

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM

**TO BE FILLED OUT BY ORIGINATING OFFICE:**

(Attach a copy of the final order and transmittal letter to Defendant/Respondent)

This form was originated by: Joyce Harrell 3/26/2009  
Name of Contact person Date

in the Office of Regional Counsel at \_\_\_\_\_  
Office Phone number

\_\_\_\_ Non-SF Jud. Order/Consent Decree. DOJ COLLECTS  Administrative Order/Consent Agreement FMD COLLECTS PAYMENT

\_\_\_\_ SF Jud. Order/Consent Decree. FMD COLLECTS

This is an original debt \_\_\_\_\_ This is a modification

Name of Person and/or Company/Municipality making the payment  
FMD United States Dept. of Healthcare

The Total Dollar Amount of Receivable \$15,066

(If in installments, attach schedule of amounts and respective due dates)

The Case Docket Number RCR4-03-2005-0032

The Site-Specific Superfund Acct. Number \_\_\_\_\_

The Designated Regional/HQ Program Office \_\_\_\_\_

**TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:**

The IFMS Accounts Receivable Control Number \_\_\_\_\_

If you have any questions call: \_\_\_\_\_  
Name of Contact Date

in the Financial Management Office, phone number: \_\_\_\_\_

**JUDICIAL ORDERS: Copies of this form with an attached copy of the front page of the final judicial order should be mailed to:**

1. U.S. Environmental Protection Agency  
Cincinnati Finance Center  
26 W. Martin Luther King Drive (MS-002)  
Cincinnati, OH 45268
2. Originating Office (ORC)
3. Designated Program Office

Attn: Lori Weidner

**ADMINISTRATIVE ORDERS: Copies of this form with an attached copy of the front page of the administrative order should be sent to:**

1. Originating Office
2. Designated Program Office
3. Regional Hearing Clerk
3. Regional Counsel



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

March 26, 2009

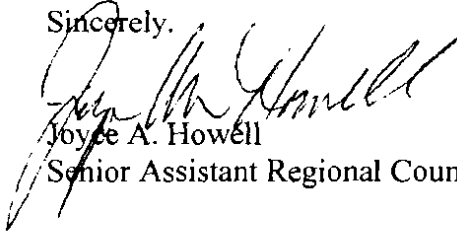
Lori Weidner  
U.S. Environmental Protection Agency  
Cincinnati Finance Center  
26 W. Martin Luther King Drive  
Cincinnati, OH 45268

Re: In the Matter of: United States Department of Agriculture, Agricultural  
Research Service  
Docket No. RCRA-03-2009-0052

Dear Ms. Weidner:

Enclosed please find a stamped copy of the SCAFO filed in this matter, together with a completed EARCNF. Thank you.

Sincerely,



Joyce A. Howell

Senior Assistant Regional Counsel




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

MEMORANDUM

SUBJECT: Consent Agreement and Final Order  
In the Matter of: United States Department of Agriculture,  
Agricultural Research Service  
Docket No. RCRA-03-2009-0052

FROM: Abraham Ferdas, Director  
Land and Chemicals Division 

William C. Early  
Regional Counsel 

TO: Renée Sarajian  
Regional Judicial Officer (3RC00)

The attached Consent Agreement and Final Order both commences and concludes a matter with the United States Department of Agriculture, Agricultural Research Center ("BARC") for violations of Resource Conservation and Recovery Act ("RCRA") Subpart C and I requirements identified through EPA inspections on February 28, March 2 and March 21, 2007, pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. Part 22.13(b).

The attached Final Order directs Respondent to pay a civil penalty in the amount of \$65,066.00 and perform the tasks contained in a Compliance Order set forth in Section III of the CAFO.

We recommend that you sign the attached Final Order. After you execute the Final Order, please return the documents to Joyce Howell, x2644, for further processing.

Attachments

cc: Allison Gassner, Esq.

