

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III**

Philadelphia, Pennsylvania

In the Matter of:	:
	:
E.G.E. Corporation, Owner	: U.S. EPA Docket No. RCRA-03-2023-0050
Kenilworth Red Top Gas Station	:
949 East-West Highway	: Proceeding under Section 9006 of the Resource
Takoma Park, MD 20912	: Conservation and Recovery Act, as amended, 42
	: U.S.C. Section 6991e
	:
Respondent.	:
	:
Kenilworth Red Top Gas Station	:
5301 Kenilworth Avenue	:
Riverdale, Maryland 20737	:
	:
Facility.	:
	:

CONSENT AGREEMENT

PRELIMINARY STATEMENT

1. This Consent Agreement is entered into by the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region III (“Complainant”) and E.G.E. Corporation (“Respondent”) (collectively the “Parties”), pursuant to Section 9006 of the Solid Waste Disposal Act, commonly referred to as the Resource Conservation and Recovery Act of 1976, as amended (“RCRA” or the “Act”), 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 of Practice”), 40 C.F.R. Part 22. Section 9006 of RCRA, 42 U.S.C. § 6991e, authorizes the Administrator of the U.S. Environmental Protection Agency to assess penalties and undertake other actions required by this Consent Agreement. The Administrator has delegated this authority to the Regional Administrator who, in turn, has delegated it to the Complainant. This Consent Agreement and the attached Final Order (hereinafter jointly referred to as the “Consent Agreement and Final Order”) resolve Complainant’s civil penalty claims against Respondent under Section 9006 of RCRA.
2. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant hereby simultaneously commences and resolves this administrative proceeding.

JURISDICTION

3. The U.S. Environmental Protection Agency (“EPA”) has jurisdiction over the above-captioned matter, as described in Paragraph 1, above.
4. The Consolidated Rules of Practice govern this administrative adjudicatory proceeding pursuant to 40 C.F.R. § 22.1(a)(4).
5. EPA has given the Maryland Department of the Environment (“MDE”) notice of the issuance of this Consent Agreement and Final Order in accordance with Section 9006(a)(2) of RCRA, 42 U.S.C. § 6991e(a)(2).

GENERAL PROVISIONS

6. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this Consent Agreement and Final Order.
7. Except as provided in Paragraph 6, above, Respondent neither admits nor denies the specific factual allegations set forth in this Consent Agreement.
8. Respondent agrees not to contest the jurisdiction of EPA with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of this Consent Agreement and Final Order.
9. For purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in this Consent Agreement and Final Order and waives its right to appeal the accompanying Final Order.
10. Respondent consents to the assessment of the civil penalty stated herein, to the issuance of any specified compliance order herein, and to any conditions specified herein.
11. Respondent shall bear its own costs and attorney’s fees in connection with this proceeding.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

12. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant alleges and adopts the Findings of Fact and Conclusions of Law set forth immediately below.
13. Section 9006(d) of RCRA, 42 U.S.C. § 6991e(d), authorizes civil penalties to be assessed against any owner or operator of an underground storage tank (“UST”) who fails to

comply with, *inter alia*, any requirement or standard of a State program that has been approved pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c for the violations alleged herein.

