



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

In Reply Refer To Mail Code: 3RC50

AUG 18 2016

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Neal Brofee, Assistant Counsel
Governor's Office of General Counsel
Department of Transportation
Office of Chief Counsel
Real Property Division
P.O. Box 8212, Harrisburg, PA 17105-8212

Re: Consent Agreement and Final Order
EPA Docket No.: RCRA-03-2016-0154

Dear Mr. Brofee:

Enclosed is a copy of the CONSENT AGREEMENT AND FINAL ORDER filed today with the Regional Hearing Clerk settling the matter referenced above. For your files, I am also enclosing a copy of the supporting memorandum from Environmental Protection Agency management to the Regional Judicial Officer. Should you have any questions or concerns, please feel free to contact me at (215) 814-2066.

Sincerely,

Jennifer M. Abramson
Senior Assistant Regional Counsel

Enclosures

cc: Gary Morton, EPA

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RECORDED
ENVIRONMENTAL PROTECTION AGENCY
PHILADELPHIA OFFICE

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

In the Matter of:)	
)	
PA Department of Transportation)	Docket No.: RCRA-03-2016-0154
Keystone Building)	
400 North Street)	Proceeding Under Section 9006 of the
Harrisburg, PA 17120)	Resource Conservation and Recovery Act,
)	as amended, 42 U.S.C. Section 6991e
RESPONDENT,)	
)	CONSENT AGREEMENT
West Brownsville)	
Route 40 and Route 88)	
Brownsville, PA 15417)	
)	
Franklin)	
1460 Pittsburgh Road)	
Franklin, PA 16323)	
)	
FACILITIES.)	

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 ENVIRONMENTAL PROTECTION AGENCY
 REGION III
 PHILADELPHIA, PA

CONSENT AGREEMENT

This Consent Agreement (“CA”) is entered into by the Director, Land and Chemicals Division, U.S. Environmental Protection Agency, Region III (“EPA” or “Complainant”) and the PA Department of Transportation (“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 alleged violations of RCRA Subtitle I, 42 U.S.C. §§ 6991-6991m, and the Commonwealth of Pennsylvania’s federally authorized underground storage tank program by Respondent in connection with underground storage tanks operated by Respondent at facilities located at Route 40 and Route 88 in Brownsville, Pennsylvania (“Brownsville facility”) and at 1460 Pittsburgh Road in Franklin, Pennsylvania (“Franklin facility”).

Effective September 11, 2003, pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c, and 40 C.F.R. Part 281, the Commonwealth of Pennsylvania was granted final authorization to administer a state UST management program (“Pennsylvania UST management program”) *in lieu* of the Federal UST management program established under Subtitle I of RCRA, 42 U.S.C. §§ 6991-6991m. The provisions of the Pennsylvania UST management program, through this final authorization, are enforceable by EPA pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e. The Pennsylvania UST management program regulations are set forth in the

Pennsylvania Code, Title 25, Chapter 245, Sections 245.1 *et seq.*, and will be cited hereinafter as 25 Pa. Code 245.1 *et seq.*

Section 9006(d) of RCRA, 42 U.S.C. § 6991e(d), authorizes EPA to assess a civil penalty against any owner or operator of an underground storage tank who fails to comply with, *inter alia*, any requirement or standard of a State underground storage tank program that has been approved by EPA pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c.

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 ("FO"), or the enforcement of the 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 agrees to comply with its terms and conditions.
6. Respondent shall bear its own costs and attorney's fees.
7. The person signing this CA on behalf of the Respondent certifies to EPA by his or her signature herein that Respondent, as of the date of this CA, is in compliance with the provisions of RCRA, Subtitle I, 42 U.S.C. §§ 6991-6991m, and the Commonwealth of Pennsylvania's federally authorized underground storage tank program set forth at 25 Pa. Code 245.1 *et seq.* at the Brownsville facility and the Franklin facility.
8. The provisions of this CAFO shall be binding upon Respondent, and its officers, directors, employees, successors and assigns.
9. 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 Subtitle I, 42 U.S.C. §§ 6991-6991m, or of any regulations promulgated or authorized thereunder.
10. 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.

11. Respondent agrees not to deduct for civil taxation purposes the civil penalty specified in this Consent Agreement and the attached Final Order.
12. EPA has given the Commonwealth of Pennsylvania prior notice of the issuance of this CAFO in accordance with Section 9006(a)(2) of RCRA, 42 U.S.C. § 6991e(a)(2).

