

**BEFORE THE UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION III**

**IN THE MATTER OF:**

**Philippi Marathon, LLC  
RT 4 Box 264C-A  
Philippi, WV 26416;**

**Marathon of Philippi, LLC  
P.O. Box 459  
Philippi, WV 26416;**

**Charles Cleavenger  
RT 4 Box 264C-A  
Philippi, WV 26416;**

**John Eric Cutright  
113 Church Street  
Philippi, WV 26416;**

**RESPONDENTS,**

**Marathon of Philippi  
144 North Main Street  
Philippi, WV 26416,**

**FACILITY.**

**Consent Agreement and Final Order**

**Docket No.: RCRA-03-2013-0013**

**Proceeding under Section 9006 of the  
Resource Conservation and Recovery Act,  
42 U.S.C. § 6991e**

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REGIONAL HEARING CLERK  
EPA REGION III, PHILA. PA**

**CONSENT AGREEMENT**

This Consent Agreement is entered into by the Director, Land and Chemicals Division, U.S. Environmental Protection Agency, Region III (“Complainant” or “EPA”) and Philippi Marathon, LLC, Marathon of Philippi, LLC, Charles Cleavenger, and John Eric Cutright (“Respondents”) pursuant to Sections 9006 and 9007 of the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6991e and § 6991f, 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 22.18(b)(2) and (3).

This Consent Agreement and Final Order (collectively “CA/FO”), resolve violations of RCRA Subtitle I, 42 U.S.C. §§ 6991-6991m, and the State of West Virginia’s federally authorized underground storage tank program by Respondents in connection with the underground storage tanks at Respondents’ facility located at 144 N Main Street, Philippi, WV (the “Facility”).

On April 10, 1996 pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c, and 40 C.F.R. Part 281, Subpart A, the State of West Virginia was granted final authorization to administer a state underground storage tank management program *in lieu* of the Federal underground storage tank management program established under Subtitle I of RCRA, 42 U.S.C. §§ 6991-6991i. The authorization of West Virginia's underground storage tank program became effective on July 1, 1996. Accordingly, the provisions of West Virginia's authorized underground storage tank program regulations set forth in Series 30, Title 33 of the West Virginia Code of State Rules have become requirements of Subtitle I of RCRA and are, accordingly, enforceable by EPA pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e. The authorized West Virginia underground storage tank regulations "WVUSTR 33-30," incorporate by reference the federal underground storage tank program regulations set forth at 40 C.F.R. Part 280 (1995 ed.). Thus, both the state and the incorporated federal regulations are cited as the legal basis for EPA's claims.

### **I. GENERAL PROVISIONS**

1. For purposes of this proceeding only, Respondents admit the jurisdictional allegations set forth in this CA/FO.
2. Respondents neither admit nor deny the specific factual allegations and conclusions of law set forth in this CA/FO, except as provided in Paragraph 1, above.
3. Respondents agree not to contest EPA's jurisdiction with respect to the execution of this Consent Agreement, the issuance of the attached Final Order or the enforcement of the CA/FO.
4. For the purposes of this proceeding only, Respondents hereby expressly waive their rights to a hearing on any issue of law or fact set forth in this Consent Agreement and any right to appeal the accompanying Final Order.
5. Respondents consent to the issuance of this CA/FO, and agree to comply with its terms and conditions.
6. Respondents shall bear their own costs and attorney's fees.
7. The person signing this Consent Agreement on behalf of each Respondent certifies to EPA by his or her signature herein that that Respondent, as of 120 days from the date of this Consent Agreement, will be in compliance with the provisions of RCRA, Subtitle I, 42 U.S.C. §§ 6991-6991m, and the State of West Virginia's federally authorized underground storage tank program set forth at WVUSTR Section 33-30-2.2.1 at the Facility referenced herein.
8. The provisions of this CA/FO shall be binding upon Respondents, and their officers, directors, employees, successors and assigns.
9. This CA/FO shall not relieve Respondents of their obligations 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 CA/FO

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 or representations made by Respondents to EPA regarding matters at issue in the CA/FO are false or, in any material respect, inaccurate. Respondents are aware that the submission of false or misleading information to the United States government may subject Respondents to separate civil or criminal liability.
11. Respondents agree not to deduct for civil taxation purposes the civil penalty specified in this Consent Agreement and the attached Final Order.
12. EPA has given the State of West Virginia prior notice of the issuance of this CA/FO in accordance with Section 9006(a)(2) of RCRA, 42 U.S.C. § 6991e(a)(2).

