

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

In the Matter of:	:	
	:	
Southeastern Pennsylvania Transportation Authority (SEPTA) 1234 Market Street Philadelphia, PA 19107	:	U.S. EPA Docket Number RCRA-03-2008-0375
Respondent,	:	
	:	
SEPTA Fern Rock Rail Shop 11th Street & Grange Street Philadelphia, PA EPA ID No. PAD981104326	:	
	:	
SEPTA Victory Avenue 103 Victory Avenue Upper Darby, PA EPA ID No. PA0000850933	:	
	:	
SEPTA Comly Garage Comly Street & Penn Street Philadelphia, PA EPA ID No. PAD981742620	:	
	:	
SEPTA Allegheny Garage Allegheny Avenue & 27th Street Philadelphia, PA EPA ID No. PAD981742687	:	
	:	
SEPTA Woodland Shop 50th Street & Woodland Avenue Philadelphia, PA EPA ID No. PAD981104268	:	
	:	
SEPTA 69th Street Shop Victory Avenue	:	

SEPTA 69th Street Shop	:
Victory Avenue	
Upper Darby, PA	:
EPA ID No. PAD122995111	
	:
SEPTA Callowhill Garage	
59th Street & Callowhill Street	:
Philadelphia, PA	
EPA ID No. PAD981742448	:
	:
SEPTA Frontier Garage	
1100 W. Ridge Pike	:
Conshohocken, PA	
EPA ID No. PAD982565236	:
	:
SEPTA Midvale Garage	
4301 Wissahickon Ave.	:
Philadelphia, PA	
EPA ID No. PAD987310430	:
	:
Facilities.	:


FINAL ORDER

Complainant, the Director, Land and Chemicals Division, U.S. Environmental Protection Agency - Region III, and Respondent, Southeastern Pennsylvania Transportation Authority (“SEPTA”), 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 Sections 3008(a) and 9006(a) and (c) of the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6928(a) and 6991e(a) and (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 Sections 3008(a)(3) and (g) and 9006(c)-(e) of RCRA, 42 U.S.C. §§ 6928(a)(3) and (g) and 6991e(c)-(e), **IT IS HEREBY ORDERED** that Respondent pay a civil penalty of One Hundred Sixty Nine Thousand Five Hundred Twenty-Seven Dollars (\$169,527.00), perform the Supplemental Environmental Project, 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.

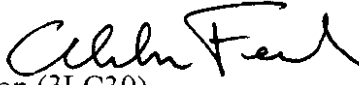
Date: 9/26/08


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

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

SUBJECT: Transmittal Memorandum
Consent Agreement and Final Order
In the Matter of Southeastern Pennsylvania
Transportation Authority
Docket No. RCRA-03-2008-0375

FROM: William C. Early 
Regional Counsel (3RC00)

Abraham Ferdas, Director 
Land and Chemicals Division (3LC30)

TO: Renee Sarajian
Regional Judicial Officer (3RC00)

The attached Consent Agreement and Final Order (“CAFO”) have been negotiated pursuant to Section 3008(a) and 9006(a) of the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6928(a) and 6991e(a), 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).

The CAFO resolves violations of RCRA Subtitle C and I, the authorized Pennsylvania Hazardous Waste Management Regulations (“PaHWMR”), 25 Pa. Code, Chapters 260a-266a, 266b, and 268a-270a, and Pennsylvania’s Authorized UST Management Program, Chapter 245 of Title 25, by Southeastern Pennsylvania Transportation Authority (“SEPTA” or “Respondent”) in connection with its management of hazardous waste at certain facilities including its ownership of underground storage tanks located at such facilities as indicated in the CAFO. Please refer to the CAFO for further details concerning the violations at each Facility.

Under the terms of the settlement, Respondent will pay a civil penalty in the amount of \$169,527.00 and perform a pollution reduction Supplemental Environmental Project (“SEP”) in the amount of \$1,125,000. This settlement was determined after consideration of the statutory factors set forth in Section 3008(a)(3) and (g) of RCRA, 42 U.S.C. § 6928(a)(3) and (g), with specific reference to EPA’s October 1990 RCRA Civil Penalty Policy (“RCRA Penalty Policy”); the statutory factors set forth in Section 9006(c) -(e) of RCRA, 42 U.S.C. § 6991e(c) - (e), with specific reference to the “U.S. Penalty Guidance for Violation of UST Regulations” dated November, 1990 (“UST Penalty Policy”); and EPA’s 1998 SEP Policy.

We concur with the terms of the enclosed Consent Agreement and Final Order. Accordingly, we recommend that you sign the Final Order and return it to the Office of Regional Counsel for further processing.

cc: Louis F. Ramalho (3RC30)
Donna R. Daly, Esq.
Counsel for SEPTA

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

In the Matter of:	:	
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Southeastern Pennsylvania Transportation Authority (SEPTA) 1234 Market Street Philadelphia, PA 19107	:	U.S. EPA Docket Number RCRA-03-2008-0375
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Respondent,	:	
SEPTA Fern Rock Rail Shop 11th Street & Grange Street Philadelphia, PA EPA ID No. PAD981104326	:	
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SEPTA Victory Avenue 103 Victory Avenue Upper Darby, PA EPA ID No. PAD000850933	:	
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SEPTA Comly Garage Comly Street & Penn Street Philadelphia, PA EPA ID No. PAD981742620	:	
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SEPTA Allegheny Garage Allegheny Avenue & 27th Street Philadelphia, PA EPA ID No. PAD981742687	:	
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SEPTA Woodland Garage 50th Street & Woodland Avenue Philadelphia, PA EPA ID No. PAD981104268	:	
	:	
SEPTA 69th Street Shop Victory Avenue Upper Darby, PA EPA ID No. PAD122995111	:	

SEPTA Callowhill Garage	:	
59 th Street & Callowhill Street	:	
Philadelphia, PA	:	
EPA ID No. PAD981742448	:	
	:	
SEPTA Frontier Garage	:	
1100 W. Ridge Pike	:	
Conshohocken, PA	:	
EPA ID No. PAD982565236	:	Proceeding under Sections 3008(a)
	:	and (g) and 9006 of the Resource
SEPTA Midvale Garage	:	Conservation and Recovery Act,
4301 Wissahickon Ave.	:	as amended, 42 U.S.C. § 6928(a)
Philadelphia, PA	:	and (g) and § 6991e.
EPA ID No. PAD987310430	:	
	:	
Facilities.	:	
	:	

CONSENT AGREEMENT

I. Preliminary Statement

1. This Consent Agreement is entered into by the Director, Land and Chemicals Division (formerly known as the Waste and Chemicals Management Division), U.S. Environmental Protection Agency, Region III (“EPA”, “Agency” or “Complainant”) and Southeastern Pennsylvania Transportation Authority (“SEPTA” or “Respondent”) pursuant to Sections 3008(a) and 9006(a) of the Solid Waste Disposal Act, commonly known as the Resource Conservation and Recovery Act (“RCRA”) of 1976, as amended by *inter alia*, the Hazardous and Solid Waste Amendments of 1984 (collectively referred to hereinafter as “RCRA”), 42 U.S.C. §§ 6928(a) and 6991e(a), and 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, including, specifically, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3). This Consent Agreement (“CA”) and the accompanying Final Order (“FO”), hereinafter jointly referred to as this “CAFO”, address alleged violations by Respondent of Subtitle C of RCRA and the Pennsylvania Hazardous Waste Management Regulations (“PaHWMR”), 25 Pa. Code, Chapters 260a-266a, 266b, and 268a-270a, which were authorized by EPA on November 27, 2000 (65 Fed. Reg. 57734 (September 26, 2000)). On March 22, 2004, EPA authorized revisions to PaHWMR, which did not make any changes to the November 27, 2000 PaHWMR that are relevant to the violations set forth herein. The PaHWMR incorporate, with certain exceptions, specific provisions of Title 40 of the 1999 Code of Federal Regulations by reference. *See* 25 Pa. Code § 260.3(e).

In addition, this CAFO addresses alleged violations by Respondent of Subtitle I of RCRA, 42 U.S.C. §§ 6991-6991*m*, and Pennsylvania's Authorized UST Management Program, Chapter 245 of Title 25, which were authorized by EPA on September 11, 2003 (68 *Fed. Reg.* 53520 (September 11, 2003)).

