



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

AUG 27 2013

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. P.J. Patel
Quick Pantry of Orangeburg, LLC
3911 Bamberg Road
Cardova, South Carolina 29039

RE: Quick Pantry of Orangeburg, LLC
Consent Agreement and Final Order
Docket No. RCRA-UST-04-2013-0002

Dear Mr. Patel:

Enclosed find the Consent Agreement and Final Order (CA/FO) in the above-referenced matter. Please sign and return the **original** CA/FO to my attention, at the address provided in the letterhead, within seven (7) days of receipt.

Once all signatures are obtained, the EPA will file the document with the Regional Hearing Clerk and mail a copy of the fully executed document as filed to you. The CA/FO is effective on the date it is filed with the Regional Hearing Clerk. The penalty due date is calculated from that time, as well.

If you have any questions, feel free to contact me at (404) 562-8530, or contact Ben Singh at (404) 562-8922.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Busó", with a long horizontal flourish extending to the right.

Roberto X. Busó
Assistant Regional Counsel
Office of Environmental Accountability

Enclosure

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

IN THE MATTER OF:) Docket No.: RCRA-UST-04-2013-0002
)
Quick Pantry of Orangeburg, LLC.) Proceeding under Section 9006
3911 Bamberg Road,) of the Resource Conservation
Cardova, South Carolina 29039) and Recovery Act, as amended
) 42 U.S.C. § 6991e
RESPONDENT.)
_____)

RECEIVED
EPA REGION IV
2013 AUG 27 PM 3: 18
HEARING CLERK

CONSENT AGREEMENT

I. NATURE OF THE ACTION

1. This is a civil administrative enforcement action, ordering compliance with the requirements of the State Underground Petroleum Environmental Response Bank Act (SUPERB), S.C. Code Ann. §§ 44-2-10 et seq. [Subtitle I of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §§ 6991 et seq.]. This action is seeking civil penalties pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e, for alleged violations of SUPERB and its corresponding regulations, set forth at S.C. Code Ann. Regs. 61-92, Part 280 (2000) [Subtitle I of RCRA and its corresponding regulations, set forth at Title 40 of the Code of Federal Regulations (40 C.F.R.), Part 280].

2. The *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, 40 C.F.R. Part 22, provide that where the 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). 40 C.F.R. §§ 22.13 and 22.18(b)(2).

3. The parties have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18, and a desire to settle this action. Accordingly, before any testimony has been taken upon the pleadings and without any admission of violation or adjudication of any issue of fact or law, and in accordance with 40 C.F.R. § 22.13(b), the parties have agreed to the execution of this CA/FO, and Respondent hereby agrees to comply with the terms of this CA/FO.

II. THE PARTIES

4. Complainant is the Director, RCRA Division, Region 4, United States Environmental Protection Agency (EPA). Complainant is authorized to issue the instant CA/FO pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e, and applicable delegations of authority.

5. Respondent is Quick Pantry of Orangeburg, LLC., the owner of the underground storage tank (UST) system at Quick Pantry 6 located at 3224 Five Chops Road, Orangeburg, South Carolina 29115 (Quick Pantry 6 or the "Facility").

III. PRELIMINARY STATEMENTS

6. Pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c, the State of South Carolina (State) received final authorization from the EPA to carry out the State UST program in lieu of the federal UST program. The requirements of the authorized State program are found at S.C. Code Ann. Regs. 61-92, Part 280; however, for ease of reference, the federal citations will follow in brackets.

7. Although the EPA has granted the State authority to enforce its own UST program, the EPA retains jurisdiction and authority to initiate independent enforcement actions in the State pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e. This authority is exercised by the EPA in the manner set forth in the Memorandum of Agreement between the EPA and the State.

8. Pursuant to Section 9006(a)(2) of RCRA, 42 U.S.C. § 6991e(a)(2), Complainant has given notice of this action to the State prior to issuing this CA/FO.

9. Section 44-2-50 of the South Carolina Annotated Code, S.C. Code Ann. § 44-2-50 [Section 9003 of RCRA, 42 U.S.C. § 6991b], authorizes the promulgation of release detection, prevention, and corrective action regulations applicable to all owners and operators of USTs as may be necessary to protect human health and the environment. These regulations are found at S.C. Code Ann. Regs. 61-92, Part 280 [40 C.F.R. Part 280].

10. Pursuant to S.C. Code Ann. Regs. 61-92.280.70(a) [40 C.F.R. §280.70(a)] (out of service USTs) and S.C. Code Ann. Regs. 61-92.280.31(a) [40 C.F.R. § 280.31(a)] (in service USTs), owners and operators must ensure that corrosion protection systems are operated and maintained to continuously provide corrosion protection to the metal components of that portion of the tank and piping that routinely contain regulated substances and are in contact with the ground.