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

In the Matter of: :

United States Department of Agriculture, : Docket Number RCRA-03-2009-0052  
Agricultural Research Service :

Respondent, :

Beltsville Agricultural Research Service :  
10300 Baltimore Avenue :  
Beltsville, MD 20705 :

Facility. :

**CONSENT AGREEMENT**

This Consent Agreement (“CA”) is entered into by the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region III (“EPA” or “Complainant”) and the United States Department of Agriculture, Agricultural Research Service (“BARC” or “Respondent”), pursuant to Sections 3008(a)(1) and (g) of the Resource Conservation and Recovery Act (“RCRA”), as amended, 42 U.S.C. §§ 6928(a)(1) and (g), Section 9006 of RCRA, 42 U.S.C. § 6991e, Section 6001(b) of RCRA, 42 U.S.C. § 6961(b), and Section 9007 of RCRA, 42 U.S.C. § 6991f, 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) & (3).

This CA and the accompanying Final Order (collectively “CAFO”) resolve violations of RCRA Subtitle C, 42 U.S.C. §§ 6921-6939e, and the regulations promulgated thereunder at 40 C.F.R. Parts 260-266, 268 and 270-273, and the authorized Maryland hazardous waste management regulations (“MdHWMR”) *in lieu* of the federal hazardous waste management program, and violations of RCRA Subtitle I, 42 U.S.C. §§ 6991-6991m, and the regulations in the authorized Maryland underground storage tank programs *in lieu* of the federal underground storage tank program in connection with Respondent’s hazardous waste treatment, storage and

disposal facilities and underground storage tanks located the Beltsville Agricultural Research Service, 10300 Baltimore Avenue, Beltsville, MD 20705.

On February 11, 1985, pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), and 40 C.F.R. Part 271, Subpart A, the State of Maryland was granted final authorization to administer its hazardous waste management program set forth in the Code of Maryland Regulations (hereinafter "COMAR," followed by the applicable section of the regulations), Title 10, Subtitle 51, *in lieu* of the federal hazardous waste management program established under RCRA Subtitle C, 42 U.S.C. §§ 6921-6939e. Through this final authorization, the provisions of the MdHWMR ("Original Authorized Program") became requirements of RCRA Subtitle C and are, accordingly, enforceable by EPA on and after that date pursuant to Sections 3008(a) and 6001(b) of RCRA, 42 U.S.C. §§ 6928(a) and 6961(b). A revised Maryland hazardous waste management program set forth at COMAR, Title 26, Subtitle 13 ("Revised Authorized Program") was authorized by EPA on July 31, 2001, and, accordingly, the provisions of the Revised Authorized Program are enforceable by EPA on and after that date pursuant to § 3008(a) of RCRA, 42 U.S.C. § 6928(a). Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), authorizes the assessment of a civil penalty against any person who violates any requirement of Subtitle C of RCRA.

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. 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 set forth in COMAR, followed by the applicable section of the regulations. Section 9006 of RCRA, 42 U.S.C. § 6991e, authorizes EPA: (a) to take an enforcement action whenever it is determined that a person is in violation of any requirement of RCRA Subtitle I, EPA's regulations thereunder, or any regulation of a state underground storage tank program which has been authorized by EPA; and (b) to assess a civil penalty against any person who violates any requirement of RCRA Subtitle I.

### **Notice to the State of Maryland**

EPA has given the State of Maryland notice, through the Maryland Department of the Environment ("MDE"), of the issuance of this CAFO in accordance with Sections 3008(a)(2) and 9006(a)(2) of RCRA, 42 U.S.C. §§ 6928(a)(2) and 6991e(a)(2).

## **I. GENERAL PROVISIONS**

1. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CAFO.
2. Respondent neither admits nor denies the specific factual allegations and conclusions of law set forth in this CAFO, except as provided in Paragraph 1, above.
3. Respondent agrees not to contest EPA's jurisdiction with respect to the execution of this CA, the issuance of the attached Final Order, or the enforcement of the CAFO.
4. For the purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in this Consent Agreement and any right to appeal the accompanying Final Order. Respondent also waives any opportunity to confer with the EPA Administrator under Section 6001(b)(2) of RCRA, 42 U.S.C. § 6961(b)(2).
5. Respondent consents to the issuance of this CAFO and agrees to comply with its terms and conditions.
6. Respondent shall bear its own costs and attorney's fees.
7. The provisions of this CAFO shall be binding upon Complainant, Respondent, and Respondent's employees, successors and assigns.
8. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit, nor does this CAFO constitute a waiver, suspension or modification of the requirements of RCRA Subtitles C and I, 42 U.S.C. §§ 6921-6939e, and 6991-6991m, or any regulations promulgated thereunder.