## **II. FACTUAL ALLEGATIONS AND LEGAL CONCLUSIONS**

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. For purposes of this proceeding only, at all times relevant to this CA/FO, Marathon of Philippi, LLC and Philippi Marathon, LLC have been West Virginia limited liability companies—and Charles Cleavenger and John Eric Cutright are individuals—doing business in the State of West Virginia.
15. All Respondents are “persons” as defined in Section 9001(5) of RCRA, 42 U.S.C. § 6991(5), and WVUSTR § 33-30-2.2.1 which incorporates by reference 40 C.F.R. § 280.12.
16. At all times relevant to this CA/FO, each Respondent has been an “owner” or “operator,” as those terms are defined in Section 9001(3) and (4) of RCRA, 42 U.S.C. § 6991(3) and (4), and WVUSTR § 33-30-2.2.1 which incorporates by reference 40 C.F.R. § 280.12, 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 WVUSTR § 33-30-2.2.1 which incorporates by reference 40 C.F.R. § 280.12, located at 144 North Main Street, Philippi, West Virginia.
17. On October 18, 2010, an EPA representative conducted a Compliance Evaluation Inspection (the “Inspection”) of the Facility pursuant to Section 9005 of RCRA, 42 U.S.C. § 6991d.
18. At the time of the October 18, 2010 inspection, and at all times relevant to the applicable violations alleged herein, three USTs, as described in the following subparagraphs, were located at the Facility:

19. Each of the USTs is a 4,000-gallon fiberglass-reinforced plastic tank and was installed in 1991. UST No. 1 stored Premium-grade fuel, UST No. 2 stored Regular-grade fuel, and UST No. 3 stored Mid-grade fuel.
20. At all times relevant to the applicable violations alleged herein, USTs Nos. 1, 2, and 3 have been “petroleum UST systems” and “existing UST systems” as these terms are defined in WVUSTR § 33-30-2.2.1 which incorporates by reference 40 C.F.R § 280.12.
21. At all times relevant to applicable violations alleged in this CA/FO, USTs Nos. 1, 2, and 3 were used to store “regulated substance(s)” at Respondents’ Facility, as defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and WVUSTR § 33-30-2.2.1 which incorporates by reference 40 C.F.R § 280.12, and were not “empty” until April 6, 2011 as that term is defined at WVUSTR § 33-30-2.2.1 which incorporates by reference 40 C.F.R § 280.70(a).
22. Pursuant to RCRA Section 9005, 42 U.S.C. § 6991d, on April 6, 2011, EPA issued an Information Request to Respondents concerning its petroleum UST systems at the Facility.
23. Pursuant to WVUSTR § 33-30-2.2.1 which incorporates by reference 40 C.F.R § 280.40(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.
24. Pursuant to WVUSTR § 33-30-4.4.2f which incorporates by reference 40 C.F.R § 280.41(a), USTs shall be monitored at least every 30 days for releases using one of the methods listed in WVUSTR Sections 33-30-2.2.1 which incorporates by reference 40 C.F.R. § 280.43(d) through (h), except that:
  - A. UST systems that meet the performance standards in WVUSTR § 33-30-2.2.1 which incorporates by reference 40 C.F.R § 280.20 (Performance Standards for New UST Systems) or WVUSTR § 33-30-2.2.1 which incorporates by reference 40 C.F.R § 280.21 (Upgrading of Existing UST Systems), and the monthly inventory control requirements in WVUSTR § 33-30-2.2.1 which incorporates by reference 40 C.F.R § 280.43(a) or (b) (Inventory Control or Manual Tank Gauging), and tank tightness testing, conducted in accordance with WVUSTR § 33-30-2.2.1 which incorporates by reference 40 C.F.R § 280.43(c) (Tank Tightness Test), at least every 5 years until December 22, 1998, or until 10 years after the UST is installed or upgraded under WVUSTR § 33-30-2.2.1 which incorporates by reference 40 C.F.R § 280.21(b) (Tank Upgrading Requirements); and
  - B. UST systems that do not meet the performance standards in WVUSTR § 33-30-2.2.1 which incorporates by reference 40 C.F.R § 280.20 (Performance Standards for New UST Systems) or WVUSTR § 33-30-2.2.1 which incorporates by reference 40 C.F.R § 280.21 (Upgrading of Existing UST Systems), may use monthly inventory controls, conducted in accordance with WVUSTR § 33-30-