14. On June 20, 1992, EPA approved the State of Maryland's UST program regulations, the Maryland Department of the Environment regulations entitled "TANK MANAGEMENT," as contained in the Code of Maryland Regulations ("COMAR") Chapter 26, Sections 26.10.02 to 26.10.11.
15. Complainant alleges that Respondent failed to comply with specific requirements of Subtitle I of RCRA, 42 U.S.C. § 6991 *et seq.*, its implementing regulations at 40 C.F.R. Part 280, and the federally-approved Maryland UST management program regulations set forth in COMAR, Title 26, Subtitle 10 *et seq.*
16. At all times relevant to this Consent Agreement, Respondent has been a Maryland corporation which is authorized to do business in the State of Maryland.
17. At all times relevant to this Consent Agreement, Respondent has been and continues to be a "person" as defined by Section 9001(5) of RCRA, 42 U.S.C. § 6991(5), and COMAR § 26.10.02.04.B(40),
18. At all times relevant to this Consent Agreement, Respondent has been the "operator" and/or "owner" of "USTs" and "UST systems," as defined in Sections 9001(3), (4) and (10) of RCRA, 42, U.S.C. § 6991(3), (4), and (10); and COMAR § 26.10.02.04B(37), (39), (64) and (66), located at 5301 Kenilworth Avenue, Riverdale, Maryland 20737 ("the Facility").
19. On August 24, 2020, under the authority of Section 9005(a) of RCRA, 42 U.S.C. § 6991d(a), EPA conducted a Compliance Evaluation Inspection ("CEI" or "Inspection") of the Facility. The findings of the EPA inspection are the basis for the violations cited in this Consent Agreement.
20. At the time of the August 24, 2020 Inspection, the EPA inspector noted that there are three USTs at the Facility.
21. At all times relevant to the applicable violations alleged herein, there were at the Facility the three (3) USTs, each of which contained 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):
 - a. Tank 1: 10,000 gallons; containing regular-grade gasoline; single-walled fiberglass-reinforced plastic tank; installed 7/1/1986;
 - b. Tank 2: 10,000 gallons; containing medium-grade gasoline; single-walled fiberglass-reinforced plastic tank; installed 7/1/1986;
 - c. Tank 3: 10,000 gallons; containing premium-grade gasoline; single-walled fiberglass-reinforced plastic tank; installed 7/1/1986.

- 22. At all times relevant to the applicable violations alleged herein, Tanks 1, 2 and 3, along with the respective underground piping associated with each, was a “petroleum UST system” and “existing tank system” as these terms are defined in COMAR § 26.10.02.04B(19) and (43).

Count I
Failure to perform piping release detection on all three (3) USTs

- 23. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
- 24. COMAR § 26.10.05.02 A requires that:

Owners and operators of petroleum UST systems shall provide release detection for tanks and piping as described in this regulation.

- 25. COMAR § 26.10.05.02 C (2), *Requirements for Petroleum UST Systems, Section C, Piping, (2), Pressurized Piping*, requires that:

Underground piping that conveys regulated substances under pressure shall:

- (a) Be equipped with an automatic line leak detector conducted in accordance with Regulation .05B; and*
- (b) Have an annual line tightness test conducted in accordance with Regulation .05 C or have monthly monitoring conducted in accordance with Regulation .05 D.*

- 26. Based on information obtained during the August 24, 2020 Inspection, the Facility exceeded the deadline to perform line tightness testing or to conduct monthly monitoring on all three (3) USTs for the time periods listed below:

- December 28, 2017 to October 18, 2018
- October 18, 2019 to February 10, 2021.

- 27. While records indicated that tests were performed, the required tests were performed late as follows:

TEST DONE	NEXT TEST DUE	TEST DONE	DAYS LATE
12-28-2016	next test due on or before 12-28-2017	10-18-2018	305
10-18-2018	next test due on or before 10-18-2019	02-10-2021	481

- 28. From December 28, 2017 to October 18, 2018, and from October 18, 2019 to February 10, 2021, Respondent did not conduct annual line tightness testing or utilize a monthly method of piping release detection, in accordance with COMAR § 26.10.05.05 C and COMAR § 26.10.05.05 D respectively, on all three (3) USTs, as required by COMAR §

26.10.05.02 C (2)(b). EPA acknowledges that the tests required under these regulations have been performed and have been performed timely through the date of this Consent Agreement.

- 29. Respondent’s failures to conduct annual line tightness testing or utilize a monthly method of piping release detection on all three (3) USTs, as alleged in Paragraph 26 above, constitute violations by Respondent of COMAR § 26.10.05.02 C (2)(b) and the requirement to provide release detection for tanks and piping at COMAR § 26.10.05.02 A.
- 30. In failing to comply with COMAR § 26.10.05.02 C (2)(b) and COMAR § 26.10.05.02 A, Respondent is subject to the assessment of penalties under Section 9006(d) of RCRA, 42 U.S.C. § 6991e(d).

