



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2  
290 BROADWAY  
NEW YORK, NY 10007-1866

MAR 28 2011

CERTIFIED MAIL --  
RETURN RECEIPT REQUESTED

Barbara H. Cioffi, Esq.  
U.S. Postal Service Law Department  
P.O. Box 66640  
St. Louis, MO 63141

Re: **In the Matter of U.S. Postal Service**  
**Docket No. RCRA-02-2010-7503**

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2011 MAR 28 A 10: 09  
REGIONAL HEARING  
CLERK

Dear Ms. Cioffi:

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

Cc: Russ Brauksieck, Chief  
Facility Compliance Section  
NYSDEC  
625 Broadway -11<sup>th</sup> floor  
Albany, NY 12233

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

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**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2**

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In the Matter of	:	
	:	
United States Postal Service	:	CONSENT AGREEMENT AND FINAL ORDER
	:	
	:	
Respondent.	:	Docket No. RCRA-02-2010-7503
	:	
Proceeding Under Section 9006	:	
of the Solid Waste Disposal Act,	:	
as amended	:	
-----X	:	

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2011 MAR 28 A 10:09  
REGIONAL HEARING  
CLERK

**PRELIMINARY STATEMENT**

This administrative proceeding was 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") and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permit, 40 C.F.R. Part 22 (hereinafter "CROP"). 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 a "Complaint, Compliance Order, and Notice of Opportunity for Hearing" on March 31, 2010 to the United States Postal Service ("Respondent").

The Complaint alleged violations of Subtitle I of the Act and the regulations codified at Title 40 of the Code of Federal Regulations (C.F.R.) Part 280 that set out the requirements for underground storage tanks ("USTs"). Specifically, the Complaint alleged several violations of the regulations by the Respondent including the failure to: continuously provide tank corrosion protection; install and test cathodic protection on piping; maintain records of release detection and cathodic protection tests for tanks and piping; and install and maintain overfill prevention equipment.

Section 9007 of RCRA, 42 U.S.C. §6991f, provides *inter alia*, that each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal Government (1) having jurisdiction over any UST system, or (2) engaged in any activity resulting, or which may result, in the installation, operation, management, or closure of any underground storage tank, release response activities related thereto, or in the delivery, acceptance, or deposit, of any regulated substance to an UST or UST system shall be subject to, and comply with, all Federal, State, interstate, and local requirements, both substantive and procedural, respecting USTs in the same manner, and to the same extent, as any person is subject

to such requirements.

The Complainant and Respondent 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. subsections 22.18(b)(2) and (3), 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 Postal Service.
2. Respondent is a “person” within the meaning of Section 9001(5) of the Act, 42 U.S.C. § 6991(5).
3. Respondent is a department, agency or instrumentality of the executive branch of the federal government.
4. Prior to the issuance of the Complaint, Respondent was the “owner” and “operator” of “Underground Storage Tanks” or “UST” systems, as those terms are defined in Section 9001 of the Act, 42 U.S.C. § 6991, located at the following five locations in the New York metropolitan area: the United States Postal Service Brooklyn Vehicle Maintenance Facility, 1050 Forbell Street, Brooklyn, NY; the United States Postal Service Queens Processing and Distribution Center (P&DC), 142-02 20<sup>th</sup> Avenue, Flushing, NY; the United States Postal Service New York International Service Center, JFK Cargo Building No. 250, Jamaica, NY; the United States Postal Service FDR Vehicle Maintenance Facility, 909 3<sup>rd</sup> Avenue, New York, New York; and the United States Postal Service Western Nassau Vehicle Maintenance Facility, 830A Stewart Avenue, Garden City, New York (“the Facilities”). Respondent reports that it continues to own and operate the USTs or UST systems described above, except that Respondent has removed the UST at the Brooklyn Vehicle Maintenance Facility and has taken out of service the USTs at the International Service Center, JFK Cargo Building.
5. Respondent owns 11 USTs or UST systems and operates 9 USTs or UST Systems at the above Facilities.
6. Pursuant to Sections 2002, 9002, and 9003 of the Act, 42 U.S.C. §§ 6912, 6991a, and 6991b, EPA promulgated rules setting forth requirements for owners and operators of UST systems, set forth at 40 C.F.R. Part 280.
7. The UST systems at the Facilities store either diesel fuel or gasoline for use in vehicles and thus are subject to the UST requirements set forth in 40 C.F.R. Part 280.
8. On or about August 14, 16, and 17, 2006, April 1, 2008, and January 20 and October 15,

2009 pursuant to Section 9005 of the Act, 42 U.S.C. § 6991d, an authorized representative of EPA inspected the Facility to determine the Respondent's compliance with the Act and the rules promulgated thereunder ("the Inspections").

