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HEARINGS CLERK
EPA -- REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

RICHARD DEVEREAUX,
NORTH PORTLAND EXPRESS CARE,

Portland, Oregon,

Respondent.

DOCKET NO. RCRA-10-2016-0104

CONSENT AGREEMENT

I. STATUTORY AUTHORITY

1.1. This Consent Agreement is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 9006 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6991e.

1.2. Pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c, EPA granted the State of Oregon final authorization to administer and enforce an underground storage tank release detection, prevention, and correction program and to carry out such program in lieu of the federal program.

1.3. Pursuant to Section 9006(a) of RCRA, 42 U.S.C. § 6991e(a), EPA may enforce the federally-approved Oregon Underground Storage Tank Program.

1.4. Pursuant to Section 9006(a)(2) of RCRA, 42 U.S.C. § 6991e(a)(2), notification of this action has been given to the Oregon Department of Environmental Quality ("ODEQ").

1.5. Pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e, and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. part 22, EPA issues, and Richard Devereaux (“Respondent”) agrees to issuance of, the Final Order attached to this Consent Agreement (“Final Order”).

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this Consent Agreement commences this proceeding, which will conclude when the Final Order becomes effective.

2.2. The Director of the Office of Compliance and Enforcement, EPA Region 10 (“Complainant”) has been delegated the authority pursuant to Section 9006(d) of RCRA, 42 U.S.C. § 6991e(d), to sign consent agreements between EPA and the party against whom an administrative penalty for violations of RCRA is proposed to be assessed.

2.3. Part III of this Consent Agreement contains a concise statement of the factual and legal basis for the alleged violations of RCRA together with the specific provisions of RCRA and the implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

3.1 Respondent is an individual, and therefore a “person” as that term is defined in Oregon Administrative Rule (“OAR”) 340-150-0010(57).

3.2 Respondent is the “owner” of three “underground storage tank(s)” at the Facility. OAR 340-150-0010(55), (86).

3.3 North Portland Express Care (the “Facility”) is located at 9330 North Whitaker Road in Portland, Oregon.

3.4 Owners and permittees of regulated Underground Storage Tank (“UST”) systems which are not otherwise exempt or deferred must comply with OAR Chapter 340, Divisions 150 and 151. OAR 340-150-0006 to 340-150-0008; OAR 340-151-0010.

3.5 Each underground storage tank at the Facility is part of a separate “UST system.” OAR 340-150-0010(86), (89). UST System 1 includes Tank 1, UST System 2 includes Tank 2, and UST System 3 includes Tank 3.

3.6 Tank 1 is a 2,000 gallon, single wall UST that routinely contains 30W motor oil.

3.7 Tank 2 is a 1,000 gallon, single wall UST that routinely contains 40W motor oil.

3.8 Tank 3 is a 1,000 gallon, single wall UST that routinely contains used motor oil.

3.9 Motor oils are types of “petroleum” and is “regulated substance(s).” OAR 340-150-0010(48), (58), (66).

3.10 On June 2, 2014, ODEQ issued a Notice of Civil Penalty Assessment and Order (“ODEQ Order”) against the permittee of the Facility, James Jinho Lee. This Consent Agreement has no effect upon the ODEQ Order. The ODEQ Order covers violations up to June 2, 2014. This Consent Agreement resolves violations occurring after issuance of the ODEQ Order, for the period between June 3, 2014 and March 3, 2016.

Violation 1: Failure to Conduct Release Detection for UST Systems

3.11 Respondent was and is required to provide an approved method of release detection which, *inter alia*, can detect a release from any portion of the UST and the underground piping that routinely contains a regulated substance. OAR 340-150-0400(1)(a).

3.12 Respondent was and is required to maintain records demonstrating compliance with all applicable requirements of OAR 340-150-0400 and retain those records for as long as the release detection equipment is in use. OAR 340-150-0400(4).

3.13 For all time periods relevant to the Consent Agreement, Respondent was using inventory control to conduct release detection on Tank 1, Tank 2, and Tank 3.

3.14 Owners and permittees that use inventory control as a method of release detection must reconcile inventory control measurements in a manner sufficient to detect a release of at least 1.0 percent of flow-through plus 130 gallons on a monthly basis. OAR-340-150-0430(3).

3.15 Owners and permittees that use inventory control as a method of release detection must use equipment capable of measuring the level of the regulated substance over the full range of the UST's height to the nearest one-eighth of an inch. OAR 340-150-0440(2)(c).

3.16 For all time periods relevant to the Consent Agreement, inventory control has not been an approved method of release detection for USTs, such as Tank 1, that are capable of containing more than 1,000 gallons of regulated substance. OAR 340-150-0430(1)(c); OAR 340-150-0440(1)(b)(C).

