

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

JUL 31 1992
PHILA, PA

In the Matter of:)
)
Government of the District of Columbia)
Executive Office of the Mayor)
1350 Pennsylvania Avenue, NW, Suite 316)
Washington, D.C. 20004)

U.S. EPA Docket Number
RCRA-03-2010-0071

RESPONDENT,)

District of Columbia Department of)
Youth Rehabilitation Services)
8300 Riverton Court)
Laurel, Maryland 20724)

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

FACILITY.)

CONSENT AGREEMENT

CONSENT AGREEMENT

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

This CA and the Final Order (collectively "CAFO"), resolve violations of RCRA Subtitle I, 42 U.S.C. §§ 6991-6991m, and the State of Maryland's federally authorized underground storage tank program by Respondent in connection with its underground storage tanks at Respondent's facility located at 8300 Riverton Court, Laurel, Maryland (the "Facility").

Effective July 30, 1992, pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c, and 40 C.F.R. Part 281, Subpart A, the State of Maryland was granted final authorization to administer a state underground storage tank management program *in lieu* of the Federal underground storage tank management program established under Subtitle I of RCRA, 42 U.S.C. §§ 6991-6991i. The provisions of the Maryland underground storage tank management program, through this final authorization, have become requirements of Subtitle I of RCRA and are, accordingly, enforceable by EPA pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e. Maryland's authorized underground storage tank program regulations are administered by the Maryland Department of

the Environment ("MDE"), and are set forth in the Code of Maryland Regulations, Title 26, Subtitle 10, and will be cited as "COMAR" followed by the applicable section of the regulations.

GENERAL PROVISIONS

1. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CAFO.
2. Respondent neither admits nor denies the specific factual allegations and conclusions of law set forth in this CAFO, except as provided in Paragraph 1, above.
3. Respondent agrees not to contest EPA's jurisdiction with respect to the execution of this Consent Agreement ("CA"), the issuance of the attached Final Order ("FO"), or the enforcement thereof, and Respondent admits the jurisdictional allegations set forth in this CAFO.
4. For the purposes of this proceeding only, Respondent hereby expressly waives its right to a hearing on any issue of law or fact set forth in this CA and any right to appeal the accompanying FO.
5. Respondent consents to the issuance of this CAFO and the Settlement Conditions Document ("SCD"), and agrees to comply with its terms and conditions set forth therein. The settlement agreed to by the parties in this CAFO and the SCD reflects the desire of the parties to resolve this matter without litigation. This CAFO and SCD resolve whatever liability for civil penalties Respondent may have for the violations alleged in the Factual Allegations and Conclusions of Law.
6. Respondent shall bear its own costs and attorney's fees.
7. The provisions of this CAFO and SCD shall be binding upon Respondent, and its officers, directors, employees, successors and assigns.
8. This CAFO and SCD shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit, nor does this CAFO constitute a waiver, suspension or modification of the requirements of RCRA Subtitle I, 42 U.S.C. §§ 6991-6991m, or any regulations promulgated thereunder.
9. Complainant shall have the right to institute further actions to recover appropriate relief if Complainant obtains evidence that the information provided and/or representations made by Respondent to EPA regarding matters at issue in the CAFO are false or, in any material respect, inaccurate. Respondent is aware that the submission of false or misleading information to the United States government may subject Respondent to separate civil and/or criminal liability.

10. EPA has given the State of Maryland and the District of Columbia prior notice of the issuance of this CAFO in accordance with Section 9006(a)(2) of RCRA, 42 U.S.C. § 6991e(a)(2). This Agreement can only be enforced by the parties specified in this Agreement, their legal representatives, and assigns. This Agreement shall be unenforceable by third parties and shall not be construed to create third party beneficiary rights.

FACTUAL ALLEGATIONS AND CONCLUSIONS OF LAW

11. The United States Environmental Protection Agency - Region III ("EPA" or the "Region") and EPA's Office of Administrative Law Judges have jurisdiction over this matter pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e, 40 C.F.R. Part 280 and 40 C.F.R. § 22.1(a)(4) and .4(c).
12. At all times relevant to this CAFO, Respondent has been the "owner" and/or "operator," as those terms are defined in Section 9001(3) and (4) of RCRA, 42 U.S.C. § 6991(3) and (4), and COMAR § 26.10.02.04B(37) and (39), of the "underground storage tanks" ("USTs") and "UST systems" as those terms are defined in Section 9001(10) of RCRA, 42 U.S.C. § 6991(10), and COMAR § 26.10.02.04B(64) and (66), located at the Facility described herein.
13. Respondent is a "person" as defined in Section 9001(5) of RCRA, 42 U.S.C. § 6991(5), and COMAR § 26.10.02.04B.(40).
14. On September 23, 2008, EPA performed a Compliance Evaluation Inspection ("CEI") at Facility. At the time of the September 23, 2008 CEI, and at all times relevant to the violations alleged herein, thirteen (13) USTs were located at the Facility as described in the following subparagraphs:

Oak Hill Central Administration Building

- A. A five hundred fifty (550) gallon fiberglass reinforced plastic tank that was installed in or about 1991, and that, at all times relevant hereto, routinely contained and was used to store diesel fuel, a "regulated substance" as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and COMAR § 26.10.02.04B(48) (hereinafter "UST No. 1");

Oak Hill Shop Building

- B. An five hundred fifty (550) gallon fiberglass reinforced plastic tank that was installed in or about 1967, and that, at all times relevant hereto, routinely contained and was used to store diesel fuel, a "regulated substance" as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and COMAR § 26.10.02.04B(48) (hereinafter "UST No. 2");

Oak Hill Modular Building

- C. A one thousand (1000) gallon fiberglass reinforced plastic tank that was installed in or about 1991, and that, at all times relevant hereto, routinely contained and was used to store diesel fuel, a "regulated substance" as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and COMAR § 26.10.02.04B(48) (hereinafter "UST No. 3");

Old Forest Haven Power Plant

- D. A five hundred fifty (550) gallon steel tank that was installed in or about 1967, and that, at all times relevant hereto, routinely contained and was used to store diesel fuel, a "regulated substance" as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and COMAR § 26.10.02.04B(48) (hereinafter "UST No. 4");