2. Pursuant to § 22.13(b) of the Consolidated Rules of Practice, this CAFO simultaneously commence and conclude an administrative proceeding against Respondent, brought under Sections 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g), and Section 9006(a) and (d) of RCRA, 42 U.S.C. § 6991e(a) and (d), to resolve alleged violations of RCRA at Respondent's facilities located at 11th Street & Grange Street, Philadelphia, Pennsylvania (SEPTA Fern Rock Rail Shop); 103 Victory Avenue, Upper Darby, Pennsylvania (SEPTA Victory Avenue); Comly Street & Penn Street, Philadelphia, Pennsylvania (SEPTA Comly Garage); Allegheny Avenue & 27th Street, Philadelphia, Pennsylvania (SEPTA Allegheny Garage); 50th Street & Woodland Avenue, Philadelphia, Pennsylvania (SEPTA Woodland Shop); Victory Avenue, Upper Darby, Pennsylvania (SEPTA 69th Street Shop); 59th Street & Callowhill Street, Philadelphia, Pennsylvania (SEPTA Callowhill Garage); 1100 W. Ridge Pike, Conshohocken, Pennsylvania (SEPTA Frontier Garage); and 4301 Wissahickon Avenue, Philadelphia, Pennsylvania (SEPTA Midvale Garage) (collectively the "Facilities").
3. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CAFO.
4. Respondent neither admits nor denies the specific factual allegations and conclusions of law set forth in this CA, except as provided in Paragraph 3, above.
5. For the purposes of this proceeding only, Respondent agrees not to contest EPA's jurisdiction with respect to the execution and issuance of this CAFO, or the enforcement of the CAFO.
6. For purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in this CA and any right to appeal the accompanying FO.
7. Respondent consents to the issuance of this CAFO and agrees to comply with its terms. Respondent also consents and agrees to perform a supplemental environmental project ("SEP") as set forth herein.
8. Each party shall bear its own costs and attorney's fees in connection with this proceeding.

Notice of Action to the Commonwealth of Pennsylvania

9. EPA has given the Commonwealth of Pennsylvania, through the Pennsylvania Department of Environmental Protection (“PADEP”), prior notice of the initiation of this action in accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

II. Findings of Facts and Conclusions of Law

In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3), Complainant alleges the following findings of fact and conclusions of law:

10. The United States Environmental Protection Agency’s Office of Administrative Law Judges has jurisdiction over this matter pursuant to RCRA Section 3008(a) and (g), 42 U.S.C. § 6928(a) and (g), RCRA Section 9006, 42 U.S.C. § 6991e, and 40 C.F.R. § 22.1(a)(4) and .4(c).
11. Respondent, SEPTA, is a body corporate and politic that exercises the public powers of the Commonwealth of Pennsylvania as an agency and instrumentality thereof, and is a “person” as defined by RCRA Section 1004(15), 42 U.S.C. § 6903(15), 25 Pa. Code § 260a.10, Section 9001(5) of RCRA, 42 U.S.C. § 6991(5), and 25 PA Code § 245.1.
12. Respondent is and, at all times relevant to this CAFO, has been the “owner” and/or “operator” of the Facilities identified in Paragraph 2, above, as these terms are defined at 25 Pa Code § 260a.1, which incorporates by reference 40 C.F.R. § 260.10.
13. Respondent is and has been, at all times relevant to this CAFO, a “generator” of, and has engaged in the “storage” of materials, described herein, that are “solid wastes” and “hazardous waste” at the Facilities, as those terms are defined by 25 Pa. Code § 260a.1, which incorporates by reference 40 C.F.R. § 260.10, and 25 Pa Code § 260a.10.
14. Respondent is and, at the time of the violations alleged herein, was a “small quantity generator” of hazardous waste, as that term is defined at 40 C.F.R. § 260.10, which is incorporated by reference in 25 Pa Code § 260a.1, at each of the Facilities.
15. Respondent is and has been, at all times relevant to this CAFO, 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 SEPTA Frontier Garage, SEPTA Midvale Garage, and SEPTA Woodland Garage Facilities.

16. On May 16, 2006, June 23, 2006, June 29, 2006 and July 18, 2006, EPA representatives conducted Compliance Evaluation Inspections (“CEIs”) of the SEPTA Comly Garage, SEPTA Frontier Garage, SEPTA Woodland Garage, and SEPTA Midvale Garage Facilities pursuant to RCRA § 3007(a), 42 U.S.C. § 6927(a) and RCRA § 9005, 42 U.S.C. § 6991d.
17. Pursuant to RCRA Section 3007(a), 42 U.S.C. § 6927(a), on November 28, 2006, EPA issued an Information Request to Respondent concerning hazardous wastes generated, stored, transported from and/or otherwise handled by Respondent at the Facilities.

COUNT I

(Owning and/or operating a hazardous waste storage facility without a permit or interim status)

18. The allegations of Paragraphs 1 through 17 of this CAFO are incorporated herein by reference as though fully set forth at length herein.
19. 25 Pa. Code § 270a.1, which incorporates by reference 40 C.F.R. § 270.1(b), and Section 3005(a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e), provide in pertinent part that a person may not own or operate a hazardous waste storage, treatment or disposal facility unless such person has first obtained a permit for the facility or has qualified for interim status for the facility.
20. 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.34(d), provides, in pertinent part, that a generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month may accumulate hazardous waste on-site for 180 days or less without a permit or having interim status provided, among other things, that:
 - (a) The quantity of waste accumulated on-site never exceeds 6000 kilograms;
 - (b) The generator complies with the requirements of 40 C.F.R. Part 265, Subpart 1 (relating to use and management of containers), except for 40 C.F.R. §§ 265.176 and 265.178;
 - (c) The generator complies with the requirements of 40 C.F.R. § 262.34(a)(2) and 40 C.F.R. § 262.34(a)(3), the requirements of 40 C.F.R. Part 265, Subpart C, and the requirements of 40 C.F.R. § 268.7(a)(5);
 - (d) The generator must post next to the telephone the name and telephone number of the emergency coordinator; the location of the fire extinguishers and spill control material, and, if present, fire alarm; and the telephone number of the fire department, unless the facility has a direct alarm; and

- (e) The generator must ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures, relevant to their responsibilities during normal facility operations and emergencies.
21. 40 C.F.R. Part 265, Subparts I and C, are incorporated by reference into 25 Pa. Code Part 265a, with exceptions not relevant to the violations alleged in this CAFO.
 22. 40 C.F.R. Part 265, Subpart I, at § 265.171, provides that, if a container holding hazardous waste is not in good condition, or if it begins to leak, the owner or operator must transfer the hazardous waste from such container to a container that is in good condition, or manage the waste in some other way that complies with the requirements of 40 C.F.R. Part 265.
 23. 40 C.F.R. Part 265, Subpart I, at § 265.173(a), provides that the owner or operator of a hazardous waste facility must always keep containers holding hazardous waste closed during storage, except when it is necessary to add or remove waste.
 24. 25 Pa. Code §§ 265a.173(1) and (3) provides, in pertinent part, that the owner or operator of a hazardous waste facility shall, for purposes of indoor storage of reactive/nonreactive or ignitable/nonignitable hazardous waste, provide container height, width and depth of a group of containers that provides a configuration and aisle spacing which insures safe management and access for purposes of inspection, containment and remedial action with emergency vehicles.
 25. 40 C.F.R. Part 265, Subpart I, at § 265.174, provides that the owner or operator of a hazardous waste facility must inspect at least weekly areas where containers of hazardous waste are stored at the facility.
 26. 40 C.F.R. § 262.34(a)(2) and 40 C.F.R. § 262.34(a)(3) require, respectively, that: (1) the date upon which each period of accumulation begins is clearly marked and visible for inspection on each container; and (2) while the container is being accumulated on-site, each container is labeled or marked clearly with the words, "Hazardous Waste".
 27. From at least January 10, 2005 through July 7, 2006, Respondent had in storage five (5) 30-gallon containers of hazardous waste in its less-than-180-day hazardous waste storage area at the SEPTA Woodland Garage for greater than 180 days.
 28. During the June 23, 2006 CEI, Respondent had in storage hazardous waste in one (1) 30-gallon container that was not in good condition in its less-than-180-day hazardous waste storage area at the SEPTA Woodland Garage.

29. During the June 23, 2006 CEI, Respondent did not have posted next to the telephone at the SEPTA Woodland Garage the name and telephone number of the emergency coordinator, and the location of the fire extinguishers and spill control material.
30. From September 2003 through September 2008, Respondent did not ensure that all employees were thoroughly familiar with proper waste handling and emergency procedures relevant to their responsibilities during normal facility operations and emergencies at the SEPTA Woodland Garage.
31. During the June 23, 2006 CEI, hazardous waste was in storage in two (2) 55 gallon open containers in the SEPTA Woodland Garage's paint booth area, even though it was not necessary at such time to add or remove waste from such containers.
32. From October 1, 2003 through August 11, 2006, Respondent failed to inspect at least weekly its less-than-180-day hazardous waste storage area at the SEPTA Woodland Garage.
33. During the June 29, 2006 CEI, hazardous waste was in storage in one (1) 55 gallon open container in the SEPTA Midvale Garage's paint booth area, even though it was not necessary at such time to add waste to or remove waste from such container. In addition, the open container was not labeled with the words "Hazardous Waste".
34. During the June 29, 2006 CEI, Respondent had in storage hazardous waste in seven (7) 1-gallon containers that were damaged and/or leaking in its less-than-180-day hazardous waste storage area at the SEPTA Midvale Garage.
35. From May 4, 2005 through July 17, 2006, Respondent failed to inspect at least weekly its less-than-180-day hazardous waste storage area at the SEPTA Midvale Garage.
36. From May 4, 2005 through July 17, 2006, containers of hazardous waste that were ignitable and/or reactive were stored in Respondent's less-than-180-day hazardous waste storage area at the SEPTA Midvale Garage in a manner that did not provide a configuration and aisle spacing which insured safe management and access for purposes of inspection, containment and remedial action with emergency vehicles as required by 25 Pa. Code § 265a.173(3).
37. From May 4, 2005 through July 17, 2006, Respondent stored at the SEPTA Midvale Garage hundreds of containers of hazardous waste accepted from Respondent's SEPTA Fern Rock Rail Shop, SEPTA Victory Avenue, SEPTA Comly Garage, SEPTA Allegheny Garage, SEPTA Woodland Garage, SEPTA 69th Street Shop, SEPTA Callowhill Garage and SEPTA Frontier Shop.