11. Pursuant to S.C. Code Ann. Regs. 61-92.280.70(a) [40 C.F.R. § 280.70(a)], owners and operators of out of service UST systems must comply with S.C. Code Ann. Regs. 61-92.280.41 [40 C.F.R. § 280.41], which requires owners and operators to perform release detection in accordance with S.C. Code Ann. Regs. 61-92, Part 280, Subpart D [40 C.F.R. Part 280, Subpart D] in the out of service UST system, unless the system is empty (i.e., all materials have been removed using commonly employed practices so that no more than 2.5 centimeters (one inch) of residue, or 0.3 percent by weight of the total capacity of the UST system, remain in the system).

12. Pursuant to S.C. Code Ann. Regs. 61-92.280.70(a) [40 C.F.R. §280.70(a)] (out of service USTs) and S.C. Code Ann. Regs. 61-92.280.31(c) [40 C.F.R. § 280.31(c)] (in service USTs), all owners and operators of steel UST systems with an impressed current corrosion protection system must inspect the system every 60 days to ensure the equipment is running properly.

IV. ALLEGATIONS AND DETERMINATIONS

13. Respondent is a “person” as defined in S.C. Code Ann. Regs. 61-92.280.12 [40 C.F.R. § 280.12].

14. Respondent is the “owner” of “underground storage tanks” used as “petroleum UST systems” as those terms are defined in S.C. Code Ann. Regs. 61-92.280.12 [40 C.F.R. § 280.12].

15. Gasoline and diesel are “regulated substances” as defined in S.C. Code Ann. Regs. 61-92.280.12 [40 C.F.R. § 280.12].

16. On June 7, 2011, the EPA conducted a compliance inspection (CI) of Respondent’s UST systems located at Quick Pantry 6, a gasoline service station and convenience store with four (4) steel tanks equipped with an impressed current cathodic protection (CP) system. Tank #1 is a 6,000-gallon gasoline UST. Tank #2 is a 4,000-gallon diesel UST. Tank #3 is a 3,000-gallon gasoline UST. Tank #4 is an 8,000-gallon gasoline UST. At the time of the inspection, Tanks #2 and #3 were in temporary out of service status.

17. At the time of the CI at Quick Pantry 6, the EPA observed that the metal swing joints associated with Tank #4 routinely contain a regulated substance and are in contact with the ground. However, the impressed current CP system was not providing the swing joints with corrosion protection, as required by S.C. Code Ann. Regs. 61-92.280.31(a) [40 C.F.R. § 280.31(a)] (in service USTs). Additionally, records reviewed during the CI indicate that CP was not continuously provided to any of the USTs at Quick Pantry 6 from approximately March 2011 to April 2011, as required by S.C. Code Ann. Regs. 61-92.280.70(a) [40 C.F.R. §280.70(a)] (out of service USTs) and S.C. Code Ann. Regs. 61-92.280.31(a) [40 C.F.R. § 280.31(a)] (in service USTs).

18. The EPA therefore alleges that Respondent violated S.C. Code Ann. Regs. 61-92.280.70(a) [40 C.F.R. §280.70(a)] (out of service USTs) and S.C. Code Ann. Regs. 61-92.280.31(a) [40 C.F.R. § 280.31(a)] (in service USTs) by failing to provide continuous corrosion protection to the metal components of the UST system that routinely contain regulated substances and are in contact with the ground.

19. At the time of the CI at Quick Pantry 6, the EPA observed that Tanks #2 and #3 were in temporary closure and contained more than one inch of product (i.e., were not “empty”).

Respondent was unable to demonstrate that Tanks #2 and #3 were being monitored for releases at least every 30 days as required by S.C. Code Ann. Regs. 61-92.280.70(a) [40 C.F.R. § 280.70(a)] (which requires compliance with S.C. Code Ann. Regs. 61-92.280.41 [40 C.F.R. § 280.41]).

20. The EPA therefore alleges that Respondent violated S.C. Code Ann. Regs. 61-92.280.70(a) [40 C.F.R. § 280.70(a)] by failing to perform release detection on Tanks #2 and #3 during temporary closure.

21. At the time of the CI at Quick Pantry 6, Respondent was unable to demonstrate that the impressed current CP system was inspected every 60-days, as required by S.C. Code Ann. Regs. 61-92.280.70(a) [40 C.F.R. §280.70(a)] (out of service USTs) and S.C. Code Ann. Regs. 61-92.280.31(c) [40 C.F.R. § 280.31(c)] (in service USTs).