Forest Haven Central Administration Building

- E. A one thousand (1,000) gallon steel tank that was installed in or about 1967, and that, at all times relevant hereto, routinely contained and was used to store diesel fuel, a "regulated substance" as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and COMAR § 26.10.02.04B(48) (hereinafter "UST No. 5");
- F. A one thousand (1,000) gallon steel tank that was installed in or about 1967, and that, at all times relevant hereto, routinely contained and was used to store diesel fuel, a "regulated substance" as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and COMAR § 26.10.02.04B(48) (hereinafter "UST No. 6");

Forest Haven, Patricia Morse Nursery

- G. A one thousand (1000) gallon steel tank that was installed in or about 1967, and that, at all times relevant hereto, routinely contained and was used to store diesel fuel, a "regulated substance" as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and COMAR § 26.10.02.04B(48) (hereinafter "UST No. 7");

Forest Haven, Spruce Cottage

- H. A one thousand (1000) gallon steel tank that was installed in or about 1967, and that, at all times relevant hereto, routinely contained and was used to

store diesel fuel, a "regulated substance" as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and COMAR § 26.10.02.04B(48) (hereinafter "UST No. 8"); and

Forest Haven, Elliot Infirmary

- I. A five hundred fifty (550) gallon steel tank that was installed in or about 1967, and that, at all times relevant hereto, routinely contained and was used to store diesel fuel, a "regulated substance" as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and COMAR § 26.10.02.04B(48) (hereinafter "UST No. 9").
15. At all times relevant to the violations alleged herein, USTs Nos. 1 and 3 have been "petroleum UST systems" and "new tank systems" as these terms are defined in COMAR § 26.10.02.04B(43), (31), respectively.
16. At all times relevant to the violations alleged herein, USTs Nos. 2 and USTs Nos. 4 through 9 have been "petroleum UST systems" and "existing tank systems" as these terms are defined in COMAR § 26.10.02.04B(43), (19).

COUNTS 1 - 6

(Failure to meet the UST system performance standards for spill prevention on USTs Nos. 2, 4, 5 and 7 through 9)

17. The allegations of Paragraphs 1 through 16 of this CAFO are incorporated herein by reference.
18. COMAR § 26.10.03.01A provides, in pertinent part, that all owners and operators of new UST systems shall meet certain requirements in order to prevent releases due to structural failure, corrosion, or spills and overfills for as long as the UST system is used to store regulated substances.
19. COMAR § 26.10.03.01D(1) provides that owners and operators of new UST systems shall use certain spill and overfill prevention equipment to prevent spilling and overfilling associated with product transfer to the UST system as follows:
 - (a) Spill prevention equipment that shall prevent release of product into the environment when the transfer hose is detached from the fill pipe by use of a spill catchment basin; and
 - (b) Overfill prevention equipment that shall:
 - (i) Automatically shut off flow into the tank when the tank is more than 95 percent full, or

- (ii) Alert the transfer operator when the tank is no more than 90 percent full by restricting the flow into the tank or triggering a high level alarm.
20. The requirements set forth at COMAR § 26.10.03.01D(1), above, have been incorporated by reference into COMAR § 26.10.03.02D, and are therefore applicable to existing UST systems as well as new UST systems.
21. From at least April 1, 2005 through August 6, 2009, from at least April 1, 2005 through August 18, 2009, and from at least April 1, 2005 through August 20, 2009, Respondent failed to install certain spill prevention equipment for UST No. 2, USTs Nos. 4, and 7 through 9, and UST No. 5, respectively, as described in COMAR § 26.10.03.01D, and such USTs did not fall within the exception in COMAR § 26.10.03.01D(2) and such USTs were not in compliance with the closure requirements of COMAR § 26.10.10.
22. Respondent's acts and/or omissions as alleged in Paragraph 21, above, constitute violations by Respondent of COMAR § 26.10.03.01A and D.

COUNTS 7 - 14

(Failure to meet the UST system performance standards for overfill prevention on USTs Nos. 2 through 9)

23. The allegations of Paragraphs 1 through 22 of this CAFO are incorporated herein by reference.
24. From at least April 1, 2005 through August 6, 2009, from at least April 1, 2005 through August 18, 2009, and from at least April 1, 2005 through August 20, 2009, Respondent failed to install certain overfill prevention equipment for USTs Nos. 2 and 3, UST No. 4 and USTs Nos. 7 through 9, and UST No. 5 and 6, respectively, as described in COMAR § 26.10.03.01D, and such USTs did not fall within the exception in COMAR § 26.10.03.01D(2) and such USTs were not in compliance with the closure requirements of COMAR § 26.10.10.
25. Respondent's acts and/or omissions as alleged in Paragraph 24, above, constitute violations by Respondent of COMAR § 26.10.03.01A and D.

COUNT 15-20

(Failure to provide corrosion protection on USTs Nos. 4 through 9)

26. Paragraphs 1 through 25 of this CAFO are incorporated by reference as if fully set forth herein.

27. COMAR § 26.10.03.02A. provides that, no later than December 22, 1998, all UST systems containing a regulated substance shall comply with one of the following requirements:
- (1) New UST system performance standards of COMAR § 26.10.03.01.
 - (2) The upgrading requirements in COMAR § 26.10.03.02B-D.
 - (3) Closure requirements under COMAR § 26.10.10., including applicable requirements for corrective action under COMAR § 26.10.03.09.
28. COMAR § 26.10.03.02B.(1) provides, in pertinent part, that steel tanks shall be upgraded to meet one of the following requirements in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory: (2) cathodic protection; (3) and internal lining combined with cathodic protection.
29. Respondent's USTs Nos. 4 through 9 routinely contained regulated substances, and at all times relevant to the violations alleged herein, were made of metal/steel in contact with ground.
30. From at least April 1, 2005 through August 18, 2009, and from at least April 1, 2005 through August 20, 2009, Respondent's steel UST No. 4 and USTs Nos. 7 through 9, and USTs Nos. 5 and 6, respectively, routinely contained regulated substances and such steel USTs did not comply with the new UST system performance standards of COMAR § 26.10.03.01, the upgrading requirements in COMAR § 26.10.03.02B-D, and such USTs were not in compliance with the closure requirements under COMAR § 26.10.10., including applicable requirements for corrective action under COMAR § 26.10.03.09.
31. Respondent's act and/or omission as alleged in Paragraph 30, above, constitute violations by Respondent of COMAR §§ 26.10.03.02A. and B.

