

THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III

In the Matter of: :
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 :
 Lehigh and Northampton :
 Transportation Authority : U.S. EPA Docket No.
 : RCRA-03-2008-0047
 :
 Respondent, :
 :
 :
 : Proceeding under Section 9006
 : of the Resource Conservation and
 : Recovery Act, as amended,
 1060 Lehigh Street :
 Allentown, PA 18103, : 42 U.S.C. § 6991e
 :
 :
 Facility. :

CONSENT AGREEMENT

This Consent Agreement (“CA”) is entered into by the Director of the Waste and Chemicals Management Division, U.S. Environmental Protection Agency, Region III (“EPA” or “Complainant”) and the Lehigh and Northampton Transportation Authority, Allentown, Pennsylvania (“LANTA” or “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 accompanying Final Order (collectively “CAFO”) resolve violations of RCRA Subtitle I, 42 U.S.C. §§ 6991-6991m, and the Commonwealth of Pennsylvania’s federally authorized underground storage tank program by Respondent in connection with its facility at 1060 Lehigh Street, Allentown, Pennsylvania.

Pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c, and 40 C.F.R. Part 281, Subpart A, the Commonwealth of Pennsylvania was granted final authorization to administer a state underground storage tank management program (“Pennsylvania Authorized UST Management Program”) *in lieu* of the Federal underground storage tank management program established under Subtitle I of RCRA, 42 U.S.C. §§ 6991-6991m. This authorization was effective on September 11, 2003. *See* 68 *Fed. Reg.* 53520 (September 11, 2003) and 40 C.F.R. § 282.88. Through this final authorization, the provisions of the Pennsylvania Authorized UST Management Program became requirements of RCRA Subtitle I and are, accordingly, enforceable by EPA pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e. As of the date of EPA’s authorization of

Pennsylvania's Authorized UST Management Program, these provisions were codified in Chapter 245 of Title 25 of the Pennsylvania Code, and will be cited herein as 25 PA Code §§ 245.1 *et seq.*

EPA has given the Commonwealth of Pennsylvania notice of the issuance of this Consent Agreement in accordance with Section 9006(a)(2) of RCRA, 42 U.S.C. § 6991e(a)(2).

I. 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 Final Order, 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 provisions of this CAFO shall be binding upon Complainant and Respondent, its officers, directors, employees, successors and assigns.
8. 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.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

9. Respondent is a "person" as defined in Section 9001(5) of RCRA, 42 U.S.C. § 6991(5), and 25 PA Code § 245.1.
10. At all times relevant to this Consent Agreement, 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 25 PA Code § 245.1, 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 25 PA Code § 245.1, located at 1060 Lehigh Street, Allentown, Pennsylvania.

11. On February 22, 2007, an EPA representative conducted a Compliance Evaluation Inspection (“CEI”) of the Facility pursuant to Section 9005 of RCRA, 42 U.S.C. § 6991d.
12. At the time of the February 22, 2007 CEI, and at all times relevant to the applicable violations alleged herein, six USTs, as described in the following subparagraphs, were located at the Facility:
 - A. A ten thousand (10,000) gallon fiberglass tank that was installed in or about December 1982 and that, at all times relevant hereto, routinely contained diesel fuel, a “regulated substance” as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and 25 PA Code § 245.1 (hereinafter “UST No. 1”), and
 - B. A ten thousand (10,000) gallon fiberglass tank that was installed in or about December 1982 and that, at all times relevant hereto, routinely contained diesel fuel, a “regulated substance” as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and 25 PA Code § 245.1 (hereinafter “UST No. 2”), and
 - C. A one thousand (1,000) gallon fiberglass tank that was installed in or about June, 1989 and that, at all times relevant hereto, routinely contained automatic transmission fluid (“ATF”), a “regulated substance” as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and 25 PA Code § 245.1 (hereinafter “UST No. 3”), and
 - D. A 2,500 gallon fiberglass tank that was installed in or about June, 1989 and that, at all times relevant hereto, routinely contained motor oil, a “regulated substance” as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and 25 PA Code § 245.1 (hereinafter “UST No. 4”), and
 - E. A 2,500 gallon fiberglass tank that was installed in or about June 1989 and that, at all times relevant hereto, routinely contained motor oil, a “regulated substance” as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and 25 PA Code § 245.1 (hereinafter “UST No. 5”), and
 - F. A 2,000 gallon fiberglass tank that was installed in or about December 1982, and that, at all times relevant hereto, routinely contained waste oil, a “regulated substance” as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991