9. On or about February 15 and May 18, 2007, May 13, 2008, and March 3, July 7, and October 19, 2009, Notices of Violation ("NOVs") and/or Information Request Letters ("IRLs") were issued to representatives of Respondent.
10. EPA's NOVs listed UST violations that were identified by EPA representatives during the Inspections.
11. EPA's IRLs sought general information about the USTs owned and/or operated by the Respondent at the Facilities, as well as information about any actions taken to correct the violations, and to prevent recurrence of the violations, identified in the NOV.
12. On April 20 and June 15, 2007, May 19, 2008 and July 7 and November 20, 2009, Respondent submitted responses to EPA's NOVs and IRLs.
13. Based on the inspections and Respondent's responses to EPA's NOVs and IRLs, EPA issued a Complaint on March 31, 2010 alleging that Respondent had failed to protect USTs and piping from corrosion and to properly install and maintain overfill prevention equipment. In addition, the Complaint alleged that the Postal Service had failed to perform or maintain records of various monitoring and test results designed to ensure that its underground storage tanks and piping were not leaking petroleum.
14. The parties have agreed to settle this matter and that this settlement will include a Supplemental Environmental Project ("SEP"), as described further below. Respondent submitted a preliminary description of the SEP on September 30, 2010.

#### **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/Termination or Suspension of Permits, 40 C.F.R. §22.18, it is hereby agreed by and between the Complainant and the Respondent that:

1. For purposes of this proceeding, Respondent (a) admits the jurisdictional allegations for this proceeding, as specified in the Complaint; (b) neither admits nor denies the above Findings of Fact and Conclusions of Law, and (c) consents to the terms of this Consent Agreement.
2. Respondent shall hereafter maintain compliance with the applicable requirements found in 40 C.F.R. Part 280 for the USTs at the locations listed in Paragraph 4 of the Findings of Fact and Conclusions of Law.

3. The person signing this Consent Agreement on behalf of Respondent certifies to EPA by his or her signature herein that Respondent, as of the date of this Consent Agreement, is in compliance with 40 C.F.R. Part 280 at the locations listed in Paragraph 4 of the Findings of Fact and Conclusions of Law.

4. Respondent shall pay, by either a cashiers, certified, or postal U.S. Treasury check, or by Electronic Funds Transfer ("EFT"), a civil penalty in the amount of **Sixty Five Thousand Five Hundred Dollars (\$65,500)**, 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 Postal Service, Docket No. RCRA-02-2010-7503. 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

a. If Respondent chooses to make the payment by EFT, then Respondent 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: : In the Matter of United States Postal Service
- 7) Docket No. RCRA-02-2010-7503

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

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

and

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

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, 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”).

- b. Failure of Respondent to pay the penalty in full pursuant to this Consent Agreement will result in further action for collection or appropriate action without prejudice to the right of Respondent to oppose, contest, or challenge such action so long as Respondent does not contest the terms of this Consent Agreement; and
- c. 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.

5. As part of the settlement of this matter, Respondent agrees to implement a Supplemental Environmental Project (“SEP”) in accordance with the “EPA Supplemental Environmental Projects Policy” (“SEP Policy”) which became effective on May 1, 1998. For the implementation of the SEP, which is set forth in the following paragraphs, the Respondent shall expend at least \$243,000 on EPA-approved SEP-specific activities (“Required SEP Expenditure”).