38. From May 4, 2005 through July 17, 2006, Respondent was the owner and operator of a “hazardous waste management unit” and a “hazardous waste management facility” as these terms are defined in 25 Pa. Code § 260a.10 and 40 C.F.R. §§ 260.10 and 270.2 at the SEPTA Midvale Garage.
39. From January 10, 2005 through July 7, 2006, “hazardous wastes” generated by Respondent’s SEPTA Woodland Garage were in “storage” in “containers” at the SEPTA Woodland Garage as those terms are defined by 25 Pa. Code § 260a.1, which incorporates by reference 40 C.F.R. § 260.10, and 25 Pa. Code § 260a.10.
40. From May 4, 2005 through July 17, 2006, “hazardous wastes” generated by Respondent’s SEPTA Fern Rock Rail Shop, SEPTA Victory Avenue, SEPTA Comly Garage, SEPTA Allegheny Garage, SEPTA Woodland Garage, SEPTA 69th Street Shop, SEPTA Callowhill Garage and SEPTA Frontier Shop were in “storage” in “containers” at Respondent’s SEPTA Midvale Garage as those terms are defined by 25 Pa. Code § 260a.1, which incorporates by reference 40 C.F.R. § 260.10, and 25 Pa. Code § 260a.10.
41. Respondent failed to qualify for the “less than 180 day” small quantity generator accumulation exemption of 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.34(d), for the activities and/or units at the SEPTA Woodland Garage and the SEPTA Midvale Garage described in Paragraphs 27 through 40, above, by failing to satisfy the conditions for such exemption as set forth in 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.34(d).
42. The SEPTA Woodland Garage and the SEPTA Midvale Garage were, at the time of the activities described in Paragraphs 27 through 40, respectively, hazardous waste treatment, storage or disposal “facilit[ies]”, as the term is defined by 25 Pa. Code § 260a.1, which incorporates by reference 40 C.F.R. § 260.10, and 25 Pa. Code § 260a.10, with respect to the activities and units described in Paragraphs 27 through 40, above.
43. Respondent was required by 25 Pa. Code § 270a.1, which incorporates by reference 40 C.F.R. § 270.1(b), and Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), to obtain a permit for the activities and/or units described in Paragraphs 27 through 40, above.
44. Respondent has never had a permit or interim status pursuant to 25 Pa. Code § 270a.1, which incorporates by reference 40 C.F.R. § 270.1(b), or Section 3005 of RCRA, 42 U.S.C. § 6925, for the storage of hazardous waste at the SEPTA Woodland Garage and the SEPTA Midvale Garage Facilities.

45. Respondent violated 25 Pa. Code § 270a.1, which incorporates by reference 40 C.F.R. § 270.1(b), and Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), by operating two hazardous waste storage facilities without permits or interim status.

COUNT II

(Failure to perform hazardous waste determinations)

46. The allegations of Paragraphs 1 through 45 of this CAFO are incorporated herein by reference as though fully set forth at length.
47. 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.11, provides that a person or municipality who generates a solid waste shall determine if that waste is a hazardous waste using the following procedures:
- (i) He should first determine if the waste is excluded from regulation under 40 C.F.R. § 261.4 .
 - (ii) He must then determine if the waste is listed as a hazardous waste in Subpart D of 40 C.F.R. Part 261.
 - (iii) If the waste is not listed in Subpart D of 40 C.F.R. Part 261, the generator must then determine whether the waste is identified in Subpart C of 40 C.F.R. Part 261 by either:
 - (A) testing the waste, or
 - (B) applying knowledge of the hazardous characteristic of the waste in light of the material or processes used.
48. From October 1, 2003 through January 22, 2008, Respondent generated used aerosol cans, the contents of which had been used for cleaning, painting and other operations at the SEPTA Woodland Garage, SEPTA Frontier Garage and SEPTA Midvale Garage Facilities. The contents of the used aerosol cans exhibited the characteristic of ignitability (D001).
49. From January 2003 through June 15, 2006, Respondent used a ZEP solvent ("ZEP Paint Gun Cleaner - R-5598") to clean its paint guns at the SEPTA Woodland Garage. This activity resulted in the generation by Respondent's SEPTA Woodland Garage of a mixture of spent ZEP solvent and paint residue removed from the paint guns.
50. From January 2003 through June 15, 2006, Respondent's SEPTA Woodland Garage reclaimed the spent ZEP solvent/paint residue mixture described in Paragraph 49, above.

This reclamation activity resulted in the generation by Respondent's SEPTA Woodland Garage of spent filters containing a solid material and still bottoms.

51. From January 2004 through June 15, 2006, Respondent used a ZEP solvent ("ZEP Paint Gun Cleaner - R-5598") to clean its paint guns at the SEPTA Midvale Garage. This activity resulted in the generation by Respondent's SEPTA Midvale Garage of a mixture of spent ZEP solvent and paint residue removed from the paint guns.
52. From January 2004 through June 15, 2006, Respondent's SEPTA Midvale Garage reclaimed the spent ZEP solvent/paint residue mixture described in Paragraph 51, above. This reclamation activity resulted in the generation by Respondent's SEPTA Midvale Garage of spent filters containing a solid material and still bottoms.
53. The aerosol cans, spent filters and still bottoms referred to in Paragraphs 48, 50 and 52, above, are and were "solid wastes" and "hazardous wastes" as these terms are defined in 25 Pa. Code § 260a.1, which incorporates by reference 40 C.F.R. 260.10, and 25 Pa. Code § 260a.10, with exception not relevant hereto.
54. From January 2003 and January 2004, respectively, through June 15, 2006, Respondent's SEPTA Woodland Garage and SEPTA Midvale Garage failed to determine whether the "solid wastes" generated by the activities described in this Count were "hazardous wastes" as provided in 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.11.
55. Respondent violated 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.11 by failing to perform a hazardous waste determination for the solid wastes generated at the SEPTA Woodland Garage, SEPTA Frontier Garage and SEPTA Midvale Garage Facilities.

COUNT III

(Failure to conduct training)

56. The allegations of Paragraphs 1 through 55 of this CAFO are incorporated herein by reference as though fully set forth at length.
57. 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.16(a), requires, in pertinent part:

(1) Facility personnel must successfully complete a program of classroom training or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with the requirements of [40 C.F.R. § 264.16].

(2) This program must be directed by a person trained in hazardous waste management procedures, and must include instruction which teaches facility personnel hazardous waste management procedures (including contingency plan implementation) relevant to the position in which they are employed.

(3) At a minimum, the training program must be designed to ensure that facility personnel are able to respond effectively to emergencies by familiarizing them with emergency procedures, emergency equipment, and emergency systems....

58. 40 C.F.R. § 264.16(b) requires, in pertinent part, that facility personnel successfully complete the training program referred to in 40 C.F.R. § 264.16(a)(1), (2) and (3) within six (6) months after the date of their employment or assignment to a facility, or to a new position at a facility, whichever is later.
59. 40 C.F.R. § 264.16(c) requires, in pertinent part, that facility personnel take part in an annual review of the initial training referred to in 40 C.F.R. § 264.16(a)(1), (2) and (3).
60. 40 C.F.R. § 264.16(d) requires the owner or operator of a facility to maintain the following records at the facility:
- A. Job title for each position at the facility related to hazardous waste management, and the name of the employee filing each job;
 - B. Written job descriptions for each position at the facility related to hazardous waste management;
 - C. Written description of the type and amount of both introductory and continuing training given to each employee in a position related to hazardous waste management; and
 - D. Records that document that the training or job experience required under 40 C.F.R. § 264.16(d)(1), (2), and (3), has been given to and completed by facility personnel.
61. 40 C.F.R. § 264.16(e) provides that the training records on current personnel must be kept until closure of the facility, and training records on former employees must be kept for at least three years from the date the employee last worked at the facility.
62. During the June 29, 2006 CEI and from May 4, 2005 to July 17, 2006, as indicated in Respondent's response to EPA's November 28, 2006 RCRA 3007(a) information request, Respondent was not maintaining at the SEPTA Midvale Garage records to demonstrate that introductory and annual review training had been given to and completed by

SEPTA's personnel in a position related to hazardous waste management, and records that documented the job titles, job descriptions, and job experience for each position at the SEPTA Midvale Garage Facility, as required under 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. §§ 264.16(a), (b), (c), (d) and (e).

63. From May 4, 2005 through July 17, 2006, Respondent failed to ensure that certain personnel at the SEPTA Midvale Garage completed introductory and annual review training, and failed to maintain records that documented the job titles, job descriptions, and job experience for each position at the SEPTA Midvale Garage Facility related to hazardous waste management as required under 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. §§ 264.16(a), (b), (c), (d) and (e).
64. Respondent violated 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. §§ 264.16(a)(1), (2), and (3), (b), (c), (d) and (e), by failing to ensure that certain personnel at the SEPTA Midvale Garage completed introductory and annual review training, and by failing to maintain records that documented the job titles, job descriptions, and job experience for each position at the SEPTA Midvale Garage Facility related to hazardous waste management.