COUNT 21-27

(Failure to provide corrosion protection on the metal/steel piping for USTs Nos. 2 and 4 through 9)

32. The allegations of Paragraphs 1 through 31 of this CAFO are incorporated herein by reference.
33. COMAR § 26.10.03.01A provides, in pertinent part, that all owners and operators of new UST systems shall meet the requirements of COMAR § 26.10.03.01 to ensure that releases due to corrosion are prevented for as long as the UST system is used to store regulated substances.
34. COMAR § 26.10.03.01C provides, *inter alia*, that piping that is in contact with the ground shall be properly designed, constructed and protected from corrosion in accordance with a

code of practice developed by a nationally recognized association or independent testing laboratory as specified in COMAR § 26.10.03.01A(1)-(3).

35. The requirements set forth at COMAR § 26.10.03.01C, above, have been incorporated by reference into COMAR § 26.10.03.02C, and are therefore applicable to existing UST systems as well as new UST systems.
36. The piping for the UST No. 2 and USTs Nos. 4 through 9 is, and at all times relevant to the violations alleged herein, was made of metal/steel in contact with ground and used to store regulated substances.
37. From at least April 1, 2005 through August 6, 2009, from at least April 1, 2005 through August 18, 2009, and from at least April 1, 2005 through August 20, 2009, Respondent failed to provide corrosion protection for the metal/steel piping associated with UST No. 2, UST No. 4 and USTs Nos. 7 through 9, and USTs Nos. 5 and 6, respectively, as required by COMAR § 26.10.03.01C(2), (3), and/or (4).
38. Respondent's act and/or omission as alleged in Paragraph 37, above, constitutes a violation by Respondent of COMAR § 26.10.03.01.A and C.

COUNT 28 - 36

(Failure to register USTs Nos. 1 through 9)

39. The allegations of Paragraphs 1 through 38 of this CAFO are incorporated herein by reference.
40. COMAR § 26.10.03.03A. provides that, on or before July 1, 1990, owners, operators, or person-in-charge of an underground storage tank shall register the underground storage tank with the Maryland Department of the Environment ("MDE").
41. COMAR § 26.10.03.03C. provides, in pertinent part, that owners, operators, or person-in-charge of an underground storage tank installed after July 1, 1990 shall also register the underground storage tank with MDE.
42. Respondent installed and/or brought into use USTs Nos. 1 through 9 on or before July 1, 1990, as described in Paragraphs 14.B., C. and E through M, respectively.
43. Respondent installed and/or brought into use USTs Nos. 1 through 9 after July 1, 1990, as described in Paragraphs 14.A. and D, respectively.
44. From at least April 1, 2005 through August 6, 2009, from at least April 1, 2005 through August 18, 2009, and from at least April 1, 2005 through August 20, 2009, Respondent failed to register UST Nos. 1 through 3, UST No. 4 and USTs Nos. 7 through 9, and USTs Nos. 5 and 6 at the Facility with MDE.

45. Respondent's failure to register with MDE that UST Nos. 1 through 9 were installed and/or brought into use, as described in Paragraphs 42 through 44, constitutes violations by Respondent of COMAR § 26.10.03.03A. and C.

CIVIL PENALTY

46. In settlement of Complainant's claims for civil penalties for the violations alleged in this CA, Respondent agrees to pay a civil penalty in the amount of Seventy Three Thousand Four Hundred Eighty-Nine Dollars (\$73,489.00) and perform the SEP set forth in the SCD.
47. The civil penalty of Seventy Three Thousand Four Hundred Eighty-Nine Dollars (\$73,489.00) set forth in Paragraph 46, above, shall be paid within one hundred twenty (120) calendar days on which this CAFO and the attached SCD is mailed or hand-delivered to Respondent.
48. The aforesaid settlement amount was based upon Complainant's consideration of a number of factors, including, but not limited to, the statutory factors of the seriousness of Respondent's violations and any good faith efforts by Respondent to comply with all applicable requirements as provided in RCRA Section 9006(c) and (e), 42 U.S.C. § 6991e(c) and (e), and with EPA's Penalty Guidance for Violations of UST Regulations ("UST Guidance") dated November 4, 1990.
49. Respondent shall pay the civil penalty set forth in Paragraph 46, above, by sending either a cashier's check, certified check, or electronic wire transfer, in the following manner:
- A. All payments by Respondent shall reference Respondent's name and address, and the Docket Number of this action, *i.e.*, RCRA-03-2010-0071;
 - B. All checks shall be made payable to "United States Treasury";
 - C. All payments made by check and sent by regular mail shall be addressed to:

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

Contact: Eric Volck 513-487-2105

- D. All payments made by check and sent by overnight delivery service shall be addressed for delivery 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

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

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

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

Federal Reserve Bank of New York
ABA = 021030004
Account No. = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read:
D 68010727 Environmental Protection Agency

- G. All electronic payments made through the Automated Clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury REX / Cashlink ACH Receiver
ABA = 051036706
Account No.: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - Checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court

Riverdale, MD 20737

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

H. On-Line Payment Option:

WWW.PAY.GOV/PAYGOV

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

I. Additional payment guidance is available at:

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

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

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

Louis F. Ramalho
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency - Region III
1650 Arch Street
Philadelphia, PA 19103-2029.

50. 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. Accordingly, Respondent's failure to make timely payment or to comply with the conditions in this CAFO shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.
51. Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a true and correct copy of this CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within one hundred twenty (120) 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).

52. 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.
53. A late payment penalty of six percent (6%) per year will be assessed monthly on any portion of the civil penalty that remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). The late payment penalty on any portion of the civil penalty that remains delinquent more than ninety days shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

FULL AND FINAL SATISFACTION

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

RESERVATION OF RIGHTS

55. 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

56. Nothing in this CA shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341, or other applicable law.

AUTHORITY TO BIND THE PARTIES

57. 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.

