying FINAL ORDER bearing the above referenced docket number, in the following manner to the respective addressees listed below:

Copy by

Certified Mail/

Return Receipt Requested:

James T. King, Esq.
Office of the Staff Judge Advocate
141 Lewis Avenue
Fort Drum, NY 13602

Original and One Copy

by Hand:

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

Dated: DEC - 2, 2008
New York, New York

Michael N. Bay