2.2.1 which incorporates by reference 40 C.F.R § 280.43(a) or (b) (Inventory Control or Manual Tank Gauging) and annual tank tightness testing, conducted in accordance with WVUSTR § 33-30-2.2.1 which incorporates by reference 40 C.F.R § 280.43(c) (Tank Tightness Test) until December 22, 1998, when the tank must be upgraded under WVUSTR § 33-30-2.2.1 which incorporates by reference 40 C.F.R § 280.21 (Tank Upgrading Requirements) or permanently closed under WVUSTR § 33-30-2.2.1 which incorporates by reference 40 C.F.R § 280.71; and

- C. Tanks with a capacity of 550 gallons or less and not metered may use weekly tank gauging, conducted in accordance with WVUSTR § 33-30-2.2.1 which incorporates by reference 40 C.F.R § 280.43(b).

### **COUNT #1**

#### **Failure to perform release detection on UST No. 2 from June 9, 2010 through April 6, 2011, excluding the period from July 26, 2010 through and November 1, 2010**

- 25. The allegations of Paragraphs 13 to 24 of the CA/FO are incorporated herein by reference.
- 26. EPA alleges that from at least June 9, 2010 until April 6, 2011, excluding the period from July 26, 2010 through November 1, 2010, Respondents' UST No. 2 at the Facility was not monitored in compliance with any of the methods set forth in WVUSTR § 33-30.2.2.1 which incorporated by reference 40 C.F.R § 280.43(d)-(h).
- 27. EPA alleges that Respondents' acts or omissions as alleged in the preceding paragraph constitute violations of WVUSTR § 33-30-2.2.1 which incorporates by reference 40 C.F.R § 280.41(a).

### **COUNT #2**

#### **Failure to perform release detection on USTs Nos. 1 and 3 from June 9, 2010 through April 6, 2011**

- 28. The allegations of Paragraphs 13 to 24 of the CA/FO are incorporated herein by reference.
- 29. EPA alleges that from at least June 9, 2010 until April 6, 2011, Respondents' USTs Nos. 1 and 3 at the Facility were not monitored in compliance with any of the methods set forth in WVUSTR § 33-30.2.2.1 which incorporated by reference 40 C.F.R § 280.43(d)-(h).
- 30. EPA alleges that Respondents' acts or omissions as alleged in the preceding paragraph constitute violations of WVUSTR § 33-30-2.2.1 which incorporates by reference 40 C.F.R § 280.41(a).

**COUNT #3**

**Failure to maintain every record of release detection**

31. The allegations of Paragraphs 13 to 24 of the CA are incorporated herein by reference.
32. WVUSTR § 33-30-2.2.1 which incorporates by reference 40 C.F.R § 280.34(b)(4) provides that UST system owners and operators shall maintain information of current compliance with release detection requirements pursuant to WVUSTR § 33-30-2.2.1 which incorporates by reference 40 C.F.R § 280.45.
33. Pursuant to WVUSTR § 33-30-2.2.1 which incorporates by reference 40 C.F.R § 280.45, owners and operators of UST systems must maintain records in accordance with WVUSTR § 33-30-2.2.1 which incorporates by reference 40 C.F.R § 280.34 demonstrating compliance with all applicable requirements of WVUSTR § 33-30-2.2.1 which incorporates by reference 40 C.F.R Subpart D. These records must include the following:
  - A. 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, or for another reasonable period of time determined by the “implementing agency” within the meaning of WVUSTR § 33-30-2.2.1.a., from the date of installation;
  - B. The results of any sampling, testing, or monitoring shall be maintained for at least 1 year, or for another reasonable period of time determined by the “implementing agency” within the meaning of WVUSTR § 33-30-2.2.1.a.; 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.
34. EPA alleges that, from at least October 18, 2009 until June 8, 2010, Respondents performed release detection for USTs Nos. 1, 2, and 3 at the Facility.
35. EPA alleges that, from at least October 18, 2009 until June 8, 2010, Respondents failed to maintain records of release detection monitoring for USTs Nos. 1, 2, and 3 in accordance with WVUSTR § 33-30-2.2.1 which incorporates by reference 40 C.F.R § 280.34(b)(4) and 40 C.F.R § 280.45
36. EPA alleges that Respondents’ acts or omissions as alleged in the preceding paragraph constitute violations by Respondents of WVUSTR § 33-30-2.2.1 which incorporates by reference 40 C.F.R § 280.34(b)(4) and 40 C.F.R § 280.45.