(7), and 25 PA Code § 245 .1 (hereinafter "UST No. 6").

13. At all times relevant to the applicable violations alleged herein, USTs 1, 2 and 6 have been "petroleum UST systems" and "existing UST systems" as these terms are defined in 25 PA Code § 245.1.
14. At all times relevant to the applicable violations alleged herein, USTs 3 - 5 have been "petroleum UST systems" and "new tank systems" as these terms are defined in 25 PA Code § 245.1.
15. USTs Nos. 1- 6 are and were, at all times relevant to applicable violations alleged in this Consent Agreement, used to store "regulated substance(s)" at Respondent's Facility, as defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and 25 PA Code § 245.1, and have not been "empty" as that term is defined at 25 PA Code § 245.451.
16. The violations alleged in this Consent Agreement relate solely to Respondent's failure to perform release detection and failure to perform automatic line leak detector testing annually as set forth in Counts I and II below.

COUNT I

(Failure to Perform Release Detection)

17. The allegations of Paragraphs 1 through 16 of the CA are incorporated herein by reference.
18. Pursuant to 25 PA Code § 245.441(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.
19. With exceptions not herein applicable, 25 PA Code § 245.442(1) requires that owners and operators of USTs shall provide release detection for underground storage tanks by monitoring such tanks at least every 30 days for releases in accordance with any of the methods set forth at 25 PA Code § 245.444(4) - (9), which methods include: Automatic Tank Gauging; Vapor Monitoring; Groundwater Monitoring; Interstitial Monitoring; Statistical Inventory Reconciliation (SIR); and Other Methods (if an owner or operator has demonstrated to the Pennsylvania Department of Environmental Protection that such other type or types of release detection method or methods: (i) can detect a 0.2 gallon per hour leak rate or a release of 150 gallons within a month with a probability of detection of 0.95 and a probability of false alarm of 0.05; or (ii) can detect a release as effectively as any of the methods allowed in 25 PA Code § 245.444(3) - (8)).
20. From at least February 22, 2002 until the date of this Consent Agreement, the method of

release detection selected by Respondent for USTs Nos. 3 - 6 has been automatic tank gauging in accordance with § 245.444(4).

21. From February 2 - April 3, 2006; May 3 - July 3, 2006; September 7 - November 6, 2006, Respondent failed to perform automatic tank gauging for UST No. 4 in accordance with 25 PA Code § 245.444(4).
22. From January 2, 2006 - April 3, 2006, Respondent failed to perform automatic tank gauging for the UST No. 3 in accordance with 25 PA Code § 245.444(4).
23. From April 1, 2003 - December 13, 2007, Respondent failed to perform automatic tank gauging for the UST No. 6 in accordance with 25 PA Code § 245.444(4).
24. During the periods of time indicated in Paragraphs 21 - 23, above, Respondent did not use any of the other release detection methods specified in 25 PA Code § 245.442(1)(i)-(iii) and/or 25 PA Code § 245.444(4)-(9) on USTs Nos. 3, 4 and 6 located at the Facility.
25. Respondent's acts and/or omissions as alleged in Paragraphs 21 - 23, above, constitute violations by Respondent of 25 PA Code §§ 245.441 and .442.

