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9/23/2024

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

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 7**

In the Matter of

Cubby's Incorporated
9229 Mormon Bridge Plaza, Suite 6
Omaha, NE 68152

EPA ID: EPA-USTD-2305

Respondent.

Docket No. RCRA-07-2024-0133

**EXPEDITED SETTLEMENT
AGREEMENT AND FINAL ORDER**

EXPEDITED SETTLEMENT AGREEMENT

1. The U.S. Environmental Protection Agency ("EPA") alleges that Cubby's Incorporated ("Respondent"), owner or operator of the Underground Storage Tank(s) (USTs) at Cubby's Community Store, 701 South 4th Street, Pender, NE 68047 (the "UST Facility"), failed to comply with the following requirement(s) of Subtitle I of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §§ 6991 *et seq.*, and its implementing regulations at 40 C.F.R. part 280.
 1. 40 C.F.R. §280.33(d) and §280.33(f) in accordance with §280.35 – Failure to perform tightness testing within 30 days after completion of repair to secondary containment areas
 2. 40 C.F.R. §280.33(g) – Failure to maintain records of repairs at time of inspection.
 3. 40 C.F.R. §280.36 – Failure to conduct annual walkthrough inspection in 2022.
 4. 40 C.F.R. §280.40(a)(2) – Failure to install and calibrate release detection method in accordance with manufacturer's instructions for four sump sensors.
 5. 40 C.F.R. §280.41(b)(1)(i)(B) referencing 40 C.F.R. §280.44(b) – Failure to provide line tightness testing for piping within last 12 months for all 6 tanks.
 6. 40 C.F.R. §280.45(b) – Failure to maintain every result of sampling, testing, or monitoring for release detection for at least 1 year.
2. The EPA and the Respondent agree that settlement of this matter for a penalty of **\$14,900** is in the public interest.
3. The EPA is authorized to enter into this Expedited Settlement Agreement and Final Order ("Agreement") pursuant to section 9006 of RCRA and 40 C.F.R. § 22.13(b).
4. In signing this Agreement, the Respondent: (1) admits that the Respondent is subject to requirements listed above in Paragraph 1, (2) admits that the EPA has jurisdiction over the Respondent and the Respondent's conduct as alleged herein, (3) neither admits nor

denies the factual allegations contained herein, (4) consents to the assessment of this penalty, and (5) waives any right to contest the allegations contained herein.

5. By its signature below, the Respondent certifies, subject to civil and criminal penalties for making a false submission to the United States Government, that he or she has: (1) corrected the alleged violations, (2) submitted true and accurate documentation of those corrections, (3) provided a deposit for payment of the civil penalty in Paragraph 2 above in accordance with the EPA penalty collection procedures provided to the Respondent, (4) submitted true and accurate proof of deposit for payment of the civil penalty with this Agreement, and (5) agrees to release the deposit for payment to the EPA upon entry of this Order.

6) 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 by certified or cashier's check made payable to the "United States Treasury" and sent to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979078
St. Louis, Missouri 63197-9000

or by alternate payment method described at <http://www.epa.gov/financial/makepayment>.

7. Upon filing, this Expedited Settlement Agreement and Final Order shall constitute full settlement of the violation(s) alleged herein.

7. The EPA reserves all of its rights to take enforcement action for any other past, present, or future violations by the Respondent of RCRA, any other federal statute or regulation, or against any violations alleged to have been corrected pursuant to this Agreement that were not corrected.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this Expedited Settlement Agreement and Final Order, and its right to appeal this Expedited Settlement Agreement and Final Order.

8. Each party shall bear its own costs and fees, if any.

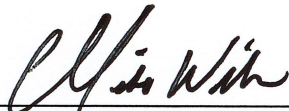
9. This Agreement is binding on the parties signing below, and in accordance with 40 C.F.R. § 22.31(b), is effective upon filing.

9. Respondent consents to electronic service of the filed Expedited Settlement Agreement and Final Order to the following email address: *Mike.wilson@cubbys.com*. Respondent understands that the Expedited Settlement Agreement and Final Order will become publicly available upon filing.

10. By its signature below Respondent certifies, subject to civil and criminal penalties for making a false submission to the United States Government, that it is presently in compliance with all requirements of RCRA, 42 U.S.C. § 6901 *et. seq.* and its implementing regulations.
11. The penalty specified herein shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal, State and local taxes.

IT IS SO AGREED,

CUBBY'S INC.



Signature

9.15.2024

Date

MIKE WELSON

Printed Name

CHIEF OPERATING OFFICER

Title

APPROVED BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY

David Cozad
Director
Enforcement and Compliance Assurance Division

Date

Chris Muehlberger
Office of Regional Counsel

Date

FINAL ORDER

Pursuant to the authority of Section 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 Expedited Settlement 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 Expedited Settlement Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Expedited Settlement Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

Karina Borromeo
Regional Judicial Officer

Date

CERTIFICATE OF SERVICE

(For EPA use only.)

I certify that that a true and correct copy of the foregoing Expedited Settlement Agreement and Final Order in the matter of Cubby's Inc., EPA Docket No. RCRA-07-2024-0133, was sent this day in the following manner to the addressees:

Copy via Email to Complainant:

Christopher Muehlberger
Office of Regional Counsel
Muehlberger.christopher@epa.gov

Tiffany DeLong
Enforcement and Compliance Assurance Division
Delong.tiffany@epa.gov

Milady Peters
Office of Regional Counsel
Peters.milady@epa.gov

Copy via Email to Respondent for Respondent:

Mike Wilson
Cubby's Incorporated
9229 Mormon Bridge Plaza, Suite 6
Omaha, NE 68152
Mike.wilson@cubbys.com

Copy via Email to the Omaha Tribe of Nebraska:

Tim Grant
Omaha Tribe of Nebraska
100 Main Street
Macy, Nebraska 68039
tgrant2@theomahatribe.com

Dated this _____ day of _____, _____.

Signed