

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

REGIONAL HEARINGS CLERK
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In the Matter of:

A 786 Mir Enterprises, Inc.
5213 Juliet Street
Springfield, Virginia 22151

RESPONDENT

Docket No. RCRA-03-2013-0128

Chevron
3303 Plank Road
Fredericksburg, Virginia 22401

CONSENT AGREEMENT

FACILITY.

I. PRELIMINARY STATEMENT

1. This Consent Agreement ("CA") is entered into by the Director, Land and Chemicals Division, U.S. Environmental Protection Agency, Region III ("Complainant"), and A 786 Mir Enterprises, Inc. ("Respondent"), pursuant to Section 9006 of the Solid Waste Disposal Act, commonly known as the Resource Conservation and Recovery Act of 1976, as amended (hereinafter "RCRA"), 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, 40 C.F.R. Part 22 ("*Consolidated Rules of Practice*"). This CA and the accompanying Final Order ("FO") (hereinafter collectively referred to as "CAFO") address violations by Respondent of RCRA and the Virginia Regulations for Underground Storage Tanks, 9 VAC § 25-580-10 *et seq.*, as authorized by EPA pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c.
2. Pursuant to Section 22.13(b) of the *Consolidated Rules of Practice*, this CA and the attached FO simultaneously commence and conclude an administrative proceeding against Respondent, brought under Section 9006 of RCRA, 42 U.S.C. § 6991e, to resolve alleged violations of RCRA at Respondent's facility at 3303 Plank Road, Fredericksburg, Virginia, 22401 ("Facility").

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. 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 any issue of law or fact 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.
8. Respondent shall bear its own costs and attorney's fees in connection with this proceeding.
9. EPA has given the Commonwealth of Virginia prior notice of the initiation of this action in accordance with Section 9006(a)(2) of RCRA, 42 U.S.C. § 6991e(a)(2).
10. The settlement embodied in this CA is based in part upon an analysis of Respondent's ability to pay a civil penalty. This analysis was based upon information submitted to Complainant by Respondent, as listed on Exhibit A to this Agreement. Respondent and its undersigned representative, by such representative's signature to this CA, certify that the information submitted to Complainant regarding Respondent's ability to pay is accurate and not misleading.
11. 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 Findings of Fact and Conclusions of Law are false, or in any material respect, inaccurate.

II. FINDINGS OF FACT 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:

12. Respondent, is, and has been at all times relevant to this CA, the "owner" and "operator," as those terms are defined by Sections 9001(4) and (3) of RCRA, 42 U.S.C. § 6991(4) and (3), and 9 VAC 25-580-10, 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 9 VAC § 25-580-10 at the Facility located at 3303 Plank Road, Fredericksburg, Virginia, 22401.

13. The Facility referred to in Paragraph 12, above, is a gas station, including the underground storage tanks and all associated equipment and structures.
14. Pursuant to 9 VAC § 25-580-10, the term “underground storage tank” or “UST” means, in pertinent part, any one or combination of tanks (including connected underground pipes) that is used to contain an accumulation of regulated substances and the volume of which (including the underground pipes connected thereto) is ten percent (10%) or more beneath the surface of the ground.
15. On April 28, 2009, a duly authorized representative of EPA conducted a Compliance Evaluation Inspection of the Facility (“Inspection”).
16. On August 4, 2009, and February 11, 2011, EPA sent Information Request Letters (“IRLs”) to Respondent pursuant to Section 9005 of RCRA, 42 U.S.C. § 6991d.
17. At the time of the Inspection and at all times relevant hereto, the USTs described in the following subparagraphs were located at the Facility:
 - A. Three 10,000-gallon tanks that were each installed on or about June 1, 1985, 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 9 VAC § 25-580-10 (“Tank 1”, “Tank 2” and “Tank 3”).
 - B. One 10,000-gallon tank that was installed on or about June 1, 1985, 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 9 VAC § 25-580-10 (“Tank 4”).
18. From June 1, 1985, until the date of this CA, each of Tanks 1, 2, 3, and 4 at the Facility has been a “petroleum UST system” and “existing tank system” as these terms are defined in 9 VAC § 25-580-10.
19. Each of Tanks 1, 2, 3, and 4 at the Facility is and was, at all times relevant to the violations alleged herein, used to store “regulated substance(s)” at Respondent’s Facility, as defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and 9 VAC § 25-580-10.

