

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

-----X
In the Matter of :
:
Aero Star Petroleum, Inc. :
:
:
:
Respondents :
:
:
Proceeding Under Section 9006 of :
the Solid Waste Disposal Act, as :
amended. :
-----X

CONSENT AGREEMENT/ FINAL ORDER
Docket No. RCRA-02-2020-7501

REGIONAL HEARING
CLERK
2020-12-22 10:41

PRELIMINARY STATEMENT

This is a civil administrative proceeding instituted pursuant to Section 9006 of the Solid Waste Disposal Act, as amended, 42 U.S.C. §6901 et seq. (hereinafter referred to as the “Act” or “RCRA”) and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22 (hereinafter “CROP”). Complainant in this proceeding is the Director of the Enforcement & Compliance Assurance Division, United States Environmental Protection Agency, Region 2 (“EPA”). Section 9006 of RCRA, 42 U.S.C. § 6991(e), authorizes the Administrator to enforce violations of the Act and the regulations promulgated pursuant to it. The Respondent, Aero Star Petroleum, Inc., has been the owner and/or operator of at least one or more “underground storage tanks” (“USTs”) that are located at twenty-one (21) facilities in New York State.

Based on EPA inspections and Respondent’s responses to an EPA Notice of Violation (“NOV”) and three Information Request Letters (“IRLs”), EPA determined that prior to October 4, 2016 the Respondent did not have required insurance coverage for third party bodily injury and therefore it did not demonstrate compliance with federal regulatory financial responsibility requirements (40 CFR Part 280, subpart H) for the UST systems at Respondent’s twenty-one facilities in New York State. Moreover, EPA determined that Respondent did not provide overfill prevention for USTs at two of its facilities.

Pursuant to Section 22.13(b) of the CROP, where the parties agree to settlement of one or more causes of action before the filing of an Administrative Complaint, a proceeding may be simultaneously commenced and concluded by issuance of a Consent Agreement and Final Order (“CA/FO”) pursuant to 40 C.F.R. Sections 22.18(b)(2) and 22.18(b)(3) of the CROP. The Complainant and the Respondent have reached an amicable resolution of this matter and agree that settlement of this matter by entering into this CA/FO pursuant to 40 C.F.R. subsections 22.18(b)(2)&(3) is an appropriate means of resolving this case without further litigation.

No adjudicated findings of fact or conclusions of law have been made. Respondent neither admits nor denies the EPA Findings of Fact and Conclusions of Law set forth below.

EPA FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent is Aero Star Petroleum, Inc. (hereinafter "Respondent" or "Respondent Aero Star").
2. The Respondent is a "person" within the meaning of Section 9001(5) of the Act, 42 U.S.C. § 6991(5), and 40 C.F.R. § 280.12.
3. The Respondent was and remains the "owner" and/or "operator" of at least one or more underground storage tanks" ("USTs") or "UST system," as those terms are defined in Section 9001 of the Act, 42 U.S.C. § 6991, and in 40 C.F.R. § 280.12 that are located at twenty-one (21) facilities in the State of New York.
4. Pursuant to 40 C.F.R. § 280.12, EPA is the "implementing agency" responsible for enforcing the requirements of the Act and the regulations promulgated pursuant thereto which are the subject of this case.
5. Pursuant to Sections 2002, 9002, and 9003 of the Act, 42 U.S.C. §§ 6912, 6991a, and 6991b, EPA promulgated rules setting forth requirements applicable to owners and operators of UST systems, codified at 40 C.F.R. Part 280. These rules include requirements related to financial responsibility.
6. Forty C.F.R. § 280.12 defines an "underground storage tank or UST" as "any one or combination of tanks (including underground pipes connected thereto) that is used to contain an accumulation of regulated substances, and the volume of which (including the volume of underground pipes connected thereto) is 10 percent or more beneath the surface of the ground."
7. Pursuant to 40 C.F.R. § 280.93 owners and operators of UST systems are required to demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and for property damage caused by accidental releases arising from the operation of USTs that they own or operate.
8. Pursuant to 40 C.F.R. § 280.111, owners or operators of USTs are required to maintain evidence of all financial assurance mechanisms used to demonstrate financial responsibility for an UST and must maintain such evidence at the UST site or the owner's or operator's place of work.
9. Pursuant to 40 C.F.R. §§280.21(d) and 280.20(c)(1)(ii), owners and operators of USTs are required to provide overfill prevention for USTs that they own or operate.

