

03/29 19:30

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

In the Matter of:	)	
	)	
D.C. Sports and Entertainment Commission,	)	
	)	U.S. EPA Docket Number
RESPONDENT.	)	RCRA-03-2009-0145
	)	
D.C. National Guard Armory	)	Proceeding Under Section 9006 of the
2001 East Capitol Street NE	)	Resource Conservation and Recovery Act,
Washington, D.C. 20013	)	as amended, 42 U.S.C. Section 6991e
	)	
FACILITY.	)	
	)	
	)	

**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 D.C. Sports and Entertainment Commission (“DCSEC” or “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 “CA/FO”), resolve violations of RCRA Subtitle I, 42 U.S.C. §§ 6991-6991m, and the District of Columbia’s federally authorized underground storage tank program by Respondent in connection with the underground storage tank at the D.C. National Guard Armory located at 2001 East Capitol Street NE, Washington, D.C. 20013 (“the Facility”).

Effective May 4, 1998, pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c, and 40 C.F.R. Part 281, Subpart A, the District of Columbia was granted final authorization to administer a state 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 District of Columbia UST management program, through this final authorization, became requirements of Subtitle I of RCRA and are, accordingly, enforceable by EPA pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e. The District of Columbia’s authorized UST program regulations are

set forth in the District of Columbia Municipal Regulations, Title 20, Chapters 55 *et seq.*, and will be cited hereinafter as 20 DCMR §§ 5500 *et seq.*

EPA has given the District of Columbia notice of the issuance of this CA/FO in accordance with Section 9006(a)(2) of RCRA, 42 U.S.C. § 6991e(a)(2).

### **GENERAL PROVISIONS**

1. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CA/FO.
2. Respondent neither admits nor denies the specific factual allegations and conclusions of law set forth in this CA/FO, 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 CA/FO.
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. In addition, Respondent waives its right to confer with the Administrator pursuant to RCRA § 6001(b)(2), 42 U.S.C. § 6961(b)(2)
5. Respondent consents to the issuance of this CA/FO, and agrees to comply with its terms and conditions.
6. Each party 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 its execution of this CA, is in compliance with the provisions of RCRA, Subtitle I, 42 U.S.C. §§ 6991-6991m, and the District of Columbia's federally authorized underground storage tank program set forth at 20 DCMR §§ 5500 *et seq.* at the Facility referenced herein. This certification is based on the personal knowledge of the signer or an inquiry of the person or persons responsible for the Facility's compliance with Subtitle I of RCRA.
8. The provisions of this CA/FO shall be binding upon EPA and Respondent.
9. This CA/FO 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 CA/FO constitute a waiver, suspension or modification of the requirements of RCRA Subtitle I, 42 U.S.C. §§ 6991-6991m, or any regulations promulgated thereunder.

10. Complainant shall have the right to institute further actions to obtain appropriate relief if Complainant obtains evidence that the information provided and/or representations made by Respondent to EPA regarding matters at issue in the CA/FO are false or, in any material respect, inaccurate.
11. EPA has given the District of Columbia prior notice of the issuance of this CA/FO in accordance with Section 9006(a)(2) of RCRA, 42 U.S.C. § 6991e(a)(2).

**FACTUAL ALLEGATIONS AND CONCLUSIONS OF LAW**

12. The United States Environmental Protection Agency - Region III ("EPA" or the "Region") and EPA's Office of Administrative Law Judges have jurisdiction over this matter pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e, and 40 C.F.R. § 22.1(a)(4) and .4(c).
13. DCSEC is a "person" as defined in Section 9001(5) of RCRA, 42 U.S.C. § 6991(5), and 20 DCMR § 6899.1.
14. At all times relevant to this CA/FO, DCSEC 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 20 DCMR § 6899.1, 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 20 DCMR § 6899.1, located at the Facility.
15. On May 7, 2008, an EPA representative conducted a Compliance Evaluation Inspection ("CEI") of the Facility pursuant to Section 9005 of RCRA, 42 U.S.C. § 6991d.
16. At the time of the May 7, 2008 CEI, and at all times relevant to the applicable violations alleged herein, the following UST was located at the Facility:
  - A. a 550-gallon fiberglass reinforced plastic tank that was installed in August 1999 and that, at all times relevant hereto, routinely contained and was used to store gasoline, a "regulated substance" as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and 20 DCMR § 6899.1 (hereinafter "UST #008").
17. At all times relevant to the applicable violations alleged herein, UST #008 has been a "petroleum UST system" and a "new tank system" as these terms are defined in 20 DCMR § 6899.1, respectively.
18. UST #008 is not and was not, at all times relevant to the applicable violations alleged in this CA/FO, "empty" as that term is defined at 20 DCMR § 6100.7.