6. This SEP consists of the removal by Respondent of the Fuel Oil tanks at the following thirteen United States Postal Service facilities: Brevoort Main Post Office (MPO), 1205 Atlantic Avenue, Brooklyn, NY; Metropolitan Station, 47 Debevoise St., Brooklyn, NY; New Lots Station, 1223 Sutter Avenue, Brooklyn, NY; Flatbush Station, 2273 Church Avenue, Brooklyn, NY; Hicksville MPO, 185 West John Street, Hicksville, NY; Peekskill MPO, 738 South St., Peekskill, NY; Somerset MPO, 500 Demott Lane, Somerset, NJ; Staten Island P&DC, 550 Manor Road, Staten Island, NY; Blythebourne Station/Brooklyn, 1200 51<sup>st</sup> Street, Brooklyn, NY; Wyckoff Heights Station/Brooklyn, 85 Wyckoff Avenue, Brooklyn, NY; Bath Beach

Station/Brooklyn, 1865 Benson Avenue, Brooklyn, NY; Fordham Station/Bronx, 465 E. 188<sup>th</sup> Street, Bronx, NY; and Lincolnton Station/Manhattan, 2266 5<sup>th</sup> Avenue, New York, NY. Respondent certifies that none of the above-mentioned tanks have suspected or confirmed releases and Respondent believes that, as of the effective date of this Consent Agreement, these tanks have not reached the end of their useful lives. Should Respondent be unable to complete the tank removal at any of these locations for reasons beyond its control, or should the cost of the tank removal at any of these locations be significantly less than the cost estimate, the Respondent shall have the right to add additional United States Postal Service facilities to the SEP after approval by EPA.

7. Respondent agrees to implement the SEP in accordance with the terms and the schedule set forth or approved pursuant to this CA/FO. For purposes of this Consent Agreement, "days" shall mean calendar days. Any proposed changes to the SEP must be approved by EPA.

8. Within 30 days of the effective date of the Final Order issued in this matter, Respondent shall submit to EPA a Workplan for the SEP, including a detailed description of the work to be performed (including any required closure and site assessment work) and appropriate schedules for completion of the work. Within 30 days of receipt of the SEP Workplan, EPA may offer comments on the SEP Workplan. Within 30 days of receipt of EPA's comments, if any, on the SEP Workplan, or by such date as is approved by EPA, Respondent shall revise the SEP Workplan to address EPA's comments. Once the Respondent has addressed the EPA's comments or if EPA did not offer any comments on the Workplan, then Respondent shall immediately commence the implementation of the SEP. Respondent shall complete the removal of the Fuel Oil USTs in accordance with the terms and schedules of the EPA approved Workplan, but in no case shall the work exceed two years.

9. Respondent shall submit semi-annual Progress Reports to inform EPA of Respondent's progress in implementing the SEP, identify any issues or problems that have arisen in the implementation of the SEP, detail how issues or problems were addressed, itemize and document the expenditures that Respondent has made in connection with the SEP. Unless otherwise approved by EPA, copies of all invoices and a copy of documents related to the SEP and created or paid or received by Respondent during the reporting period shall be enclosed with the semi-annual Progress Reports when transmitted to EPA. Respondent shall send the semi-annual Progress Reports to the addressee in paragraph 11, below. The semi-annual Progress Reports shall cover the period January through June and July through December and shall be due 15 days after the end of the period. The first semi-annual Progress Report will be due after the end of the six month period in which the SEP commences.

10. Respondent shall provide EPA with a SEP Completion Report for the SEP documenting the completion of the SEP and the expenditures made in connection with the performance of the SEP. All expenditures which Respondent seeks to have counted toward the Required SEP Expenditure are subject to approval by EPA. The SEP Completion Report, shall contain the following information:

- a) Detailed description of the SEP as implemented;
- b) Description of any problems encountered and the solutions thereto, including monitoring for, and remediation of, any ground or groundwater contamination from the tanks;
- c) Itemization of costs incurred which Respondent feels are eligible for SEP credit, accompanied by copies of invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and services for which payment is being made (if the itemization and documentation have been previously provided with a Progress Report, it will suffice to refer to the prior submittal );
- d) Certification that the SEP has been fully implemented pursuant to the provisions of this Consent Agreement and Final Order; and,
- e) Description of the environmental and public health benefits resulting from implementation of the SEP (with quantification of the benefits if possible).