FACTUAL ALLEGATIONS AND CONCLUSIONS OF LAW

13. EPA has jurisdiction over this matter pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e, 40 C.F.R. Part 281 and 40 C.F.R. § 22.1(a)(4).
14. On May 7, 2014, EPA representatives conducted a compliance inspection of the Brownsville facility located at Route 40 and Route 88 in Brownsville, Pennsylvania pursuant to Section 9005 of RCRA, 42 U.S.C. § 6991d.
15. At the time of the May 7, 2014 compliance inspection described above and at all times relevant to the applicable violations alleged herein:
 - (a) two ten-thousand (10,000) gallon double-walled fiberglass underground storage tanks, installed in or about 1997, and routinely containing diesel fuel, a “regulated substance” as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and 25 PA Code § 245.1, were located at the Brownsville facility;
 - (b) the two tanks at the Brownsville facility, together with connected piping, ancillary equipment and containment systems, were each “underground storage tank system(s)” and “petroleum system(s)” as these terms are defined in 25 Pa. Code § 245.1; and
 - (c) the piping associated with the two petroleum underground storage tank systems at the Brownsville facility conveyed regulated substances under pressure, and were equipped with mechanical line leak detectors.
16. Pursuant to RCRA Section 9005, 42 U.S.C. § 6991d, EPA issued an Information Request letter to Respondent on December 4, 2014 concerning the petroleum underground storage tank systems at the Brownsville facility.
17. On August 18, 2014, an EPA representative conducted a compliance inspection of the Franklin facility located at 1460 Pittsburgh Road in Franklin, Pennsylvania pursuant to Section 9005 of RCRA, 42 U.S.C. § 6991d.
18. At the time of the August 18, 2014 compliance inspection described above and at all times relevant to the applicable violations alleged herein:
 - (a) two ten-thousand (10,000) gallon steel with fiberglass reinforced plastic underground storage tanks, installed in or about 1996, and routinely containing

diesel fuel, a “regulated substance” as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and 25 Pa. Code § 245.1, were located at the Franklin facility;

- (b) the two tanks at the Franklin facility, together with connected piping, ancillary equipment and containment systems, were each “underground storage tank system(s)” and “petroleum system(s)” as these terms are defined in 25 Pa. Code § 245.1; and
 - (d) the piping associated with the two petroleum underground storage tank systems at the Franklin facility conveyed regulated substances under pressure, and were equipped with mechanical line leak detectors.
19. Pursuant to RCRA Section 9005, 42 U.S.C. § 6991d, EPA issued an Information Request letter to Respondent on March 31, 2015 concerning the petroleum underground storage tank systems at the Franklin facility.
20. At all times relevant to this CAFO, Respondent has been the “operator” as that term is defined in Section 9001(3) of RCRA, 42 U.S.C. § 6991(3), and 25 PA Code § 245.1, of “underground storage tank(s)” and “underground storage tank system(s)” as those terms are defined in Section 9001(10) of RCRA, 42 U.S.C. § 6991(10), and 25 PA Code § 245.1, at the Brownsville facility and at the Franklin facility.
21. At all times relevant to this CAFO, Respondent has been a department of the Commonwealth of Pennsylvania.
22. Respondent is a “person” as defined in Section 9001(5) of RCRA, 42 U.S.C. § 6991(5), and 25 Pa. Code § 245.1

COUNT I - FAILURE TO CONDUCT ANNUAL LINE LEAK DETECTOR TESTING

23. Paragraphs 1 through 22 are incorporated by reference as if fully set forth herein.
24. Pursuant to 25 Pa. Code § 245.445(1), owners and operators of underground storage tank systems with pressurized piping equipped with automatic line leak detectors are required to conduct an annual test of the operation of the leak detectors in accordance with manufacturer’s requirements.
25. Respondent failed to conduct required annual operational testing of the mechanical line leak detectors on pressurized piping associated with the underground storage tank systems at the Brownsville facility from at least July 1, 2011 through July 29, 2013, and from August 1, 2014 through January 8, 2015.
26. Respondent failed to conduct required annual operational testing of the mechanical line leak detectors on pressurized piping associated with the underground storage tank systems at the Franklin facility from at least July 1, 2011 through February 10, 2012.