COUNT II

(Failure to perform automatic line leak detector testing annually)

26. The allegations of Paragraphs 1 through 25 of the CA are incorporated herein by reference.
27. 25 PA Code § 245.442(2)(i) provides, in pertinent part, that underground piping that conveys regulated substances under pressure shall:
 - (A) Be equipped with an automatic line leak detector conducted in accordance with 25 PA Code § 245.445(1); and
 - (B) Have an annual line tightness test conducted in accordance with 25 PA Code § 245.445(2) or have monthly monitoring conducted in accordance with 25 PA Code § 245.445(3).
28. 25 PA Code § 245.445(1) provides, in pertinent part, that an annual test of the operation of the line leak detector shall be conducted in accordance with the manufacturer's requirements.
29. From at least February 22, 2002 until the date of the CEI, the piping for USTs Nos. 1 - 2 was underground and routinely conveyed regulated substances under pressure.

30. Respondent failed to perform an annual test of the automatic line leak detectors for the underground piping for USTs Nos. 1 and 2 during calendar years 2004, 2005, and 2006.
31. Respondent's acts and/or omissions as alleged in Paragraph 30, above, constitute violations by Respondent of 25 PA Code §§ 245.442(2)(i) and 245.445(1).

III. COMPLIANCE ORDER

Pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e, Respondent is hereby ordered to:

32. Immediately upon the effective date of this Compliance Order, comply with the release detection requirements of 25 PA Code § 245.442(1) for all UST systems located at the Facility subject to this Complaint or close such UST systems in accordance with 25 PA Code § 245.451(c).
33. Immediately upon the effective date of this Compliance Order, conduct a test of the line leak detector for USTs Nos. 1 and 2, and thereafter remain in compliance with the line leak detector testing requirements of 25 PA Code § 245.445(1).
34. Within thirty days (30) days of the effective date of this Compliance Order certify compliance with the terms of this Compliance Order in accordance with paragraph 35.
35. Any notice, report, certification, data presentation, or other document submitted by Respondent pursuant to this Compliance Order which discusses, describes, demonstrates, supports any finding or makes any representation concerning Respondent's compliance or noncompliance with any requirement of this Compliance Order shall be certified by a responsible corporate officer of Respondent.

The certification required above shall 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: _____

36. All documents and reports to be submitted pursuant to this Compliance Order shall be sent to the following persons:

- i. Documents to be submitted to EPA shall be sent certified mail, return receipt requested to the attention of:

Stacie Peterson
Environmental Engineer
RCRA Compliance and Enforcement Branch (3WC31)
U.S. Environmental Protection Agency - Region III
1650 Arch Street
Philadelphia, PA 19103-2029

and

Joyce A. Howell
Senior Assistant Regional Counsel (3WC31)
U.S. Environmental Protection Agency - Region III
1650 Arch Street
Philadelphia, PA 19103-2029

- ii. One copy of all documents submitted to EPA shall also be sent by regular mail to the attention of:

Mr. Rick Shipman
Chief, Division of Hazardous Waste Management
PA Department of Environmental Protection
Rachel Carson State Office Building
400 Market Street, 14th Floor
Harrisburg, PA 17105

