

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

In the Matter of: )

Mid-Atlantic Petroleum Properties, LLC )  
12311 Middlebrook Road )  
Germantown, MD 20874 )

RESPONDENT, )

**Takoma Park Texaco** )  
**6400 New Hampshire Avenue** )  
**Takoma Park, MD 20912** )

FACILITY. )

Docket Number: RCRA-3-2010-0379

Proceeding Under Section 9006 of the  
Resource Conservation and Recovery Act,  
as amended, 42 U.S.C.  
§ 6991e.

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**CONSENT AGREEMENT**

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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 Mid-Atlantic Petroleum Properties, LLC ("Respondent"), pursuant to Section 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, alleged by EPA, of RCRA Subtitle I, 42 U.S.C. §§ 6991-6991m, and the State of Maryland's federally authorized underground storage tank program by Respondent in connection with its underground storage tanks located at 6400 New Hampshire Avenue, Takoma Park, Maryland (the "Facility").

Complainant and Respondent agree that settling this matter by entering into this CAFO, pursuant to Section 22.13(b) and .18(b)(2) and (3) of the Consolidated Rules is an appropriate means of resolving this case without litigation.

Effective July 30, 1992, pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c, and 40 C.F.R. Part 281, Subpart A, the State of Maryland 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 Maryland UST management program, through this final authorization, are enforceable by EPA pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e. Maryland's authorized UST program regulations are administered by the Maryland Department of the Environment ("MDE") and are set forth in the Code of Maryland Regulations ("COMAR"), Title 26, Subtitle 10 *et seq.*, and will be cited as "COMAR" followed by the applicable section of the regulations.

### **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. This CAFO and any provision herein shall not be construed as an admission of liability on any criminal or civil action or other administrative or legal proceeding.
3. Respondent agrees not to contest EPA's jurisdiction with respect to the execution of this CA, the issuance of the attached Final Order ("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. However, Respondent has not waived such right that may exist for any separate action that may be brought by MDE for any alleged violations described herein.
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 State of Maryland's federally authorized underground storage tank program set forth at COMAR §§ 26.10 *et seq.* 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. Respondent agrees not to deduct, for civil taxation purposes, the civil penalty specified in this CAFO.
11. 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.
12. EPA has given the State of Maryland 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**

13. 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).
14. Respondent is a "person" as defined in Section 9001(5) of RCRA, 42 U.S.C. § 6991(5), and COMAR § 26.10.02.04B.(40).
15. 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 COMAR § 26.10.02.04B(37) and (39), 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 COMAR § 26.10.02.04B(64) and (66), located at the Facility.
16. On August 11, 2009, an EPA representative conducted a Compliance Evaluation Inspection ("CEI") of the Facility pursuant to Section 9005 of RCRA, 42 U.S.C. § 6991d.
17. At the time of the August 11, 2009 CEI, and at all times relevant to the applicable violations alleged herein, the following UST was located at the Facility: a twelve thousand (12,000) gallon double-walled fiberglass-reinforced plastic tank that was installed in November 2005, and that, at all times relevant hereto, routinely contained and was used to store regular grade gasoline, a "regulated substance" as that term is defined in

Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and COMAR § 26.10.02.04B(48) (hereinafter "UST No. 1").

18. At the time of the August 11, 2009 CEI, and at all times relevant to the applicable violation alleged herein, the following UST was located at the Facility: a ten thousand (10,000) gallon double-walled fiberglass-reinforced plastic tank that was installed in November 2005, and that, at all times relevant hereto, routinely contained and was used to store super grade gasoline, a "regulated substance" as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and COMAR § 26.10.02.04B(48) (hereinafter "UST No. 2").
19. At the time of the August 11, 2009 CEI, and at all times relevant to the applicable violation alleged herein, the following UST was located at the Facility: a ten thousand (10,000) gallon double-walled fiberglass-reinforced plastic tank that was installed in November 2005, and that, at all times relevant hereto, routinely contained and was used to store E-85 gasoline, a "regulated substance" as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and COMAR § 26.10.02.04B(48) (hereinafter "UST No. 3").
20. At all times relevant to the applicable violation alleged herein, USTs Nos. 1 through 3 have been "petroleum UST systems" and "new tank systems" as those terms are defined in COMAR, § 26.10.02.04B(43), (31) respectively.