Count II

Failure to conduct Line Leak Detector (“LLD”) testing on all three (3) LLDs

- 31. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
- 32. COMAR § 26.10.05.05 B, Methods of Release Detection for Piping, Section B, Automatic Line Leak Detectors, provides that:

Methods which 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. An annual test of the operation of the leak detector shall be conducted in accordance with the manufacturer’s requirements.

- 33. Based on information obtained during the August 24, 2020 Inspection, the Facility exceeded the deadline to perform an annual LLD test on all three (3) LLDs for the time periods listed below:
 - December 28, 2017 to October 18, 2018
 - October 18, 2019 to February 10, 2021

- 34. While records indicated that tests were performed, the required line leak detector tests for all three (3) LLDs were performed late as follows:

TEST DONE	NEXT TEST DUE	TEST DONE	DAYS LATE
12-28-2016	next test due on or before 12-28-2017	10-18-2018	305
10-18-2018	next test due on or before 10-18-2019	02-10-2021	481

From December 28, 2017 to October 18, 2018, and from October 18, 2019 to February 10, 2021, Respondent did not conduct annual LLD testing for all three (3) LLDs in as required by COMAR § 26.10.05.05 B, which fails to meet the “Requirements for Petroleum UST Systems” for release detection in accordance with COMAR § 26.10.05.02 A. EPA acknowledges that the tests required under these regulations have been performed and have been performed timely through the date of this Consent Agreement.

35. Respondent’s failures to conduct annual LLD testing for all three (3) LLDs, as alleged in Paragraph 33 above, constitute violations by Respondent of COMAR § 26.10.05.05 B and the requirement to provide release detection for tanks and piping at COMAR § 26.10.05.02 A.
36. In failing to comply with COMAR § 26.10.05.05 B and COMAR § 26.10.05.02 A, Respondent is subject to the assessment of penalties under Section 9006(d) of RCRA, 42 U.S.C. § 6991e(d).

CIVIL PENALTY

37. In settlement of EPA’s claims for civil penalties for the violations alleged in this Consent Agreement, Respondent consents to the assessment of a civil penalty in the amount of **FORTY-THREE THOUSAND FOUR-HUNDRED THIRTY-THREE dollars (\$43,433.00)**, which Respondent shall be liable to pay in accordance with the terms set forth below.
38. The civil penalty is based upon EPA’s consideration of a number of factors, including the penalty criteria (“statutory factors”) set forth in RCRA, Section 9006(c) and (e), 42 U.S.C. § 6991e(c) and (e), which includes the seriousness of the violation, any good faith efforts to comply with the applicable requirements, and any other factors considered appropriate. In developing a proposed penalty for the violations alleged in this Consent Agreement, EPA will take into account the particular facts and circumstances of this case with specific reference to EPA’s November 1990 U.S. E.P.A. Penalty Guidance for Violations of UST Regulations, and EPA’s Interim Consolidated Enforcement Penalty Policy for Underground Storage Tank Regulations and Revised Field Citation Program and ESA Policy, dated October 5, 2018 (collectively “UST Penalty Guidance”) which reflects the statutory penalty criteria and factors set forth Section 9006(c) of RCRA, and the appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to 40 C.F.R. Part 19.
39. Payment of the civil penalty amount, and any associated interest, administrative fees, and late payment penalties owed, shall be made by either cashier’s check, certified check or electronic wire transfer, in the following manner:
 - a. All payments by Respondent shall include reference to Respondent’s name and address, and the Docket Number of this action, *i.e.*, **EPA Docket Number RCRA-03-2023-0050**;

- b. All checks shall be made payable to the “United States Treasury”;
- c. All payments made by check and sent by regular mail shall be addressed and mailed to:

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

- d. For additional information concerning other acceptable methods of payment of the civil penalty amount see:

<https://www.epa.gov/financial/makepayment>

- e. A copy of Respondent’s check or other documentation of payment of the penalty using the method selected by Respondent for payment shall be sent simultaneously **by email** to:

Daniel T. Gallo, Jr.
Assistant Regional Counsel
gallo.dan@epa.gov

and

U.S. EPA Region III Regional Hearing Clerk
R3_Hearing_Clerk@epa.gov.

