

**U.S. EPA REGION 7  
HEARING CLERK**

4. This Consent Agreement and Final Order resolve Complainant's civil penalty claims against Respondent under RCRA Subtitle I, 42 U.S.C. §§ 6991-6991m, and the State of Kansas' federally authorized underground storage tank program for the violations alleged herein.

5. The State of Kansas is approved to administer and enforce an underground storage tank program in lieu of the Federal program under Subtitle I of RCRA, as amended. Kansas' program, as administered by the Kansas Department of Health and Environment, was approved by EPA pursuant to 42 U.S.C. § 6991c and 40 C.F.R. Part 281 of this chapter. EPA approved the Kansas underground storage tank program on June 6, 1994, effective July 6, 1994. A subsequent program revision application was approved by EPA and became effective November 1, 2021.

6. At all times relevant hereto, Subtitle I of RCRA, 42 U.S.C. §§ 6991-6991m, and regulations promulgated pursuant thereto at 40 C.F.R. Part 280, and Kansas' Underground Storage Tank ("UST") program, set forth at Kansas Administrative Regulations (K.A.R.) 28-44-12 through 31, regulate USTs used to contain regulated substances including, but not limited to, petroleum products (e.g. gasoline and crude oil).

7. The regulations of 40 C.F.R. Part 280 are designed, in part, to reduce the chance of releases from USTs, detect leaks and spills when they do occur, and secure a prompt cleanup.

8. Kansas has primary responsibility for administering and enforcing its federally-approved underground storage tank program. However, EPA retains the authority to exercise its inspection and enforcement authorities under sections 9005 and 9006 of Subtitle I of RCRA, 42 U.S.C. §§ 6991d and 6991e, regardless of whether the State has taken its own actions, as well as under any other applicable statutory and regulatory provisions.

### **General Factual Background**

9. At all times relevant to this Consent Agreement and Final Order, Respondent was a "person" as defined by 40 C.F.R. § 280.12.

10. At all times relevant to this Consent Agreement and Final Order, Respondent was an "operator" of the "USTs" and "UST systems" as defined by 40 C.F.R. § 280.12.

11. At all times relevant to this Consent Agreement and Final Order, Respondent operated a convenience store and gas station facility known as Fast N' Friendly located at Emporia Service Area MP132, KTA Milepost 132, Emporia, Kansas 66801 (the "Facility"). KDHE provided the Facility the following identification number: KDHE ID 26570.

12. At all times relevant to this Consent Agreement and Final Order, Respondent's facility had four USTs: 1) one tank with a capacity of 8,000 gallons; and 2) three tanks with capacities of 10,000 gallons.

13. At all times relevant to this Consent Agreement and Final Order, the UST systems operated by Respondent were "petroleum UST systems" as defined by 40 C.F.R. § 280.12.

14. At all times relevant to this Consent Agreement and Final Order, the USTs and UST systems were being used to contain a "regulated substance" as defined by 40 C.F.R. § 280.12.

15. On June 9, 2021, and December 20, 2022, personnel from EPA (the “Inspector”) conducted RCRA Compliance Evaluation Inspections of Respondent’s facility and its USTs and UST systems (the “2021 and 2022 Inspections”).

16. On April 19, 2024, the EPA sent an information request to Respondent (the “Information Request”) requiring that Respondent provide information regarding its UST systems and records. On May 21, 2024, Respondent provided its response to the Information Request.

### **Violations**

17. Complainant hereby states and alleges that Respondent has violated RCRA and the federal regulations promulgated thereunder, as follows:

#### **Count 1**

#### **Failure to Meet General Operating Requirements for a UST Operator**

18. Complainant hereby incorporates the allegations contained in Paragraphs 1 through 16 above, as if fully set forth herein.

#### *Prevention of Spilling or Overfilling*

19. Pursuant to 40 C.F.R. § 280.30(a), operators must ensure that releases due to spilling or overfilling do not occur. The operator must ensure that the volume available in the tank is greater than the volume of product to be transferred to the tank before the transfer is made and that the transfer operation is monitored constantly to prevent overfilling and spilling.

20. During the 2021 Inspection, the Inspector observed petroleum product ponded on a concrete surface south of a UST system diesel spill bucket at the Facility.

21. Therefore, Respondent failed to prevent spilling or overfilling of regulated product as required by 40 C.F.R. § 280.30(a).

#### *Corrosion Protection*

22. Pursuant to 40 C.F.R. § 280.31(a), operators of metal UST systems must operate and maintain all corrosion protection systems 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.

23. During the 2022 Inspection, the Inspector observed water in the containment sumps and corroded piping within Respondent’s UST systems.