11. All correspondence set forth above relating to the SEP shall be mailed to:

Charles Zafonte  
Compliance Assistance and Program Support Branch  
Division of Enforcement and Compliance Assistance  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 21<sup>st</sup> Floor  
New York, N.Y. 10007-1866

Unless Respondent informs the EPA in writing that there has been a change, and unless otherwise specified herein, whenever EPA sends a written communication, notice, or demand concerning the SEP or any other aspect of this CA/FO, EPA shall send such communication to:

Richard P. Uluski  
Manager, Operations Support  
USPS Northeast Area  
6 Griffin Road North  
Windsor, CT 06006-7010

With a copy to:

Barbara H. Cioffi  
USPS Law Department  
P.O. Box 66640  
St. Louis, MO 63141-0640

12. Respondent agrees that failure to timely submit the SEP Progress Reports or SEP Completion Report without prior approval from EPA extending the deadline based on a showing of good cause for such extension shall be deemed a violation of this CA/FO and Respondent



shall become liable for stipulated penalties pursuant to paragraph 18 b., below. To be timely, the reports shall be mailed, postage prepaid, on or before the due date, or conveyed by another acceptable method (e.g., hand-delivery, fax, email).

13. Following receipt of any Progress Report and the SEP Completion Report, EPA will:
- a) accept the report (with or without a formal response); or
  - b) reject the report, notify Respondent in writing of deficiencies in the report and grant Respondent an additional thirty (30) days in which to correct any deficiencies and to resubmit the report to EPA. If EPA, after allowing Respondent thirty (30) days to correct any deficiencies, finds that the same type of deficiencies remain, then EPA may seek stipulated penalties in accordance with paragraph 18 b, below.

14. If EPA elects to exercise option 13(b) above, EPA shall permit Respondent the opportunity to object in writing to the notification of deficiency pursuant to this paragraph within 10 days of receipt of such notification. EPA and Respondent will have an additional thirty (30) days (or such time as the parties may agree to) from the due date of Respondent's notification of objection to reach agreement. If agreement cannot be reached on any such issue within this thirty (30) day period, Respondent may ask that the Complainant or her representative review the matter. Thereafter, EPA shall provide a written statement of its decision to Respondent, which decision shall be final and binding upon Respondent. In the event the SEP is not completed as contemplated herein, stipulated penalties shall be due and payable by Respondent to EPA in accordance with paragraph 18, below.

15. In all documents or reports, including without limitation, SEP Progress Reports and the SEP Completion Report, which are submitted to EPA pursuant to this CA/FO, the following certification shall be signed by a responsible agency official of Respondent:

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. 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.

16. Whether Respondent has complied with the terms of this CA/FO through the implementation of the SEP project as herein required, whether the SEP has been satisfactorily

completed, whether the Respondent has made good-faith, timely efforts to implement the SEP, and whether costs expended are creditable to the SEP, shall be the sole determination of EPA. Should EPA have any concerns about the satisfactory completion of the SEP, EPA will communicate those concerns to Respondent and provide it with an opportunity to respond, and/or correct the deficiencies. If EPA makes a determination that the SEP has been satisfactorily completed, it will provide Respondent with written confirmation of the determination within a reasonable amount of time.

17. Respondent shall maintain in one central location legible copies of documentation concerning the development, implementation, and financing of the SEP and documentation supporting information in documents or reports submitted to EPA pursuant to this CA/FO, including the reports required to be submitted for the SEP, such as the Semi-Annual Progress Reports and the SEP Completion Report for the SEP required pursuant to this CA/FO. Respondent shall grant EPA and its authorized representatives access to such documentation and shall provide copies of such documentation to EPA within thirty (30) days of Respondent's receipt of a request by EPA for such information, or within such additional time as is approved by EPA in writing. The provisions of this paragraph shall remain in effect for five (5) years from the effective date of this CA/FO or from three (3) years from the satisfactory completion of the required SEP, whichever is later.