- 40. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest 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 of the penalty as specified herein shall result in the assessment of late payment charges including interest, penalties and/or administrative costs of handling delinquent debts.
- 41. Payment of the civil penalty, in accordance with the above terms and provisions, is due and payable immediately upon receipt by Respondent of a true and correct copy of the fully executed and filed Consent Agreement and Final Order. Receipt by Respondent or Respondent’s legal counsel of such copy of the fully executed Consent Agreement and Final Order, with a date stamp indicating the date on which the Consent Agreement and Final Order was filed with the Regional Hearing Clerk, shall constitute receipt of written initial notice that a debt is owed EPA by Respondent in accordance with 40 C.F.R. § 13.9(a).

42. INTEREST: In accordance with 40 C.F.R § 13.11(a)(1), interest on the civil penalty assessed in this Consent Agreement and Final Order will begin to accrue on the date that a copy of the fully executed and filed Consent Agreement and Final Order is electronically transmitted to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalties that is paid within thirty (30) calendar days after the date on which the payment is due and 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).
43. ADMINISTRATIVE COSTS: The costs of the EPA'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 – Case 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.
44. LATE PAYMENT PENALTY: A late payment penalty of six percent 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). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
45. Respondent agrees not to deduct for federal tax purposes the civil penalty assessed in this Consent Agreement and Final Order.

GENERAL SETTLEMENT CONDITIONS

46. By signing this Consent Agreement, Respondent acknowledges that this Consent Agreement and Final Order will be available to the public and represents that, to the best of Respondent's knowledge and belief, this Consent Agreement and Final Order does not contain any confidential business information or personally identifiable information from Respondent.
47. Respondent certifies that any information or representation it has supplied or made to EPA concerning this matter was, at the time of submission true, accurate, and complete and that there has been no material change regarding the truthfulness, accuracy or completeness of such information or representation. EPA shall have the right to institute further actions to recover appropriate relief if EPA obtains evidence that any information provided and/or representations made by Respondent to the EPA regarding matters relevant to this Consent Agreement and Final Order, are false or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action that EPA may have, civil or criminal, under law or equity in such event. Respondent and its officers, directors and agents are aware that the submission of false or misleading information to the United States government may subject a person to separate civil and/or criminal liability.

CERTIFICATION OF COMPLIANCE

48. Respondent certifies to EPA, upon personal investigation and to the best of its knowledge and belief, that it currently is in compliance with regard to the violations alleged in this Consent Agreement.

OTHER APPLICABLE LAWS

49. Nothing in this Consent Agreement and Final Order shall relieve Respondent of its obligation to comply with all applicable federal, state, and local laws and regulations, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on the validity of any federal, state or local permit. This Consent Agreement and Final Order does not constitute a waiver, suspension or modification of the requirements of RCRA, Subtitle I, or any regulations promulgated thereunder.

RESERVATION OF RIGHTS

50. This Consent Agreement and Final Order resolves only EPA's claims for civil penalties for the specific violations alleged against Respondent in this Consent Agreement and Final Order up to and through the date of execution of this Consent Agreement. 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. 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, 40 C.F.R. § 22.18(c). EPA reserves any rights and remedies available to it under RCRA, Subtitle I, the regulations promulgated thereunder and any other federal law or regulation to enforce the terms of this Consent Agreement and Final Order after its effective date.

EXECUTION /PARTIES BOUND

51. This Consent Agreement and Final Order shall apply to and be binding upon the EPA, the Respondent and the officers, directors, employees, contractors, successors, agents and assigns of Respondent. By his or her signature below, the person who signs this Consent Agreement on behalf of Respondent is acknowledging that he or she is fully authorized by the Respondent to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of this Consent Agreement and Final Order.