3.17 For all time periods relevant to the Consent Agreement, neither Respondent nor the Permittee was reconciling the inventory control measurements for Tank 2 and Tank 3 in a manner sufficient to detect a release of at least 1.0 percent of flow-through plus 130 gallons on a monthly basis.

3.18 For all time periods relevant to the Consent Agreement, neither Respondent nor the Permittee was consistently recording the height of regulated substance within Tank 2 and Tank 3 to the nearest eighth inch.

3.19 Respondent was and is required to ensure the method of release detection employed for the USTs and the underground piping was and is installed, calibrated, operated and maintained in accordance with the manufacturer's instructions, including routine maintenance and service checks for operability or running condition. OAR 340-150-0400(1)(b)-(c).

3.20 Respondent was and is required to either test the suction piping for its UST systems at least once every three years through a line tightness test ("LTT"), and conduct the LTT in accordance with the manufacturer's requirements, or conduct monthly monitoring by one of the applicable release detection methods described in OAR 340-150-0450 through 340-150-0470. OAR 340-150-0410(5), (7).

3.21 Respondent was and is required to retain, at a minimum, the last completed LTT or the most current 12 consecutive months of release detection records for piping. OAR 340-150-0410(8).

3.22 On July 14, 2015, neither Respondent nor the Permittee had records of any LTT, or other form of release detection for piping.

3.23 **Count 1:** Respondent violated OAR 340-150-0400(1) and OAR 340-150-0410(5) from June 3, 2014, through at least March 3, 2016, when Respondent failed to provide an approved method of release detection which, *inter alia*, can detect a release from any portion of his USTs and the associated underground piping that routinely contains a regulated substance.

Violation 2: Failure to Operate and Maintain Corrosion Protection

3.24 Respondent was and is required to operate and maintain corrosion protection systems on each of his UST systems to provide continuous protection to the metal components of any portion of his USTs and underground piping that routinely contain a regulated substance. OAR 340-150-0325(1).

3.25 Respondent was and is required to have the corrosion protection system inspected and tested for proper operation by a qualified cathodic protection tester licensed by ODEQ at least once every three years. OAR 340-150-0325(2).

3.26 Respondent was and is required to maintain records of the results of the last two cathodic protection inspections for each of his UST systems. OAR 340-150-0325(6).

3.27 Respondent conducted a cathodic protection test on UST System 1, UST System 2, and UST System 3 on May 13, 2009. Respondent's next cathodic protection test for his UST systems occurred on July 14, 2015.

3.28 **Count 2:** Respondent violated OAR 340-150-0325(2) from at least June 3, 2014, through July 13, 2015, when Respondent failed to have the corrosion protection systems on any of Respondent's three UST systems inspected and tested for proper operation by a qualified cathodic protection tester licensed by ODEQ at least once every three years.

Violation 3: Failure to Maintain Financial Responsibility

3.29 Oregon incorporated the financial responsibility requirements of 40 C.F.R. part 280, subpart H by reference as part of the State of Oregon's federally-approved UST program, as modified by OAR 340-151-0025. OAR 340-151-0015, 0025.

3.30 Oregon requires owners and permittees of petroleum USTs at petroleum marketing facilities to demonstrate financial responsibility in accordance with 40 C.F.R. part 280, subpart H, in effect as of February 1, 2003. OAR 340-151-0015, 0025, 0135(3).

3.31 Respondent was and is required to demonstrate one million dollars of per occurrence financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs. 40 C.F.R. § 280.93(a).

3.32 Respondent was and is required to demonstrate one million dollars of annual, aggregate financial responsibility for taking corrective action and for compensating third parties

for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs. 40 C.F.R. § 280.93(b).

3.33 Respondent was and is required to maintain evidence of all financial assurance mechanisms used to demonstrate financial responsibility. 40 C.F.R. § 280.111.

3.34 Respondent failed to demonstrate financial responsibility per occurrence and per annual aggregate amounts for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of Respondent's three UST systems by any of the methods set forth in 40 C.F.R. §§ 280.95 through 280.103, during the period of June 3, 2014, through June 10, 2015.

3.35 **Count 3:** Respondent violated OAR 340-151-0015, when Respondent was unable to demonstrate financial responsibility for releases arising from the operation of its USTs from at least June 3, 2014, through June 10, 2015.

Violation 4: Failure to Provide Overfill Prevention

3.36 Respondent was and is required to prevent spilling and overfilling associated with transfer of a regulated substance to the UST system, as an owner and permittee of an existing UST system must comply with new UST system spill and overfill prevention equipment requirements specified in 40 C.F.R. § 280.20(c). OAR 340-150-0560(4).