COUNT IV

(Failure to prepare a Contingency Plan)

65. The allegations of Paragraphs 1 through 64 of this CAFO are incorporated herein by reference as though fully set forth at length.
66. 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.52, provides that owners and operators of hazardous waste facilities must prepare a contingency plan in accordance with the requirements provided therein.
67. 25 Pa Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.53(b), provides, in pertinent part, that the owner or operator must submit a copy of the contingency plan and all revisions to the plan to all local police departments, fire departments, hospitals, and State and local emergency response teams that may be called upon to provide emergency services.
68. From May 4, 2005 through July 17, 2006, Respondent had not prepared a contingency plan for the SEPTA Midvale Garage Facility as required by 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.52.
69. From May 4, 2005 through July 17, 2006, Respondent had not submitted a copy of the SEPTA Midvale Garage Facility's contingency plan to all local police departments, fire

departments, hospitals, and state and local emergency response teams that may be called upon to provide emergency services at Respondent's Facility.

70. Respondent violated 25 Pa Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.53(b), by failing to submit a copy of SEPTA Midvale Garage's contingency plan to all local police departments, fire departments, hospitals, and state and local emergency response teams that may be called upon to provide emergency services at Respondent's SEPTA Midvale Garage, and Respondent violated 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.52, by failing to prepare a contingency plan that included all of the requirements of 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.52.

COUNT V

(Failure to keep containers closed)

71. The allegations of Paragraphs 1 through 70 of this CAFO are incorporated herein by reference as though fully set forth at length herein.
72. 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.173(a), provides that the owner or operator must always keep containers holding hazardous waste closed during storage, except when it is necessary to add or remove waste.
73. Based on the activities described in Paragraphs 31 and 33 of this CAFO, above, Respondent violated 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.173(a), by failing to keep hazardous waste containers located at the SEPTA Woodland Garage and SEPTA Midvale Garage closed during storage at those facilities while it was not necessary to add or remove waste from the hazardous waste containers.

COUNT VI

(Damaged and leaking containers of hazardous waste)

74. The allegations of Paragraphs 1 through 73 of this CAFO are incorporated herein by reference as though fully set forth at length herein.
75. 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.171, provides that, if a container holding hazardous waste is not in good condition or if it begins to leak, the owner or operator must transfer the hazardous waste from this container to a container that is in good condition or manage the waste in some other way that complies with the requirements of this part.
76. Based on the activities described in Paragraphs 28 and 34 of this CAFO, above, Respondent violated 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R.

§ 264.171, by failing to transfer hazardous waste from a container not in good condition, or from a container which is beginning to leak, to a container that is in good condition or manage the waste in some other way that complies with the requirements of 40 C.F.R. § 264.171.

COUNT VII

(Failure to maintain adequate aisle space)

77. The allegations of Paragraphs 1 through 76 of this CAFO are incorporated herein by reference as though fully set forth at length herein.
78. 25 Pa. Code §§ 264a.173(1) and (3) provides, in pertinent part, that the owner or operator of a hazardous waste facility shall, for purposes of indoor storage of reactive/nonreactive or ignitable/nonignitable hazardous waste, provide container height, width and depth of a group of containers that provides a configuration and aisle spacing which insures safe management and access for purposes of inspection, containment and remedial action with emergency vehicles.
79. Based on the acts or omissions described in Paragraph 36 of this CAFO, above, from May 4, 2005 through July 17, 2006, Respondent violated 25 Pa. Code §§ 264a.173(1) and (3) by failing to provide container height, width and depth of a group of containers that provides a configuration and aisle spacing which insures safe management and access for purposes of inspection, containment and remedial action with emergency vehicles at the SEPTA Midvale Garage Facility.

COUNT VIII

(Failure to conduct weekly inspections)

80. The allegations of Paragraphs 1 through 79 of this CAFO are incorporated herein by reference as though fully set forth at length herein.
81. 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.174, provides that the owner or operator of a hazardous waste facility must inspect at least weekly areas where containers of hazardous waste are stored at the facility.
82. Based on the activities described in Paragraph 32 of this CAFO, above, Respondent violated 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.174, from October 1, 2003 through August 11, 2006 by failing to inspect at least weekly areas where containers of hazardous waste are stored at the SEPTA Woodland Garage.
83. Based on the activities described in Paragraph 35 of this CAFO, above, Respondent violated 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.174,

from May 4, 2005 through July 17, 2006 by failing to inspect at least weekly areas where containers of hazardous waste are stored at the SEPTA Midvale Garage.

COUNT IX

(Failure to properly manifest off-site shipments of hazardous waste)

84. The allegations of Paragraphs 1 through 83 of this CAFO are incorporated herein by reference as though fully set forth at length.
85. 25 Pa. Code § 262a.10, incorporates by reference 40 C.F.R. Part 262, including the Appendix thereto (Uniform Hazardous Waste Manifest and Instructions (EPA Forms 8700-22 and 8700-22A and their instructions)), which in turn, provides that generators of hazardous waste must complete and use such manifest for both intrastate and interstate transportation.
86. 25 Pa. Code § 262a.20(a)(1) provides that generators must complete the manifest form in its entirety and distribute copies of such manifest in accordance with its instructions. 40 C.F.R. §§ 262.23(a) and (b) provide that the generator must:
 - A. Sign the manifest certification by hand.
 - B. Obtain the handwritten signature of the initial transporter and date of acceptance on the manifest.
 - C. Retain one copy, in accordance with 40 C.F.R. § 262.40(a).
 - D. The generator must give the transporter the remaining copies of the manifest.
87. From May 2005 through September 2005, Respondent transported hazardous waste from its SEPTA Frontier Garage, SEPTA Woodland Garage, SEPTA Comly Garage, SEPTA Fern Rock Shop, SEPTA Victory Avenue, SEPTA Allegheny Garage, SEPTA 69th Street Shop, and SEPTA Callowhill Garage to its SEPTA Midvale Garage without preparing a hazardous waste manifest for such shipments.
88. Respondent violated 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. Part 262, including the Appendix, and 40 C.F.R. § 262.23, as well as 25 Pa. Code § 262a.20(a)(1), by transporting hazardous waste from its SEPTA Frontier Garage, SEPTA Woodland Garage, SEPTA Comly Garage, SEPTA Fern Rock Shop, SEPTA Victory Avenue, SEPTA Allegheny Garage, SEPTA 69th Street Shop, and SEPTA Callowhill Garage to its SEPTA Midvale Garage without preparing a hazardous waste manifest for such shipments.

COUNT X

(Failure to retain copies of signed manifests)

89. The allegations of Paragraphs 1 through 88 of this CAFO are incorporated herein by reference as though fully set forth at length.
90. 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.40(a), provides that a generator shall retain a copy of each manifest signed in accordance with subsection 40 C.F.R. § 262.23(a) for 3 years or until he receives a signed copy from the designated facility which received the waste. The signed copy from the designated facility must be retained as a record for at least 3 years from the date on which the waste was accepted by the initial transporter.
91. Respondent shipped hazardous waste from its SEPTA Woodland Garage for off-site treatment, storage or disposal under Manifests IL10559070 dated December 23, 2002, IL10602590 dated March 5, 2003, PAH254009 dated July 7, 2006, PAH254216 dated August 25, 2006, and Manifest Tracking No. 000742436 dated October 27, 2006, and Manifest Tracking No. 001800334 dated November 1, 2006.
92. Respondent received signed copies of the manifests described in Paragraph 91, above, for its SEPTA Woodland Garage's off-site shipments of hazardous waste from the treatment, storage or disposal facility designated to receive such hazardous wastes prior to EPA's June 23, 2006 CEI.
93. At the time of EPA's inspection on June 23, 2006, Respondent was not retaining a copy of the manifests described in Paragraph 91, above, signed by the owner or operator of the designated facility which received such wastes.
94. Respondent's failure to retain a copy of each manifest signed by the owners or operators of the facilities designated for receipt of its off-site shipments of hazardous waste described in Paragraph 91, above, constitutes violations of 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.40(a).

COUNT XI

(Failure to Submit 2005 Biennial Report)

95. The allegations of Paragraphs 1 through 94 of this CAFO are incorporated herein by reference as though fully set forth at length herein.
96. 25 Pa. Code § 264a.75, which incorporates by reference 40 C.F.R. § 264.75, and 25 Pa. Code § 260a.3(1), provide that the owner or operator of a facility must prepare and

submit a single copy of a biennial report to the Pennsylvania Department of Environmental Protection ("PADEP") by March 1 of each even numbered year. Such report must include, among other things:

- A. The EPA identification number, name, and address of the facility;
- B. The calendar year covered by the report;
- C. For off-site facilities, the EPA identification number of each hazardous waste generator from which the facility received a hazardous waste during the year;
- D. A description and the quantity of each hazardous waste the facility received during the year. For off-site facilities, this information must be listed by EPA identification number of each generator;
- E. The method of treatment, storage, or disposal for each hazardous waste;
- F. The most recent closure cost estimate under 40 C.F.R. § 264.142. . . ;
- G. The certification signed by the owner or operator of the facility or his authorized representative.