## **II. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

9. Respondent is, and was at the time of the violations alleged herein, a department, agency or instrumentality of the Federal Government within the meaning of Section 9007 of RCRA, 42 U.S.C. § 6991f, and a "person" within the meaning of Sections 1004(15) and 9001(5) of RCRA, 42 U.S.C. §§ 6903(15) and 6991(5), and COMAR 26.13. 01.03.B(61) and 26.10.02.04B(40).

10. Respondent is the owner and operator of the research facility located at 10300 Baltimore Avenue, Beltsville, Maryland (the "Facility"). Respondent's EPA ID number is MD5123510732.
11. At all times relevant hereto, 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.
12. At all times relevant to the violations set forth in this Complaint, Respondent has been an "owner" and "operator," as those terms are defined in COMAR 26.13.01.03B(59) and (58), of the Facility.
13. At all times relevant to the violations set forth in this Complaint, Respondent's Facility was a "facility" as that term is defined at COMAR 26.13.01.03B(23).
14. At the Facility, Respondent is a "generator" of "solid wastes" and "hazardous waste," as described below, at the Facility as those terms are defined in COMAR 26.13.01.03.B (29), (73) and (31).
15. On March 21, 2007, EPA inspectors conducted a RCRA Subtitle C compliance evaluation inspection ("CEI") at Respondent's Facility.
16. On February 28, 2007 and March 2, 2007, representatives of EPA conducted Underground Storage Tank ("UST") CEIs at Respondent's Facility.
17. At the time of the February 28, 2007 and March 2, 2007 CEIs, and at all times relevant hereto, the two (2) USTs described in the following subparagraphs were located at Building 27 at Respondent's Facility:
  - A. A 4,000 gallon tank that was installed on or about January 1, 1994 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 COMAR 26.10.02.04B(48).
  - B. A 4,000 gallon tank that was installed on or about January 1, 1994 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 COMAR 26.10.02.04B(48).

18. From January 1, 1994 until the date of Complainant’s execution of this CA, the USTs at Building 27 at Respondent’s Facility have been “petroleum UST systems” and “new tank systems” as these terms are defined in COMAR 26.10.02.04B(43) and (31), respectively.
19. The USTs at Building 27 at Respondent’s Facility are and were, at all times relevant to this CAFO, used to store “regulated substance(s),” as defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7) and COMAR 26.10.02.04B(48).
20. At the time of the February 28, 2007 and March 2, 2007 CEIs, and at all times relevant hereto, the three (3) USTs described in the following subparagraphs were located at Buildings 445, 446 and 447 at Respondent’s Facility:
  - A. A 2,000 gallon tank that was installed on or about January 1, 1994 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 COMAR 26.10.02.04B(48).
  - B. A 10,000 gallon tank that was installed on or about January 1, 1994 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 COMAR 26.10.02.04B(48).
  - C. A 550 gallon tank that was installed on or about January 1, 1994 and that, at all times relevant hereto, routinely contained kerosene, 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).
21. From January 1, 1994 until the date of Complainant’s execution of this CA, the USTs at Buildings 445, 446 and 447 at Respondent’s Facility have been “petroleum UST systems” and “new tank systems” as these terms are defined in COMAR 26.10.02.04B(43) and (31), respectively.
22. The USTs at Buildings 445, 446 and 447 at Respondent’s Facility are and were, at all times relevant to this CAFO, used to store “regulated substance(s),” as defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7) and COMAR 26.10.02.04B(48).