19. Pursuant to RCRA Section 9005, 42 U.S.C. § 6991d, on June 9, 2008, EPA issued an Information Request to DCSEC concerning its petroleum UST system at the Facility.

**COUNT # 1**

(Failure to perform release detection on UST #008)

20. The allegations of Paragraphs 1 through 19 of this CA/FO are incorporated herein by reference.
21. 20 DCMR § 6000.1 provides that each owner and operator of a new or existing UST system shall provide a method, or combination of methods, of release detection that meets the requirements described therein.
22. Pursuant to 20 DCMR §§ 6003.1 through 6003.5, tanks which are part of a petroleum UST system must be monitored at least every 30 days for releases using one of the methods listed in 20 DCMR §§ 6008 through 6012, except that: (1) prior to December 22, 1995, certain UST systems could have been monitored using a combination of inventory control and tank tightness testing in compliance with the requirements of 20 DCMR §§ 6005 through 6007; and (2) tanks with a capacity of 550 gallons or less may use weekly tank gauging conducted in accordance with 20 DCMR § 6006.
23. From April 1, 2004 until May 13, 2008, the method of release detection selected by Respondent for UST #008 at the Facility was manual tank gauging in accordance with 20 DCMR § 6006.
24. From April 1, 2004 until May 13, 2008, Respondent failed to perform manual tank gauging for UST #008 in accordance with 20 DCMR § 6006.
25. During the period of time indicated in Paragraph 23 and 24, Respondent did not use any of the other release detection methods specified in 20 DCMR § 6003.3 through 6003.5 and/or 20 DCMR §§ 6005 through 6012 on UST #008.
26. Respondent's acts and/or omissions as alleged in Paragraphs 24 through 25, above, constitute a violation by Respondent of 20 DCMR §§ 6000.1 and 6003.

**COUNT # 2**

(Failure to Provide Financial Assurance)

27. The allegations in Paragraphs 1 through 26, of this Complaint are incorporated herein by reference.
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28. 20 DCMR §§ 6700.1 and 6700.10 through 6700.17 provide that owners and operators of petroleum UST systems are required, with exceptions not here relevant, to demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs. Subject to the limitations set forth in 20 DCMR §§ 6701.1 through 6701.7, an owner or operator may demonstrate financial responsibility using any of the mechanisms set forth in 20 DCMR §§ 6703 through 6711.
29. From April 1, 2004 until June 30, 2008, Respondent did not demonstrate financial responsibility for UST #008, above, by any of the methods set forth in 20 DCMR §§ 6703 through 6711.
30. Respondent's act and/or omission as alleged in Paragraph 29, above, constitutes a violation by Respondent of 20 DCMR § 6700.1 and §§ 6700.10 through 6700.17.

#### CIVIL PENALTY

31. 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 **Fifteen Thousand Nine Hundred and Eighty Dollars (\$15,980.00)**. 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 **\$15,980.00** within thirty (30) 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).
32. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest, administrative costs and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below.
33. 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 thirty (30) 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).
34. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period a debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives - Cash Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the

payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.

35. A late payment penalty of six percent per year will be assessed monthly on any portion of a civil penalty which remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on a debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
36. The aforesaid settlement amount was based upon Complainant's consideration of a number of factors, including, but not limited to, the statutory factors of the seriousness of Respondent's violations and any good faith efforts by Respondent to comply with all applicable requirements as provided in RCRA § 9006(c), 42 U.S.C. § 6991e(c), the maximum civil penalties established under RCRA § 9006(d), 42 U.S.C. § 6991e(d), Respondent's compliance history and any other factors EPA considers appropriate as provided in RCRA § 9006(e), 42 U.S.C. § 6991e(e), as well as applicable portions of EPA's Penalty Guidance for Violations of UST Regulations ("UST Guidance") dated November 4, 1990.
37. Payment of the civil penalty amount described in Paragraph 31, above, shall be made by either cashier's check, certified check or electronic wire transfer, in the following manner:
  - A. All payments by Respondent shall reference its name and address, and the Docket Number of this action, *i.e.*, RCRA-03-2009-0145;
  - B. All checks shall be made payable to "**United States Treasury**";
  - C. All payments made by check and sent by regular mail shall be addressed and mailed to:

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

Contact: Natalie Pearson, 314-418-4087
  - D. All payments made by check and sent by overnight delivery service shall be addressed and mailed to:

U.S. Environmental Protection Agency–Fines and Penalties  
U.S. Bank

1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101

Contact: Natalie Pearson, 314-418-4087

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

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"

- F. All electronic payments made through the automated clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

Automated Clearinghouse (ACH) for receiving US currency  
PNC Bank  
808 17th Street, NW  
Washington, DC 20074  
Contact: Jesse White 301-887-6548