24. Therefore, Respondent failed to operate and maintain its corrosion protection systems to continuously provide corrosion protection to the metal components of its UST systems as required by 40 C.F.R. § 280.31(a).

#### *Availability of Records for Inspection*

25. Pursuant to 40 C.F.R. § 280.34(b)(4), operators are required to maintain documentation of UST system repairs.

26. Pursuant to 40 C.F.R. § 280.34(c), operators are required to keep records at the UST site and immediately available for inspection by the implementing agency or at a readily available alternative site from which they can be provided for inspection by the implementing agency upon request.

27. As part of the Information Request, EPA requested that Respondent provide records of “repair activities related to the spill of product.”

28. In responding to the Information Request, Respondent was unable to provide these requested repair records.

29. Therefore, Respondent failed to have records it was required to maintain either immediately available for inspection or at a readily available alternative site as required by 40 C.F.R. § 280.34(c).

30. Respondent’s failures to meet the above enumerated general operating requirements for UST and UST system operators under 40 C.F.R. Part 280 Subpart C, are violations of K.A.R. 28-44-19 and Subtitle I of RCRA, 42 U.S.C. §§ 6991-6991i, for which the EPA is authorized to assess penalties under 42 U.S.C. § 6991e.

### **Count 2**

#### **Failure to Meet Release Detection Requirements for a UST Operator**

31. Complainant hereby incorporates the allegations contained in Paragraphs 1 through 16 above, as if fully set forth herein.

#### *Release Detection Method*

32. Pursuant to 40 C.F.R. § 280.40(a)(1), operators of UST systems must provide a method, or combination of methods, of release detection that can detect a release from any portion of the tank and the connected underground piping that routinely contains product.

33. Pursuant to 40 C.F.R. § 280.40(a)(4), referencing 40 C.F.R. § 280.43, equipment for automatic tank gauging (“ATG”) must be able to detect a 0.2 gallon per hour leak rate from any portion of the tank that routinely contains product.

34. During the 2021 Inspection, the Inspector observed that Respondent had not been monitoring “Tank 1” at the Facility because a probe had been removed during repairs. Also during this inspection, the Inspector observed that Respondent’s ATG was not operating to detect releases at 0.2 gallon/hour on all tanks.

35. During the 2022 Inspection, the Inspector observed failures in the Periodic and Continuous Statistic Leak Detection (“CSLD”) Tests for “Tank 2” and “Tank 3” at the Facility.

36. Therefore, Respondent failed to provide a method or combination of methods for release detection that could detect a release from any portion of its tanks and the connected underground piping that routinely contained product as required by 40 C.F.R. § 280.40(a)(1) and § 280.40(a)(4), referencing 40 C.F.R. § 280.43.

#### *Tank Monitoring*

37. Pursuant to 40 C.F.R. § 280.41(a)(1), operators of petroleum UST systems must monitor tanks installed on or before April 11, 2016, for releases at least every 30 days using one of the methods listed in 40 C.F.R. 280.43(d) through (i).

38. All four of the Facility's USTs had been installed on or before April 11, 2016.

39. During the 2022 Inspection, the Inspector observed that tanks within Respondent's petroleum UST systems were not consistently monitored every 30 days.

40. Therefore, Respondent failed to monitor tanks within its petroleum UST systems for releases as required by 40 C.F.R. § 280.41(a)(1).

#### *Inventory Control*

41. Pursuant to 40 C.F.R. § 280.43(a), operators of USTs must conduct product inventory control or another test of equivalent performance on a monthly basis to detect a release of at least 1.0 percent of flow-through plus 130 gallons on a monthly basis in accordance with the specifications of subparagraphs (1) through (6).

42. During the 2022 Inspection, the Inspector observed that Respondent had not correctly conducted its leak check calculations.

43. Therefore, Respondent failed to conduct product inventory control or another test of equivalent performance on a monthly basis as required by 40 C.F.R. § 280.43(a).

#### *Annual Testing of Leak Detector*

44. Pursuant to 40 C.F.R. § 280.44(a), methods which alert the operator of a petroleum UST system to the presence of a leak by restricting or shutting off the flow of regulated substances through piping or triggering an audible or visual alarm may be used only if they detect leaks of 3 gallons per hour at 10 pounds per square inch line pressure within 1 hour. An annual test of the operation of the leak detector must be conducted in accordance with 40 C.F.R. 280.40(a)(3).

45. During the 2021 Inspection, the Inspector observed that Respondent's most recent annual leak detector operation test was performed on July 30, 2019, and that Respondent had not conducted an annual leak detector operation test in 2020..

46. Therefore, Respondent failed to meet the annual test of the operation of the leak detector as required by 40 C.F.R. § 280.44(a).