23. At the time of the February 28, 2007 and March 2, 2007 CEIs, and at all times relevant hereto, the two (2) USTs described in the following subparagraphs were located at Building 166 at Respondent's Facility:
- A. A 2,500 gallon tank that was installed on or about July 1, 1994 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 COMAR 26.10.02.04B(48).
  - B. A 4,000 gallon tank that was installed on or about July 1, 1994 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 COMAR 26.10.02.04B(48).
24. From July 1, 1994 until the date of this CAFO, the USTs at Building 166 at Respondent's Facility have been "petroleum UST systems" and "new tank systems" as these terms are defined in COMAR 26.10.02.04B(43) and (31), respectively.
25. The USTs at Building 166 at Respondent's Facility are and were, at all times relevant to this CAFO, used to store "regulated substance(s)," as defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7) and COMAR 26.10.02.04B(48).
26. At the time of the February 28, 2007 and March 2, 2007 CEIs, and at all times relevant hereto, the two (2) USTs described in the following subparagraphs were located at Building 301D at Respondent's Facility:
- A. A 4,000 gallon tank that was installed on or about May 1, 1996 and that, at all times relevant hereto, routinely contained diesel fuel, a "regulated substance" as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and COMAR 26.10.02.04B(48).
  - B. A 4,000 gallon tank that was installed on or about May 1, 1996 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 COMAR 26.10.02.04B(48).
27. From May 1, 1996 until the date of this CAFO, the USTs at Building 301D at Respondent's Facility have been "petroleum UST systems" and "new tank systems" as these terms are defined in COMAR 26.10.02.04B(43) and (31), respectively.

28. The USTs at Building 301D at Respondent's Facility are and were, at all times relevant to this CAFO, used to store "regulated substance(s)," as defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7) and COMAR 26.10.02.04B(48).

### **COUNT I**

#### **(Operating Without Qualifying for a Permit Exemption or Obtaining a Permit )**

29. The allegations contained in Paragraphs 1 through 28 are incorporated herein by reference.
30. COMAR 26.13.07.01A provides that, subject to exceptions not applicable to this matter, a person may not operate any facilities without first obtaining a valid permit from the Maryland Department of the Environment ("MDE").
31. At the time of the March 21, 2007 CEI, Respondent engaged in the "storage, treatment and/or disposal" of "hazardous wastes" at the "facility" within the meaning of COMAR 26.13.01.03.B (76), (86), (15), (31) and (23).
32. COMAR 26.13.03.05E(1) provides in pertinent part, that a generator may accumulate hazardous waste on-site without a permit for 90 days or less, if, *inter alia*, the generator:
- a. Properly labels and marks each container according to COMAR 26.13.03.05C.
  - b. Maintains records of employee hazardous waste training as required by COMAR 26.13.03.05E(1)(g), which in turn references COMAR 26.13.05.02G.
  - c. When accumulating waste in containers, complies with the requirements of 26.13.03.05E(1)(d), which in turn references COMAR 26.13.05.09.
33. At the time of the March 21, 2007 CEI, Respondent accumulated hazardous wastes in containers at the Facility that were not clearly labeled or marked with the words "Hazardous Waste," as required by COMAR 26.13.03.05E(1)(f).
34. At the time of the March 21, 2007 CEI, Respondent did not maintain at the Facility records that document, as required by COMAR 26.13.05.02G(4)(d), that the hazardous waste training or job experience required under COMAR 26.13.05.02G(1), (2) and (3) had been given to and completed by facility personnel, including contract workers, as required by COMAR 26.13.03.05E(1)(g), which in turn references COMAR 26.13.05.02G.

35. At the time of the March 21, 2007 CEI, Respondent failed to transfer hazardous waste in a container not in good condition to a container in good condition or manage the waste in some other way that complies with COMAR 26.13.05, as required by COMAR 26.13.03.05E(1)(d), which in turn references COMAR 26.13.05.09.
36. Respondent failed to qualify for the "less than 90 day" generator accumulation exemption of COMAR 26.13.03.05E by failing to satisfy the conditions for those exemptions as set forth in COMAR 26.13.03.05E.
37. Respondent did not have a hazardous waste permit or interim status to store, transport or dispose hazardous wastes at the Facility.
38. Respondent violated COMAR 26.13.07.01A by operating a facility for the storage, treatment and/or disposal of hazardous waste, without a permit or interim status.