#### COUNT 1

(Failure to maintain records of release detection for USTs Nos. 1 through 3)

21. The allegations of Paragraphs 1 through 20 of this CAFO are incorporated herein by reference.
22. Pursuant to COMAR § 26.10.05.01A 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. COMAR § 26.10.05.02B provides, in pertinent part, that USTs shall be monitored at least every 30 days for releases using one of the methods listed in COMAR § 26.10.05.04E-I, except that:
  - (1) UST systems that meet the performance standards in COMAR § 26.10.03.01 (Performance Standards for New UST Systems) and .02 (Upgrading of Existing UST Systems), and the monthly inventory control requirements in COMAR § 26.10.05.04B or C (Inventory Control or Manual Tank Gauging) shall use tank tightness testing, conducted in accordance with COMAR § 26.10.05.04D (Tank Tightness Test), at least

every 5 years until December 22, 1998, or until 10 years after the UST is installed or upgraded under COMAR § 26.10.03.02B (Tank Upgrading Requirements); and

- (2) UST systems that do not meet the performance standards in COMAR § 26.10.03.01 (Performance Standards for New UST Systems) and .02 (Upgrading of Existing UST Systems), may use monthly inventory controls, conducted in accordance with COMAR § 26.10.05.04B or C (Inventory Control or Manual Tank Gauging) and annual tank tightness testing, conducted in accordance with COMAR § 26.10.05.04D (Tank Tightness Test) until December 22, 1998, when the tank must be upgraded under COMAR § 26.10.03.02 (Tank Upgrading Requirements) or permanently closed under COMAR § 26.10.10.02; and
- (3) Tanks with a capacity of 550 gallons or less and not metered may use weekly tank gauging, conducted in accordance with COMAR § 26.10.05.04C.

24. COMAR § 26.10.04.05C(4) provides that UST system owners and operators shall maintain information of recent compliance with release detection requirements pursuant to COMAR § 26.10.05.06.
25. Pursuant to COMAR § 26.10.05.06, owners and operators of new and existing UST systems shall maintain records in accordance with COMAR § 26.10.04.05 demonstrating compliance with all applicable requirements of COMAR. These records shall include the following and shall be maintained as follows:
  - A. All written performance claims pertaining to any 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;
  - B. The results of any sampling, testing, or monitoring shall be maintained for 1 year; and
  - C. 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.
26. From August 1, 2008 until April 2009, Respondent performed release detection for

USTs Nos. 1 through 3 at the Facility.

27. From August 1, 2008 until October 31, 2008, from January 1, 2009 until January 31, 2009, and from April 1, 2009 until April 30, 2009, Respondent failed to maintain records of release detection monitoring for USTs Nos. 1 through 3 in accordance with COMAR § 26.10.05.06 and COMAR § 26.10.04.05.
28. Respondent's acts and/or omissions as alleged in Paragraph 27, above, constitutes a violation by Respondent of COMAR § 26.10.04.05C and COMAR § 26.10.04.05.

**COUNT 2**

(Failure to report a suspected release from UST No. 3)

29. The allegations of Paragraphs 1 through 28 of this CA are incorporated herein by reference.
30. COMAR § 26.10.08.01A provides that if a storage system fails a test for tightness or is otherwise determined to be leaking, the person conducting the test, the owner, and the person-in-charge of the storage system shall notify the Maryland Department of Environment ("MDE") within two (2) hours.
31. COMAR § 26.10.08.01B(3) provides, in pertinent part, that owners or operators of UST systems shall report to the MDE pursuant to COMAR § 26.10.08.01A if the monitoring results from a release detection method required under COMAR § 26.10.05.02 (Requirements for Petroleum UST Systems) indicate a release may have occurred, unless the monitoring device is found to be defective, and is immediately repaired, recalibrated, or replaced, and additional monitoring does not confirm the initial result.
32. From May 21, 2009 until June 15, 2009 the line leak detector for UST No. 3 was in alarm status indicating that a release may have occurred and Respondent did not find the monitoring devices in issue to be defective and/or Respondent did not immediately repair, recalibrate or replace any such defective device and Respondent did not conduct additional monitoring to confirm the initial monitoring result from a release detection method required under COMAR § 26.10.05.02.
33. Respondent did not report within 2 hours to MDE that its Veeder Root report for the time period May 21, 2009 through June 15, 2009 had indicated that UST No. 3 had been in alarm mode with the code "Q3-annual line fail" as described in Paragraph 32, above.
34. Respondent's acts and/or omissions as alleged in Paragraph 33, above, constitute a violation by Respondent of COMAR § 26.10.08.01.

## CIVIL PENALTY

35. 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 **Two Thousand Eighty Dollars (\$2,080.00)**. 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. If Respondent pays the entire civil penalty of two thousand eighty dollars (\$2,080.00) within thirty (30) calendar days of the date on which this CAFO is mailed or hand-delivered to Respondent, no interest will be assessed against Respondent pursuant to 40 C.F.R. § 13.11(a)(1).
36. 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.
37. In accordance with 40 C.F.R. § 13.11(a), interest on any civil penalty assessed in a CAFO begins to accrue on the date that a copy of the CAFO is mailed or hand-delivered to the Respondent. However, EPA will not seek to recover interest on any amount of such civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).
38. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period a debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives - Cash Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.
39. A late payment penalty of six percent per year will be assessed monthly on any portion of a civil penalty which remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on a debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
40. 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.