COUNT I
(Failure to Provide Release Detection)

20. The preceding paragraphs are incorporated by reference as though fully set forth herein.
21. 9 VAC § 25-580-140 requires, in pertinent part, that owners and operators of petroleum UST systems provide release detection for tanks and piping that meets the requirements described therein.
22. 9 VAC § 25-580-140.1 requires, with exceptions not applicable to Tanks 1, 2, 3, and 4, that tanks must be monitored at least every thirty days for releases using one of the release detection methods listed in 9 VAC § 25-580-160(4)-(8).
23. From January 2008 through April 2009, the method of release detection for each of Tanks 1, 2, 3, and 4 selected by Respondent was Statistical Inventory Reconciliation (“SIR”) pursuant to 9 VAC § 25-580-160(8).
24. From January 2008 through at least April 2009, Respondent failed to monitor each of Tanks 1, 2, 3, and 4 for releases at least every thirty days using SIR or any other approved method of release detection in accordance with 9 VAC § 25-580-160(4)-(8).
25. Respondent’s acts and/or omissions as alleged in Paragraph 24, above, constitute violations by Respondent of 9 VAC § 25-580-140.1.

COUNT II
**(Failure to Conduct Annual Line Tightness Testing
or Monthly Monitoring of Underground Piping)**

26. The preceding paragraphs are incorporated by reference as though fully set forth herein.
27. 9 VAC § 25-580-140.2 states that underground piping that routinely contains regulated substances must be monitored for releases in a manner that meets the requirements of either 9 VAC § 25-140.2.a. (for pressurized piping) or 9 VAC § 25-580-140.2.b. (for suction piping).
28. 9 VAC § 25-580-140.2.a(2) requires that pressurized piping that conveys regulated substances under pressure have an annual line tightness test conducted in accordance with subdivision 2 of 9 VAC § 25-580-170 or have monthly monitoring conducted in accordance with subdivision 3 of 9 VAC § 25-580-170.

29. The underground piping associated with Tanks 1, 2, 3, and 4 is, and has been at all times relevant to the violations alleged herein, piping that routinely contains regulated substances and conveys regulated substances under pressure.
30. From January 2008 through April 2009, the method of release detection for the piping associated with each of Tanks 1, 2, 3, and 4, selected by Respondent was SIR pursuant to subdivision 3 of 9 VAC § 25-580-170.
31. From January 2008 through at least April 2009, Respondent failed to monitor the piping associated with each of Tanks 1, 2, 3, and 4, for releases at least every thirty days using SIR or any other approved method of release detection in accordance with subdivision 3 of 9 VAC § 25-580-170.
32. From January 2008 through at least April 2009, Respondent failed to conduct an annual line tightness test of the piping associated with each of Tanks 1, 2, 3 and 4, in accordance with subdivision 2 of 9 VAC § 25-580-170.
33. Respondent's acts and/or omissions as alleged in Paragraphs 31 and 32, above, constitute violations by Respondent of 9 VAC § 25-580-140.2.a(2).

COUNT III

(Failure to Conduct Annual Line Leak Detector Tests of Underground Piping)

34. The preceding paragraphs are incorporated by reference as though fully set forth herein.
35. 9 VAC § 25-580-140.2.a(1) requires that underground piping that routinely contains regulated substances under pressure be equipped with an automatic line leak detector conducted in accordance with subdivision 1 of 9 VAC § 25-580-170.
36. Subdivision 1 of 9 VAC § 25-580-170 provides that an annual test of the operation of the automatic line leak detector must be conducted in accordance with the manufacturer's requirements.
37. The pressurized piping associated with each of Tanks 1, 2, 3, and 4 is, and has been, at all times relevant to the violations alleged herein, equipped with automatic line leak detectors.
38. In its response to the August 4, 2009, IRL, Respondent produced records of tests of the automatic line leak detectors for the piping associated with each of Tanks 1, 2, 3, and 4, that were conducted on October 25, 2006, and September 1, 2009.
39. From October 25, 2007, through August 31, 2009, Respondent failed to conduct annual tests of the operation of the automatic line leak detectors for the piping associated with each of Tanks 1, 2, 3, and 4, in accordance with subdivision 1 of 9 VAC § 25-580-170.