37. The term “days” as used herein shall mean calendar days unless specified otherwise.

IV. SUPPLEMENTAL ENVIRONMENTAL PROJECT

38. Respondent shall complete the following SEP, which the parties agree is intended to secure significant environmental and/or public health protections. No more than THREE HUNDRED SIXTY FIVE (365) DAYS after receiving a true and correct copy of this fully executed and effective CAFO, Respondent shall purchase three hybrid SUV motor vehicles (herein "SUV Purchase SEP"). The SUV Purchase SEP is more fully described in the Statement of Work ("SEP SOW") attached hereto as Attachment A, and incorporated as if fully set forth herein.
39. The SEP as described in the SEP SOW shall be fully implemented within THREE HUNDRED SIXTY FIVE (365) DAYS of receipt of a true and correct copy of the fully executed and effective CAFO.
40. The total required Actual SEP Expenditures shall not be less than **\$105,000.00**. Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report described in Paragraph 42.
41. Respondent hereby certifies that, as of the date of its signature to this Consent Agreement, Respondent is not required to perform or develop the SEP by any federal, state or local law or regulation; nor is Respondent required to perform or develop the SEP by any other agreement, or grant or as injunctive relief in this or any other legal proceeding or in compliance with state or local requirements. Respondent further certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP or any portion thereof.
42. Respondent shall submit a SEP Completion Report to EPA no later than FOUR HUNDRED FIFTY- FIVE (455) DAYS after the effective date of this CAFO. The SEP Completion Report shall contain the following information:
 - (i) A detailed description of the SEP as implemented, describing how the SEP has fulfilled all the requirements described in the SEP SOW;
 - (ii) A description of any operating problems encountered and the solutions utilized by Respondent to address such problems;
 - (iii) An itemization of costs incurred in implementing the SEP. In itemizing its costs in the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all Actual SEP Expenditures as provided by

Paragraph 40. Where the SEP Completion Report includes costs incurred by Respondent not eligible for SEP credit, such costs must be clearly identified in the SEP Completion Report as ineligible for SEP credit. For purposes of this Paragraph, "Actual SEP Expenditures" shall include the cost for implementation of the SUV Purchase SEP as specified in the SEP SOW;

- (iv) A description and a quantitative and qualitative estimation of the environmental and public health benefits resulting from implementation of the SEP; and
 - (v) Certification that the SEP has been fully implemented pursuant to the provisions of this CAFO in the form set forth in paragraph 35.
43. Failure to submit a SEP Completion Report as required by Paragraph 42 above, shall be a violation of this CAFO and Respondent shall become liable for stipulated penalties therefor pursuant to Paragraph 51E, below.
44. In itemizing the costs in the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all Actual SEP Expenditures. For purposes of this Paragraph, "acceptable documentation" for itemizing Actual SEP Expenditures includes invoices, purchase orders, canceled checks, or other documentation that specifically identifies and itemizes the Actual SEP Expenditures for the goods and/or services for which payment is being made by Respondent. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual cost of the goods and/or services for which payment is being made.
45. EPA may inspect Respondent's place of business at any time to confirm that the SEP is being undertaken in conformity with the specification referenced herein.
46. Respondent shall maintain for inspection by EPA the original records pertaining to Actual SEP Expenditures incurred in implementing the SEP, such as purchase orders, receipts, and/or canceled checks, for a period of one year following EPA's issuance of a "Letter of Remittance Upon Satisfaction of Settlement Conditions" for the SEP as provided in Paragraph 63 of this CAFO. Respondent shall also maintain non-financial records, such as work orders and work reports, documenting the actual implementation and/or performance of the SEP for a period of one year following EPA's issuance of a Letter Remittance Upon Satisfaction of Settlement Conditions for the SEP as provided in Paragraph 63 of this CAFO. In all documents and reports, including without limitation, any SEP report, submitted to EPA pursuant to this CAFO. Respondent shall, by a responsible officer in charge of the implementation of the SEP, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and complete in accordance with Paragraph 35 of this CAFO.

47. Following receipt of the SEP Completion Report described in Paragraph 42 above, EPA will do one of the following:
- A. Notify Respondent in writing of any deficiency in the SEP Completion Report itself (“Notice of Deficiency”) and grant and additional THIRTY (30) DAYS for Respondent to correct the deficiency;
 - B. Notify Respondent in writing of EPA’s determination that the project has been completed satisfactorily (“Notice of Approval”); or
 - C. Notify Respondent in writing that the project has not been completed satisfactorily (“Notice of Disapproval”), in which case, EPA may seek stipulated penalties in accordance with Paragraph 51 herein.
48. Respondent agrees to comply with any requirements imposed by EPA as a result of any failure to comply with the terms of this CAFO. If EPA, in its sole discretion and after completion of the Dispute Resolution Process set forth in Paragraphs 49 and 50 of this CAFO, if applicable, determines that the SEP and/or any report due pursuant to this CAFO has not been completed as set forth herein, stipulated penalties shall be due and payable by Respondent to EPA in accordance with Paragraph 70 herein.