### III. COMPLIANCE TASKS

37. Pursuant to the authority of Section 9006 of RCRA, 42 U.S.C. § 6991e, Respondents must complete the following Compliance Tasks.
38. For all tanks at the Facility:
- A. Within fifteen (15) calendar days of the effective date of this Consent Agreement, submit to EPA a notice of intent to permanently close, identifying which UST(s) they intend to close. Such notice shall be sent to Clark Conover at the address set forth below. A copy of such notice shall also be sent to WVDEP at the address set forth below.
  - B. Within one hundred twenty (120) days of the effective date of this Consent Agreement, permanently close UST Nos. 1, 2, and 3 in accordance with WVUSTR § 33-30-2.2.1 which incorporates by reference 40 C.F.R §§ 280.71 and 280.72, by removing the tanks from the ground, assessing the site, and taking corrective action as needed.
  - C. Within one hundred fifty (150) days of the effective date of this Consent Agreement, submit to EPA a report that documents and certifies Respondents' compliance with these Compliance Tasks.
39. If activities undertaken by Respondents in connection with these Compliance Tasks indicate the release of a regulated substance from any UST systems at the Facility may have occurred, Respondents may be required to undertake responsive action pursuant to applicable regulations in 40 C.F.R. Part 280, Subpart F.
40. Any notice, report, certification, data presentation, or other document submitted by Respondents pursuant to these Compliance Tasks which discusses, describes, demonstrates, supports any finding or makes any representation concerning Respondents' compliance or noncompliance with any requirement of these Compliance Tasks must be certified by a responsible corporate officer of Respondents.
41. The certification required above must be in the following form:

I certify that the information contained in or accompanying this [type of submission] is true, accurate, and complete. As to [the/those] identified portions of this [type of submission] for which I cannot personally verify [its/their] accuracy, I certify under penalty of law that this [type of submission] and all attachments were prepared in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

42. All documents and reports to be submitted pursuant to this CA/FO must be sent to the following persons:

A. Documents to be submitted to EPA must be sent via overnight delivery, signature required, to:

Louis F. Ramalho  
Sr. Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region III (Mail Code 3RC50)  
1650 Arch Street  
Philadelphia, PA 19103-2029

Clark Conover  
USEPA Wheeling Operations Office  
Office of Land Enforcement  
303 Methodist Building  
11th and Chapline Streets  
Mail Code: 3LC70  
Wheeling, WV 26003

B. Documents required to be submitted to WVDEP, and one copy of all documents required to be submitted to EPA, must be sent by overnight delivery or regular mail to:

Ruth M. Porter, Program Manager  
West Virginia Department of Environmental Protection  
601 57th Street SE  
Charleston, WV 25304

43. Respondents are hereby notified that failure to comply with any of the terms of this CA/FO may subject them to imposition of a civil penalty of up to \$37,500 for each day of continued noncompliance, pursuant to Section 9006(a)(3) of RCRA, 42 U.S.C. §6991e(a)(3).