41. Respondent shall pay the amount described in Paragraph 35 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-03-2010-0379**
- 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 Volck, 513-487-2105

- 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: Natalie Pearson (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  
U.S. EPA, MS-NWD  
26 W. M.L. King Drive  
Cincinnati, OH 45268-0001

42. Respondent may also pay the amount described in Paragraph 35, above, electronically or on-line as follows:

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

Takoma Park, SCAFO  
RCRA-03-2010-0379



Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT Address = FRNYUS33  
Tax id. No. = 52-0852695  
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  
Tax Id. No. 52-0852695  
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](http://WWW.PAY.GOV)

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](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 (3RC30)  
Senior Assistant Regional Counsel  
U.S. Environmental Protection Agency - Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029.

**FULL AND FINAL SATISFACTION**

43. 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**

44. 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. 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.

**OTHER APPLICABLE LAWS**

45. 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**

46. 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**

47. 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**

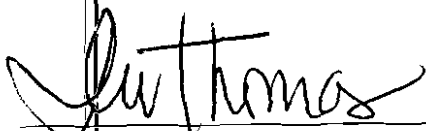
48. This CA and attached FO shall become effective upon filing with the Regional Hearing Clerk.

**For Respondent:**



by: Peter Troilo, General Manager  
Mid-Atlantic Petroleum Properties, LLC

**For Complainant:**



by: Donzetta Thomas, Sr. Ass't Regional Counsel  
U.S. Environmental Protection Agency, Region III

**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.**

9/16/10

Date

By:



Abraham Ferdas, Director  
Land and Chemicals Division,  
U.S. EPA, Region III

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

In the Matter of:	)	
	)	
Mid-Atlantic Petroleum Properties, LLC	)	Docket Number: RCRA-3-2010-0379
12311 Middlebrook Road	)	
Germantown, MD 20874	)	Proceeding Under Sections 9006 of the
RESPONDENT,	)	Resource Conservation and Recovery Act,
	)	as amended, 42 U.S.C.
	)	§ 6991e.
<b>Takoma Park Texaco</b>	)	
<b>6400 New Hampshire Avenue</b>	)	
<b>Takoma Park, MD 20912</b>	)	
FACILITY.	)	
	)	
	)	
	)	

**FINAL ORDER**

Complainant, the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency - Region III, and Respondent, Mid-Atlantic Petroleum Properties, LLC (“Respondent”), 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. The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated herein as if set forth at length.

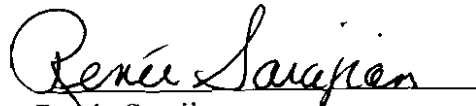
**NOW, THEREFORE, PURSUANT TO** Section 22.18(b)(3) of the *Consolidated Rules of Practice* and Section 9006(c) of the Resource Conservation and Recovery Act, 42 U.S.C. § 6991e(c)(“RCRA”), and having determined, based on the representations of the parties in the

attached Consent Agreement, that the civil penalty agreed to therein was based upon a consideration of the factors set forth in Section 9006(c) of RCRA, 42 U.S.C. § 6991e(c), **IT IS HEREBY ORDERED** that Respondent pay a civil penalty of **Two Thousand Eighty Dollars (\$2,080.00)** in accordance with the payment provisions set forth in the attached Consent Agreement and comply with each of the additional terms and conditions as specified in the attached Consent Agreement.

The effective date of this Final Order and the accompanying Consent Agreement is the date on which the Final Order, signed by the Regional Administrator of U.S. EPA Region III or the Regional Judicial Officer, is filed with the Regional Hearing Clerk of U.S. EPA - Region III.

Date:

9/29/10



Renée Sarajian  
Regional Judicial Officer  
U.S. EPA, Region III

CERTIFICATE OF SERVICE

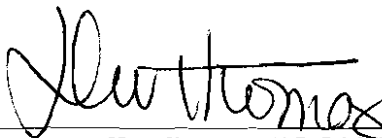
I hereby certify that, on the date listed below, the original and one copy of the foregoing Consent Agreement and Final Order, Docket No. RCRA-03-2010-0379, was filed with the EPA Region III Regional Hearing Clerk, and that a correct copy of the same was sent in the following manner to the person listed below:

Via United Parcel Service to:

Jeff Leiter, Esq.  
1707 L Street, N.W.  
Suite 560  
Washington, D.C. 20036

Date

9/30/10



Donzetta W. Thomas (3RC30)  
Counsel for Complainant  
U.S. Environmental Protection Agency, Region III  
(215) 814-2474