

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

U.S. EPA-REGION 3-RHC
FILED-8SEP2018pm2148

In the Matter of:)
)
VESUVIUS, INC.,) Docket Number: RCRA-03-2018-0135
)
RESPONDENT,)
)
)
LEE HI TRAVEL PLAZA) Proceeding Under Section 9006 of the
2516 North Lee Highway) Resource Conservation and Recovery
Lexington, Virginia 24450) Act, as amended, 42 U.S.C. § 6991e.
)
FACILITY.)

CONSENT AGREEMENT

This Consent Agreement ("CA") is entered into by the Director, Land and Chemicals Division, U.S. Environmental Protection Agency, Region III ("EPA" or "Complainant") and Vesuvius, Inc. ("Respondent"), pursuant to Sections 9006 of the Resource Conservation and Recovery Act ("RCRA"), as amended, 42 U.S.C. § 6991e, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules"), 40 C.F.R. Part 22, including, specifically 40 C.F.R. §§ 22.13(b) and .18(b)(2) and (3).

This CA and the Final Order (collectively "CAFO"), resolve violations of RCRA Subtitle I, 42 U.S.C. §§ 6991-6991m, and the Commonwealth of Virginia's federally authorized underground storage tank program by Respondent in connection with its underground storage tanks located at Lee Hi Travel Plaza, 2516 N. Lee Highway, Lexington, Virginia 24450 (the "Facility").

Effective October 28, 1998, pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991e, and 40 C.F.R. Part 281, Subpart A, the Commonwealth of Virginia was granted final authorization to administer a state UST management program *in lieu* of the Federal UST management program established under Subtitle I of RCRA, 42 U.S.C. §§ 6991-6991m. The provisions of the Commonwealth of Virginia's UST management program, through this final authorization, are enforceable by EPA pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e. The Commonwealth of Virginia's authorized UST program regulations are set forth in the Virginia Administrative Code as Underground Storage Tanks: Technical Standards and Corrective Action Requirements ("VA UST Regulations"), 9 VAC § 25-580-10 *et seq.*

GENERAL PROVISIONS

1. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CAFO.

2. Respondent neither admits nor denies the specific factual allegations and conclusions of law set forth in this CAFO, except as provided in Paragraph 1. above.
3. Respondent agrees not to contest EPA's jurisdiction with respect to the execution of this CA, the issuance of the attached FO, or the enforcement of the CAFO.
4. For the purposes of this proceeding only, Respondent hereby expressly waives its right to a hearing on any issue of law or fact set forth in this CA and any right to appeal the accompanying FO.
5. Respondent consents to the issuance of this CAFO and agrees to comply with its terms and conditions.
6. Respondent shall bear its own costs and attorney's fees.
7. The person signing this CA on behalf of the Respondent certifies to EPA by his/her signature herein that Respondent, as of the date of this CA, is in compliance with the provisions of RCRA, Subtitle I, 42 U.S.C. §§ 6991-6991m, and the Commonwealth of Virginia's federally authorized underground storage tank program set forth at Chapter 580 of Title 9 of the VAC at the Facility referenced herein.
8. The provisions of this CAFO shall be binding upon Respondent, and its officers, directors, employees, successors and assigns.
9. This CAFO shall 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 determination of, any issue related to any federal, state or local permit, nor does this CAFO constitute a waiver, suspension or modification of the requirements of RCRA Subtitle I, 42 U.S.C. §§ 6991-6991m, or any regulations promulgated thereunder.
10. Complainant shall have the right to institute further actions to recover appropriate relief if Complainant obtains evidence that the information provided and/or representations made by Respondent to EPA regarding matters at issue in this CAFO are false or, in any material respect, inaccurate. Respondent is aware that the submission of false or misleading information to the United States government may subject Respondent to separate civil and/or criminal liability.
11. EPA has given the Commonwealth of Virginia prior notice of the issuance of this CAFO in accordance with Section 9006(a)(2) of RCRA, 42 U.S.C. § 6991e(a)(2).

FACTUAL ALLEGATIONS AND CONCLUSIONS OF LAW

12. The United States Environmental Protection Agency - Region III ("EPA" or the "Region") and EPA's Office of Administrative Law Judges have jurisdiction over this

matter pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e, 40 C.F.R. Part 280 and 40 C.F.R. § 22.1(a)(4) and .4(c).