- G. No diking, draining, filling, dredging or removal of any wetland or wetlands is permitted. "Wetland" means any portion of the Easement Property defined by State or federal law as a wetland at the time of any activity which may impact such portion of the Easement Property.
- H. No signs, billboards, or outdoor advertising displays may be erected, displayed, placed or maintained on the Easement Property.
- I. The Easement property shall not be subdivided or partitioned.
- J. There shall be no use of the Easement Property or any portion thereof to satisfy compensatory mitigation requirements under 33 U.S.C. § 1344 or any successor or replacement of the foregoing.

The Respondent and the prospective grantee may impose additional restrictions and/or prohibitions on the Easement Property as long as such additional restrictions and/or prohibitions are not inconsistent with the terms and condition of the CAFO and this SCD.

FOR RESPONDENT:

Government of the District of Columbia

6/23/10
Date

Peter J. Nickles
Peter J. Nickles
Attorney General for the District of Columbia

ENTIRE AGREEMENT

58. This Consent Agreement and the attached Final Order and Settlement Conditions Document 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

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

For Respondent:

Government of District of Columbia

6/23/10
Date

Peter J. Nickles
Peter J. Nickles
Attorney General for District of Columbia

For Complainant:

U.S. Environmental Protection Agency,
Region III

6/24/10
Date

Louis F. Ramalho
Louis F. Ramalho
Senior Assistant Regional Counsel

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

6/24/10
Date

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

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

In the Matter of:)
)
Government of the District of Columbia)
Executive Office of the Mayor)
1350 Pennsylvania Avenue, NW, Suite 316)
Washington, D.C. 20004)

RESPONDENT,)

District of Columbia Department of)
Youth Rehabilitation Services)
8300 Riverton Court)
Laurel, Maryland 20724)

FACILITY.)

U.S. EPA Docket Number
RCRA-03-2010-0071

Proceeding Under Section 9006 of the
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as amended, 42 U.S.C. Section 6991e

FINAL ORDER

FINAL ORDER

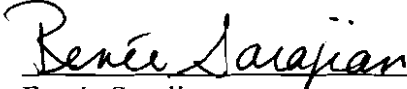
Complainant, the Director, Land and Chemicals Division, U.S. Environmental Protection Agency - Region III, and Respondent, Government of the District of Columbia, have executed a document entitled "Consent Agreement" which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22. The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated herein as if set forth at length.\

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

§ 6991e(c) ("RCRA"), and having determined, based on the representations of the parties in the attached Consent Agreement, that the civil penalty agreed to therein was based upon a consideration of the factors set forth in Section 9006(c) and (e) of RCRA, 42 U.S.C. § 6991e(c) and (e), **IT IS HEREBY ORDERED** that Respondent pay a civil penalty of Seventy-Three Thousand Four Hundred Eighty-Nine Dollars (\$73,489.00) in accordance with the payment provisions set forth in the attached Consent Agreement, and comply with each of the additional terms and conditions as specified in the attached Consent Agreement.

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

Date: 6/29/10



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

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

In the Matter of:

Government of the District of Columbia)
Executive Office of the Mayor)
1350 Pennsylvania Avenue, NW, Suite 316)
Washington, D.C. 20004)

RESPONDENT,

District of Columbia Department of)
Youth Rehabilitation Services)
8300 Riverton Court)
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as amended, 42 U.S.C. Section 6991e

SETTLEMENT CONDITIONS DOCUMENT

I. INTRODUCTION

This Settlement Conditions Document ("SCD") is part of the settlement described in the attached Consent Agreement and Final Order in the above-captioned administrative enforcement action initiated by the U.S. Environmental Protection Agency - Region III ("Complainant", "Agency" or "EPA") against the Government of the District of Columbia ("Respondent") pursuant to Section 9006 of the Resource Conservation and Recovery Act ("RCRA"), as amended, 42 U.S.C. § 6991e, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension

of Permits ("Consolidated Rules"), 40 C.F.R. Part 22, including, specifically, 40 C.F.R. §§ 22.13(b) and .18(b)(2) and (3). The purpose of this document is to set forth the terms and conditions of, and the tasks Respondent agrees to undertake in implementing, the Supplemental Environmental Project ("SEP") as described herein and incorporated into the Consent Agreement and Final Order as part of the settlement of the above-captioned matter. The terms, conditions and tasks set forth in this SCD exceed the requirements of Subtitle I of RCRA, 42 U.S.C. §§ 6991-6991i, and the Code of Maryland Regulations, Title 26, Subtitle 10. The following documents collectively constitute a single integrated settlement agreement as contemplated by the May 1, 1998 "EPA Final Supplemental Environmental Projects Policy": this SCD; the attached Consent Agreement signed by the parties; and the attached Final Order signed by the Regional Administrator of U.S. EPA - Region III or his designee (collectively referred to as the "CAFO").

In the attached Consent Agreement, Respondent agrees to perform fully the SEP described in Section III, below, which the parties agree is intended to secure significant protection of the environment and the health and welfare of the public.

The effective date of this SCD is the date on which the accompanying Final Order, signed by the Regional Administrator of U.S. EPA Region III or his designee, is filed with the Regional Hearing Clerk of U.S. EPA Region III. This SCD shall remain in effect until the Respondent has either (1) fully satisfied the conditions set forth in this SCD and the Regional Administrator for U.S. EPA Region III or his designee has issued a "Letter of Remittance Upon Satisfaction of Settlement Conditions" pursuant to Section VII, below, or (2) the conditions set

forth herein have not been fully satisfied by Respondent and full payment by Respondent of the penalty amounts provided in Section V, below, has been received by EPA as directed by issuance of a written demand by the Agency.

II. SETTLEMENT CONDITIONS - SEP

A. Consistent with and as provided in the May 1, 1998 "Final Supplemental Environmental Projects Policy", the SEP described herein is an environmentally beneficial project which Respondent has agreed to undertake in settlement of the above-captioned enforcement action, but which Respondent is not otherwise legally required to perform. Furthermore, the SEP described herein is intended and designed, *inter alia*, to advance the protection of human health and the environment, a stated goal of RCRA.