3.37 Respondent was and is required to equip Respondent's UST systems with overfill prevention equipment that can automatically shut off flow into the tank when the tank is no more than 95 percent full; or alert the transfer operator when the tank is no more than 90 percent full by restricting the flow into the tank or triggering a high-level alarm; or restrict flow 30 minutes prior to overfilling, alert the operator with a high level alarm one minute before overfilling, or automatically shut off flow into the tank so that none of the fittings located on top of the tank are

exposed to product due to overfilling. Alternatively, Respondent was and is required to equip Respondent's UST systems with overfill prevention equipment determined by the implementing agency to be no less protective of human health and the environment than the equipment specified earlier in this paragraph, or fill Respondent's UST systems in transfers of no more than 25 gallons at one time.

3.38 On June 20, 2007, ODEQ conducted an inspection of Respondent's Facility. ODEQ determined that the Facility did not have equipment or methods for Tank 1 or Tank 2 that satisfied the UST system spill and overfill prevention equipment requirements of OAR 340-150-0560(4).

3.39 On January 28, 2013, and July 12, 2013, ODEQ conducted inspections of Respondent's Facility. ODEQ determined that the Facility did not have equipment or methods for any of the three USTs that satisfied the UST system spill and overfill prevention equipment requirements of OAR 340-150-0560(4).

3.40 On July 14, 2015, EPA conducted an inspection of Respondent's Facility. At the time of the EPA inspection, the Facility did not have equipment or methods for any of the three USTs that satisfied the UST system spill and overfill prevention equipment requirements of OAR 340-150-0560(4).

3.41 **Count 4:** Respondent violated OAR 340-150-0560(4) from at least June 3, 2014, through March 3, 2016, when Respondent failed to have adequate equipment or methods for Tank 1 and Tank 2 to satisfy the UST system spill and overfill prevention equipment requirements of OAR 340-150-0560(4).

Violation 5: Failure to Provide Operator Training

3.42 Respondent was and is required to employ Class A, Class B and Class C operators who can properly operate and maintain Respondent's UST systems and respond to events indicating emergency conditions and alarms caused by spills or releases from Respondent's UST systems. OAR-340-150-0210(2).

3.43 Respondent was and is required to designate Class A operators for Respondent's UST systems and, within 90 days of that designation and ensure the designated operators completed a training session for Class A operators approved by ODEQ, or successfully passed an examination for Class A operators approved by ODEQ. OAR 340-150-0210.

3.44 Respondent was and is required to designate Class B operators for Respondent's UST systems and, within 90 days of that designation and ensure the designated operators completed a training session for Class B operators approved by ODEQ, or successfully passed an examination for Class B operators approved by ODEQ. OAR 340-150-0210.

3.45 Respondent was and is required to designate Class B operators for Respondent's UST systems and, before dispensing a regulated substance or assuming responsibility for responding to emergencies, be appropriately trained by a trained Class A or Class B operator. OAR 340-150-0210.

3.46 Respondent was and is required to maintain each certificate of completion, including a copy of any examination results, for each designated Class A, Class B, and Class C operator. Training records for Respondent's Class A, Class B, and Class C operators must be either kept on file at Respondent's Facility, or have those records available for review upon request. OAR 340-150-0210(7).

3.47 On June 16, 2014, the operator at the Facility received a Certificate of Completion from Pacific Environmental & Industrial Services, Inc. for UST System Operator Training.

3.48 Prior to June 16, 2014, Respondent did not have any trained Class A, Class B and Class C operators at the Facility.

3.49 **Count 5:** Respondent violated OAR 340-150-0210 from at least June 3, 2014, through June 15, 2014, when Respondent failed to have Class A, Class B and Class C operators properly operate and maintain Respondent's UST systems and able to respond to events indicating emergency conditions and alarms caused by spills or releases from Respondent's UST systems.

Penalty Authority

3.50 Under Section 9006(d) of RCRA, 42 U.S.C. § 6991e(d), and 40 C.F.R. part 19, EPA may assess a civil penalty of not more than \$16,000 per tank for each day of violation, issue an order requiring compliance, or both.

IV. TERMS OF SETTLEMENT

4.1. Respondent admits the jurisdictional allegations of this Consent Agreement.

4.2. Respondent neither admits nor denies the specific factual allegations contained in this Consent Agreement.

4.3. As required by Section 9006(c) of RCRA, 42 U.S.C. § 6991e(c), EPA has taken into account the seriousness of the violations and any good faith efforts to comply with applicable requirements. After considering these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$16,407 (the "Assessed Penalty").

4.4. Respondent agrees to pay the Assessed Penalty within 30 days of the effective date of the Final Order, and to undertake the actions specified in this Consent Agreement.