22. The EPA therefore alleges that Respondent violated S.C. Code Ann. Regs. 61-92.280.70(a) [40 C.F.R. §280.70(a)] (out of service USTs) and S.C. Code Ann. Regs. 61-92.280.31(c) [40 C.F.R. § 280.31(c)] (in service USTs) by failing to inspect the impressed current CP system every 60 days.

V. TERMS OF AGREEMENT

Based on the foregoing, the parties agree to the following:

23. Respondent has submitted information demonstrating that all the alleged violations identified in this CA/FO have been corrected and the UST system located at Quick Pantry 6 are in compliance with the above cited regulations.

24. For the purposes of this CA/FO, Respondent admits the jurisdictional allegations set forth above pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e.

25. Pursuant to 40 C.F.R. § 22.18(b)(2), Respondent neither admits nor denies the factual allegations set forth above.

26. Pursuant to 40 C.F.R. § 22.18(b)(2), Respondent waives any right to contest the EPA allegations and its right to appeal the CA/FO.

27. Respondent waives its right to challenge the validity of this CA/FO and the settlement of the matters addressed in this CA/FO on the basis of any issue related to the Paperwork Reduction Act.

28. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to participate in any communication addressed to the EPA officials where the purpose of such communication is to persuade such officials to accept and issue this CA/FO.

29. Respondent waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this CA/FO, including any right of judicial review under Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706

30. The parties agree that the settlement of this matter is in the public interest and that this CA/FO is consistent with the applicable requirements of SUPERB and RCRA Subtitle I.

31. The parties agree that compliance with the terms of this CA/FO shall resolve Respondent's liability for civil penalties for the violations and facts alleged and stipulated to in this CA/FO.

32. The parties agree that they will pay their own costs and attorney's fees.

VI. PAYMENT OF CIVIL PENALTY

33. Respondent consents to the payment of a civil penalty in the amount of **NINE THOUSAND, ONE HUNDRED AND TWENTY DOLLARS (\$9,120.00)**, payable within thirty (30) calendar days of the effective date of this CA/FO.

34. Payment shall be made by cashier's or certified check, or by Automated Clearing House (ACH) (also known as REX or remittance express). If paying by check, the check shall be payable to: **Treasurer, United States of America**. Respondent's name and the docket number for this matter shall be referenced on the face of the check. If Respondent sends payment by the U.S. Postal Service, payment shall be sent to:

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

If Respondent sends payment by non-U.S. Postal express mail delivery, the payment shall be sent to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, Missouri 63101
(314) 418-1028

If paying by ACH, Respondent shall remit payment to:

PNC Bank
ABA: 051036706
Account Number: 310006
CTX Format Transaction Code 22 - checking
Environmental Protection Agency
808 17th Street, NW
Washington, D.C. 20074
Contact: Jessee White, (301) 887-6548

35. Respondent shall submit a copy of the payment to:

Patricia A. Bullock
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, Georgia 30303

and to:

William E. Truman
Chief, Underground Storage Tank Section
U.S. Environmental Protection Agency, Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, Georgia 30303

36. If Respondent fails to remit the civil penalty as agreed to herein, EPA is required to assess interest, penalties, and a charge to cover the costs of processing and handling the delinquent claim. Interest, at the statutory judgment rate provided for in 31 U.S.C. § 3717, will begin to accrue on the civil penalty if not paid as specified above. Pursuant to 31 U.S.C. § 3717, Respondent must pay the following amounts on any amount overdue:

- (a) Interest. Any unpaid portion of a civil penalty or stipulated penalty must bear interest at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1). Interest will therefore begin to accrue on a civil penalty or stipulated penalty if it is not paid by the last date required. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 4 C.F.R. § 102.13(c).

- (b) Monthly Handling Charge. Respondent must pay a late payment handling charge of \$15.00 on any late payment, with an additional charge of \$15.00 for each subsequent thirty (30) calendar-day period over which an unpaid balance remains.
- (c) Non-Payment Penalty. On any portion of a civil penalty or stipulated penalty more than ninety (90) calendar days past due, Respondent must pay a non-payment penalty of six percent (6%) per annum, which will accrue from the date the penalty payment became due and is not paid. This non-payment is in addition to charges which may accrue under subparagraphs (a) and (b).

37. Penalties paid pursuant to this CA/FO are not tax deductible under 26 U.S.C. § 62(f).

VII. PARTIES BOUND

38. This CA/FO shall be binding upon Respondent and its successors and assigns. Respondent shall cause its officers, directors, employees, agents, and all persons, including independent contractors, contractors, and consultants acting under or for Respondent, to comply with the provisions hereof in connection with any activity subject to this CA/FO.

39. No change in ownership, partnership, corporate, or legal status relating to the Facility will in any way alter Respondent's obligations and responsibilities under this CA/FO.