**COUNT II**  
**(Failure to Maintain Training Records)**

39. The allegations contained in Paragraphs 1 through 38 are incorporated herein by reference.
40. COMAR 26.13.05.02G(4)(d) requires a generator of hazardous waste to maintain at the Facility records that document that the hazardous waste training or job experience required under COMAR 26.13.05.02G(1), (2) and (3) has been given to and completed by facility personnel, including contract workers.
41. At the time of the March 21, 2007 CEI, Respondent did not maintain at the Facility records documenting that the hazardous waste training or job experience required under COMAR 26.13.05.02G(1), (2) and (3) had been given to and completed by facility personnel, specifically contract workers, as required by COMAR 26.13.05.02G(4)(d).
42. Respondent violated COMAR 26.13.05.02G(4)(d) by failing to maintain at the Facility records that document that the hazardous waste training or job experience required under COMAR 26.13.05.02G(1), (2) and (3) had been given to and completed by facility personnel, specifically contract workers.

**COUNT III**  
**(Failure to Make a Hazardous Waste Determinations)**

43. The allegations of Paragraphs 1 through 42 of the CAFO are incorporated herein by reference.
44. COMAR 26.13.03.02A provides that a person who generates a solid waste as defined in COMAR 26.13.02.02, shall determine if that waste is a hazardous waste using the method described therein.
45. As a generator of solid waste, Respondent was required by COMAR 26.13.03.02A to determine if the solid wastes it generated were hazardous waste using the method using the method prescribed by COMAR 26.13.03.02A.
46. At the time of the March 21, 2007 CEI, Respondent had not performed waste determinations on certain solid wastes, specifically, used aerosol cans generated from machinery shop at the Facility.
47. Respondent violated COMAR 26.13.03.02A by failing to perform waste determinations on solid wastes as defined at COMAR 26.13.02.02 generated at the Facility by Respondent.

**COUNT IV**  
**(Failure to Properly Manage Containers)**

48. The allegations contained in Paragraphs 1 through 47 are incorporated herein by reference.
49. COMAR 26.13.05.09B requires owners and operators of all hazardous waste facilities to transfer hazardous waste from a container not in good condition to a container in good condition or manage the waste in some other way that complies with COMAR 26.13.05.
50. At the time of the March 21, 2007 CEI, Respondent failed to transfer hazardous waste in a container not in good condition to a container in good condition, or to manage the waste in some other way that complies with COMAR 26.13.05, as required by COMAR 26.13.05.09B.
51. Respondent violated COMAR 26.13.05.09B by failing to transfer hazardous waste in a container not in good condition to a container in good condition, or to manage the waste

in some other way that complies with COMAR 26.13.05, as required by COMAR 26.13.05.09B.

**COUNT V**  
**(Failure to Conduct Release Detection on USTs)**

52. The allegations of Paragraphs 1 through 51 of the CAFO are incorporated herein by reference.
53. COMAR 26.10.05.02.B provides, *inter alia*, with exceptions not relevant to this matter, that owners and operators of petroleum USTs must monitor each UST for releases at least every thirty (30) days using one of the methods described in COMAR 26.10.05.04.E-I.
54. Respondent did not perform release detection as required by COMAR 26.10.05.02.B on the 4,000 gallon diesel UST at Building 27 at the Facility from November 1, 2007 - February 28, 2008.
55. Respondent did not perform release detection as required by COMAR 26.10.05.02.B on the 4,000 gallon gasoline UST at Building 27 at the Facility from November 1, 2007 - February 28, 2008.
56. Respondent did not perform release detection as required by COMAR 26.10.05.02.B on the 2,000 gallon diesel UST at Building 445/446/447 at the Facility from November 1, 2007 - February 28, 2008.
57. Respondent did not perform release detection as required by COMAR 26.10.05.02.B on the 10,000 gallon diesel UST at Building 445/446/447 at the Facility from November 1, 2007 - February 28, 2008.
58. Respondent did not perform release detection as required by COMAR 26.10.05.02.B on the 550 gallon kerosene UST at Building 445/446/447 at the Facility from November 1, 2007 - February 28, 2008.
59. Respondent did not perform release detection as required by COMAR 26.10.05.02.B on the 2,500 gallon diesel UST at Building 166 at the Facility from November 1, 2007 - February 28, 2008.

60. Respondent did not perform release detection as required by COMAR 26.10.05.02.B on the 4,000 gallon gasoline UST at Building 166 at the Facility from November 1, 2007 - February 28, 2008.
61. Respondent did not perform release detection as required by COMAR 26.10.05.02.B on the 4,000 gallon gasoline UST at Building 301D at the Facility from November 1, 2007 - February 28, 2008.
62. Respondent did not perform release detection as required by COMAR 26.10.05.02.B on the 4,000 gallon diesel UST at Building 301D at the Facility from November 1, 2007 - February 28, 2008.
63. Respondent violated COMAR 26.10.05.02.B by failing to perform release detection required by COMAR 26.10.05.02.B for the USTs described in this Count at the Facility.