13. Respondent is a "person" as defined in Section 9001(5) of RCRA, 42 U.S.C. § 6991(5), and 9 VAC § 25-580-10.
14. At all times relevant to this CAFO, Respondent has been the "owner" and/or "operator," as those terms are defined in Section 9001(3) and (4) of RCRA, 42 U.S.C. § 6991(3) and (4), and 9 VAC § 25-580-10, of the "underground storage tanks" ("USTs") and "UST systems" as those terms are defined in Section 9001(10) of RCRA, 42 U.S.C. § 6991(10), and 9 VAC § 25-580-10 located at the Facility.
15. On June 14, 2017, an EPA representative conducted a Compliance Evaluation Inspection ("CEI") at the Facility pursuant to Section 9005 of RCRA, 42 U.S.C. § 6991d.
16. At the time of the June 14, 2017 CEI, and at all times relevant to the applicable violations alleged herein, four Underground Storage Tanks existed at the Facility.
 - a. a thirty thousand (30,000) gallon fiberglass tank with double-walled fiberglass reinforced plastic piping that was installed in or about May 1995 and that, at all times relevant hereto, routinely contained diesel, a "regulated substance" as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and 9 VAC § 25-580-10 (hereinafter "UST No. 1") was located at the Facility.
 - b. a thirty thousand (30,000) gallon fiberglass tank with double-walled fiberglass reinforced plastic piping that was installed in or about May 1995 and that, at all times relevant hereto, routinely contained diesel, a "regulated substance" as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and 9 VAC § 25-580-10 (hereinafter "UST No. 2") was located at the Facility.
 - c. a ten thousand (10,000) gallon fiberglass tank with double-walled fiberglass reinforced plastic piping that was installed in or about May 1995 and that, at all times relevant hereto, routinely contained gasoline, a "regulated substance" as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and 9 VAC § 25-580-10 (hereinafter "UST No. 3") was located at the Facility.
 - d. a ten thousand (10,000) gallon fiberglass tank with double-walled fiberglass reinforced plastic piping that was installed in or about May 1995 and that, at all times relevant hereto, routinely contained gasoline, a "regulated substance" as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and 9 VAC § 25-580-10 (hereinafter "UST No. 4") was located at the Facility.

17. At all times relevant to the applicable violations alleged herein, UST Nos. 1 and 2 (diesel tanks) have been "petroleum UST systems" and "new tank systems" as those terms are defined in 9 VAC § 25-580-10.
18. At all times relevant to the applicable violations alleged herein, UST Nos. 3 and 4 (gasoline tanks) have been "petroleum UST systems" and "new tank systems" as those terms are defined in 9 VAC § 25-580-10.
19. UST Nos. 1 and 2 were, at all times relevant to the applicable violations alleged in this CAFO, used to store "regulated substances" at Respondent's Facility, as defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and 9 VAC § 25-580-10, and have not been "empty" as that term is defined at 9 VAC § 25-580-310.1.
20. UST Nos. 3 and 4 were, at all times relevant to the applicable violations alleged in this CAFO, used to store "regulated substances" at Respondent's Facility, as defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and 9 VAC § 25-580-10, and have not been "empty" as that term is defined at 9 VAC § 25-580-310.1.

COUNT 1

(Failure to perform tank release detection on USTs 1 and 2)

21. The allegations of Paragraphs 1 through 20 of the CA are incorporated herein by reference.
22. Pursuant to 9 VAC § 25-580-130.A. and C., owners and operators of new and existing UST systems must provide a method or combination of methods of release detection monitoring that meets the requirements described therein.
23. 9 VAC § 25-580-140.1. provides, in pertinent part, that USTs shall be monitored at least every 30 days for releases using one of the methods listed in 9 VAC § 25-580-160.4.-8., except that:
 - (a) UST systems that meet the performance standards in subsections 1 through 5 of 9 VAC § 25-580-50 (Performance Standards for New UST Systems) or subsections 1 through 4 of 9 VAC § 25-580-60 (Upgrading of Existing UST Systems), and the monthly inventory control requirements in subsections 1 or 2 of 9 VAC § 25-580-160 (Inventory Control or Manual Tank Gauging), and tank tightness testing, conducted in accordance with subsection 3 of 9 VAC § 25-580-160 (Tank Tightness Test), at least every 5 years until December 22, 1998, or until 10 years after the UST is installed or upgraded under subsection 2 of 9 VAC § 25-580-60 (Tank Upgrading Requirements); and
 - (b) UST systems that do not meet the performance standards in 9 VAC § 25-580-50 (Performance Standards for New UST Systems) or 9 VAC § 25-