44. The term "days" as used herein means calendar days unless specified otherwise.

#### **IV. FORCE MAJEURE**

45. The Respondents' obligations under the Compliance Tasks section of this CA/FO must be performed as set forth in this CA/FO unless performance is prevented or delayed by a force majeure event. For purposes of this CA/FO, "force majeure" is defined as any event arising from causes beyond the control of the Respondents or of entities controlled by the Respondents, including, but not limited to, contractors and sub-contractors, which could not be overcome by the due diligence of the Respondents or the entities controlled by the Respondents, which delays or prevents the performance of any obligation under this CA/FO, including acts of God or war, labor unrest, civil disturbance and any judicial orders which prevent compliance with the provisions of this CA/FO. Force majeure may not include increased costs of performance of any activity required by this CA/FO, the failure of any customers to fund any activity necessary to achieve compliance with this CA/FO or the failure to apply for any required permits or approvals or to provide all information required therefore in a timely manner, nor may it include the failure of contractors or employees to perform or the avoidable malfunction of equipment.

46. If the Respondents are having difficulty meeting its obligations as set forth in this CA/FO due to a force majeure event, they will notify EPA promptly by telephone of any change in



circumstances giving rise to the suspension of performance or the non-performance of any obligation under this CA/FO. In addition, within 14 calendar days of the occurrence of circumstances causing such difficulty, it will provide a written statement to EPA of the reason(s), the anticipated duration of the event and delay, the measures taken and to be taken to prevent or minimize the time and effects of failing to perform or delaying any obligation, and the timetable for the implementation of such measures. Failure to comply with the notice provisions will constitute a waiver of any claims of force majeure. The Respondents must take all reasonable steps to avoid and/or minimize any such delay.

47. The burden of proving that any delay is caused by circumstances beyond the control of the Respondents will rest with the Respondents.

## **V. MODIFICATIONS**

48. The requirements, timetable and deadline under this CA/FO may be modified upon receipt of a timely request for modification and when good cause exists for the requested modification. Any request for modification by the Respondents must be submitted in writing and must specify: the requirement, timetable or deadline for which a modification is sought; the good cause for the modification; and any related requirement, timetable, deadline or schedule that would be affected if the modification were granted.
49. Good cause exists for a modification when sought in regard to: a force majeure event; a delay caused, or which is likely to be caused, by the grant of a modification to another timetable and deadline or schedule; a delay caused by failure of a regulatory agency to perform its duties in a timely manner where regulatory action is necessary to proceed with work and where the Respondents has made a timely and complete request for action from the regulatory agency; acceptable scientific data exists which demonstrates that another requirement, deadline or timetable would be adequate to achieve compliance with this CA/FO; and another event or series of events mutually agreed to by the Parties and constituting good cause.
50. Within 21 calendar days of receipt of a request for a modification, EPA will advise the Respondents of its position on the request. If EPA does not concur in the modification, it will include in its statement of non-concurrence an explanation of the basis for its position.
51. In the event that a modification to any Compliance Task set forth above is required, EPA and the Respondents agree to negotiate with regard to such modification to the extent necessary for the Respondents to achieve compliance with RCRA Subtitle I, 42 U.S.C. §§ 6991-6991m, the State of West Virginia's federally authorized underground storage tank program and the Compliance Tasks set forth in this CA/FO.

## **VI. CIVIL PENALTY**

52. In settlement of Complainant's claims for civil penalties for the violations alleged in this CA, the parties agree to a civil penalty assessment in the amount of **zero dollars (\$0)**.
53. The aforesaid settlement amount is based upon Complainant's consideration of a number of factors, including the statutory factors provided in RCRA Section 9006(c) - (e), 42 U.S.C.

§ 6991e(c) - (e), and in accordance with EPA's Penalty Guidance for Violations of UST Regulations ("UST Guidance") dated November 4, 1990. EPA has also considered Respondents' ability to pay a penalty, based on an analysis of financial documents Respondents disclosed during settlement negotiations.

**VII. FULL AND FINAL SATISFACTION**

54. This CA/FO 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.

**VIII. RESERVATION OF RIGHTS**

55. EPA reserves the right to commence action against any person, including Respondents, 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 CA/FO, following its filing with the Regional Hearing Clerk.

**IX. OTHER APPLICABLE LAWS**

56. Nothing in this CA/FO shall relieve Respondents of any duties otherwise imposed on it by applicable federal, state or local law or regulations.