**COUNT VI**  
**(Failure to Perform Annual Line Leak Detector Test)**

64. The allegations of Paragraphs 1 through 63 of the CAFO are incorporated herein by reference.
65. COMAR 26.10.05.02C(2)(a) provides that underground piping that routinely contains regulated substances and conveys regulated substances under pressure must be equipped with an automatic line leak detector which must be tested annually as required by COMAR 26.10.05.05B.
66. Respondent failed to conduct annual tests of the line leak detector for the piping associated with the 10,000 gallon UST used to store gasoline at Building 445 at the Facility, which routinely contained regulated substances and conveyed regulated substances under pressure, from March 1, 2002 though December 31, 2007.
67. Respondent failed to conduct annual tests of the line leak detectors for the piping associated with the 4,000 gallon UST used to store gasoline at Building 166 at the Facility, which routinely contained regulated substances and conveyed regulated substances under pressure, from March 1, 2002 though December 31, 2007.
68. Respondent violated COMAR 26.10.05.02(c)(2)(a) by failing to conduct an annual test in accordance with COMAR 26.10.05.05C for the operation of the line leak detectors

associated with the USTs described in this Count used to store gasoline at Buildings 166 and 445 at the Facility from March 1, 2002 through December 31, 2007.

**COUNT VII**  
**(Failure to Perform Annual Line Tightness Test)**

69. The allegations of Paragraphs 1 through 68 of the CAFO are incorporated herein by reference.
70. COMAR 26.10.05.02C(2)(b) provides that underground piping that routinely contains regulated substances and conveys regulated substances under pressure must have an annual line tightness test conducted in accordance with COMAR 26.10.05.05C or have monthly monitoring conducted in accordance with COMAR 26.10.05.05D.
71. Respondent did not perform an annual line tightness test in accordance with COMAR 26.10.05.05C or conduct monthly monitoring in accordance with COMAR 26.10.05.05D for the pressurized piping associated with the 4,000 gallon UST used to store gasoline at Building 166 at the Facility from March 2, 2007 through November 26, 2007.
72. Respondent violated COMAR 26.10.05.02C(2)(b) by not performing an annual line tightness test conducted in accordance with COMAR 26.10.05.05C or monthly monitoring conducted in accordance with COMAR 26.10.05.05D for the pressurized piping associated with the 4,000 gallon UST used to store gasoline at Building 166 at the Facility from March 2, 2007 through November 26, 2007.

**III. COMPLIANCE ORDER**

73. Respondent shall perform the following Compliance Tasks set forth in this Section III of this CA within the time specified. Respondent shall certify completion of such Compliance Tasks in accordance with paragraph 78 no later than sixty (60) days after Respondent's receipt of a true and correct copy of this CAFO, after filing with the Regional Hearing Clerk. "Days" as used herein shall mean calendar days unless specified otherwise.
74. Immediately cease the storage of hazardous wastes at the Facility except in accordance with a permit issued by, or an exemption or exclusion allowed by, the Maryland Hazardous Waste Management Regulations, COMAR Title 26, Subtitle 13, and/or EPA's hazardous waste management regulations, 40 C.F.R. Parts 260-273, as applicable.

- 75. Immediately make hazardous waste determinations for all solid wastes generated at the Facility as required by COMAR 26.13.03.02A.
- 76. Within 30 days after Respondent's receipt of a true and correct copy of this CAFO, after filing with the Regional Hearing Clerk, ensure that all records of hazardous waste training or job experience required to be maintained at the facility pursuant to COMAR 26.13.05.02G(4)(d) are maintained at the Facility.
- 77. Any notice, report, certification, data presentation, or other document submitted by Respondent pursuant to this CAFO which discusses, describes, demonstrates, supports any finding or makes any representation concerning Respondent's compliance or noncompliance with any requirements of this CAFO shall be certified by a "principal executive officer" as that term is defined at 40 C.F.R. § 270.11(a)(3).
- 78. The certification of the principal executive officer required above shall be in the following form:

I certify that the information contained in or accompanying this [type of submission] is true, accurate, and complete. As to [the/those] identified portions of this [type of submission] for which I cannot personally verify [its/their] accuracy, I certify under penalty of law that this [type of submission] and all attachments were prepared in accordance with a system designed to assure 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: \_\_\_\_\_



79. All documents and reports to be submitted pursuant to this CAFO shall be sent to the following persons:

- a. Documents to be submitted to EPA shall be sent certified mail, return receipt requested to:

Mr. Kenneth J. Cox (3LCD70)  
U. S. Environmental Protection Agency Region III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103

- b. One copy of all documents submitted to EPA shall be sent first class mail to:

Mr. Herb Meade  
Administrator, Oil Control Program  
Maryland Department of the Environment  
Montgomery Park Business Center  
1800 Washington Blvd., Suite 620  
Baltimore, MD 21230

and

Mr. Rick Johnson  
Chief  
Hazardous Waste Enforcement Division  
Maryland Department of the Environment  
1800 Washington Blvd., Suite 610  
Baltimore, MD 21230

#### **IV. CIVIL PENALTY**

80. 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 **\$65,066**. The civil penalty amount is due and payable immediately upon Respondent's receipt of a true and correct copy of this CAFO, fully executed by both parties, signed by the Regional Judicial Officer, and filed with the Regional Hearing Clerk. Respondent must pay the civil penalty no later than thirty (30) calendar days after the date on which this CAFO is mailed or hand-delivered to Respondent.

81. The aforesaid settlement amount was based upon Complainant's consideration of a number of factors, including, but not limited to, the statutory factors as provided in RCRA Sections 3008(a)(3) and (g) and 9006(c) - (e) of RCRA, 42 U.S.C. §§ 6928(a)(3) and (g) and 6991e(c) - (e) and with the *RCRA Civil Penalty Policy* (October 1990) and EPA's *Penalty Guidance for Violations of UST Regulations* (November 1990).
82. Respondent shall pay the amount described in Paragraph 80, above, by sending a certified or cashier's check payable to the "United States Treasury," as follows:

By regular U.S. Postal Service:

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

For overnight deliveries, street address:

United States Environmental Protection Agency  
 Fines and Penalties  
 U.S. Bank  
 1005 Convention Plaza  
 Mail Station SL-MO-C2GL  
 St. Louis, MO 63101  
 Contact: Natalie Pearson

Wire transfers:

Federal Reserve Bank of New York  
 ABA = 021030004  
 Account = 68010727  
 SWIFT address = FRNYUS33  
 33 Liberty Street  
 New York NY 10045  
 Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

Automated Clearing House (ACH) Transfers:

PNC Bank  
ABA = 051036706  
Transaction Code 22 -checking  
Account 310006  
CTX Format  
Environmental Protection Agency  
808 17th Street NW  
Washington DC 20074  
Contact: Jesse White, 301-887-6548

[www.pay.gov](http://www.pay.gov)

Enter sfo 1.1 in the search field, open form and complete the required fields

All payments by Respondent shall reference its name and address and the Docket Number of this action.

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

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

and

Joyce A. Howell  
Senior Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region III (Mail Code 3RC30)  
1650 Arch Street  
Philadelphia, PA 19103-2029

## **V. EFFECT OF SETTLEMENT**

84. Payment of the penalty specified in Paragraph 80, above, shall constitute full and final satisfaction of all civil claims for penalties which Complainant has under RCRA Sections 3008(a) and (g), and 9006 of RCRA 42 U.S.C. §§ 6928(a), and (g), and 6991e, for the specific violations alleged in Counts I through VII, above. Compliance with this CAFO shall not be a defense to any action commenced at any time for any other violation of the federal laws and regulations administered by EPA.

## **VI. RESERVATION OF RIGHTS**

85. This CAFO resolves only EPA's claims for civil penalties for the specific violations alleged in the CAFO. 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. Respondent reserves all available rights and defenses it may have to defend itself in any such action.