4.5. Payments under this Consent Agreement and the Final Order may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier's check or certified check must be payable to the order of "Treasurer, United States of America" and delivered to the following address:

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

Respondent must note on the check the title and docket number of this action.

4.6. Concurrently with payment, Respondent must serve photocopies of the check, or proof of other payment method, described in Paragraph 4.5 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-113
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101
Luna.teresa@epa.gov

Katie Griffith
U.S. Environmental Protection Agency
Region 10, Mail Stop OCE-101
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101
Griffith.katherine@epa.gov

4.7. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, the entire unpaid balance of the Assessed Penalty and accrued interest shall become immediately due and owing. If such a failure to pay occurs, Respondent may be subject to a civil action to collect any unpaid penalties, together with interest, handling charges, and nonpayment penalties, as set forth below. In any collection action, the validity, amount, and appropriateness of the Assessed Penalty shall not be subject to review.

4.8. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, Respondent shall also be responsible for payment of the following amounts:

4.8.1. *Interest.* Pursuant to 31 U.S.C. § 3717(a)(1), any unpaid portion of the Assessed Penalty shall bear interest at the rate established by the Secretary of the Treasury from the effective date of the Final Order contained herein, provided, however, that no interest shall be payable on any portion of the Assessed Penalty that is paid within 30 days of the effective date of the Final Order contained herein.

4.8.2. *Handling Charge.* Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of \$15 shall be paid if any portion of the Assessed Penalty is more than 30 days past due.

4.8.3. *Nonpayment Penalty.* Pursuant to 31 U.S.C. § 3717(e)(2), a nonpayment penalty of 6% per annum shall be paid on any portion of the Assessed Penalty that is more than 90 days past due, which nonpayment shall be calculated as of the date the underlying penalty first becomes past due.

4.9. The Assessed Penalty, including any additional costs incurred under Paragraph 4.8, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes. 26 U.S.C. § 162(f).

4.10. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondent to this document.

4.11. The undersigned representative of Respondent also certifies that, as of the date of Respondent's signature of this Consent Agreement, Respondent has corrected the violations alleged in Part III.

4.12. Except as described in Paragraph 4.8, each party shall bear its own costs and attorneys' fees in bringing or defending this action.

4.13. For the purposes of this proceeding, Respondent expressly waives any right to contest the allegations contained in this Consent Agreement and to appeal the Final Order.

4.14. The provisions of this Consent Agreement and the Final Order shall bind Respondent and its agents, servants, employees, successors, and assigns.

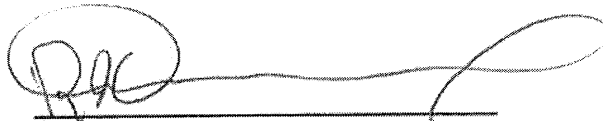
4.15. Respondent consents to the issuance of any specified compliance or corrective action order, to any conditions specified in this consent agreement, and to any stated permit action.

4.16. The above provisions in Part IV are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

7/2/16

FOR RESPONDENT:



RICHARD DEVEREAUX

DATED:

7/21/16

FOR COMPLAINANT:



EDWARD J. KOWALSKI, Director
Office of Compliance and Enforcement
EPA Region 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

RICHARD DEVEREAUX,
NORTH PORTLAND EXPRESS CARE,

Portland, Oregon,

Respondent.

DOCKET NO. RCRA-10-2016-0104

FINAL ORDER

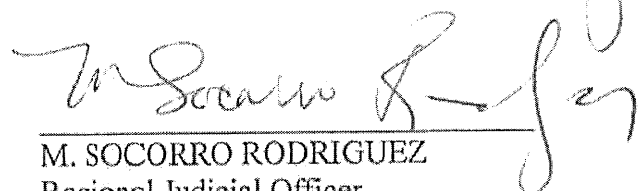
1.1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Regional Judicial Officer in EPA Region 10.

1.2. The terms of the foregoing Consent Agreement are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

1.3. The Consent Agreement and this Final Order constitute a settlement by EPA of all claims for civil penalties under RCRA for the violations alleged in Part III of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(a), nothing in this Final Order shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of RCRA and regulations promulgated or permits issued thereunder.

1.4. This Final Order shall become effective upon filing with the Regional Hearing Clerk.

SO ORDERED this 2nd day of August, 2016.



M. SOCORRO RODRIGUEZ
Regional Judicial Officer
EPA Region 10

Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of: North Portland Express Care, Docket No.: RCRA-10-2016-0104**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:


The undersigned certifies that a true and correct copy of the document was delivered to:

Christopher Bellovary, Esquire
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-113
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt to:

Richard Devereaux
3941 Park Drive, #20326
El Dorado Hills, California 95762

DATED this 3 day of August, 2016.



Teresa Luna
Regional Hearing Clerk
EPA Region 10