10. Pursuant to Section 9005 of the Act, 42 U.S.C. § 6991d, on various dates in October 2016 an authorized representative of EPA inspected twenty of the Respondent's twenty-one facilities which have underground storage tanks in the State of New York to determine their compliance with the Act and 40 C.F.R Part 280.
11. Pursuant to Section 9005(a) of the Act, 42 U.S.C. § 6991d(a), and 40 C.F.R. § 280.34, EPA sent three Notices of Violations/Information Request Letters (NOVs/IRLs) dated February 21, 2017 (resent April 7, 2017), June 13, 2017 (resent July 18, 2017) and November 1, 2017 to Respondent in order to determine the company's compliance with the Act and 40 C.F.R. Part 280.
12. Based on EPA's UST inspections and Respondent's replies to the IRLs and NOV, EPA has alleged that prior to January 10, 2018, the Respondent has failed to comply with federal regulatory financial responsibility requirements in 40 C.F.R. Section 280.93(a) for USTs owned and/or operated at all of the Respondent's facilities identified in Attachment A of this CA/FO, except for the six facilities which have other periods of violation, as identified in paragraphs 13 and 14, below.
13. Based on EPA's UST inspections and Respondent's replies to the IRLs and NOV, EPA has alleged that prior to January 10, 2020, the Respondent failed to comply with federal regulatory financial responsibility requirements in 40 C.F.R. Section 280.93(a) for USTs owned and/or operated at the following three facilities: Azzam & Sons, 1083 Route 32, Rosendale, NY; Stone Ridge Citgo, 3492 Main Street, Stone Ridge, NY; and Aero Star Realty, 2887 Route 17K, Bullville, N.Y., as each of these facilities is identified in Attachment A of this CA/FO.
14. For the period between January 10, 2019 and January 10, 2020, the Respondent has failed to comply with federal regulatory financial responsibility requirements in 40 C.F.R. Section 280.93(a) for USTs owned and/or operated at the following three facilities: Rock Hill Citgo, 7 Glen Wild Rock Road, Rock Hill, NY; Rock Hill Mobil, 37 Katrina Falls, Rock Hill, NY; and Aero Star Petroleum, 1146 Rte 32, Rosendale, NY, as each of these facilities is identified in Attachment A of this CA/FO.
15. Based on EPA's UST inspections and Respondent's replies to the IRLs and NOV, EPA has alleged that the Respondent failed to provide the overfill prevention requirements in 40 C.F.R. Section 280.21(d) and 40 C.F.R. Section 280.20(c)(1)(ii) for USTs at two facilities (identified in Attachment B of this CA/FO) for at least the time periods from October 6, 2016 to October 19, 2016 and from October 7, 2016 to October 18, 2016.
16. Respondent's response to EPA's February 21, 2017 IRL documented the installation of overfill prevention in compliance with the overfill prevention UST requirement at 40 C.F.R. Section 280.20(c)(1)(ii) and Section 280.21(d) for USTs at two facilities identified in Attachment B of this CA/FO.

17. Respondent has provided documentation to EPA supporting that Respondent has secured insurance coverage, as of January 10, 2020, pursuant to 40 C.F.R. Section 280.97, in order to demonstrate financial responsibility in compliance with 40 C.F.R. Section 280.93 for USTs it owns and/or operates at all of its facilities in New York State. .