## **VII. FULL AND FINAL SATISFACTION**

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

## **VIII. ANTIDEFICIENCY ACT**

87. Failure to obtain adequate funds or appropriations from Congress does not release Respondent from its obligation to comply with RCRA, the applicable regulations thereunder, or with this CAFO. Nothing in this CAFO shall be interpreted to require obligation or payment of funds in violation of the Antideficiency Act, 31 U.S.C. § 1341.

**IX. OTHER APPLICABLE LAWS**

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

**X. AUTHORITY TO BIND THE PARTIES**

89. The undersigned representative of the United States Department of Agriculture (“USDA”) certifies that he or she is fully authorized by Respondent to enter into the terms and conditions of this Consent Agreement and to bind the Respondent to it.

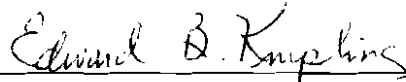
**XI. EFFECTIVE DATE**

90. The effective date of this CAFO is the date on which the Final Order, signed by the Regional Administrator or the Regional Judicial Officer, is filed with the Regional Hearing Clerk.

**For Respondent:**

The United States Department of Agriculture  
Agricultural Research Service

Date: 2/19/2009

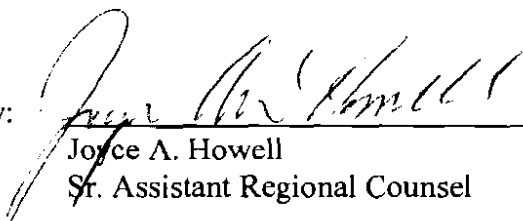


\_\_\_\_\_  
Administrator of Agricultural Research  
Service

**For Complainant:**


United States Environmental Protection Agency,  
Region III

Date: 3/21/2009

By:   
Joyce A. Howell  
Sr. Assistant Regional Counsel

Accordingly, I hereby recommend that the Regional Administrator or his designee issue the Final Order attached hereto.

Date: 3/23/09

By:   
Abraham Ferdas, Director  
Land and Chemicals Division  
U.S. EPA - Region III

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

In the Matter of:	:	
	:	
United States Department of Agriculture, Agricultural Research Service	:	Docket Number RCRA-03-2009-0052
	:	
	:	
Respondent,	:	
	:	
	:	
Beltsville Agricultural Research Service 10300 Baltimore Avenue Beltsville, MD 20705	:	
	:	
	:	
Facility.	:	

**FINAL ORDER**

Complainant, the Director of the Land and Chemicals Division, U.S.

Environmental Protection Agency - Region III, and Respondent, the United States Department of Agriculture, Agricultural Research Service, have executed a document entitled "Consent Agreement" which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22. The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated herein as if set forth at length.

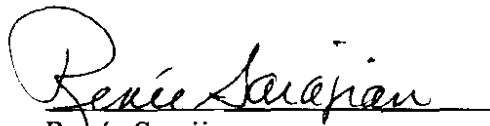
NOW, THEREFORE, PURSUANT TO the Consolidated Rules of Practice, and based on the representations in the Consent Agreement, having determined that the penalty agreed to



in the Consent Agreement is based on a consideration of the factors set forth in Sections 3008(a) and (g) and 9006(c) - (e) of the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6928(a) and (g) and 6991e(c) - (e), it is hereby ordered that Respondent pay \$65,066.00 in accordance with the Consent Agreement and comply with the terms and conditions of this Consent Agreement.

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

Date: 3/25/09

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

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

In the Matter of: :

United States Department of Agriculture, : Docket Number RCRA-03-2009-0052  
Agricultural Research Service :

Respondent, :

Beltsville Agricultural Research Service :  
10300 Baltimore Avenue :  
Beltsville, MD 20705 :

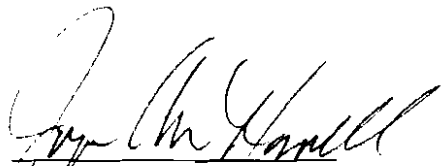
Facility. :

**CERTIFICATE OF SERVICE**

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

Allison Gassner, Esq.  
United States Department of Agriculture  
Office of the General Counsel/Conservation and Environment Division  
1400 Independence Avenue, SW  
Room 2349B  
Washington, DC 20250

Date: 3/26/2009



Joyce A. Howell  
Senior Assistant Regional Counsel  
United States Environmental Protection Agency