580-60 (Upgrading of Existing UST Systems), may use monthly inventory controls, conducted in accordance with subsections 1 or 2 of 9 VAC § 25-580-160 (Inventory Control or Manual Tank Gauging) and annual tank tightness testing, conducted in accordance with subsection 3 of 9 VAC § 25-580-160 (Tank Tightness Test) until December 22, 1998, when the tank must be upgraded under 9 VAC § 25-580-60 (Tank Upgrading requirements) or permanently closed under 9 VAC § 25-580-320; and

- (c) Tanks with a capacity of 550 gallons or less and not metered may use weekly tank gauging, conducted in accordance with subsection 2 of 9 VAC § 25-580-160.
24. From June 1, 2013 until July 31, 2014; January 1, 2015 until March 1, 2015; and from July 1, 2015 until November 1, 2015, Respondent's UST Nos. 1 and 2 at the Facility have not been monitored in compliance with any of the methods set forth in 9 VAC § 25-580-140.1.a.-c. and/or 9 VAC § 25-580-160.4.-8.
25. Respondent's acts and/or omissions as alleged in Paragraph 24 above, constitute violations by Respondent of 9 VAC § 25-580-130.A. and C. and 9 VAC § 25-580-140.1.

COUNT 2

(Failure to maintain release detection records at the Facility)

26. The allegations of Paragraphs 1 through 25 of the CA are incorporated herein by reference.
27. Pursuant to 9 VAC § 25-580-130.A. and C., owners and operators of new and existing UST systems must provide a method or combination of methods of release detection monitoring that meets the requirements described therein.
28. 9 VAC § 25-580-140.1. provides, in pertinent part, that USTs shall be monitored at least every 30 days for releases using one of the methods listed in 9 VAC § 25-580-160.4.-8., except that:
- (a) UST systems that meet the performance standards in subsections 1 through 5 of 9 VAC § 25-580-50 (Performance Standards for New UST Systems) or subsections 1 through 4 of 9 VAC § 25-580-60 (Upgrading of Existing UST Systems), and the monthly inventory control requirements in subsections 1 or 2 of 9 VAC § 25-580-160 (Inventory Control or Manual Tank Gauging), and tank tightness testing, conducted in accordance with subsection 3 of 9 VAC § 25-580-160 (Tank Tightness Test), at least every 5 years until December 22, 1998, or until 10 years after the UST is installed or upgraded under subsection 2 of 9 VAC § 25-580-60 (Tank Upgrading Requirements); and

- (b) UST systems that do not meet the performance standards in 9 VAC § 25-580-50 (Performance Standards for New UST Systems) or 9 VAC § 25-580-60 (Upgrading of Existing UST Systems), may use monthly inventory controls, conducted in accordance with subsections 1 or 2 of 9 VAC § 25-580-160 (Inventory Control or Manual Tank Gauging) and annual tank tightness testing, conducted in accordance with subsection 3 of 9 VAC § 25-580-160 (Tank Tightness Test) until December 22, 1998, when the tank must be upgraded under 9 VAC § 25-580-60 (Tank Upgrading Requirements) or permanently closed under 9 VAC § 25-580-320; and
 - (c) Tanks with a capacity of 550 gallons or less and not metered may use weekly tank gauging, conducted in accordance with subsection 2 of 9 VAC § 25-580-160.
29. 9 VAC § 25-580-120.2.c. provides that UST system owners and operators shall maintain information of current compliance with release detection requirements pursuant to 9 VAC § 25-580-180.
30. Pursuant to Pursuant to 9 VAC § 25-580-180., owners and operators of UST systems shall maintain records in accordance with 9 VAC § 25-580-120 demonstrating compliance with all applicable requirements of 9 VAC § 25-580-180. These records must include the following:
- 1. Written performance claims pertaining to a release detection system used, and the manner in which these claims have been justified or tested by the equipment manufacturer or installer, shall be maintained for 5 years from the date of installation or as long as the method of release detection is used, whichever is greater;
 - 2. The results of any sampling, testing, or monitoring shall be maintained for at least 1 year; and
 - 3. Written documentation of all calibration, maintenance, and repair of release detection equipment permanently located on-site shall be maintained for at least 1 year after the service work is completed, and any schedules of required calibration and maintenance provided by the release detection equipment manufacturer shall be retained for 5 years from the date of installation.
31. From at least February 3, 2016 until January 22, 2017, Respondent alleges to have performed release detection for UST Nos. 1, 2, 3 and 4 at the Facility.