B. Nothing in this SCD, including performance of the SEP described herein, shall be construed as prohibiting, altering or in any way limiting EPA's authority to enforce any applicable law, regulation or requirement at Respondent's facility captioned above or Respondent's duty to comply with such law, regulation or requirement, except as may be provided herein.

C. The total expenditure by Respondent for the SEP described in Section III, below, shall not be less than **\$275,586.00**.

D. Any public statement made by Respondent which refers to the SEP described in Section III, below, 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 alleged violations of the Resource Conservation and Recovery Act, Subtitle I.

E. This SCD shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit, nor shall it be construed to constitute EPA approval of any measures undertaken under the terms of this Agreement.

F. Respondent hereby certifies that Respondent is not required to perform or develop the SEP by any federal, state or local law, regulation or requirement, nor is Respondent required to perform or develop the SEP by agreement, grant or as injunctive relief in any other case. Respondent further certifies that it has not received, and is not presently negotiating to receive, credit in any other federal, state or local enforcement action for the performance of the SEP.

III. DESCRIPTION OF SUPPLEMENTAL ENVIRONMENTAL PROJECT

A. Land Conservation Easement - Respondent shall establish a perpetual land conservation easement ("Land Conservation Easement") in accordance with the terms and conditions of this SCD. The purpose of the Land Conservation Easement is to conserve and preserve the existing natural characteristics of the property, and, to the extent hereinafter provided, prevent the use or development of the property for any purpose or in any manner that would conflict with the existing natural characteristics of the property in its condition as open-space.

1. Licensed Contractor(s)

a. Respondent shall use only a "licensed contractor" or "licensed contractors" to perform the SEP as fully described herein. The term "licensed contractor" shall

mean an individual who is licensed by State of Maryland or the Government of the District of Columbia to perform the necessary tasks to implement the SEP in each respective jurisdiction.

b. Respondent shall provide EPA with the name, address, and telephone number of each licensed contractor it proposes to use for the SEP implementation and documentation that each licensed contractor satisfies the requirements described below in Section III.A.1.c. of this SCD. No later than thirty days after entering into a contract with the licensed contractor(s) concerning performance of any of the SEP tasks, Respondent shall provide EPA with a copy of such contract.

c. At a minimum, each licensed contractor selected by Respondent to perform any task to implement the SEP shall:

- (i) have no less than 3 years experience in performing the task(s); and
- (ii) have a trained and experienced staff for the performance of such task(s).

2. SEP Overview.

a. Respondent shall implement the SEP in accordance with the criteria, terms, and conditions and procedures set forth herein. The SEP shall be designed and implemented to conserve and preserve undeveloped land, as provided in Section III.A. of this SCD, above, by conveyance of a Deed of Conservation Easement by Respondent to a third-party non-profit tax exempt organization, within the meaning of Section 501(c)(3) of the United States Internal Revenue Code, 42 U.S.C.S. § 501(c)(3), with certain restrictive covenants to run with

the land in perpetuity. The SEP shall satisfy the following criteria, terms, conditions and procedures:

(i). Respondent shall identify a parcel of land located near Laurel, Maryland that it currently owns to be the subject of the conservation easement (the "Easement Property"). Respondent shall retain an independent licensed land surveyor who shall identify the specific metes and bounds of the Easement Property to be the subject of the conveyance of a Deed of Conservation Easement in accordance with the terms and conditions of this SEP.

(ii). Respondent shall retain an independent licensed appraiser who shall determine the value of a conservation easement on the Easement Property to be conveyed under Deed of Conservation Easement in accordance with the terms and conditions of this SEP (the "Conservation Easement"). The appraisal of the Conservation Easement shall not include the value of any wetlands located on the Easement Property. Respondent shall select an appraiser from the list of appraisers provided in Attachment "A" to this SCD.

(iii). Respondent shall retain an independent licensed environmental assessor who shall perform, at a minimum, a Phase I environmental assessment and, if necessary, a Phase II environmental assessment to determine that the Easement Property is free and clear of contamination or other environmental concerns. The environmental assessor(s) must follow site assessment standards and principles established by the ASTM, specifically ASTM Standards E1527-00 and E1903-97.

(iv). Respondent shall retain an independent licensed contractor(s) who shall identify the presence, boundaries, and nature of any wetlands that may be located on the Easement Property.

(v). Respondent shall select the prospective grantee of the Conservation Easement from list of approved grantees set forth in Section XI of this SCD;

(vi) Respondent shall enter into a Memorandum of Understanding ("MOU") with the prospective grantee selected by Respondent. The MOU shall describe the nature and scope of the Conservation Easement pursuant to this SEP, including, but not limited to, the activities that are prohibited and restricted on the Easement Property under the Conservation Easement. All prohibitions and restrictions and other terms and conditions of the Conservation Easement shall run with the land in perpetuity as set forth in Section XII of this SCD.

(vii). Respondent shall execute and record a Deed of Conservation Easement substantially in the same form and format as provided in Attachment "B" to this SCD in accordance with the Uniform Environmental Covenants Act as adopted by the State of Maryland on October 1, 2005.

b. Within thirty (30) days of the effective date of the CAFO and this SCD, Respondent shall provide to EPA the following:

(i) a Proposed Schedule for performance of the SEP which satisfies the requirements provided in Section III.A.2.a.(i)-(vii) of this SCD, above; and

(ii) a Proposed Plan describing the procedures by which the SEP shall be performed, which, at a minimum, satisfies the requirements provided in Section III.A.2.d. of this SCD below.

c. The Proposed Schedule for the performance of the SEP to be submitted by Respondent shall provide for completion of the requirements provided in Section III.A.2.a.(i)-(v) of this SCD, above, within one hundred eighty (180) calendar days of the effective date of the CAFO and this SCD; the submission to EPA of the proposed MOU and the proposed Deed of Conservation Easement within two hundred ten (210) calendar days of the effective date of the CAFO and this SCD; and a written Final SEP Report in accordance with Section IV.B. of this SCD within 1 year of the effective date of the CAFO and this SCD. Respondent shall commence the SEP in accordance with the schedule set forth in the approved Proposed Schedule.