27. Respondent's acts or omission as alleged in Paragraphs 25 and 26, above, constitute violations by Respondent of 25 Pa. Code § 245.445(1).

COUNT II - FAILURE TO PERFORM PIPING RELEASE DETECTION

28. Paragraphs 1 through 27 are incorporated by reference as if fully set forth herein.
29. Pursuant to 25 Pa. Code § 245.442(2), owners and operators of underground storage tank systems shall monitor underground piping that routinely contains regulate substances and that conveys regulate substances under pressure for releases by having either an annual line tightness test in accordance with § 245.445(2) or have monthly monitoring conducted in accordance with § 245.445(3).
30. Respondent failed to have either an annual line tightness test conducted in accordance with § 245.445(2) or monthly monitoring conducted in accordance with § 245.445(3) for the underground pressurized piping associated with the underground storage tank systems at the Franklin facility from August 14, 2014 through January 20, 2015.
31. Respondent's acts or omission as alleged in Paragraph 30, above, constitute violations by Respondent of 25 Pa. Code § 245.442(2).

COUNT III - FAILURE TO MAINTAIN RECORDS

32. Paragraphs 1 through 31 are incorporated by reference as if fully set forth herein.
33. Pursuant to 25 Pa. Code § 245.446, owners and operators of underground storage tank systems are required to maintain monitoring records in accordance with § 245.435 (related to reporting and recordkeeping) demonstrating compliance with applicable requirements of §§ 245.441-245.446 (relating to release detection) for at least a year.
34. Respondent failed to keep every record of tank release detection monitoring and of underground piping release detection monitoring associated with the underground storage tank systems at the Brownsville facility from November 2011 through November 2014.
35. Respondent's acts or omission as alleged in Paragraph 34, above, constitute violations by Respondent of 25 Pa. Code § 245.446.

CIVIL PENALTY

36. 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 twenty-six thousand and sixty-six dollars (\$26,066). The civil penalty amount is due and payable immediately upon Respondent's receipt of a true and correct copy of this CAFO. If Respondent pays the entire civil penalty of twenty-six thousand and sixty-six dollars (\$26,066) within ninety (90) calendar days of the date on which this CAFO is mailed or hand-delivered to Respondent, no interest will be assessed against Respondent pursuant to 40 C.F.R. §§ 13.11(a)(1) and (a)(2).

37. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest on outstanding debts owed to the United States by State governments, as more fully described below.
38. In accordance with 40 C.F.R. § 13.11(a), interest on any civil penalty assessed in a CAFO begins to accrue on the date that a copy of the CAFO is mailed or hand-delivered to the Respondent. However, EPA will not seek to recover interest on any amount of such civil penalty that is paid within ninety (90) 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).
39. 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 Section 9006(c) of RCRA, 42 U.S.C. § 6991e(c), and with EPA's Penalty Guidance for Violations of UST Regulations ("UST Guidance") dated November 4, 1990.
40. Respondent shall pay the amount described in Paragraph 36, above, by sending a certified or cashier's check payable to the "United States Treasury," as follows:

a. Mailing (*via first class U.S. Postal Service Mail*) a certified or cashier's check, made payable to the United States Treasury to the following address

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

Contact: Craig Steffen 513-487-2091
Molly Williams 513-487-2076

b. Via Overnight Delivery of a certified or cashier's check, made payable to the United States Treasury, sent to the following address:

U.S. Bank
Government Lockbox 979077
US EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101

c. All payment 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

d. By electronic funds transfer ("EFT") to the following account:

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

Beneficiary: US Environmental Protection Agency

e. By automatic clearinghouse ("ACH") to the following account:

U.S. Treasury REX/Cashlink ACH Receiver
ABA 051036706
Account No. 310006
Environmental Protection Agency
CTX Format
Transaction Code 22 - checking

Physical location of US Treasury Facility:
5700 Rivertech Court
Riverdale, MD 20737

Remittance Express (REX): 1-866-234-5681

f. Online payments can be made at WWW.PAY.GOV by entering "sfo 1.1" in the search field, and opening the form and completing the required fields.

g. Additional payment guidance is available at:
<https://www.epa.gov/financial/makepayment>

All payments shall also reference the above case caption and docket number, DOCKET NO.: RCRA-03-2016-0154. At the same time that any payment is made, Respondent shall mail copies of any corresponding check, or provide written notification confirming any electronic wire transfer, automated clearinghouse or online payment to Lydia A. Guy, Regional Hearing Clerk (3RC00), U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029 and to Gary Morton (3LC70), U.S. Environmental Protection Agency, Region III, Office of Land Enforcement, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029.