32. From at least February 3, 2016 until January 22, 2017, Respondent failed to maintain records of release detection monitoring for UST Nos. 1, 2, 3 and 4 in accordance with 9 VAC § 25-580-120.2.c. and 9 VAC § 25-580-180.
33. Respondent's acts and/or omissions as alleged in Paragraph 32, above, constitutes a violation by Respondent of 9 VAC § 25-580-120.2.c. and 9 VAC § 25-580-180.

CIVIL PENALTY

34. In settlement of Complainant's claims for civil penalties for the violations alleged in this CA, Respondent agrees to pay a civil penalty in the amount of Fourteen Thousand Dollars (\$14,000.00). The civil penalty amount is due and payable immediately upon Respondent's receipt of a true and correct copy of this CA and attached FO.
35. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest, administrative costs and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below.
36. The aforesaid settlement amount was based upon Complainant's consideration of a number of factors, including, but not limited to, the statutory factors of the seriousness of Respondent's violations and any good faith efforts by Respondent to comply with all applicable requirements as provided in RCRA Section 9006(c), 42 U.S.C. § 6991e(c), and with EPA's Penalty Guidance for Violations of UST Regulations ("UST Guidance") dated November 4, 1990.
37. Respondent shall pay the amount described in Paragraph 34 above, by sending a certified or cashier's check payable as follows:
 - a. All payments by Respondent shall reference Respondent's name and address, and the Docket Number of this action, *i.e.*, **RCRA-03-2018-0135**;
 - b. All checks shall be made payable to **United States Treasury**;
 - c. All payments made by check and sent by regular mail shall be addressed and mailed to:

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

Contact: Eric Volek, 513-487-2105 or
Craig Steffen 513-487-2091

- d. All payments made by check and sent by overnight delivery service shall be addressed and mailed to:

U.S. EPA - Fines and Penalties
U.S. Bank
Government Lockbox 979077
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

Contact: (314) 418-1028

- e. All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance
US EPA, MS-NWD
26 W. M.L. King Drive
Cincinnati, OH 45268-0001

38. Respondent may also pay the amount described in Paragraph 34 above, electronically or on-line as follows:

- a. All payments made by electronic wire transfer shall be directed to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT Address = FRNYUS33
33 Liberty Street
New York, NY 10045
(Field Tag 4200 of the wire transfer message should read:
"D 68010727 Environmental Protection Agency")

- b. All electronic payments made through the automated clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury REX / Cashlink ACH Receiver
ABA = 051036706

Environmental Protection Agency, Account No. 310006
CTX Format Transaction Code 22 - checking

Physical location of U.S. Treasury facility:

5700 Rivertech Court
Riverdale, MD 20737

Contact: Jessie White 301-887-6548 or
REX 1-866-234-5681

- c. On-Line Payment Option:

WWW.PAY.GOV/PAYGOV

Enter sfo 1.1 in the search field. Open and complete the form.

- d. Additional payment guidance is available at:

http://www.epa.gov/ocfo/finservices/make_a_payment.htm

A copy of Respondent's check or a copy of Respondent's electronic transfer shall be sent simultaneously to:

Regional Hearing Clerk (3RC00)
EPA Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103 - 2029.

and

Donzetta Thomas (3RC50)
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency - Region III
1650 Arch Street
Philadelphia, PA 19103-2029.

FULL AND FINAL SATISFACTION

39. This CAFO constitutes a settlement by EPA of its claims for civil penalties pursuant to 9006(a) of RCRA, 42 U.S.C. § 6991e(a), for the violations alleged in this Consent Agreement.

RESERVATION OF RIGHTS

40. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the

reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice.

41. Further, EPA reserves any rights and remedies available to it under RCRA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk.
42. Failure to obtain adequate funds or appropriations from Congress does not release Respondent from its obligation to comply with RCRA, the applicable regulations thereunder, or with this CAFO. Nothing in this CAFO shall be interpreted to require obligation or payment of funds in violation of the Antideficiency Act, 31 U.S.C. § 1341.