- 97. Respondent failed to submit a Biennial Report to PADEP by March 1, 2006 providing the information required by 40 C.F.R. § 264.75, including information relating to the hazardous waste shipments received by the SEPTA Midvale Garage from those off-site facilities referred to in Paragraphs 37 and 87, above.
- 98. Respondent violated 25 Pa. Code § 264a.75, which incorporates by reference 40 C.F.R. § 264.75, by failing to submit a Biennial Report to PADEP by March 1, 2006 for the SEPTA Midvale Garage.

COUNT XII

(Transporting hazardous waste without an EPA identification number)

- 99. The allegations of Paragraphs 1 through 98 of this CAFO are incorporated herein by reference as though fully set forth at length herein.
- 100. 25 Pa. Code § 262a.10 and § 263a.10, which incorporate by reference 40 C.F.R. § 262.12(a) and § 263.12, respectively, provide in pertinent part, that neither a generator nor a transporter may transport hazardous waste without having received an EPA identification number from the Administrator.

101. From May 2005 through September 2005, Respondent was a generator as well as a “transporter,” as that term is defined in 25 Pa. Code § 260a.1, which incorporates by reference 40 C.F.R. § 260.10, who transported hazardous waste from its SEPTA Frontier Garage, SEPTA Woodland Garage, SEPTA Comly Garage, SEPTA Fern Rock Shop, SEPTA Victory Avenue, SEPTA Allegheny Garage, SEPTA 69th Street Shop, and SEPTA Callowhill Garage to its SEPTA Midvale Garage without first having received an EPA identification number for the transportation of such hazardous waste.
102. Respondent violated 25 Pa. Code § 262a.10 and § 263a.10, which incorporate by reference 40 C.F.R. § 262.12(a) and § 263.12, respectively, by transporting hazardous waste from its SEPTA Frontier Garage, SEPTA Woodland Garage, SEPTA Comly Garage, SEPTA Fern Rock Shop, SEPTA Victory Avenue, SEPTA Allegheny Garage, SEPTA 69th Street Shop, and SEPTA Callowhill Garage to its SEPTA Midvale Garage without first having received an EPA identification number for the transportation of such hazardous waste.

COUNT XIII

(Offering hazardous waste to an unpermitted treatment, storage or disposal facility)

103. The allegations of Paragraphs 1 through 102 of this CAFO are incorporated herein by reference as though fully set forth at length herein.
104. 25 Pa. Code § 262a.12, which incorporates by reference 40 C.F.R. § 262.12(c), provides in pertinent part, that a generator must not offer his hazardous waste to treatment, storage or disposal facilities that have not received an EPA identification number.
105. From May 2005 through September 2005, Respondent offered hazardous waste generated at its SEPTA Frontier Garage, SEPTA Woodland Garage, SEPTA Comly Garage, SEPTA Fern Rock Shop, SEPTA Victory Avenue, SEPTA Allegheny Garage, SEPTA 69th Street Shop, and SEPTA Callowhill Garage to its SEPTA Midvale Garage, without first obtaining an EPA identification number for the treatment, storage or disposal of hazardous waste at the SEPTA Midvale Garage.
106. Respondent violated 25 Pa. Code § 262a.12, which incorporates by reference 40 C.F.R. § 262.12(c), by offering hazardous waste generated at its SEPTA Frontier Garage, SEPTA Woodland Garage, SEPTA Comly Garage, SEPTA Fern Rock Shop, SEPTA Victory Avenue, SEPTA Allegheny Garage, SEPTA 69th Street Shop, and SEPTA Callowhill Garage to its SEPTA Midvale Garage, without first obtaining an EPA identification number for the treatment, storage or disposal of hazardous waste at the SEPTA Midvale Garage.

COUNT XIV

(Failure to prepare a closure plan)

107. The allegations of Paragraphs 1 through 106 of this CAFO are incorporated herein by reference as though fully set forth at length herein.
108. 25 Pa. Code § 264a., which incorporates by reference 40 C.F.R. § 264.112(a), provides in pertinent part, that an owner or operator of a hazardous waste management facility must have a written closure plan, with exceptions not relevant to this matter.
109. From May 5, 2005 through July 17, 2006, Respondent did not have a written closure plan for its SEPTA Midvale Garage.
110. Respondent violated 25 Pa. Code § 264a., which incorporates by reference 40 C.F.R. § 264.112(a), by failing to have a written closure plan for its SEPTA Midvale Garage.

COUNT XV

(Improper management of universal waste)

111. The allegations of Paragraphs 1 through 110 of this CAFO are incorporated herein by reference as though fully set forth at length herein.
112. 25 Pa. Code § 266b.1, which incorporates by reference 40 C.F.R. § 273.14(a), provides in pertinent part, that a small quantity handler of universal waste batteries must label or mark clearly each universal waste battery or a container in which the batteries are contained with any one of the following phrases: “Universal Waste–Battery(ies),” or “Waste Battery(ies),” or “Used Batteries”.
113. 25 Pa. Code § 266b.1, which incorporates by reference 40 C.F.R. § 273.13(d)(1), provides in pertinent part, that a small quantity handler of universal waste must manage lamps in a way that prevents releases of any universal waste or component of a universal waste to the environment by containing any lamps in containers or packages that are structurally sound. Such containers must remain closed.
114. 25 Pa. Code § 266b.1, which incorporates by reference 40 C.F.R. § 273.14(e) provides, in pertinent part, that a small quantity handler of universal waste lamps must label or mark clearly each lamp or a container or package in which such lamps are contained with the words “Universal Waste–Lamp(s),” or “Waste Lamp(s),” or “Used Lamp(s)”.
115. Respondent is a “generator” of used “batteries” and used “lamps” described above and such batteries and lamps are “universal waste” as these terms are defined in 25 Pa. Code § 266b.1, which incorporates by reference 40 C.F.R. § 273.9.

116. Respondent is a “small quantity handler of universal waste” as this term is defined in 25 Pa. Code § 266b.1, which incorporates by reference 40 C.F.R. § 273.9.
117. During the June 29, 2006 CEI, Respondent was storing uncontainerized universal waste batteries that were not clearly labeled or marked with the words “Universal Waste–Battery(ies),” or “Waste Battery(ies),” or “Used Batteries,” at the SEPTA Midvale Garage.
118. During the May 16, 2006, June 23, 2006, and June 29, 2006 CEIs, Respondent was storing containers of used lamps that were open and/or the lamps or their containers were not labeled with the words “Universal Waste–Lamp(s),” or “Waste Lamp(s),” or “Used Lamp(s),” at the SEPTA Comly Garage, SEPTA Frontier Garage, SEPTA Woodland Garage and SEPTA Midvale Garage.
119. Respondent violated 25 Pa. Code § 266b.1, which incorporates by reference 40 C.F.R. § 273.14(a), by not labeling or marking clearly each uncontainerized universal waste battery at the SEPTA Midvale Garage with the words “Universal Waste–Battery(ies),” or “Waste Battery(ies),” or “Used Batteries”.
120. Respondent violated 25 Pa. Code § 266b.1, which incorporates by reference 40 C.F.R. §§ 273.13(d)(1) and 273.14(e), by storing universal waste lamps in containers that were open and/or the lamps or containers were not labeled with the words “Universal Waste–Lamp(s),” or “Waste Lamp(s),” or “Used Lamp(s)” at the SEPTA Comly Garage, SEPTA Frontier Garage, SEPTA Woodland Garage and SEPTA Midvale Garage.

COUNT XVI

(Unlawful storage of land disposal restricted wastes)

121. The allegations of Paragraphs 1 through 120 of this CAFO are incorporated herein by reference as though fully set forth at length herein.
122. 25 Pa. Code § 268a.1, which incorporates by reference 40 C.F.R. § 268.50, provides that storage of hazardous waste restricted from land disposal under 40 C.F.R. Part 268 or RCRA § 3004 is prohibited unless the following conditions, inter alia, are met:
 - (A) A generator stores such wastes in containers for the purpose of the accumulation of such quantities of hazardous waste as necessary to facilitate proper recovery, treatment, or disposal and the generator complies with the requirements in 40 C.F.R. § 262.34 and 40 C.F.R. Parts 264 and 265.
 - (B) An owner/operator of a hazardous waste treatment, storage, or disposal facility stores such wastes in containers for the purpose of the accumulation of such

quantities of hazardous waste as necessary to facilitate proper recovery, treatment, or disposal and:

(i) Each container is clearly marked to identify its contents and the date each period of accumulation begins.