*Sampling, Testing, and Monitoring Records*

47. Pursuant to 40 C.F.R. § 280.45(b), operators of UST systems must maintain the results of any sampling, testing, or monitoring for at least one year, or for another reasonable period of time determined by the implementing agency.

48. During the 2021 Inspection, the Inspector observed that Respondent had not maintained the preceding 12 months of ATG printouts.

49. In responding to the Information Request, Respondent did not provide a full set of the preceding 12 months of CSLD printouts.

50. Therefore, Respondent failed to maintain the results of all sampling, testing, and monitoring as required by 40 C.F.R. § 280.45(b).

51. Respondent's failures to meet the above enumerated release detection requirements for UST and UST system operators under 40 C.F.R. Part 280 Subpart D are violations of K.A.R. 28-44-23 and Subtitle I of RCRA, 42 U.S.C. §§ 6991-6991i, for which the EPA is authorized to assess penalties under 42 U.S.C. § 6991e.

**CONSENT AGREEMENT**

52. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:

- (a) admits the jurisdictional allegations set forth herein;
- (b) neither admits nor denies the specific factual allegations stated herein;
- (c) consents to the assessment of a civil penalty, as stated herein;
- (d) consents to the issuance of any specified compliance or corrective action order;
- (e) consents to any conditions specified herein;
- (f) consents to any stated Permit Action;
- (g) waives any right to contest the allegations set forth herein; and
- (h) waives its rights to appeal the Final Order accompanying this Consent Agreement.

53. By signing this Consent Agreement, Respondent waives any rights or defenses that Respondent has or may have for this matter to be resolved in federal court, including but not limited to any right to a jury trial, and waives any right to challenge the lawfulness of the final order accompanying the consent agreement.

54. Respondent consents to the issuance of this Consent Agreement and Final Order and consents for the purposes of settlement to the payment of the civil penalty specified herein.

55. Respondent and EPA agree to the terms of this Consent Agreement and Final Order and Respondent agrees to comply with the terms specified herein.

56. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

57. Respondent consents to receiving an electronic copy of the filed Consent Agreement and Final Order at the following email address: MikeMcVey@tropicmiller.com.

### **Penalty Payment**

58. Respondent agrees that, in settlement of the claims alleged herein, Respondent shall pay a civil penalty of Fifty-Seven Thousand Three Hundred Sixty-Six Dollars (\$57,366) as set forth below.

59. Respondent shall pay the penalty within thirty (30) days of the effective date of the Final Order. Such payment shall identify Respondent by name and docket number and shall be made using any payment method provided by <http://www.epa.gov/financial/makepayment>. For instructions for wire transfers and additional information, see <https://www.epa.gov/financial/additional-instructions-making-payments-epa>.

60. Respondent understands that its failure to timely pay any portion of the civil penalty may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall begin to accrue on a civil or stipulated penalty from the date of delinquency until such civil or stipulated penalty and any accrued interest are paid in full. 31 C.F.R. § 901.9. Interest will be assessed at a rate of the United States Treasury Tax and loan rates in accordance with 31 U.S.C. § 3717. Additionally, a charge will be assessed to cover the costs of debt collection including processing and handling costs, and a non-payment penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. 31 U.S.C. § 3717(e)(2).

61. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, the EPA is required to send to the Internal Revenue Service ("IRS") annually, a completed IRS Form 1098-F ("Fines, Penalties, and Other Amounts") with respect to any court order or settlement agreement (including administrative settlements) that require a payor to pay an aggregate amount that EPA reasonably believes will be equal to, or in excess of, \$50,000 for the payor's violation of any law or the investigation or inquiry into the payor's potential violation of any law, including amounts paid for "restitution or remediation of property" or to come "into compliance with a law." The EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (i.e., a copy of IRS Form 1098-F). Failure to comply with providing IRS Form W-9 or Tax Identification Number ("TIN"), as described below, may subject Respondent to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1. To provide EPA with sufficient information to enable it to fulfill these obligations, the EPA herein requires, and Respondent herein agrees, that:

- a. Respondent shall complete an IRS Form W-9 ("Request for Taxpayer Identification Number and Certification"), which is available at <https://www.irs.gov/pub/irs-pdf/fw9.pdf>;
- b. Respondent shall certify that its completed IRS Form W-9 includes Respondent's correct TIN or that Respondent has applied and is waiting for issuance of a TIN;
- c. Respondent shall email its completed Form W-9 to EPA's Cincinnati Finance Center at [sherrer.dana@epa.gov](mailto:sherrer.dana@epa.gov) within 30 days after the Final Order ratifying this Agreement is filed, and EPA recommends encrypting IRS Form W-9 email correspondence; and
- d. In the event that Respondent has certified in its completed IRS Form W-9 that it does not yet have a TIN but has applied for a TIN, Respondent shall provide EPA's Cincinnati Finance Division with Respondent's TIN, via email, within five (5) days of Respondent's receipt of a TIN issued by the IRS.