CONSENT AGREEMENT

Based upon the foregoing, and pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991(e), and 40 C.F.R. § 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. Part 22, it is hereby agreed by and between Complainant and the Respondent and voluntarily and knowingly accepted by the Respondent, that the Respondent, for purposes of this Consent Agreement: (a) admits that EPA has jurisdiction pursuant to Section 9006(a)(1) of the Act, 42 U.S.C. Section 6991e(a)(1) to commence a civil administrative proceeding based on the EPA Findings of Fact and Conclusions of Law described above; (b) neither admits nor denies any determination in the EPA Findings of Fact and Conclusions of Law section contained herein; (c) consents to the assessment of the EPA civil penalty as set forth below; (d) consents to the issuance of the Final Order incorporating this Consent Agreement; and (e) waives its right to contest or appeal that Final Order.

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

1. Commencing on the effective date of the Order, Respondent shall hereinafter maintain compliance at its facilities with all regulations applicable to owners and operators of USTs as set forth at 40 C.F.R. Part 280 including but not limited to complying with the financial responsibility and overfill prevention requirements for its UST systems at all of its facilities, as required.
2. Respondent certifies that, as of the effective date of the CA/FO, to the best of its knowledge and belief, that it has a financial assurance mechanism (pursuant to 40 C.F.R. Section 280.97) that demonstrates financial responsibility in compliance with 40 C.F.R. Section 280.93 for the USTs that the Respondent still owns and/or operates at all of the facilities listed in Attachment A.
3. This CA/FO is not intended, and shall not be construed, to waive, extinguish or otherwise affect Respondent's obligation to comply with all federal, state and local laws and regulations applicable to owners and operators of USTs.

4. Nothing in this document is intended nor shall it be construed, to waive, prejudice or otherwise affect the right of EPA, or the United States, from pursuing any appropriate remedy, sanction or penalty prescribed by law against Respondent for having made any material misrepresentations or for having provided materially false information in any document in connection with this proceeding.
5. Respondent shall pay a civil penalty to EPA in the total amount of EIGHTY-TWO THOUSAND FIVE HUNDRED DOLLARS (\$82,500). Such payment shall be made by cashier's or certified check or by Electronic Fund Transfer (EFT). If the payment is made by check, then the check shall be made payable to the "Treasurer, United States of America," and shall be mailed to:

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

6. The check shall be identified with a notation thereon listing the following: "In the Matter of Aero Star Petroleum, Inc.," and shall bear the Docket Number RCRA-02-2020-7501. **Payment of the penalty must be received at the above address on or before thirty (30) calendar days after the date of the Regional Administrator's signature on 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").

If Respondents choose to make the payment by EFT, then they shall provide the following information to its remitter bank:

- 1) Amount of Payment (\$82,500.00)
- 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: Aero Star Petroleum, Inc.
- 7) Case Number: RCRA-02-2020-7501

Such EFT must be received on or before thirty (30) calendar days after the date of the Regional Administrator's signature on the Final Order.

- a. Failure to pay the amount in full within the time period set forth above may result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection or other appropriate action.

- b. Furthermore, if payment is not made on or before the Due Date, interest for said payment shall be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, on the overdue amount from the Due Date said payment was to have been made through the date said payment has been received. In addition, a late payment handling charge of \$15.00 will be assessed for each thirty (30) calendar day period or any portion thereof, following the date the payment was to have been made, in which payment of the amount remains in arrears. In addition, a 6% per annum penalty will be applied to any principal amount that has not been received by the EPA within ninety (90) calendar days of the date for which the payment was required hereto to have been made.
 - c. The civil penalties provided for herein are penalties within the meaning of Title 26, Section 162(f) of the United States Code, 26 U.S.C. § 162(f), and are not deductible expenditures for purposes of federal or state taxes.
- 7. Any responses, documentation, and other communications submitted in connection with this Consent Agreement shall be sent to:

Hiep Tran, Physical Scientist
RCRA Compliance Branch
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 2
290 Broadway, 21st Floor
New York, N.Y. 10007-1866