OTHER APPLICABLE LAWS

43. Nothing in this CAFO shall relieve Respondent of any duties otherwise imposed on it by applicable federal, state or local law and/or regulations.

AUTHORITY TO BIND THE PARTIES

44. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this CA and bind Respondent hereto.

ENTIRE AGREEMENT

45. This CA and the attached FO constitute the entire Agreement and understanding of the parties concerning settlement of the above-captioned action and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this CA and the attached FO.

EFFECTIVE DATE

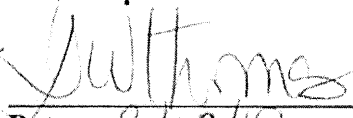
46. This CA and attached FO shall become effective upon filing with the Regional Hearing Clerk.

For Respondent:



Date: 08/17/18
Corey Berkstresser
Vesuvius, Inc.
2440 Raphine Road
Lexington, VA 24450


For Complainant:



Date: 8/28/18
Donzetta Thomas
Senior Assistant Regional Counsel
US EPA, Region III
1650 Arch Street (3RC50)
Philadelphia, PA 19103

After reviewing the foregoing Consent Agreement and other pertinent information, the Land and Chemicals Division, EPA Region III, recommends that the Regional Administrator or the Regional Judicial Officer issue the Final Order attached hereto.

Date: 9.4.18

By: 
John A. Armstead, Director
Land and Chemicals Division,
U.S. EPA, Region III

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103**

U.S. EPA-REGION 3-RHC
FILED-8SEP2018PM2:48

In the Matter of:)	
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VESUVIUS, INC.,)	Docket Number: RCRA-03-2018-0135
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RESPONDENT,)	
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)	
LEE HI TRAVEL PLAZA)	Proceeding Under Section 9006 of the
2516 North Lee Highway)	Resource Conservation and Recovery
Lexington, Virginia 24450)	Act, as amended, 42 U.S.C. § 6991e.
)	
FACILITY.)	

FINAL ORDER

Complainant, the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency - Region III, and Respondent, Vesuvius Inc., have executed a document entitled "Consent Agreement," which I hereby ratify as a Consent Agreement 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, with specific reference to Sections 22.13(b) and 22.18(b)(2) and (3). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

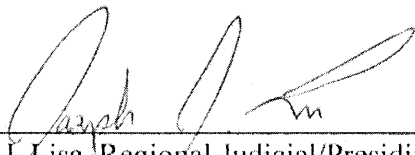
Based upon the representation of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon consideration of, *inter alia*, EPA's Penalty Guidance for Violations of UST Regulations ("UST Guidance") dated November 4, 1990, and the statutory factors set forth in RCRA Section 9006(c), 42 U.S.C. § 6991e(c).

NOW, THEREFORE, PURSUANT TO Section 9006(c) of the Resource Conservation and Recovery Act, 42 U.S.C § 6991e(c), and Section 22.18(b)(3) of the *Consolidated Rules of*

Practice, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty in the amount of Fourteen Thousand Dollars (\$14,000.00) in accordance with the payment provisions set forth in the Consent Agreement, and comply with the terms and conditions of the Consent Agreement.

The effective date of the attached Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

Date: Sept. 6, 2018



Joseph J. Lisa, Regional Judicial/Presiding Officer
U.S. Environmental Protection Agency, Region III

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
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)
FACILITY.)

CERTIFICATE OF SERVICE

I hereby certify that on SEP 06 2018, the original and one (1) copy of the foregoing **Consent Agreement and Final Order**, were filed with the EPA Region III Regional Hearing Clerk. I further certify that on the date set forth below, I served a true and correct copy of the same to each of the following persons, in the manner specified below, at the following addresses:


Copy served via **United Parcel Service - Overnight** to the following:

Andrea W. Wortzel, Esq.
Troutman Sanders LLP
Troutman Sanders Building
1001 Haxall Point
Richmond, Virginia 23219
Andrea.wortzel@troutman.com

Copy served via **Hand Delivery or Inter-Office Mail** to:

Donzetta Thomas
Office of Regional Counsel (3RC50)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

Dated: SEP 06 2018


Regional Hearing Clerk
U.S. Environmental Protection Agency, Region III

TRACKING NUMBER(S): 1Z A43 F71 01 9091 4508