18. Stipulated penalties for non-compliance with the SEP will be calculated as follows:

a. In the event that EPA determines, in its sole discretion, that Respondent fails to comply with any of the terms or provisions of this CA/FO relating to the performance of the SEP described in paragraphs 5 through 11 above (but excluding the violations specifically described in paragraph 18 b) and/or to the extent that the actual creditable expenditures for the SEP do not equal or exceed the required minimum expenditure for the SEP, Respondent shall be liable for stipulated penalties (except as provided in subparagraphs (ii) and (iii), immediately below) according to the following provisions:

i) If EPA determines, in its sole discretion, that the SEP has not been completed satisfactorily, Respondent shall pay a stipulated penalty in the amount of **Two Hundred Thousand Dollars (\$200,000)**. Payment shall be transmitted using the same procedure specified in paragraph 4, above. Once such penalty is paid, Respondent shall have no further obligation to complete the SEP to satisfy this CA/FO.

ii) If EPA determines, in its sole discretion, that the SEP is not completed satisfactorily, but:

(A) EPA determines that Respondent made good-faith and timely efforts to complete the project; and

(B) Respondent certifies, with supporting documentation, that at least ninety (90) percent of the amount of money which was required pursuant to paragraph 5 to be spent was expended on the SEP and EPA accepts that such expenditures are creditable for the SEP, then Respondent shall not pay any stipulated penalty.

iii) If EPA determines, in its sole discretion, that the SEP is satisfactorily completed, but:

(A) Respondent spent less than ninety (90) percent of the amount of money required to be spent for the SEP, and

(B) Respondent certifies, with supporting documentation, the costs that were expended on the SEP, and EPA accepts that such expenditures are creditable for the SEP, then:

Respondent shall pay a stipulated penalty in an amount equal to two (2) times the difference between the required expenditure for the SEP as set forth in Paragraph 5 above, and the amount the Respondent has expended that EPA determines is properly credited toward the SEP.

b. Notwithstanding any other provision of this CA/FO, stipulated penalties shall accrue per day per violation for the following types of matters: failure to comply with any schedule to submit records and documentation, including but not limited to reports and work plans, failure to include the required certifications or public statement and/or to revise any documents on schedule following receipt of comments; and/or failure to maintain and/or provide records. If deviation from the due dates/schedule in this Consent Agreement for the documents, reports, and records described in this paragraph, has not been approved by EPA in writing pursuant to paragraph 25, below, and if Respondent is determined by EPA to be liable to EPA for a stipulated penalty, such liability shall commence on the first day of noncompliance and continue through the final date of completion of the activity for which compliance is achieved. Simultaneous penalties shall accrue for separate violations of the CA/FO. The stipulated penalties shall accrue as follows:

**STIPULATED PENALTY AMOUNTS**

<u>Period of Failure to Comply</u>	<u>Penalty Per Day</u>
1st to 10th day	\$100
11 <sup>th</sup> to 30 <sup>th</sup> day	\$500
31st to 60th day	\$1,000
Each day in excess of 60 days	\$2,000

c. Unless Respondent provides EPA with a written explanation in accordance with subparagraph D, below, all stipulated penalties are due and payable within sixty (60) calendar days of the Respondent's receipt from EPA of a written demand for payment of the penalties. Respondent agrees that such demand may be mailed to Respondent via its counsel, Barbara Cioffi, Esq., USPS Law Department, PO Box 66640, St. Louis, MO 63141. All stipulated penalty payments shall be made in accordance with the payment instructions in Paragraph 4 of this CA/FO. Penalties shall accrue as provided above regardless of whether EPA has notified the Respondent of the violation or made a demand for payment, but need only be paid upon demand.

d. After receipt of a demand from EPA for stipulated penalties pursuant to the preceding paragraph, Respondent shall have thirty (30) 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 CA/FO (including any technical, financial or other information that

Respondent deems relevant). Pursuant to paragraph 19, below, EPA shall evaluate the written explanation provided by the Respondent.

19. The Complainant may, at 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 pursuant to the preceding paragraph, 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 Respondent. Respondent shall pay the stipulated penalty amount indicated in EPA's notice within forty-five (45) calendar days of its receipt of such written notice from EPA. Failure of Respondent to pay any stipulated penalty demanded by EPA pursuant to this Consent Agreement may result in further action or other appropriate action.

20. At any time prior to Respondent's payment of stipulated penalties, the Director of the Division of Enforcement and Compliance Assistance may, for good cause as independently determined by her, reduce or eliminate the stipulated penalty(ies). If the Director makes such determination, EPA shall notify Respondent in writing of any such action.

21. Any public statement, oral or written, made by Respondent making reference to the SEP shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for alleged violations of regulations concerning the management of underground storage tanks."