EFFECTIVE DATE

52. The effective date of this Consent Agreement and Final Order is the date on which the Final Order, signed by the Regional Administrator of EPA, Region III, or his/her designee, the Regional Judicial Officer, is filed along with the Consent Agreement with the Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

ENTIRE AGREEMENT

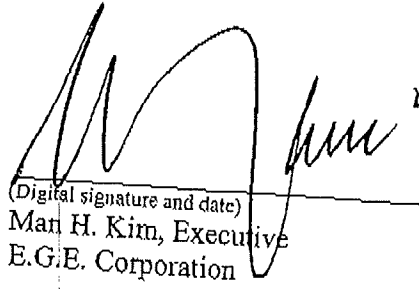
53. This Consent Agreement and Final Order constitutes the entire agreement and understanding between the Parties regarding settlement of all claims for civil penalties pertaining to the specific violations alleged herein and there are no representations, warranties, covenants, terms, or conditions agreed upon between the Parties other than those expressed in this Consent Agreement and Final Order.

In the Matter of: E.G.E. Corporation

EPA Docket No. RCRA-03-2023-0050

For Respondent:

By:


(Digital signature and date)
Man H. Kim, Executive
E.G.E. Corporation

12-30-22

For the Complainant:

After reviewing the Consent Agreement and other pertinent matters, I, the undersigned Director of the Enforcement & Compliance Assurance Division of the United States Environmental Protection Agency, Region III, agree to the terms and conditions of this Consent Agreement and recommend that the Regional Administrator, or his/her designee, the Regional Judicial Officer, issue the attached Final Order.

By:

(Digital signature and date)
Karen Melvin, Director
Enforcement & Compliance Assurance Division
U.S. EPA – Region III
Complainant

Attorney for Complainant:

By:

(Digital signature and date)
Daniel T. Gallo, Jr.
Assistant Regional Counsel
U.S. EPA – Region III

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
Philadelphia, Pennsylvania 19103

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	:	U.S.C. Section 6991e
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5301 Kenilworth Avenue	:	
Riverdale, Maryland 20737	:	
	:	
Facility.	:	
	:	
	:	

FINAL ORDER

Complainant, the Director of the Enforcement & Compliance Assurance Division, U.S. Environmental Protection Agency, Region III, and Respondent, E.G.E. Corporation, doing business as Kenilworth Red Top Gas Station, 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 (with specific reference to Sections 22.13(b) and 22.18(b)(2) and (3)). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

Based upon the representations of the parties in the attached Consent Agreement, the civil penalty is based upon EPA’s consideration of a number of factors, including the penalty criteria (“statutory factors”) set forth in RCRA, Section 9006(c) and (e), 42 U.S.C. § 6991e(c) and (e), which includes the seriousness of the violation, any good faith efforts to comply with the applicable requirements, and any other factors considered appropriate with specific reference to EPA’s November 1990 U.S. E.P.A. Penalty Guidance for Violations of UST Regulations, and EPA’s Interim Consolidated Enforcement Penalty Policy for Underground Storage Tank Regulations and Revised Field Citation Program and ESA Policy, dated October 5, 2018 (collectively “UST Penalty Guidance”) which reflects the statutory penalty criteria and factors set forth Section 9006(c) of RCRA, and the appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to 40 C.F.R. Part 19.

NOW, THEREFORE, PURSUANT TO Section 9006(d) of RCRA, 42 U.S.C. § 6991e(d), and Section 22.18(b)(3) of the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty in the amount of **FORTY-THREE THOUSAND FOUR-HUNDRED THIRTY-THREE dollars (\$43,433.00)**, in accordance with the payment provisions set forth in the Consent Agreement and in 40 C.F.R. § 22.31(c), and comply with the terms and conditions of the Consent Agreement.

This Final Order constitutes the final Agency action in this proceeding. This Final Order shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief, or criminal sanctions for any violations of the law. This Final Order resolves only those causes of action alleged in the Consent Agreement and does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of RCRA and the regulations promulgated thereunder.

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

By:

(Digital signature and date)
Joseph J. Lisa
Regional Judicial and Presiding Officer
U.S. EPA Region III