d. The Proposed Plan shall include the following information: (i) the identity of the Easement Property and the survey of such Easement Property as described in Section III.A.2.(a)(i); (ii) a description of how the SEP satisfies the criteria set forth in Section III.A.2.a.(i)-(vii), above; (iii) the estimated cost of the SEP; (iv) a schedule for performing the SEP, including a schedule for each milestone requirement set forth in Section III.A.2.a.(i)-(vii), above; and (vi) a description of the benefits that will result from the SEP, including an estimate of the SEP value. The Proposed Plan also shall include a certification in accordance with Section VIII of this SCD that: (i) as of the date of the Proposed Plan, 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 agreement, grant, or as injunctive relief award in any

other action in any forum; (ii) the SEP is not a project that Respondent was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in the CAFO; (iii) Respondent has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action; and (iv) Respondent will not receive any reimbursement for any portion of the SEP from any other person or party. EPA may approve or disapprove the Proposed Plan submitted by Respondent in accordance with this Paragraph.

e. EPA may disapprove the Proposed Plan if it determines that the SEP as described in such Proposed Plan does not achieve the terms, conditions and criteria set forth in Section III of this SCD, or does not satisfy EPA's Supplemental Environmental Projects Policy dated May 1, 1998. If EPA disapproves the Proposed Plan, EPA shall provide Respondent with a written explanation of the basis for such disapproval, and EPA shall provide Respondent thirty (30) calendar days from receipt of such written explanation to correct any deficiencies in accordance with Section IV.C.1.b. of this SCD.

f. Upon completion, the SEP must be valued no less than **\$275,586.00**, which shall include the value of the Land Conservation Easement conveyed, and no more than \$41,338.00 in "soft costs" as described herein. The **\$275,586.00** shall not include any expenditures made by Respondent to come into or maintain compliance with applicable federal, state and local laws, regulations or requirements or to institute any corrective/remedial actions at the Facility in accordance with Subtitle I of RCRA, 42 U.S.C. §§ 6991-6991i, and the Code of Maryland Regulations, Title 26, Subtitle 10. In addition, the \$275,586.00 shall not include any expenditures for "soft costs" beyond 15% of the SEP amount of \$275,586.00 (or \$41,338.00).

“Soft costs” are those expenditures associated with the performance of the tasks described in Section III.2. a.(i)-(vii) of this SCD, above, such as, but not limited to, the costs of: conducting the survey, appraisal, environmental assessment(s), wetland determination(s); Conservation Easement valuation; document preparation, title search(es); closing costs; deed recording costs; and, if applicable, real estate transfer taxes. Therefore, “SEP eligible costs” shall consist of “soft costs” capped at 15% of the total required SEP expenditure of \$275,586.00, or \$41,338.00, and the “remaining balance” of the required SEP expenditure in the amount of \$234,248.00 shall be applied to the Conservation Easement.

IV. REPORTS, DOCUMENTATION AND NOTIFICATION

A. STATUS REPORTS

1. Beginning on the 15th day of the 6th full calendar month after the effective date of the CAFO and this SCD, and every six (6) months thereafter, Respondent shall submit to EPA status reports regarding its performance of the SEP. Such status reports shall continue to be submitted for the SEP until the SEP Completion Report is approved by EPA in accordance with Section IV.B. and C. of this SCD, below.

2. Each status report shall contain the following information: a) a description of the work completed; b) a revised schedule, if necessary, and a description of all remaining activities; c) a description of any problems and/or delays recently encountered or anticipated to occur in the future; d) a description of any actions taken to prevent or mitigate such problems and (if applicable) a proposed modified completion schedule; and (e) copy of any and all documents

and reports developed by Respondent or Respondent's contractors pertaining to the performance of the completed tasks listed in Section III.2. a.(i)-(vii) of this SCD.

B. SEP COMPLETION REPORT

1. Respondent shall provide to EPA a SEP Completion Report no later than 1 year from the effective date of the CAFO and this SCD. The SEP Completion Report shall contain the following:

- a. A detailed description of the SEP as implemented, describing how the SEP has fulfilled all of the requirements described herein and in Section III of this SCD, above;
- b. A copy of any and all documents and reports developed by Respondent or Respondent's contractors not submitted to EPA during the Quarterly Reports;
- c. A copy of the MOU by and between the Respondent and the grantee;
- d. A copy of the recorded Deed of Conservation Easement from Respondent to grantee;
- e. 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 eligible costs" as defined in Section III.A.2.f. of this SCD, above. Where the SEP Completion Report includes costs 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, "acceptable documentation" for itemizing "SEP eligible costs" includes invoices, purchase orders, canceled checks, or other documentation that specifically identifies and itemizes the eligible costs of the goods for which payment is being made by Respondent;

- f. Certification, in accordance with Section VIII of this SCD, that the SEP has been fully implemented in accordance with the provisions of this SCD
- g. Certification, in accordance with Section VIII of this SCD, that, as of the date of the SEP Completion Report, Respondent was not required to perform or develop the SEP by any federal, state, or local law or regulation, nor was Respondent required to perform or develop the SEP by agreement, grant, or as injunctive relief award in any other action in any forum; and
- h. A general description of the environmental and public health benefits resulting from the implementation of the SEP, and the specific value of the Conservation Easement.

2. Respondent shall maintain for inspection by EPA the original records pertaining to the costs incurred and expenditures made for 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 by Section VII. of this SCD. 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 by Section VII. of this SCD.

C. EPA REVIEW OF PROPOSED SCHEDULE; PROPOSED PLAN AND SEP COMPLETION REPORT

1. Following EPA's receipt from Respondent the Proposed Schedule, Proposed Plan, and/or the SEP Completion Report, EPA will either:
 - a. issue a written notification to Respondent accepting the Proposed Schedule, Proposed Plan and/or the SEP Completion Report; or
 - b. issue a written notification rejecting the Proposed Schedule, Proposed Plan, and/or the SEP Completion Report, providing EPA's reasons therefore, identifying the deficiencies in the Proposed Schedule, Proposed Plan and/or the SEP Completion Report and granting Respondent thirty (30) days from receipt of such notice to correct any deficiencies. In the event Respondent fails to correct the identified deficiencies within the time allowed, EPA will issue a written notice of disapproval and may seek additional penalties in accordance with Section V of this SCD.
2. If EPA issues a written notice of disapproval rejecting the Proposed Schedule, Proposed Plan and/or the SEP Completion Report pursuant to Section IV.C.1.b. of this SCD, 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 date of receipt by EPA of the objection by Respondent to resolve and reach an agreement on the matter in dispute ("Dispute Resolution"). If an agreement cannot be reached within such thirty (30) day Dispute Resolution period, EPA shall provide to Respondent a written statement of its decision and the rationale therefore.