Bruce Aber, Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, Room 1650
New York, N.Y. 10007-1866
- 8. EPA shall address any written communications concerning the CA/FO (including any correspondence related to payment of the penalty) to Respondent at the following addresses:

Gary S. Bowitch, Esq.
Bowitch & Coffey, LLC
Attorneys At Law
17 Elk Street
Albany, NY 12207
bowitch@bcalbany.com

Tariq Gujar, Owner,
Aero Star Petroleum, Inc.
1149 Route 32
Rosendale, New York 12472

9. Full payment of the penalty described in paragraph 5, above, shall only resolve Respondent's liability for federal civil penalties for the violation(s) described in paragraphs 12, 13, 14 and 15 of EPA's Findings of Fact and Conclusions of Law in this Consent Agreement. Full payment of this penalty shall not in any case affect the right of EPA or the United States, on behalf of EPA, from pursuing appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.
10. Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable and consent to the issuance and its terms. Respondent consents to the issuance of the accompanying Final Order. Respondent agrees that all the terms of the settlement are set forth herein.
11. Respondent explicitly and knowingly consent to the assessment of the civil penalty as set forth in this Consent Agreement and agree to pay the civil penalty in accordance with the terms of the Consent Agreement.
12. The Respondent explicitly and knowingly waives its right to request or to seek any Hearing on this Consent Agreement or on the EPA Findings of Fact and Conclusions of Law, or on the accompanying Final Order.
13. Respondent agrees not to contest the validity or any term of this CA/FO in any action brought: a) by the United States, including EPA, to enforce this CA/FO; or b) to enforce a judgment relating to this CA/FO.
14. Respondent waives its right to appeal this Consent Agreement and the accompanying Final Order.
15. 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 proceeding, but Respondent agrees not to contest the terms of this Consent Agreement and Final Order in an action or proceeding to enforce or seek compliance with this Consent Agreement and its accompanying Final Order.
16. This Consent Agreement and Final Order does not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or a determination of, any issue related to any federal, state or local permit. This Consent Agreement and Final Order does not waive, extinguish, or otherwise affect Respondent's obligation to comply with applicable provisions of the Act and the regulations promulgated thereunder.

17. Nothing in this Consent Agreement and Final Order shall be construed as a release from any other action under any law and/or regulation administered by EPA.
18. The provisions of this Consent Agreement and final Order shall be binding upon both EPA and the Respondent, its officers, agents, authorized representatives and successors or assigns.
19. Any failure by Respondent to perform fully any requirement herein will be considered a violation of this CA/FO, and may subject Respondent to a civil action by the United States to enforce the provisions of this CA/FO.
20. Each undersigned signatory to this Consent Agreement certifies that he or she is duly and fully authorized to enter into this Consent Agreement and all the terms and conditions set forth in this Consent Agreement.
21. Respondent consents to the service of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk.
22. Pursuant to 40 CFR Section 22.13(b), the effective date of this Consent Agreement and Final Order shall be the date when it is filed with the Regional Hearing Clerk of the United States Environmental Protection Agency, Region 2.
23. Each party hereto agrees to bear its own costs and fees in this matter.

ATTACHMENT A

1. Lochsheldrake Food Mart, Inc.
10 Divine Corners Road
Loch Sheldrake, NY 12759
PBS #3-408875
2. Ferndale Mobil
9 Ferndale Road
Ferndale, NY 12734
PBS #3-600292
3. Jigar Petroleum Corp
115 Forestburgh Road
Monticello, NY 12701
PBS #3-139521
4. Raceway Mobil
37 Raceway Road
Monticello, NY 12701
PBS #3-179140
5. Kiamesha Citgo
4375 State Route 42
Monticello, NY 12701
PBS #3-179175
6. Rock Hill Citgo
7 Glen Wild Road
Rock Hill, N.Y. 12775
PBS #3-461067
7. Ellenville Food Mart, Inc.
8112 Route 209
Ellenville, NY 12428
PBS #3-168785
8. 111 Shreeji, Inc.
6924 Route 209
Wawarsing, NY 12489
PBS #3-493155