123. The hazardous wastes referred to in Paragraphs 27, 28, 31, 33, 34 and 37, above, are “land disposal restricted wastes” within the meaning of 25 Pa. Code § 268a.1, which incorporates by reference 40 C.F.R. §§ 268.34 and 268.40.
124. From January 10, 2005 through July 7, 2006 and from May 4, 2005 through July 17, 2006, Respondent stored land disposal restricted wastes in containers at the SEPTA Woodland Garage and SEPTA Midvale Garage, respectively, as described in Paragraphs 27, 28, 31, 33, 34 and 37, above, without complying with the requirements of 40 C.F.R. § 262.34(d) (which incorporates by reference 40 C.F.R. § 262.34(a)(2) and (3), and 40 C.F.R. Part 265, Subpart I), as required by 25 Pa. Code § 268a.1, which incorporates by reference 40 C.F.R. § 268.50(a)(1) and/or (2).
125. The land disposal restricted wastes stored in containers as described in Paragraphs 27, 28, 31, 33, 34 and 37, above, did not meet applicable treatment standards or prohibition levels, as described in 25 Pa. Code § 268a.1, which incorporates by reference 40 C.F.R. § 268.40, and were not otherwise exempt or excluded from regulation under 25 Pa. Code § 268a.1, which incorporates by reference 40 C.F.R. Part 268, with exceptions not relevant to this CAFO.
126. Respondent violated 25 Pa. Code § 268a.1, which incorporates by reference 40 C.F.R. § 268.50(a)(1) and (2), by storing hazardous waste restricted from land disposal in containers at its SEPTA Woodland Garage and SEPTA Midvale Garage Facilities without meeting the conditions for such storage set forth therein.

COUNT XVII

(Failure to perform release detection on UST No. 007 at SEPTA Woodland Garage)

127. The allegations of Paragraphs 1 through 126 of this CAFO are incorporated herein by reference as though fully set forth at length herein.
128. At the time of the June 23, 2006 CEI, and at all times relevant to the applicable violations alleged herein, three (3) regulated USTs, as described in the following subparagraphs, were located at the SEPTA Woodland Garage:
 - A. a six hundred (600) gallon double-wall steel tank that was installed in or about 1998 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. 007”);

B. a two thousand five hundred (2,500) gallon double-wall fiberglass tank that was installed in or about 1998 and that, at all times relevant hereto, routinely contained diesel, a “regulated substance” as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and 25 PA Code § 245.1 (hereinafter “UST No. 008”); and

C. a two thousand five hundred (2,500) gallon double-wall fiberglass tank that was installed in or about 1998 and that, at all times relevant hereto, routinely contained gasoline, a “regulated substance” as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and 25 PA Code § 245.1 (hereinafter “UST No. 009”).

129. At all times relevant to the applicable violations alleged herein, UST No. 007 has been a “petroleum UST system” and “new tank system” as these terms are defined in 25 PA Code § 245.1, respectively.
130. UST No. 007 is and was, at all times relevant to applicable violations alleged in this CAFO, used to store “regulated substance(s)” at Respondent’s SEPTA Woodland Garage, 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.
131. 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.
132. 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)).

133. From at least January 1, 2005 until the date of this CAFO, the method of release detection selected by Respondent for UST No. 007 has been interstitial monitoring in accordance with 25 PA Code § 245.444(7).
134. From January 1, 2005 until August 1, 2007, Respondent failed to perform interstitial monitoring for UST No. 007 in accordance with § 245.444(7).
135. During the period of time indicated in Paragraph 134, above, Respondent did not use any of the other release detection methods specified in 25 PA Code § 245.442(1)(i)-(iii) and/or § 245.444(4)-(9) on UST No. 007 located at the SEPTA Woodland Garage.
136. Respondent's acts and/or omissions as alleged in Paragraphs 134 and 135, above, constitute violations by Respondent of 25 PA Code §§ 245.441 and .442.

COUNT XVIII

(Failure to perform release detection on USTs No. 001, 002, 003, 004, 005 and 006 at SEPTA Frontier Garage)

137. The allegations of Paragraphs 1 through 136 of this CAFO are incorporated herein by reference as though fully set forth at length herein.
138. At the time of the May 16, 2006 CEI, and at all times relevant to the applicable violations alleged herein, eight (8) USTs, as described in the following subparagraphs, were located at the SEPTA Frontier Garage:
 - A. a two thousand five hundred (2,500) gallon double-wall fiberglass tank that was installed in or about 1989 and that, at all times relevant hereto, routinely contained antifreeze, 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. 001");
 - B. a ten thousand (10,000) gallon double-wall fiberglass tank that was installed in or about 1989 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. 002");
 - C. a ten thousand (10,000) gallon double-wall fiberglass tank that was installed in or about 1989 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. 003");

- D. a two thousand five hundred (2,500) gallon double-wall fiberglass tank that was installed in or about 1989 and that, at all times relevant hereto, routinely contained gasoline, a “regulated substance” as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and 25 PA Code § 245.1 (hereinafter “UST No. 004”);
 - E. a four thousand (4,000) gallon double-wall fiberglass tank that was installed in or about 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. 005”);
 - F. a two thousand five hundred (2,500) gallon double-wall fiberglass tank that was installed in or about 1989 and that, at all times relevant hereto, routinely contained automatic transmission fluid, 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. 006”);
 - G. a two thousand five hundred (2,500) gallon double-wall fiberglass tank that was installed in or about 1989 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. 007”); and
 - H. a two thousand five hundred (2,500) gallon double-wall fiberglass tank that was installed in or about 1989 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. 008”).
139. At all times relevant to the applicable violations alleged herein, USTs No. 001, 002, 003, 004, 005 and 006 have been “petroleum UST systems” and “new tank systems” as these terms are defined in 25 PA Code § 245.1, respectively.
140. From January 31, 2005 through July 5, 2007, USTs Nos. 001, 002, 003, 004, and 005 are and were used to store “regulated substance(s)” at Respondent’s SEPTA Frontier Garage, as defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and 25 PA Code § 245.1, and were not “empty” as that term is defined at 25 PA Code § 245.451.
141. From January 31, 2005 through July 29, 2005, UST No. 006 was used to store “regulated substance(s)” at Respondent’s SEPTA Frontier Garage, as defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and 25 PA Code § 245.1, and was not “empty” as that term is defined at 25 PA Code § 245.451.

142. 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.
143. 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)).
144. From January 31, 2005 through July 5, 2007, the method of release detection selected by Respondent's SEPTA Frontier Garage for USTs No. 001, 002, 003, 004 and 005 was interstitial monitoring in accordance with 25 PA Code § 245.444(7).
145. From January 31, 2005 through July 29, 2005, the method of release detection selected by Respondent's SEPTA Frontier Garage for UST No. 006 was interstitial monitoring in accordance with 25 PA Code § 245.444(7).
146. From January 31, 2005 through July 5, 2007, Respondent's SEPTA Frontier Garage failed to perform interstitial monitoring for USTs No. 001, 002, 003, 004 and 005 in accordance with § 245.444(7).
147. From January 31, 2005 through July 29, 2005, Respondent's SEPTA Frontier Garage failed to perform interstitial monitoring for UST No. 006 in accordance with § 245.444(7).
148. During the relevant periods of time indicated in Paragraphs 146 and 147, above, Respondent did not use any of the other release detection methods specified in 25 PA Code § 245.442(1)(i)-(iii) and/or § 245.444(4)-(9) on USTs No. 001, 002, 003, 004, 005 and 006 located at the SEPTA Frontier Garage.
149. Respondent's acts and/or omissions as alleged in Paragraphs 146 and 147, above, constitute violations by Respondent of 25 PA Code §§ 245.441 and .442.

COUNT XIX

(Failure to test the cathodic protection system on UST No. 007 at SEPTA Woodland Garage)

150. Paragraphs 1 through 149 of this CAFO are incorporated by reference as if fully set forth herein.
151. 25 PA Code § 245.432(2)(i) provides that all UST systems equipped with cathodic protection systems shall be tested for proper operation within 6 months of installation and at least every 3 years thereafter by a qualified cathodic protection tester.
152. UST No. 007 is and was, at the time of the violations alleged herein, a steel UST system equipped with cathodic protection and was used to store regulated substances within the meaning of 25 PA Code § 245.432.
153. From May 1998 to September 30, 2005, Respondent failed to test the cathodic protection system at least once every three years as required by 25 PA Code § 245.432(2)(i) for the UST No. 007 located at the SEPTA Woodland Garage.
154. Respondent's act and/or omission as alleged in Paragraph 153, above, constitutes a violation by Respondent of 25 PA Code § 245.432(2)(i).

COUNT XX

(Failure to provide line leak detection)

155. Paragraphs 1 through 154 of this CAFO are incorporated by reference as if fully set forth herein.
156. At the time of the June 29, 2006 CEI, and at all times relevant to the applicable violations alleged herein, four (4) regulated USTs, as described in the following subparagraphs, were located at the SEPTA Midvale Garage:
 - A. a twenty-five thousand (25,000) gallon double-wall fiberglass tank that was installed in or about 1996 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. 013");
 - B. a twenty-five thousand (25,000) gallon double-wall fiberglass tank that was installed in or about 1996 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. 014");

- C. a twenty-five thousand (25,000) gallon double-wall fiberglass tank that was installed in or about 1996 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. 015”); and
 - D. a twenty-five thousand (25,000) gallon double-wall fiberglass tank that was installed in or about 1996 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. 016”).
157. At all times relevant to the applicable violations alleged herein, USTs Nos. 013 through 016 have been “petroleum UST systems” and “new tank systems” as these terms are defined in 25 PA Code § 245.1, respectively.
158. USTs Nos. 013 through 016 are and were, at all times relevant to applicable violations alleged in this CAFO, used to store “regulated substance(s)” at Respondent’s SEPTA Midvale Garage, as defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and 25 PA Code § 245.1, and were not “empty” as that term is defined at 25 PA Code § 245.451.
159. 25 PA Code § 245.442(2)(i) provides, in pertinent part, that underground piping that routinely contains and conveys under pressure regulated substances shall:
- (A) Be equipped with an automatic line leak detector conducted in accordance with § 245.445(1).
160. 25 PA Code § 245.445(1) requires, in pertinent part, that line leak detector methods that alert the operator to the presence of a leak by restricting or shutting off the flow of regulated substances through piping or triggering an audible or visual alarm may be used only if they detect leaks of 3 gallons per hour at 10 pounds per square inch line pressure within 1 hour.
161. The underground piping for USTs Nos. 013 through 016 routinely contains and conveys under pressure regulated substances..
162. During the June 29 and July 18, 2006 CEIs, the mechanical line leak detectors for the piping associated with USTs Nos. 013 through 016 were not properly installed to meet the requirements of 25 PA Code § 245.445(1).