22. Delays:

a) If any event occurs which causes or may cause delays in the completion of the SEP as required under this CA/FO, Respondent shall notify EPA in writing within thirty (30) days of the delay or Respondent's knowledge of the anticipated delay, whichever is earlier. The notice shall describe in detail the anticipated length of delay, the precise cause of delay, the measures taken by Respondent to prevent or minimize delay, and the timetable by which those measures will be implemented. Respondent shall adopt all reasonable measures to avoid or minimize any such delay. Failure by Respondent to comply with the notice requirements of this paragraph shall render paragraph 22 void and of no effect as to the particular incident involved and may constitute a waiver of Respondent's right to request an extension of its obligation under this Consent Agreement based on such incident.

b) If the parties agree that the delay or anticipated delay in the completion of the SEP has been or will be caused by circumstances entirely beyond the control of Respondent, the time for performance hereunder may be extended for a period no longer than the delay resulting from such circumstances. In such event, the parties shall stipulate to such extension of time.

c) In the event that EPA does not agree that a delay in completing the SEP in accordance with the requirements of this Consent Agreement has been or will be caused by circumstances beyond the control of Respondent, EPA will notify Respondent in writing of its

decision and any delays in completion of the SEP shall not be excused under the provisions of this paragraph.

d) The burden of proving that any delay is caused by circumstances entirely beyond the control of Respondent shall rest with Respondent. Increased cost or expenses associated with the performance of the SEP under this CA/FO shall not, in any event, be a basis for changes in this Consent Agreement or extensions of time under section b) of this paragraph. Delay in achievement of one interim step shall not necessarily justify or excuse delay in achievement of subsequent steps unless the schedule of subsequent actions is dependent on completion of the earlier interim step.

23. The civil penalties and stipulated 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 local law.

24. The SEP to be completed by Respondent, described in paragraphs 5 through 11 of this CA/FO, has been accepted by Complainant solely for purposes of settlement of this civil administrative proceeding.

25. EPA Region 2 may grant an extension of the date(s) of performance or such other dates as are established in this CA/FO with regard to any work that is part of the SEP, if Respondent has first demonstrated in writing good cause for such extension. If Respondent submits a request for extension, such request shall be accompanied by supporting documentation and submitted to EPA no later than thirty (30) calendar days prior to any due date set forth in this Consent Agreement, or other deadline established pursuant to this Consent Agreement. Such extension, if any, shall be approved in writing.

26. Respondent hereby certifies that, as of the date of this CA/FO, Respondent is not required to perform the SEP described in paragraphs 5 through 11 above, by any federal, state, or local law, regulation or Executive Order; nor is Respondent required to perform or develop the SEP by agreement, grant, or as injunctive relief in this or any other case. Respondent further certifies that Respondent has not received, and is not currently negotiating to receive, credit in any other enforcement action for the SEP. Respondent certifies that it had not planned to perform the SEP prior to the commencement of this action.

27. If EPA determines that Respondent's certification in paragraph 26 is inaccurate, then Respondent shall pay a stipulated penalty in the amount of Two Hundred Thousand dollars (\$200,000). Payment shall be transmitted using the procedure specified in paragraph 4, above. Once such penalty is paid, Respondent shall have no further obligation to complete the SEP to satisfy this CA/FO.

28. If in the future EPA believes that any of the information certified to pursuant to this CA/FO is inaccurate, EPA will advise Respondent of its belief and its basis for such, and will afford Respondent an opportunity of no less than thirty (30) days to respond to EPA. If the

certification is materially inaccurate, EPA may, in addition to seeking stipulated penalties pursuant to paragraph 18.b, above, for noncompliance, initiate a separate criminal investigation pursuant to 18 U.S.C. § 1001 *et seq.*, or any other applicable law.

29. This CA/FO is being voluntarily and knowingly entered into by the Complainant and Respondent to resolve the civil and administrative claims specifically alleged in the Complaint against Respondent (upon full payment of the penalty and any stipulated penalty that comes due and the performance of obligations set forth in the CA/FO). Nothing herein shall be read to preclude EPA, or the United States on behalf of EPA, from pursuing the remedies mentioned in 40 C.F.R. Section 22.18(c) for any violations of law.