40. Respondent's acts and/or omissions as alleged in Paragraph 39 above, constitute violations by Respondent of 9 VAC § 25-580-140.2.a(1).

COUNT IV
(Failure to Provide Adequate Spill Prevention Equipment)

41. The preceding paragraphs are incorporated by reference as though fully set forth herein.
42. 9 VAC § 25-580-60.4 states that, to prevent spilling and overfilling associated with product transfer to the UST system, all existing UST systems must comply with the new UST system spill and overfill prevention equipment requirements specified in subsection 3 of 9 VAC § 25-580-50.
43. 9 VAC § 25-580-50.3(a)(1) requires that, with exceptions not relevant to this matter, owners and operators use spill prevention equipment that will prevent release of product to the environment when the transfer hose is detached from the fill pipe.
44. At the time of the Inspection on April 28, 2009, each spill bucket on Tank 1 and Tank 2 was cracked, rendering each unable to contain spills.
45. In its response to the August 4, 2009, IRL, Respondent produced records documenting repair of each spill bucket on Tank 1 and Tank 2.
46. From at least April 28, 2009, until August 20, 2009, Respondent did not provide spill prevention equipment that will prevent release of product to the environment when the transfer hose is detached from the fill pipe on each of Tanks 1 and 2, in accordance with 9 VAC § 25-580-50.3(a)(1).
47. Respondent's acts and/or omissions as alleged in Paragraph 46, above, constitute violations by Respondent of 9 VAC § 25-580-60.4.

COUNT V
(Failure to Test the Cathodic Corrosion Protection System)

48. The preceding paragraphs are incorporated by reference as though fully set forth herein.
49. From at least April 1, 2006, through at least April 28, 2009, each of Tanks 1, 2, 3, and 4 was a steel UST system equipped with an impressed current cathodic protection system.
50. 9 VAC § 25-580-90 requires that owners and operators of steel USTs with corrosion protection must comply with the requirements specified therein.

51. 9 VAC § 25-580-90.2. requires, in pertinent part, that all UST systems equipped with cathodic protection systems be inspected for proper operation by a qualified cathodic protection tester within six months of installation and at least every three years after that.
52. In its response to EPA's August 4, 2009, IRL, Respondent provided EPA with a copy of the cathodic protection tests for each of Tanks 1, 2, 3, and 4, that were conducted on April 1, 2006, and September 1, 2009.
53. From April 2, 2009, through August 31, 2009, Respondent failed to have the cathodic protection system for each of Tanks 1, 2, 3, and 4, inspected by a qualified cathodic protection tester at least once every three years, as required by 9 VAC § 25-580-90.2.
54. Respondent's acts and/or omissions as alleged in Paragraph 53, above, constitute violations of 9 VAC § 25-580-90.

III. COMPLIANCE ORDER

Pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e, Respondent is hereby ordered to complete the following Compliance Tasks. Respondent shall submit to EPA a certification in the form set forth in Paragraph 56 of this CAFO that this Compliance Order has been implemented, the tasks completed, and Respondent is currently in compliance with the requirements of RCRA Subtitle I and 9 VAC Chapter 580 in accordance with the following schedule:

55. Within 30 (thirty) days after the Effective Date of this CAFO, comply with the release detection requirements of 9 VAC §§ 25-580-130, 140 and 170. Submit documentation of compliance (monthly release detection results) by the 15th of each month, for the preceding month, until 6 months after the date of filing of this CAFO. For example, release detection results for the month of September are due by October 15, 2013. (Note that Statistical Inventory Reconciliation results should be monthly reports showing all data; do not submit the monthly summaries only).
56. Any notice, certification, data presentation, or other document submitted by a Respondent pursuant to this CA which discusses, describes, demonstrates, or supports any finding or makes any representation concerning Respondent's compliance or non-compliance with any requirements of this CA shall be certified, by a "responsible corporate officer" as that term is defined at 40 C.F.R. § 270.11. The aforesaid certification shall provide the following statement above the signature of the responsible person signing the certification on behalf of a Respondent:

I certify under penalty of law that this document and all attachments are 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: _____

Any notifications or submissions to EPA required by this CA shall be sent certified mail, return receipt requested, to the attention of:

Gary Morton (3LC70)
Office of Land Enforcement
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