163. Respondent violated 25 PA Code §§ 245.442(2)(i)(A) and .445(1) by failing to properly install line leak detectors for the piping associated with USTs Nos. 013 through 016 which satisfied the requirements of those provisions.

III. COMPLIANCE ORDER

164. Pursuant to the authority of Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and Section 9006 of RCRA, 42 U.S.C. § 6991e, as applicable, Respondent is hereby ordered to perform the following compliance tasks immediately upon the effective date of this Compliance Order, except as otherwise expressly provided:
- (a) Cease storing hazardous waste at the Facilities except in accordance with a permit or interim status obtained pursuant to RCRA Section 3005, 42 U.S.C. § 6925, and 25 Pa. Code § 270a., or in accordance with the generator accumulation requirements of 25 Pa. Code § 262a.10 or other applicable exemption from permitting requirements under RCRA, EPA's regulations thereunder, or PaHWMR, as applicable.
 - (b) Make a hazardous waste determination on all solid wastes generated at the Facilities at the time such waste is generated as required by 25 Pa. Code § 262a.10, which incorporates by reference 40 CFR §§ 262.11.
 - (c) Prepare and use a hazardous waste manifest for each shipment of hazardous waste generated at the Facilities when shipped for off-site treatment, storage or disposal as required by 40 C.F.R. § 262.20.
 - (d) Retain copies of signed manifests pursuant to 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.40(a).
 - (e) Submit a Biennial Report to PADEP in accordance with 25 Pa. Code § 264a.75 , which incorporates by reference 40 C.F.R. § 264.75 relating to the hazardous waste shipments received by the SEPTA Midvale Garage in 2005 from those off-site facilities referred to in Paragraphs 37 and 87, above.
 - (f) Cease transporting hazardous waste without a EPA identification number.
 - (g) Cease offering hazardous waste to a treatment, storage or disposal facility that has not received an EPA identification number.
 - (h) Properly label or mark clearly all universal waste batteries or their containers in accordance with 25 Pa. Code § 266b.1, which incorporates by reference 40 C.F.R. § 273.14(a).

- (i) Keep all containers of universal waste lamps closed and keep all such lamps or their containers properly labeled or marked as required by 25 Pa. Code § 266b.1, which incorporates by reference 40 C.F.R. §§ 273.13(d)(1) and .14(e).
 - (j) Cease storing hazardous waste restricted from land disposal in containers at the SEPTA Woodland Garage and SEPTA Midvale Garage without meeting the conditions for such storage as set forth in 25 Pa. Code § 268a.1, which incorporates by reference 40 C.F.R. § 268.50(a).
 - (k) Comply with the release detection requirements of 25 PA Code § 245.442(1) for all UST systems located at the SEPTA Woodland Garage and SEPTA Frontier Garage or close such UST systems in accordance with 25 PA Code §§ 245.451–.455.
 - (l) Test the cathodic protection system for UST No. 007 in accordance with 25 PA Code § 245.432(2)(i).
 - (m) Within one hundred twenty (120) days after the effective date of this Compliance Order, properly install the line leak detectors for USTs Nos. 013 through 016 in accordance with 25 PA Code §§ 245.442(2)(i)(A) and .445(1), and thereafter remain in compliance with the line leak detector testing requirements of 25 PA Code §§ 245.442(2)(i) and .445(1).
165. Within forty-five (45) days after the effective date of this Compliance Order, submit to EPA a written statement, accompanied by a certification in the form set forth in Paragraph 167, below, by a responsible corporate officer, certifying whether or not the requirements of Paragraph 164(a) through (l) of this Compliance Order have been completed by Respondent. Within one hundred thirty (130) days after the effective date of this Compliance Order, submit to EPA a written statement, accompanied by a certification in the form set forth in Paragraph 167, below, by a responsible corporate officer, certifying whether or not the requirements of Paragraph 164(m) of this Compliance Order have been completed by Respondent.
166. Information or documents required to be submitted to EPA under this Compliance Order shall be sent to:

Jeanna R. Henry (3LC70)
Environmental Scientist
Office of Land Enforcement
United States Environmental Protection Agency - Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029;

and

Louis F. Ramalho (3RC30)
Sr. Assistant Regional Counsel
United States Environmental Protection Agency - Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029.

167. 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 non-compliance with any requirements of this Compliance Order shall be certified by a responsible corporate officer of the Respondent. A responsible corporate officer means: (1) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or (2) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

The certification of the responsible corporate officer 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 the 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: _____

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

Robert D. France
Operations Manager
Waste Management Program
Pennsylvania Department of Environmental Protection
2 East Main Street
Norristown, PA 19401-4915

and

Walter Nagel
Bureau of Waste Management
Division of Storage Tanks
Pennsylvania Department of Environmental Protection
Rachel Carson State Office Building
400 Market Street, 14th Floor
Harrisburg, PA 17101-2301

CIVIL PENALTY

168. In settlement of Complainant's claims for civil penalties for the violations alleged in this CAFO, Respondent agrees to pay a civil penalty in the amount of One Hundred Sixty Nine Thousand Five Hundred Twenty-Seven Dollars (\$169,527.00) and perform the tasks set forth in the Compliance Order, and complete the Supplemental Environmental Project ("SEP") set forth herein. 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 One Hundred Sixty Nine Thousand Five Hundred Twenty-Seven Dollars (\$169,527.00) 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).
169. 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.
170. 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).

171. 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.
172. 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).
173. The aforesaid settlement amount was based upon Complainant's consideration of a number of factors, including, but not limited to, the statutory factors set forth in RCRA § 3008(a)(3) and (g), 42 U.S.C. § 6928(a)(3) and (g), and EPA's *RCRA Civil Penalty Policy* (June 2003) ("*Penalty Policy*") for the violations alleged in Counts I-XVI, and the statutory factors set forth in RCRA Section 9006(c)-(e), 42 U.S.C. § 6991e(c)-(e), and EPA's *Penalty Guidance for Violations of UST Regulations* ("*UST Guidance*") dated November 4, 1990, for the violations alleged in Counts XVII-XX.
174. Respondent shall pay the civil penalty specified in paragraph 168, above, by electronic funds transfer ("EFT"), as described below, or by sending a cashier's check or certified check, made payable to the order of "**United States Treasury.**"

- a. Checks sent by regular US Postal Service mail delivery must be addressed 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

- b. Checks sent by private commercial overnight delivery service must be sent to:

U.S. Bank
Government Lockbox 979077 U.S. EPA Fines & Penalties
1005 Convention Plaza

Mail Station SL-MO-C2-GL
St. Louis, MO 63101

Contact: (314)418-1028

- c. Any EFT shall be transmitted to:

Wire Transfer

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

Automated Clearing House (ACH) Transfer for receiving U.S. currency (also known as REX or remittance express)

PNC Bank
ABA = 051036706
Account 310006
CTX Format Transaction Code 22 - checking

Environmental Protection Agency
808 17th Street, NW
Washington, DC 20074

Contact for ACH: Jessie White (301)887-6548

There is now an On Line Debit and Credit Card Payment Option, available through the Department of Treasury. This payment option can be accessed from the information below:

WWW.PAY.GOV
Enter sfo 1.1 in the search field

Open the form and complete required fields.

175. All payments by Respondent shall reference its name and address and the Docket Number of this case (RCRA-03-2008-0375). At the time of payment, Respondent shall send a notice of such payment, including a copy of any check or EFT authorization form and EFT transaction record, as appropriate, to:

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

and

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

SUPPLEMENTAL ENVIRONMENTAL PROJECT

176. Respondent shall complete the following SEP, which the parties agree is intended to secure significant environmental or public health protections by off-setting Respondent's volatile organic compound ("VOC") emissions into the atmosphere through the use of renewable wind powered energy in place of fossil fuel derived non-renewable energy. Respondent's pollution reduction SEP will substantially reduce the generation of carbon dioxide, sulphur dioxide and nitrous oxide emissions into the atmosphere. Not more than one hundred sixty-five (165) days after receiving a true and correct copy of this CAFO, Respondent shall enter into a contractual agreement to purchase approximately 152 million kilowatt-hour ("kWh") wind powered energy to be used by Respondent.
177. The SEP shall be implemented for two years commencing on or before March 1, 2009 and ending by no later than February 28, 2011.
178. The total SEP Expenditures for this SEP which Respondent is required to make shall not be less than ONE MILLION ONE HUNDRED TWENTY-FIVE THOUSAND DOLLARS (\$1,125,000.00) for the purchase of approximately 152 million kWh of renewable wind powered energy by Respondent in lieu of non-renewable fossil-fuel derived energy during the period commencing on or before March 1, 2009 and ending by no later than February 28, 2011. Respondent shall provide documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report.