9. Roscoe Mobil
1911 Old Route 17
Roscoe, NY 12776
PBS #3-179205
10. Shree Petroleum, Inc.
167 Kingston Avenue
Wurtsboro, NY 12790
PBS #3-139548
11. Florida Mobil
1969 Route 17 A
Goshen, NY 10924
PBS #3-601257
12. Aero Star Petroleum, Inc.
37 Katrina Falls Road
Rock Hill, NY 12775
PBS #3-139513
13. South Fallsburg Food Mart, Inc.
5104 Main Street
South Fallsburg, NY 12779
PBS #3-139556
14. Mahima Corp.
8404 Route 209
Ellenville, NY 12428
PBS #3-601486
15. Aero Star Petroleum, Inc.
1146 Route 32
Rosendale, NY 12472
PBS #3-037478
16. Stone Ridge Corner Store
Route 209 & Ligget Road
Stone Ridge, NY 12484
PBS #3-068322
17. Sun Conure Petroleum, Inc.
1149 Route 32
Rosendale, NY 12472
PBS #3-333867

18. A & P Gas Stop Corp

3113 Route 9W

Saugerties, NY 12477

PBS # 3-139130 (The USTs were removed in December 2017 and since that time Aero Star has not been an owner or operator of USTs at this facility).

19. Stone Ridge Citgo, Inc.

3492 Main Street

Stone Ridge, NY 12484

PBS #3-494704

20. Azam & Sons

1083 Route 32

Rosendale, NY 12472

PBS #3-168874

21. Aero Star Realty, LLC

2887 Route 17K

Bullville, NY 10915

PBS #3-496677

ATTACHMENT B
(OVERFILL PREVENTION VIOLATION)

1. Raceway Mobil
37 Raceway Road
Monticello, NY 12701
PBS #3-179175
2. Rock Hill Citgo
7 Glen Wild Rock
Rock Hill, NY 12775
PBS# 3-461067

In the Matter of Aero Star Petroleum, Inc., Docket No. RCRA-02-2020-7501

RESPONDENT: AERO STAR PETROLEUM, INC.

BY: 
(signature)

NAME Tariq Gujar
Tariq Gujar

TITLE: President

DATE: 2-25-20

REC'D FEB 27 REC'D

In the Matter of Aero Star, Petroleum, Inc., Docket No. RCRA-02-2020-7501

**COMPLAINANT: United States Environmental Protection Agency
Region 2**

BY: [Signature]
Dore LaPosta, Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection
Agency - Region 2
290 Broadway
New York, N.Y. 10007-1866

DATE: **FEB 28 2020**

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 the Respondent, is hereby approved, incorporated herein, and issued as an Order pursuant to Section 9006 of the Act and 40 C.F.R. § 22.18(b)(3). The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, U.S. EPA, Region 2, New York, New York.

A handwritten signature in black ink, appearing to read "Peter D. Lopez", is written over a horizontal line.

Peter D. Lopez
Regional Administrator
U.S. Environmental Protection
Agency – Region 2
290 Broadway
New York, New York 10007-1866

DATE: 3/2/2020

In the Matter of Aero Star, Petroleum, Inc., Docket No. RCRA-02-2020-7501

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing fully executed CONSENT AGREEMENT and FINAL ORDER, bearing the above-referenced docket number, in the following manner to the respective addressees below:

Original and One Copy
by Hand:

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

Copy by Certified Mail,
Return Receipt Requested:

Gary Bowich Esq
Bowitch & Coffey, LLC
Attorney for Respondent
17 Elk Street
Albany, NY 12207
bowitch@bcalbany.com

Tariq Gujar, Owner
Aero Star, Petroleum, Inc.
1149 Route 32
Rosendale, New York 12472

Dated: March 3, 2020
New York, New York

A handwritten signature in dark ink, appearing to read "Gary Bowich", written over a horizontal line.