V. DISPUTE RESOLUTION

49. If EPA issues a written Notice of Disapproval rejecting a SEP Completion Report pursuant to 47, above, EPA shall grant Respondent the opportunity to object in writing to such notification of disapproval within twenty (20) days of receipt of EPA’s notification. EPA and Respondent shall have an additional (30) days from the receipt by the EPA of the objection by Respondent to resolve and reach an agreement on the matter in dispute. If an agreement cannot be reached within such thirty (30) day period, EPA shall provide to Respondent a written Statement of Decision and the rationale therefor.
50. In the event EPA determines after the expiration of the aforesaid 30-day dispute resolution period that a SEP has not been completed as specified herein or has issued a written Notice of Disapproval for which a timely objection has not been filed as provided in Paragraph 49 above, stipulated penalties shall be due and payable by Respondent to EPA in accordance with Paragraph 70 of this CAFO. The submission of an unacceptable SEP Completion Report shall be the equivalent of the failure to submit a timely SEP Completion Report for the purposes of the stipulated penalty provisions set forth in Paragraph 51E, below, except that the calculation of any such stipulated penalties shall not run during the pendency of the dispute resolution procedure set forth in Paragraph 49 above, but shall instead run from the date on which Respondent received EPA’s Statement of Decision pursuant to Paragraph 49 above, or, in the event that Respondent has not filed

a timely objection to an EPA Notice of Disapproval, the date following the day of expiration of the 30 - day dispute resolution period.

VI. STIPULATED PENALTIES

51. In the event that Respondent fails to comply with any of the terms or conditions of this Consent Agreement relating to the performance of the SEP described in the SOW and/or to the extent that the Actual Expenditures for the SEP do not equal or exceed the amount of Actual SEP Expenditures required to be incurred under Paragraph 40 of this Consent Agreement, Respondent shall be liable for stipulated penalties according to the provisions below:
- A. Except as provided in subparagraph (B) immediately below, for a SEP which has not been completed satisfactorily pursuant to this CAFO, Respondent shall pay a stipulated penalty to the United States in the amount of \$23,093.00.
 - B. If the SEP is not completed in accordance with Paragraphs 38 - 46, but the Complainant determines that Respondent: (i) has made good faith and timely efforts to complete the project; and (ii) has certified, with supporting documentation, that at least 95% of the Actual SEP Expenditures required to be incurred under Paragraph 40 of this Consent Agreement were expended on the SEP, Respondent shall not be liable for any stipulated penalty;
 - C. If the SEP is completed in accordance with Paragraphs 38 - 46, but the Respondent spent less than ninety percent (90%) of the amount of the Actual SEP Expenditures required to be incurred under Paragraph 40 of this Consent Agreement, Respondent shall pay an additional penalty of \$5,800.00.
 - D. If the SEP is completed in accordance with Paragraphs 38 - 46, and the Respondent spent at least 90% of the Actual SEP Expenditures required to be incurred under Paragraph 40 of this Consent Agreement, Respondent shall not be liable for any stipulated penalty;
 - E. For failure to submit the SEP Completion Report required by Paragraph 42, above, Respondent shall pay a stipulated penalty of FIVE HUNDRED DOLLARS (\$500.00) for each day after the deadline set forth in Paragraph 42 until the report is submitted.
52. The determination of whether the SEP has been satisfactorily completed and whether Respondent has made a good faith timely effort to implement the SEP shall be within the sole discretion of EPA after completion of the Dispute Resolution process set forth above in Paragraphs 49 and 50 of this CAFO, if applicable.

53. Stipulated penalties shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day of the completion of the activity.
54. Respondent shall pay stipulated penalties within FIFTEEN (15) DAYS after receipt of written demand by EPA for such penalties. The method of payment shall be in accordance the Paragraph 70.
55. Nothing in this CAFO shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this Consent Agreement or of the statutes and regulations upon which this agreement is based, or for Respondent's violation of any applicable provision of law.