179. Respondent hereby certifies that, as of the date of 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 case. 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.
180. Beginning on the 15th day of the 3rd full calendar month after the commencement of the SEP, Respondent shall submit to EPA quarterly status reports regarding its performance of the SEP. Such quarterly reports shall continue to be submitted for the SEP until the SEP Completion Report is approved by EPA as described in Paragraph 186.b., below.
181. Each quarterly status report shall contain the following information: 1) a description of the performance of the SEP in the past quarter and the actions taken by Respondent towards the continued implementing of the SEP; 2) a schedule and description of all activities scheduled for the following quarter reporting period; 3) a description of any problems and/or delays encountered during the past quarter or anticipated to occur in the future; and 4) a description of any actions taken to prevent or mitigate such problems and (if applicable) a proposed modified performance schedule.
182. Respondent shall submit a SEP Completion Report to EPA no later than NINE HUNDRED SEVENTY (970) DAYS after the effective date of this CAFO. The SEP Completion Report shall contain the following information:
- a. A detailed description of the SEP as implemented, describing how the SEP has fulfilled all of the requirements described in the SEP;
 - b. A description of any operating problems encountered and the solutions utilized by Respondent to address such problems;
 - c. 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 SEP Expenditures in accordance with Paragraph 184, below. 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, "SEP Expenditures" shall include the actual costs for the purchase of approximately 152 million kWh of renewable wind powered energy by Respondent in lieu of non-renewable fossil-fuel derived energy for two consecutive years commencing on or before March 1, 2009 and ending by no later than February 28, 2011.

- d. Certification in accordance with Paragraph 167 of this CAFO that the SEP has been fully implemented pursuant to the provisions of this CAFO, and
 - e. A description and a quantitative and qualitative estimation of the environmental and public health benefits resulting from implementation of the SEP.
183. Failure to submit the SEP Completion Report required by Paragraph 182, above, shall be a violation of this CAFO and Respondent shall become liable therefore for stipulated penalties pursuant to Paragraph 190, below.
184. In itemizing its costs in the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all SEP Expenditures. For purposes of this paragraph, “acceptable documentation” for itemizing SEP Expenditures includes invoices, purchase orders, canceled checks, or other documentation that specifically identifies and itemizes the SEP Expenditures of 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.
185. Respondent shall maintain for inspection by EPA the original records pertaining to the 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 201 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 of Remittance Upon Satisfaction of Settlement Conditions for the SEP as provided in Paragraph 201 of this CAFO. In all documents or 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 this 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 167 of this CAFO.
186. After receipt of the SEP Completion Report described in Paragraph 182, above, EPA shall:
- a. Notify Respondent in writing of any deficiency in the SEP Completion Report itself (“Notice of Deficiency”) and grant an 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 190 herein.
187. 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 below in Paragraphs 188 and 189 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 190 herein.

DISPUTE RESOLUTION

188. If EPA issues a written Notice of Disapproval rejecting a SEP Completion Report pursuant to Paragraph 186, 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 thirty (30) days from the receipt by the EPA of the objection by Respondent (“Dispute Resolution Period”) to resolve and reach an agreement on the matter in dispute. If an agreement cannot be reached within such thirty (30) day Dispute Resolution Period, EPA shall provide to Respondent a written Statement of Decision and the rationale therefor.
189. 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 by Respondent as provided in Paragraph 188, above, stipulated penalties shall be due and payable by Respondent to EPA in accordance with Paragraph 190 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 purposes of the stipulated penalty provisions set forth in Paragraph 190.c., 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 188, above, but shall instead run from the date on which Respondent receives EPA’s Statement of Decision pursuant to Paragraph 188, 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.

STIPULATED PENALTIES

190. In the event that Respondent fails to comply with any of the terms or conditions of this CA relating to the performance of the SEP as described in Paragraphs 176 to 187, above,

and to the extent that the SEP Expenditures pursuant to this CA (“Approved SEP Expenditures”) do not equal or exceed the amount of the SEP Expenditures required to be incurred under Paragraph 178 of this CA, Respondent shall be liable for stipulated penalties according to the provisions set forth 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 of FIVE HUNDRED EIGHT THOUSAND FIVE HUNDRED SEVENTY NINE (\$508,579.00) DOLLARS;
- b. If the SEP is not completed in accordance with Paragraphs 176-187, 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 90% of the SEP Expenditures required to be incurred under Paragraph 178 of this CA were expended on the SEP, Respondent shall not be liable for any stipulated penalty;
- c. If the SEP is completed satisfactorily in accordance with Paragraphs 176-187 but the Respondent spends less than 90% of the amount of the SEP Expenditures required to be incurred under Paragraph 178 of this CA, Respondent shall pay as an additional penalty the difference between the amount of the proposed penalty that was mitigated on account of Respondent’s performance of the SEP (i.e., \$508,579.00) and one-half of the amount spent by Respondent to complete the SEP calculated as follows:

$$\text{\$508,579.00} - (\text{“minus”}) \frac{1}{2} \text{ of the Approved SEP Expenditures} =$$
$$\text{(\text{“equals”}) Stipulated Penalty.}$$
- d. If the SEP is completed in accordance with Paragraphs 169-179, and the Respondent spent at least 90% of the Actual SEP Expenditures required to be incurred under Paragraph 178 of this CA, Respondent shall not be liable for any stipulated penalty;
- e. For failure to submit the SEP Completion Report required by Paragraph 182, above, Respondent shall pay a stipulated penalty of FIVE HUNDRED DOLLARS (\$500) for each day after the deadline set forth in Paragraph 182 until the report is submitted.

191. 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 188 and 189 of this CAFO, if applicable.

192. Stipulated penalties for subparagraphs 190.c, above, 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. Such stipulated penalties shall not accrue during the Dispute Resolution Period under this CAFO.
193. 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 with Paragraphs 168 through 175, above.
194. 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 agreement or of the statutes and regulations upon which this agreement is based, or for Respondent's violation of any applicable provision of law.

LANGUAGE TO BE INCLUDED IN PUBLIC STATEMENTS

195. Any public statement, oral or written, in print, film or other media, made by Respondent, making reference to this SEP shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for violations of Subtitles C and I of the Resource Conservation and Recovery Act, 42 USC §§ 6921-6939e and §§ 6991-6991m, the authorized Pennsylvania Hazardous Waste Management Regulations ("PaHWMR"), 25 Pa. Code, Chapters 260a - 270a, and the authorized underground storage tank regulations set forth at Title 25, Pennsylvania Code, Chapter 245. "

PROVISIONS IN EVENT OF DELAY OR ANTICIPATED DELAY

196. 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 TEN (10) 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 and of no effect as to the particular incident involved and constitute a waiver of the Respondent's right to seek an extension of the time for performance of its obligations under this CAFO.
197. 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 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.

198. 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.
199. 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 197 of this CAFO. Delay in achievement of one interim step shall not necessarily justify or excuse delay in achievement of subsequent steps.

SATISFACTION OF SETTLEMENT CONDITIONS

200. 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 the 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.
201. 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 that Respondent has performed fully the conditions set forth in this CAFO and paid all penalty amounts due pursuant to the terms of this CAFO.

FULL AND FINAL SATISFACTION

202. This CAFO constitutes a settlement by EPA of its claims for civil penalties pursuant to Sections 3008(a) and (g) and 9006(a) of RCRA, 42 U.S.C. §§6928(a) and (g) and 6991e(a), for the violations alleged in this CAFO.

RESERVATION OF RIGHTS

203. 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

204. 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

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

ENTIRE AGREEMENT

206. This Consent Agreement and the attached Final Order 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 Consent Agreement and the attached Final Order.

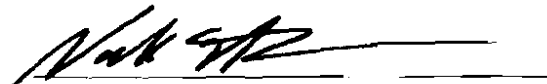
EFFECTIVE DATE

207. This CAFO shall become effective upon filing with the Regional Hearing Clerk.

For Respondent:

Southeastern Pennsylvania
Transportation Authority

September 18, 2008
Date


by: Mr. Nicholas Staffieri, Esquire
General Counsel

For Complainant:

U.S. Environmental Protection Agency,
Region III

9/22/08
Date




Louis F. Ramalho
Senior Assistant Regional Counsel

After reviewing the forgoing 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.

9/24/08
Date

By:



Abraham Ferdas, Director,
Land and Chemicals Division
EPA Region III

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the date listed below, the original of the foregoing Consent Agreement and Final Order, Docket No. RCRA-03-2008-0375, was filed with the Regional Hearing Clerk, U.S. EPA - Region III, 1650 Arch Street, Philadelphia, Pennsylvania, 19103-2029, and that a true and correct copy was sent to the following parties:

Overnight mail:

DONNA R. DALY, ESQ.
Legal Department, SEPTA
1234 Market Street, 5th Fl.
Philadelphia, PA 19107

9/26/08
Date



Louis F. Ramalho
Sr. Assistant Regional Counsel
U.S. EPA - Region III
1650 Arch Street
Philadelphia, PA 19103-2029