IV. TERMS OF SETTLEMENT

57. Complainant has determined the appropriate penalty for the violations identified and described in this CA by considering a number of factors, including, but not limited to, the facts and circumstances of this case, Respondent's ability to pay, the seriousness of the violations and any good faith efforts to comply with applicable requirements as provided in RCRA Section 9006(c) and (e), 42 U.S.C. § 6991e(c) and (e), EPA's Penalty Guidance for Violations of UST Regulations ("UST Guidance") dated November 4, 1990, and the *Civil Monetary Penalty Inflation Adjustment Rule*, 40 C.F.R. Part 19. Respondent has provided EPA with information regarding Respondent's inability to pay a civil penalty. Based on its analysis of such information, Complainant has agreed that there shall be no civil penalty for the violations specified in this CA, subject to the reservations in Paragraphs 10 and 11 herein.
58. Having determined that this Consent Agreement is in accordance with the law and that the civil penalty amount was determined after consideration of the statutory factors set forth in RCRA Section 9006(c) and (e), 42 U.S.C. § 6991e(c) and (e), Complainant hereby agrees and acknowledges that the settlement set forth in this Consent Agreement shall be in full and final satisfaction of all civil claims for penalties which Complainant may have under RCRA Section 9006(c) and (e), 42 U.S.C. § 6991e(c) and (e), for the violations alleged herein.

V. RESERVATION OF RIGHTS

59. 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 public health, welfare or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in the Consolidated Rules of Practice at 40 C.F.R. § 22.18(c). Further, EPA reserves any rights or remedies available under RCRA, the regulations promulgated thereunder, and any other federal laws and regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk.

VI. OTHER APPLICABLE LAWS

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

VII. PARTIES BOUND

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

VIII. FULL AND FINAL SATISFACTION

62. The settlement set forth in this CA shall resolve only Respondent's liability for federal civil penalties for the specific violations of RCRA Subtitle I and the Commonwealth of Virginia Authorized UST Management Program alleged herein.

IX. EFFECTIVE DATE

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

For Respondent:

Date: 9/6/2013

By: Mir Ali
Mir Ali, President
A 786 Mir Enterprises, Inc.
Respondent

For Complainant:

Date: 9/19/2013

By: Janet E. Sharke
Janet E. Sharke
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency, Region III

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

9.24.13
Date

By: John A. Armstead
John A. Armstead
Director, Land and Chemicals Division
U.S. Environmental Protection Agency, Region III

Exhibit A
Financial Information Submitted by A 786 Mir Enterprises, Inc.

Form 1120 U.S. Corporation Income Tax Returns, 2008-2011

Statement of Assets, Liabilities and Equity-Income Tax Basis, Statement of Revenue and Expenses, 2008, 2010, January 1, 2011 – May 11, 2011

Payroll Summary Statements 2008-2010

BB&T Bank statements August 2010- June 2011

EPA's Financial Statement of Corporations, Businesses or Other Organizations' Ability to Pay Claim Form

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III
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5213 Juliet Street
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Docket No. RCRA-03-2013-0128

RESPONDENT

Chevron
3303 Plank Road
Fredericksburg, Virginia 22401

FINAL ORDER

FACILITY.

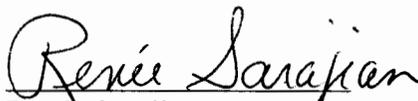
FINAL ORDER

The Director, Land and Chemicals Division, U.S. Environmental Protection Agency, Region III (“Complainant”), and A 786 Mir Enterprises, Inc. (“Respondent”), have executed a document entitled “Consent Agreement” which I hereby ratify as a Consent Agreement in accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, 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 9006 of the Solid Waste Disposal Act, commonly known as the Resource Conservation and Recovery Act of 1976, as amended (“RCRA”), 42 U.S.C. § 6991e, and based on representations in the Consent Agreement that the penalty agreed to in the Consent Agreement is based on a consideration of the factors set forth in Section 9006(c) and(e) of RCRA, 42 U.S.C. § 6991e(c) and (e), Respondent is hereby ordered to comply with the terms and conditions of the Consent Agreement. The effective date of this document is the date on which it is filed with the Regional Hearing Clerk after signature by the Regional Administrator or Regional Judicial Officer.

Date:

9/26/13



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