3. 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 Section IV.C.2, above, additional penalties shall be due and payable by Respondent to EPA in accordance with Section V of this SCD. The submission of an unacceptable Proposed Plan and/or the SEP Completion Report shall be the equivalent of the failure to perform the SEP for purposes of the additional penalty provisions set forth in Section V of this SCD, below, except that the calculation of any such additional penalties shall not run during the pendency of the Dispute Resolution procedure set forth in this Subsection, but shall instead run from the date on which Respondent receives EPA's statement of decision pursuant to Section IV.C.2, 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.

D. NOTIFICATION AND REPORTING

1. Except as otherwise specified herein, whenever this SCD requires notice or submission of reports, information, or documents, such notice or submission shall be provided to the following persons via certified mail, return receipt requested, first class mail, overnight mail (Express or priority), hand-delivery or any reliable commercial delivery service:

a. For EPA:

Louis F. Ramalho
Senior Assistant Regional Counsel (3RC30)
Office of Regional Counsel
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103-2029; and

Melissa Toffel
Enforcement and Compliance Officer (3LC70)
Land and Chemicals Division
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103-2029

b. For Respondent:

Andrew J. Saindon
Assistant Attorney General
Government of the District of Columbia
441 4th Street, N.W.
6th Floor South
Washington, D.C. 20001

2. Either party may substitute another person to receive notice on its behalf or change the address to which notices are to be sent by sending written notification of the substitution or change to the other party.

V. FAILURE TO COMPLETE SATISFACTORILY THE SEP/FAILURE TO SPEND AGREED-UPON AMOUNTS; DELAY IN PERFORMANCE

A. Respondent shall spend at least \$275,586.00 for the SEP. In the event that Respondent fails to comply with any of the terms or provisions of this SCD relating to the performance of the SEP as described in this SCD, or if the total expenditure for the SEP does not

equal or exceed \$275,586.00, Respondent shall be liable for additional penalties of up to, but not exceeding, \$220,469.00, as provided below:

1. Except as provided in Paragraph V.A.2, below, if the SEP has not been satisfactorily completed pursuant to Section III, above, Respondent shall pay an additional penalty of up to \$220,469.00.

2. If the SEP, as described in Sections III and IV, above, is completed satisfactorily and the Respondent certifies, with supporting documentation, that at least 99% of the amount of money which was required to be spent was expended on the SEP (e.g., 99% of \$275,586.00, which is \$272,830.00), Respondent shall not pay any additional penalty.

3. If the SEP, as described in Sections III and IV, above, is completed satisfactorily but the Respondent spends less than 99% of the amount of money which was required to be spent on the SEP, Respondent shall pay as an additional penalty the difference between the amount of the proposed penalty that was mitigated on account of Respondent's agreement to perform the SEP (i.e., \$349,296.00) and 80% of the amount actually spent by Respondent on performance of the SEP, as documented in accordance with Section IV.B. of this SCD and approved by EPA in accordance with Sections IV.C. and VII. of this SCD.

B. If Respondent fails to complete the SEP and/or submit the SEP Completion Report, within 1 year of the effective date of the CAFO and this SCD, Respondent

shall pay an additional penalty of \$500 for each day beyond the deadline established for SEP completion and/or submission of the SEP Completion Report that the SEP remains uncompleted and/or the SEP Completion Report remains outstanding. Except as provided in Section V.D. of this SCD, below, such penalty shall continue to accrue until the completion of the SEP and the submission of the SEP Completion Report.

C. In exercising its discretion or making determinations under this SCD, EPA shall be reasonable considering all of the relevant circumstances. However, all determinations required to be made by EPA under this SCD, including the determination of whether the SEP has been completed satisfactorily, shall be in the sole discretion of EPA. Notwithstanding any other provisions of this SCD, no action or decision by EPA pursuant to this SCD shall constitute final agency action giving rise to any right to judicial review prior to EPA's initiation of judicial action to compel compliance with this SCD, the Consent Agreement or the Final Order.

D. Except as specified in Section IV.C.3., above, additional penalties as set forth in Paragraph B. of this Section V shall begin to accrue on the first day of non-compliance with the specified deadline and shall continue to accrue through the final day of the completion of the activity, or until the limits stated in Paragraph A. of this Section V. are reached. In no event shall the total of all additional penalties, together with any expenditures approved by EPA under Section IV.C.1 a., exceed \$356,839.00. Respondent shall pay any additional penalties within thirty (30) days of receipt of a written demand from EPA for such penalties. The method of payment for any additional penalties as provided herein shall be in accordance with the

requirements for the payment of the civil penalty addressed in the attached Consent Agreement and Final Order.

VI. FORCE MAJEURE

A. If any event occurs which causes or may cause a delay in the completion of the SEP as required under this SCD, Respondent shall notify EPA in writing within 15 days of said event or within 15 days of the date on which Respondent knew or reasonably 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 prevent or minimize the delay, and the timetable by which those measures will be implemented. Respondent shall exercise due diligence to avoid or minimize any such delay. Failure by Respondent to comply with the notice requirements of this Section shall render this Section void and of no effect as to the particular incident involved and constitute a waiver of the Respondent's right to request an extension of its obligation under this SCD based on such incident.

B. If the parties agree that the delay or anticipated delay in complying with this SCD has been or will be caused by circumstances entirely beyond the control of Respondent which could not or cannot be overcome by due diligence (i.e., a "force majeure"), 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 in writing to such extension of time.

C. In the event that EPA, in its sole discretion, does not agree that a delay in achieving compliance with the requirements of this SCD has been or will be caused by a force

majeure, EPA will notify Respondent in writing of its decision. Such a delay shall not be the basis for any extension of time for the performance of Respondent's obligations under this SCD and Respondent may be subject to the payment of additional penalties for such a delay.