VII. LANGUAGE TO BE INCLUDED IN PUBLIC STATEMENTS

56. In any public statement referring to this SEP, Respondent shall include language that the SEP was undertaken in connection with a settlement of an enforcement action taken by EPA. This Paragraph does not compel Respondent to make any public statement concerning the implementation of the SEP.

VIII. NON-DEDUCTIBILITY OF SEP PROJECT COSTS

57. For federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

IX. PROVISIONS IN EVENT OF DELAY OR ANTICIPATED DELAY

58. If any event occurs which causes or may cause delays in the completion of the SEP as required under this CAFO, Respondent shall notify Complainant in writing not more than SEVEN (7) DAYS after the delay or when Respondent knew or should have known of the anticipated delay, whichever is earlier. The notice shall describe in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by Respondent to minimize the delay, and the timetable by which those measures shall be implemented. The Respondent shall adopt all reasonable measures to avoid or minimize any such delay. Failure by Respondent to comply with the notice requirements of this Paragraph shall render this Paragraph void or no effect as to the particular incident involved and constitute a waiver of the Respondent's right to seek and extension of the time for performance of its obligations under this CAFO.
59. If the Parties agree that the delay or anticipated delay in compliance with this CAFO has been or will be caused by circumstances entirely beyond the control of Respondent which

could not to be overcome by due diligence, the time for performance hereunder may be extended for a period no longer than the delay resulting from such circumstances. In such event the Parties shall stipulate to such extension of time.

60. In the event that EPA does not agree that the delay in achieving compliance with this CAFO has been or will be caused by circumstances entirely beyond the control of Respondent which could not be overcome by due diligence, EPA will notify Respondent in writing of its decision and any delays in the completion of the SEP shall not be excused.
61. The burden of proving that any delay is caused by circumstances entirely beyond the control of Respondent which could not be overcome by due diligence shall rest with the Respondent. Increased costs or expenses associated with the implementation of actions called for by this CAFO shall not, in any event be a basis for changes in this CAFO or extensions of time under Paragraph 59 of this CAFO. Delay in achievement of one interim step shall not necessarily justify or excuse delay in achievement of a subsequent step.

X. SATISFACTION OF SETTLEMENT CONDITIONS

62. A determination of compliance with the conditions set forth herein will be based upon, *inter alia*, copies of records and reports submitted by Respondent to EPA under this CAFO and any inspections of work performed under the SEP that EPA reasonably determines are necessary to evaluate compliance. Respondent is aware that the submission of false or misleading information to the United States government may subject it to separate civil and/or criminal liability. Complainant reserves the right to seek and obtain appropriate relief if Complainant obtains evidence that the information provided and/or representations made by respondent to Complainant regarding the matters at issue in the Factual Allegations and Conclusions of Law are false or, in any material respect, inaccurate.
63. If EPA determines that Respondent has complied fully with the conditions set forth herein, EPA, through the Regional Administrator of U.S. EPA - Region III, or his designee, shall promptly issue a Letter of Remittance Upon Satisfaction of Settlement Conditions, which shall state Respondent has performed fully the conditions set forth in this CAFO and paid all the penalty amounts due pursuant to the terms of this CAFO.

XI. CIVIL PENALTY

64. 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 **\$5,583.00**. The civil penalty amount is due and payable immediately upon Respondent's receipt of a true and correct copy of this CAFO. If Respondent pays the entire civil penalty of 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).
65. 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.
66. 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).
67. 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.
68. 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).
69. 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, Respondent's compliance history and any good faith efforts by Respondent to comply with all applicable requirements as provided in RCRA Section 9006(c) - (e), 42 U.S.C. § 6991e(c) - (e), and with EPA's Penalty Guidance for Violations of UST Regulations ("UST Guidance") dated November 4, 1990.
70. Respondent shall pay the amount described in Paragraph 64, above, by sending a certified or cashier's check payable to the "United States Treasury," as follows:

CHECK PAYMENTS:

US Environmental Protection Agency
Fines and Penalties

Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

WIRE TRANSFERS:

Wire transfers should be directed to the Federal Reserve Bank of New York

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 Fedwire message should read “ D 68010727 Environmental Protection Agency “

OVERNIGHT MAIL:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101
Contact: Natalie Pearson
314-418-4087

ACH (also known as REX or remittance express)

Automated Clearinghouse (ACH) for receiving US currency
PNC Bank
808 17th Street, NW
Washington, DC 20074
Contact – Jesse White 301-887-6548
ABA = 051036706
Transaction Code 22 - checking
Environmental Protection Agency
Account 310006
CTX Format

ON LINE PAYMENT:

There is now an On Line Payment Option, available through the Dept. of Treasury.

This payment option can be accessed from the information below:

WWW.PAY.GOV

Enter sfo 1.1 in the search field

Open form and complete required fields.

All payments by Respondent shall reference its name and address and the Docket Number of this action (RCRA-03-2008-0047).

At the time of payment, Respondent shall send a notice of such payment, including a copy of any check or electronic transfer, as appropriate, to:

Lydia Guy
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region III (Mail Code 3RC00)
1650 Arch Street
Philadelphia, PA 19103-2029

and

Joyce A. Howell
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency
Region III (Mail Code 3WC31)
1650 Arch Street
Philadelphia, PA 19103-2029

XII. FULL AND FINAL SATISFACTION

71. EPA hereby agrees and acknowledges that the settlement set forth herein shall be in full and final satisfaction of EPA's civil claims for penalties under Section 9006(a) of RCRA, 42 U.S.C. § 6991e(a), for the violations alleged in this CAFO.

XIII. OTHER APPLICABLE LAWS

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

XIV. RESERVATION OF RIGHTS

73. Full payment of the civil penalty set forth in Paragraph 64 of this Consent Agreement, above, shall resolve only Respondent's liability for federal civil penalties for the specific violations of RCRA Subtitle I and the Pennsylvania Authorized UST Management Program alleged herein. 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 the Consolidated Rules of Practice at 40 C.F.R. § 22.18(c). Complainant reserves any rights and remedies available to it under RCRA, the regulations promulgated thereunder, and any other federal laws or regulations for which Complainant has jurisdiction, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk.

XV. PARTIES BOUND

74. This Consent Agreement and the accompanying Final Order shall apply to and be binding upon the EPA, the Respondent, Respondent's officers and directors (in their official capacity) and Respondent's successors and assigns. By his or her signature below, the person signing this Consent Agreement on behalf of Respondent acknowledges that he or she is fully authorized to enter into this Consent Agreement and to bind the Respondent to the terms and conditions of this Consent Agreement and the accompanying Final Order.


XVI. EFFECTIVE DATE

75. The effective date of this CAFO is the date on which it is filed with the Regional Hearing Clerk after signature by the Regional Judicial Officer or Regional Administrator.

For Respondent:

Lehigh and Northampton Transportation Authority

Date: 6/10/08

By: 
ARMANDO V. GRECO
EXECUTIVE DIRECTOR

For Complainant:

United States Environmental Protection Agency, Region III

Date: _____

By:

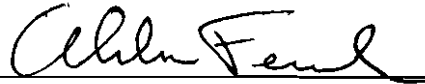


Joyce A. Howell
Sr. Assistant Regional Counsel

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

6/18/08
Date

By:



Abraham Ferdas, Director
Waste and Chemicals Management
Division, EPA Region III

ATTACHMENT A
Scope of Work for Lehigh and Northampton Transportation Authority (LANTA)
Supplemental Environmental Project