FULL AND FINAL SATISFACTION

41. 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

42. 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

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

AUTHORITY TO BIND THE PARTIES

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

ENTIRE AGREEMENT

45. This Consent Agreement and the attached Final Order constitute the entire agreement and understanding of the parties concerning settlement of the above-captioned action and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Consent Agreement and the attached Final Order.

EFFECTIVE DATE

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

For Respondent:

PA Department of Transportation

7/20/16

Date

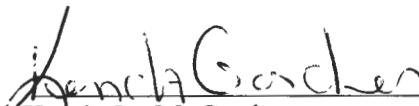


R. Scott Christie, P.E.
Deputy Secretary for Highway
Administration

Approved as to Legality and Form

7/28/16

Date



Kenda Jo. M. Gardner
Deputy Chief Counsel, Real Property
Division

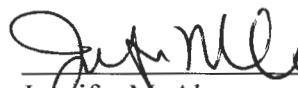
TJB 7/28/16

For Complainant:

U.S. Environmental Protection Agency,
Region III

8/10/16

Date

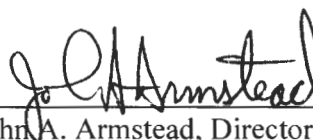


Jennifer M. Abramson
Senior Assistant Regional Counsel

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.

8.17.16

Date



John A. Armstead, Director,
Land and Chemicals Division
EPA Region III

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

In the Matter of:

PA Department of Transportation
Keystone Building
400 North Street
Harrisburg, PA 17120

RESPONDENT,

West Brownsville
Route 40 and Route 88
Brownsville, PA 15417

Franklin
1460 Pittsburgh Road
Franklin, PA 16323

FACILITIES.

EPA DOCKET NO. RCRA-03-2016 0154

FINAL ORDER

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

REGIONAL HEARING CLERK
EPA REGION III, PHILA. PA

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FINAL ORDER

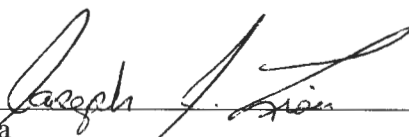
Complainant, the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region III, and Respondent, PA Department of Transportation have executed a document entitled "Consent Agreement," which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules 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 penalty agreed to therein is based upon consideration of, *inter alia*, the *U.S. EPA Penalty Guidance for Violations of UST Regulations*, dated November 1990, and the statutory factors set forth in Section 9006(c) of RCRA, 42 U.S.C. § 6991e(c).

NOW, THEREFORE, PURSUANT TO Section 9006(c) of RCRA, 42 U.S.C. § 6991e(c), 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 **TWENTY-SIX THOUSAND AND SIXTY-SIX DOLLARS (\$26,066)**, in accordance with the payment provisions set forth in the Consent Agreement, and comply with the terms and conditions of the Consent Agreement.

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.

Aug 18 2016
Date



Joseph J. Lisa
Regional Judicial and Presiding Officer
U.S. EPA Region III

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

In the Matter of:)
)
PA Department of Transportation) Docket No.: RCRA-03-2016-0154
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)
FACILITIES.)

REGIONAL HEARING CLERK
EPA REGION III, PHILA. PA

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CERTIFICATE OF SERVICE

I certify that the foregoing CONSENT AGREEMENT AND FINAL ORDER in the above referenced matter was sent this day in the following manner to the below addressees.

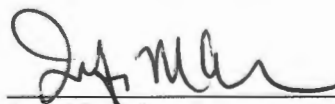
Original and one copy by hand-delivery: Lydia Guy, Regional Hearing Clerk

Copy by Certified Mail:

Neal Brofee, Assistant Counsel
Governor's Office of General Counsel
Department of Transportation
Office of Chief Counsel, Real Property Division
P.O. Box 8212, Harrisburg, PA 17105-8212

AUG 18 2016

Date



Jennifer M. Abramson (3RC50)
Senior Assistant Regional Counsel
U.S. EPA, Region III