D. The burden of proving that any delay is caused by a force majeure shall rest with Respondent. Increased costs or expenses associated with the implementation of actions required by this SCD shall not, in any event, be a basis for changes in this SCD or extensions of time, hereunder.

VII. SATISFACTION OF SETTLEMENT CONDITIONS

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 SCD and any inspections of the work performed under the SEP that EPA reasonably determines are necessary to evaluate compliance. 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 SCD and paid all penalty amounts due pursuant to the terms of this SCD.

VIII. CERTIFICATION REQUIREMENT

Any notice, report, certification, data presentation or other document submitted by Respondent pursuant to this SCD that discusses, describes, demonstrates or supports any finding, or makes any representation concerning either Respondent's compliance or non-compliance with any requirement(s) of this SCD, shall be certified by Respondent as follows:

I certify that the information contained in or accompanying this [type of submission] is true, accurate, and complete. As to [the/those] identified portions of this [type of submission] for

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

Signature: _____
Name: _____
Title: _____

IX. INSPECTION

EPA or authorized representatives of EPA may, at reasonable times during business hours and after giving Respondent reasonable notice, enter any property or facility where the SEP is being implemented to inspect documents, equipment and the property or facility related to compliance with the terms of the SCD. This right of entry is in addition to, and in no way limits, any other rights that EPA may have under any law or regulation. If the SEP is being implemented at a property or facility that is not under the control of the Respondent, Respondent shall arrange for EPA to have access, at reasonable times and with reasonable notice, to any such property or facility where the SEP is being implemented.

X. CLAIM OF CONFIDENTIALITY

Pursuant to 40 C.F.R. § 2.203, Respondent may submit a claim of confidentiality for any document or information submitted under this SCD or under the attached Consent Agreement and Final Order. Failure to make a confidentiality claim at the time the document is submitted

shall constitute a waiver of such claim. Respondent shall not assert a claim of confidentiality with respect to any sampling, monitoring or analytical data.

XI. LIST OF PROSPECTIVE GRANTEES

Respondent may select the prospective grantee of the parcel of land to be conveyed under the SEP from the group of non-profit organizations listed below.

- (1) **Scenic Rivers Land Trust**
- (2) **The Conservation Fund**
- (3) **Patuxent Tidewater Land Trust**
- (4) **The Maryland Environmental Trust**

XII. DURATION OF CONSERVATION EASEMENT

The Conservation Easement to be conveyed under the SEP shall be perpetual. The Conservation Easement shall be an easement in gross and as such shall be assignable by the grantee and shall run with the land as an incorporeal interest in the property, enforceable with respect to the property by the grantee against the grantor and its respective successors and assigns.

XIII. PROHIBITED AND RESTRICTED ACTIVITIES

The following activities shall be restricted and/or prohibited on the Easement Property and set forth in the Deed of Conservation Easement as follows:

- A. Industrial or commercial activities and any right of passage for such purposes.
- B. Agriculture, grazing, and animal husbandry operations.
- C. No construction or placing of any building, mobile home, facility, means of access, fence or other structure shall be permitted on the property, except: pedestrian pathways or stairways constructed with wood, stone, or permeable

surfaces of natural materials shall be permitted to the extent necessary to provide access to the Easement Property from any contiguous property.

- D. No burning, cutting, removal or destruction of trees, shrubs and other woody vegetation (collectively "Vegetation") shall be permitted, except: (1) vegetation that is dead, infested or diseased; (2) vegetation the burning, cutting, removal or destruction of which is necessary to control erosion; (3) vegetation the burning, cutting, removal or destruction of which is necessary to provide reasonable access under item C, above,; and (4) vegetation cut or removed pursuant to a forest management plan that has been approved by the grantee and prepared by a professional engineer.
- E. No materials may be dumped or stored on the Easement Property, including, but not limited to, ashes, trash, garbage, rubbish, abandoned vehicles, abandoned vessels, abandoned appliances, abandoned machinery, containers, drums, etc.
- F. No filling, excavation, dredging, mining or drilling shall be performed on the property, including, but not limited to, removal of soil, sand, gravel, peat, minerals or other materials, and no change in the topography of the Easement Property in any manner shall be permitted except as necessary to prevent or mitigate erosion or as necessary to any conservation management activities otherwise permitted on the Easement Property.

- G. No diking, draining, filling, dredging or removal of any wetland or wetlands is permitted. "Wetland" means any portion of the Easement Property defined by State or federal law as a wetland at the time of any activity which may impact such portion of the Easement Property.
- H. No signs, billboards, or outdoor advertising displays may be erected, displayed, placed or maintained on the Easement Property.
- I. The Easement property shall not be subdivided or partitioned.
- J. There shall be no use of the Easement Property or any portion thereof to satisfy compensatory mitigation requirements under 33 U.S.C. § 1344 or any successor or replacement of the foregoing.

The Respondent and the prospective grantee may impose additional restrictions and/or prohibitions on the Easement Property as long as such additional restrictions and/or prohibitions are not inconsistent with the terms and condition of the CAFO and this SCD.

FOR RESPONDENT:

Government of the District of Columbia

6/23/10
Date

Peter J. Nickles
Peter J. Nickles
Attorney General for the District of Columbia

ENTIRE AGREEMENT

58. This Consent Agreement and the attached Final Order and Settlement Conditions Document 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

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

For Respondent:

Government of District of Columbia

6/23/10
Date

Peter J. Nickles/EAE
Peter J. Nickles
Attorney General for District of Columbia

For Complainant:

U.S. Environmental Protection Agency,
Region III

Date

Louis F. Ramalho
Senior Assistant Regional Counsel

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


Date

By: _____
Abraham Ferdas, Director
Land and Chemicals Division
EPA Region III

FOR COMPLAINANT:

6/24/16
Date

U.S. ENVIRONMENTAL PROTECTION
AGENCY - REGION III



Louis F. Ramalho
Senior Assistant Regional Counsel

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the date listed below, the original of the foregoing Consent Agreement and Final Order, EPA Docket No. RCRA-03-2010-0071, 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 via first class mail to the following:

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Assistant Attorney General
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Date



Louis F. Ramalho
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