LANTA will purchase three hybrid mid-size sport utility vehicles (SUVs) for use in its service fleet. The SUVs will be used by three of LANTA’s operations supervisors, in the exercise of their duties, including supervision of bus operators, on-road monitoring of systems operations, incident/response/crash investigation, drive training, passenger information/data collection, and community outreach. The vehicles will replace two SUVs purchased in 1995, and one full size sedan purchased in 2001, which are currently being used by such personnel. The replaced vehicles will be immediately retired from service after purchase of the hybrid SUVs and sold by LANTA through a public bidding process, in accordance with applicable laws and regulations. The current vehicles are being replaced in accordance with LANTA’s vehicle replacement schedule and are part of the current capitol program. LANTA will also amend its replacement schedule to require the purchase of three additional hybrid vehicles immediately following the capitol program under which this SEP will be performed.

The estimated cost of each hybrid SUV is \$35,000, or \$15,000 more than a non-hybrid vehicle. The amount of fossil fuels saved over the life of the vehicle (measured as 100,000 miles) is summarized below.

Type of Vehicle	EPA Estimated Miles Per Gallon	Anticipated Miles of Lifetime Use	Total Fuel Used
2008 Ford Escape 4WD Duratec 3.0L VG Gas Engine	17 miles per gallon (city)	100,000	5,882.3
2008 Ford Escape 4WD - Hybrid 2.3L I4 Atkinson cycle Engine and electric motor	29 miles per gallon (city)	100,000	3,448.2

This represents an approximate savings of 2,434.1 gallons of fuel per unit.

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

In the Matter of:	:		
	:		
Lehigh and Northampton Transportation Authority	:	U.S. EPA Docket No. RCRA-03-2008-0047	
	:		
Respondent,	:	Proceeding under Section 9006 of the Resource Conservation and Recovery Act, as amended,	
	:	42 U.S.C. § 6991e	
1060 Lehigh Street Allentown, PA 18103	:		
	:		
Facility.	:		

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FINAL ORDER

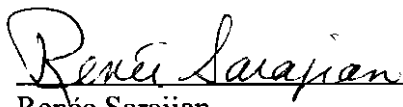
Complainant, the Director of the Waste and Chemicals Management Division, U.S. Environmental Protection Agency - Region III, and Respondent, Lehigh and Northampton Transportation Authority, have executed a document entitled "Consent Agreement" which I hereby ratify as a Consent Agreement in accordance 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 the Consolidated Rules of Practice and, based on the representations in the Consent Agreement, having determined that the penalty agreed to in the Consent Agreement is based on a consideration of the factors set forth in Section 9006(c) - (e) of

RCRA, 42 U.S.C. § 6991e(c) - (e), it is hereby ordered that Respondent pay a civil penalty in the amount of \$5,583.00 in accordance with the Consent Agreement and comply with the terms and conditions of this Consent Agreement.

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

Date: 6/24/08



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

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

In the Matter of:

Lehigh and Northampton
Transportation Authority

Respondent,

1060 Lehigh Street
Allentown, PA 18103

Facility.

U.S. EPA Docket No.
RCRA-03-2008-0047

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

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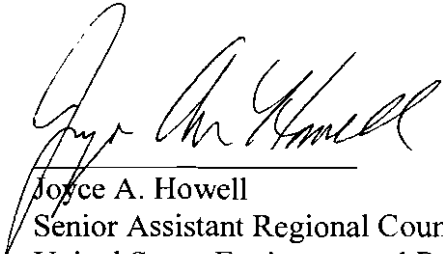
CERTIFICATE OF SERVICE

I certify that on the date noted below, I sent by Federal Express, a copy of the CONSENT AGREEMENT AND FINAL ORDER to the addressee listed below. The original and two copies of the same were hand-delivered to the Regional Hearing Clerk, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103-2029.

Kent H. Herman, Esq.
King, Spry, Herman, Freund and Faul, LLC
One West Broad Street
Suite 700
Bethlehem, PA 18018

Date:

June 30, 2008


Joyce A. Howell

Senior Assistant Regional Counsel
United States Environmental Protection Agency