**X. AUTHORITY TO BIND THE PARTIES**

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

**XI. ENTIRE AGREEMENT**

58. This Consent Agreement and the attached Final Order constitute the entire agreement and understanding between EPA and Respondents concerning settlement of the above-captioned action and there are no representations, warranties, covenants, terms or conditions agreed upon between EPA and Respondents other than those expressed in this Consent Agreement and the attached Final Order.

**XII. EFFECTIVE DATE**

59. This CA/FO shall become effective upon filing with the Regional Hearing Clerk.

**XIII. SIGNATURES**

For Respondent:

Date 10/5/2012

Marathon of Philippi LLC

By: Marathon of Philippi LLC

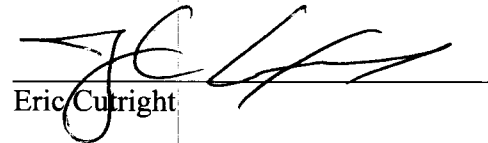
Name: Eric Cutright

Title: Member

For Respondent:

Date 10/5/2012

Eric Cutright

  
Eric Cutright

For Respondent:

Philippi Marathon LLC

Date 10/6/12

By: PHILIPPI MARATHON LLC

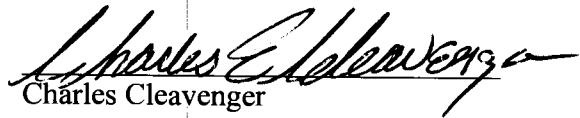
Name: CHARLES CLEAVENGER

Title: MEMBER

For Respondent:

Charles Cleavenger

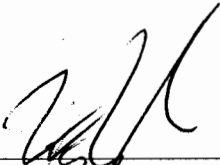
Date 10/6/12

  
Charles Cleavenger

For Complainant:

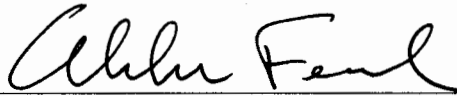
U.S. Environmental Protection Agency, Region III

Date 9/25/2012

  
\_\_\_\_\_  
Wojciech Jankowski  
Assistant Regional Counsel

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 10/11/12

  
\_\_\_\_\_  
Abraham Ferdas  
Director, Land and Chemicals Division  
U.S. Environmental Protection Agency, Region III

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EPA REGION III, PHILA. PA

**FINAL ORDER**

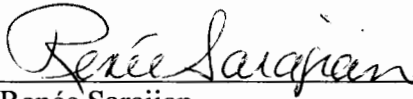
Complainant, the Director, Land and Chemicals Division, U.S. Environmental Protection Agency - Region III, and Respondents, Philippi Marathon, LLC, Marathon of Philippi, LLC, Charles Cleavenger, and John Eric Cutright, have executed a document entitled "Consent Agreement" which I hereby ratify as a Consent 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) and (d) of RCRA, 42 U.S.C. § 6991e(c) and (d), IT IS HEREBY ORDERED that Respondents ~~pay a civil penalty as assessed in the attached Consent Agreement and~~ comply with the terms of the Consent Agreement.

Ks, J

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 11/6/12



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

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**RESPONDENTS,**

**Marathon of Philippi  
144 North Main Street  
Philippi, WV 26416**

**FACILITY.**

**Consent Agreement and Final Order**

**Docket No.: RCRA-03-2013-0013**

**Proceeding under Section 9006 of the  
Resource Conservation and Recovery Act,  
42 U.S.C. § 6991e**

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**CERTIFICATE OF SERVICE**

I certify that on the below date, I hand-delivered the original and one copy of the Consent Agreement and Final Order in the case captioned *In re* Philippi Marathon, LLC *et al.*, Docket No. RCRA-03-2013-0013 to Lydia Guy, Regional Hearing Clerk, U.S. EPA, Region 3, 1650 Arch St, Philadelphia, PA 19134, and sent one copy of the signed original of the document by certified mail–return receipt requested to:

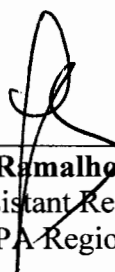
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