40. The undersigned representative of Respondent hereby certifies that she or he is fully authorized to enter into this CA/FO and to execute and legally bind Respondent to it.

VIII. RESERVATION OF RIGHTS

41. Notwithstanding any other provision of this CA/FO, an enforcement action may be brought pursuant to Section 9003(h) of RCRA, 42 U.S.C. § 6991b(h), or other statutory authority, should EPA find that the release of regulated substances from a UST may have occurred and implementation of any corrective action is needed to address such release.

42. Complainant reserves the right to take enforcement action against Respondent for any future violations of RCRA or SUPERB and their implementing regulations and to enforce the terms and conditions of this CA/FO.

43. Except as provided above, nothing in this CA/FO shall constitute a release from any claim (civil or criminal), cause of action, or demand in law or equity for any liability Respondent may have arising out of or relating in any way to Respondent's management of the USTs located at the Facility.

44. This CA/FO may be amended or modified only by written agreement executed by both EPA and Respondent.

45. The provisions of this CA/FO shall be deemed satisfied when Respondent has fully fulfilled the payment and certification obligations required by this CA/FO.

IX. OTHER APPLICABLE LAWS

46. All actions required to be taken pursuant to this CA/FO shall be undertaken in accordance with the requirements of all applicable laws and regulations. Respondent shall obtain or cause its representatives to obtain all necessary permits and approvals as required.

X. SERVICE OF DOCUMENTS

47. A copy of any legal documents that Respondent files in this action should be sent to the following attorney who represents the EPA in this matter and who is authorized to receive service for the EPA in this proceeding:

Roberto Busó
Associate Regional Counsel
U.S. Environmental Protection Agency, Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, Georgia 30303

XI. SEVERABILITY

48. It is the intent of the parties that the provisions of this CA/FO are severable. If any provision or authority of this CA/FO or the application of this CA/FO to any party or circumstance is held by any judicial or administrative authority to be invalid or unenforceable, the application of such provisions to other parties or circumstances and the remainder of the CA/FO shall remain in force and shall not be affected thereby.

[SIGNATURES ON NEXT PAGE]

XII. EFFECTIVE DATE

49. The effective date of this CA/FO shall be the date on which the CA/FO is filed with the Regional Hearing Clerk.

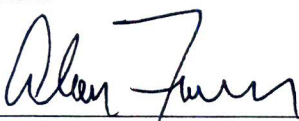
AGREED AND CONSENTED TO:

**For: Quick Pantry of Orangeburg, LLC.
Respondent**

By:  Dated: AUG-5th

Print Title: CO-OWNER

**For: U.S. Environmental Protection Agency,
Complainant**

By:  Dated: 8/22/13
G. Alan Farmer, Director
RCRA Division
U.S. EPA, Region 4

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:) Docket No.: RCRA-UST-04-2013-0002
)
Quick Pantry of Orangeburg, LLC.) Proceeding under Section 9006
3911 Bamberg Road,) of the Resource Conservation
Cardova, South Carolina 29039) and Recovery Act, as amended
) 42 U.S.C. § 6991e
)
RESPONDENT.)
_____)

FINAL ORDER

The foregoing Consent Agreement is hereby approved, ratified and incorporated by reference into this Final Order in accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules of Practice), 40 C.F.R. Part 22. The Respondent is hereby ORDERED to comply with all of the terms of the foregoing Consent Agreement effective immediately upon filing of this Consent Agreement and Final Order with the Regional Hearing Clerk. This Order disposes of matters under RCRA Subtitle I pursuant to 40 C.F.R. §§ 22.18 and 22.31.

BEING AGREED, IT IS SO ORDERED this 27 day of Aug, 2013.

BY: Susan B. Schub
Susan B. Schub
Regional Judicial Officer
United States Environmental Protection Agency, Region 4

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing Consent Agreement and the attached Final Order (CA/FO), in the Matter of Quick Pantry of Orangeburg, LLC., Docket Number: RCRA-UST-04-2013-0002, on the parties listed below in the manner indicated:

Roberto Buso,
Associate Regional Counsel
U.S. Environmental Protection Agency
Sam Nunn Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, Georgia 30303

(Via EPA's internal Mail)

Quantindra Smith
RCRA Division
U.S. Environmental Protection Agency
Sam Nunn Atlanta Federal center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

(Via EPA's internal mail)

Mr. P.J. Patel
Quick Pantry of Orangeburg, LLC.
3911 Bamberg Road,
Cardova, South Carolina 29039

(Via Certified Mail -
Return Receipt Requested)

Date

8-27-13



Patricia Bullock, Regional Hearing Clerk
U.S. Environmental Protection Agency
Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, Georgia 30303
(404) 562-9511