30. Respondent has read the CA/FO, 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.

31. Respondent explicitly and knowingly consents to the assessment of the civil penalty and stipulated penalties as set forth in this CA/FO and agrees to pay these penalties in accordance with the terms of this CA/FO.

32. Respondent explicitly waives its right to request or to seek any Hearing on the Complaint or 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.

33. Respondent waives its right to appeal the Final Order incorporating the terms of this Consent Agreement.

34. This CA/FO and any provision herein shall not be construed as an admission of liability in any criminal or civil action or other administrative proceeding, except in an action or proceeding to enforce or seek compliance with this CA/FO.

35. Respondent explicitly 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 Regional Administrator, Deputy Regional Administrator, or Regional Judicial Officer for Region 2, 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 CA/FO and issue the attached Final Order. Respondent waives its right to confer with the Administrator pursuant to Section 6001(b)(2) of RCRA, 42 U.S.C. § 6961(b)(2) regarding this matter.

36. Nothing in this CA/FO shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. Section 1341, or other applicable law.

37. This CA/FO does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable provisions of federal, state, or local law concerning USTs, nor shall it

be construed to be a ruling on or determination of any issue related to a federal, state, or local permit.

38. The undersigned signatory for Respondent certifies that he or she is duly and fully authorized to enter into this Consent Agreement and to accept all of the terms and conditions in this CA/FO.

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

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

41. Respondent consents to service upon itself of a copy of this CA/FO by an EPA employee other than the Regional Hearing Clerk.

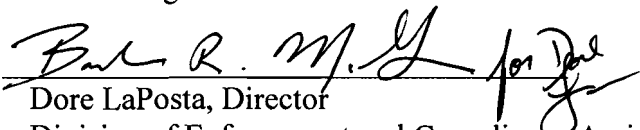
42. Pursuant to 40 C.F.R. § 22.31(b), the effective date of the Final Order herein shall be the date when it is filed with the Regional Hearing Clerk of the United States Environmental Protection Agency, Region 2.

43. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present a potential for an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution or settlement and to the reservation of rights set forth in 40 C.F.R. § 22.18(c). Further, EPA reserves any rights and remedies available to it under RCRA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CA/FO, following its filing with the Regional Hearing Clerk. Respondent reserves all available rights and defenses it may have, consistent with the terms of this CA/FO, to defend itself in any such action.

RESPONDENT: U.S Postal Service  
BY: Richard P. Uluski  
(signature)  
NAME Richard P. Uluski  
TITLE: Manager, Operations Support  
USPS Northeast Area  
DATE: 3/15/2011

In the Matter of U. S. Postal Service,  
Docket No. RCRA-02-2010-7503

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

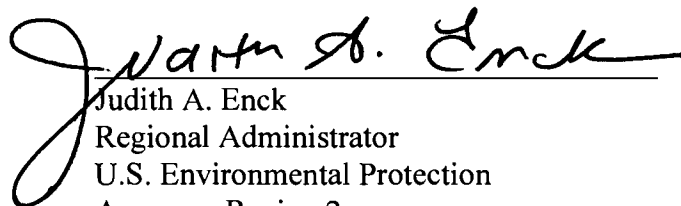
DATE: 3/19/11



In the Matter of U. S. Postal Service,  
Docket No. RCRA-02-2010-7503

**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 Complainant and Respondent to this matter, is hereby approved, incorporated herein, and issued as an Order pursuant to Section 9006 of the Act 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.

  
\_\_\_\_\_  
Judith A. Enck  
Regional Administrator  
U.S. Environmental Protection  
Agency – Region 2  
290 Broadway  
New York, New York 10007-1866

DATE: 3/23/11

In the Matter of U.S Postal Service,  
Docket No. RCRA-02-2010-7503

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing Consent Agreement and Final Order to the following addressees listed herein in the manner listed below:

Copy by facsimile and  
Pouch Mail:

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

Original and One Copy  
Hand Delivered to:

Office of the Regional Hearing Clerk  
U.S. Environmental Protection  
Agency, Region II  
290 Broadway  
New York, NY 10007-1866

Copy by Regular Mail to  
Attorney for Respondent:

Barbara Cioffi, Esq.  
USPS Law Department  
PO Box 66640  
St. Louis, MO 63141

MAR 28 2011  
Date

Smildred N. Bag