#### **Effect of Settlement and Reservation of Rights**

62. Full payment of the penalty proposed in this Consent Agreement shall only resolve Respondent's liability for federal civil penalties for the violations alleged herein. Complainant reserves the right to take any enforcement action with respect to any other violations of RCRA or any other applicable law.

63. The effect of settlement described in the immediately preceding paragraph is conditioned upon the accuracy of Respondent's representations to the EPA, as memorialized in paragraph directly below.

64. Respondent certifies by the signing of this Consent Agreement and Final Order that it is presently in compliance with all UST regulations.

65. Full payment of the penalty proposed in this Consent Agreement shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Consent Agreement and Final Order does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of RCRA and regulations promulgated thereunder.

66. Notwithstanding any other provision of this Consent Agreement and Final Order, the EPA reserves the right to enforce the terms and conditions of this Consent Agreement and Final Order by initiating a judicial or administrative action under Section 3008 of RCRA, 42 U.S.C. § 6928, and to seek penalties against Respondent in an amount not to exceed Seventy Thousand Seven Hundred Fifty-Two Dollars (\$70,752) per day, per violation, pursuant to Section 3008(c) of RCRA, for each day of non-compliance with the terms of this Consent Agreement and Final Order, or to seek any other remedy allowed by law.



67. Except as expressly provided herein, nothing in this Consent Agreement and Final Order shall constitute or be construed as a release from any claim (civil or criminal), cause of action, or demand in law or equity by or against any person, firm, partnership, entity, or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from Respondent's facility.

68. Notwithstanding any other provisions of the Consent Agreement and Final Order, an enforcement action may be brought pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or other statutory authority, should EPA find that the handling, storage, treatment, transportation, or disposal of solid waste or hazardous waste at Respondent's facility may present an imminent and substantial endangerment to human health and the environment.

69. Nothing contained in the Final Order portion of this Consent Agreement and Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

### **General Provisions**

70. By signing this Consent Agreement, the undersigned representative of Respondent certifies that they are fully authorized to execute and enter into the terms and conditions of this Consent Agreement and has the legal capacity to bind the party they represent to this Consent Agreement.

71. This Consent Agreement shall not dispose of the proceeding without a final order from the Regional Judicial Officer or Regional Administrator ratifying the terms of this Consent Agreement. This Consent Agreement and Final Order shall be effective upon the filing of the Final Order by the Regional Hearing Clerk for EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

72. The penalty specified herein shall represent civil penalties assessed by the EPA and shall not be deductible for purposes of Federal, State and local taxes.

73. This Consent Agreement and Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms, or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

74. The headings in this Consent Agreement and Final Order are for convenience of reference only and shall not affect interpretation of this Consent Agreement and Final Order.

COMPLAINANT:

U.S. ENVIRONMENTAL PROTECTION AGENCY

\_\_\_\_\_  
Date

\_\_\_\_\_  
David Cozad  
Director  
Enforcement and Compliance Assurance Division

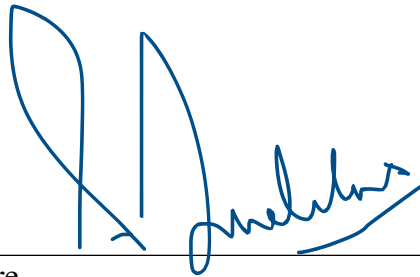
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Date

\_\_\_\_\_  
Sam Bennett  
Office of Regional Counsel

RESPONDENT:

FAST N' FRIENDLY, LLC

10/4/25  
Date



Signature

☐ Abdul Quddus  
Printed Name

Title

**FINAL ORDER**

Pursuant to Sections 3008(a) of RCRA, 42 U.S.C. § 6928(a), and 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, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

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Karina Borromeo  
Regional Judicial Officer

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Date

## CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy via Email to Complainant:

Sam Bennett  
Office of Regional Counsel  
*bennett.sam@epa.gov*

Marc Matthews  
Enforcement and Compliance Assurance Division  
*matthews.marc@epa.gov*

Copy via Email to Respondent:

Mike McVey  
Troppito Miller  
Counsel for Fast N' Friendly, LLC  
*MikeMcVey@troppitomiller.com*

Copy via Email to the State of Kansas:

Scott O'Neal  
Kanas Department of Health and Environment  
*scott.o'neal@ks.gov*

Erik Settle  
Kansas Department of Health and Environment  
*erik.settle@ks.gov*

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

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Signed