ABA = 051036706  
Transaction Code 22 - Checking  
Environmental Protection Agency  
Account 310006  
CTX Format

- G. On-Line Payment Option:

[WWW.PAY.GOV](http://WWW.PAY.GOV)

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

- H. The customer service phone numbers for the above payment centers are:

212-720-5000 (wire transfers, Federal Reserve Bank of New York)

800-762-4224 (ACH/Wire Info, PNC Bank)

Additional payment guidance is available at:

[http://www.epa.gov/ocfo/finservices/make\\_a\\_payment\\_cin.htm](http://www.epa.gov/ocfo/finservices/make_a_payment_cin.htm)

- I. Copies of all checks and/or copies of all electronic fund transfers made in payment of the penalty described in Paragraph 31 shall be sent simultaneously to:

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

and

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

#### **FULL AND FINAL SATISFACTION**

38. Pursuant to 40 C.F.R. § 22.18(c), this CA/FO constitutes a full and final resolution of Respondent's liability to EPA for civil penalties pursuant to 9006(a) of RCRA, 42 U.S.C. § 6991e(a), for the specific violations and matters alleged in this Consent Agreement.

#### **RESERVATION OF RIGHTS**

39. EPA reserves the right to commence action against any person or persons, 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 CA/FO, following its filing with the Regional Hearing Clerk.

**OTHER APPLICABLE LAWS**

40. Nothing in this CA/FO 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**

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

**ENTIRE AGREEMENT**

42. 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**


43. This CA/FO shall become effective upon filing with the Regional Hearing Clerk.

For Respondent:

D.C. Sports and Entertainment Commission

5/4/09

Date



by: Erik A. Moses  
Chief Executive Officer

*In the Matter of:*  
*D.C. National Guard Armory*

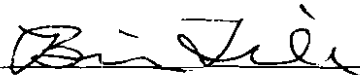
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*Consent Agreement*  
*Docket No. RCRA-03-2009-0145*

For Complainant:

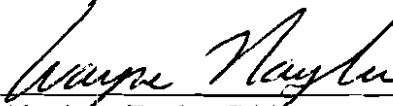
Environmental Protection Agency,  
Region III

5/14/09  
Date

  
by: Brianna Tindall  
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.

5/26/09  
Date

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

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

<b>In the Matter of:</b>	)	
	)	
<b>D.C. Sports and Entertainment Commission,</b>	)	<b>U.S. EPA Docket Number</b>
	)	<b>RCRA-03-2009-0145</b>
<b>RESPONDENT.</b>	)	
	)	<b>Proceeding Under Section 9006 of the</b>
<b>D.C. National Guard Armory</b>	)	<b>Resource Conservation and Recovery</b>
<b>2001 East Capitol Street NE</b>	)	<b>Act, as amended, 42 U.S.C. Section</b>
<b>Washington, D.C. 20013</b>	)	<b>6991e</b>
	)	
<b>FACILITY.</b>	)	
	)	

**FINAL ORDER**

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

**NOW, THEREFORE, PURSUANT TO** Section 22.18(b)(3) of the *Consolidated Rules of Practice* and Section 9006(c) of the Resource Conservation and Recovery Act, 42 U.S.C. § 6991e(c)("RCRA"), and having determined, based on the representations of the parties in the attached Consent Agreement, that the civil penalty agreed to therein was based upon a


consideration of the factors set forth in Section 9006(c) - (e) of RCRA, 42 U.S.C. § 6991e(c) - (e),

**IT IS HEREBY ORDERED** Respondent pay a civil penalty of **Fifteen Thousand Nine Hundred and Eighty Dollars (\$15,980.00)** in accordance with the payment provisions set forth in the attached Consent Agreement, and comply with each of the additional terms and conditions as specified in the attached Consent Agreement.

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

Date:

5/28/09



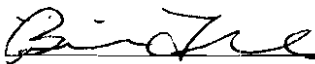
Renée Sarajian  
Regional Judicial Officer  
U.S. EPA, Region III

**CERTIFICATE OF SERVICE**

I certify that on the date noted below, I sent by Overnight Delivery Service, a copy of the Consent Agreement and Final Order, **In the Matter of: D.C. National Guard Armory, U.S. EPA Docket Number RCRA-03-2009-0145**, to the persons and addresses listed below. The original Consent Agreement and Final Order were hand-delivered to the Regional Hearing Clerk, U.S. EPA Region III.

**Nicole Jackson**  
**General Counsel**  
**D.C. Sports and Entertainment Commission**  
**2400 East Capitol Street SE**  
**Washington, D.C. 20003**

Dated: 5/29/09

  
\_\_\_\_\_  
Brianna Tindall  
Assistant Regional Counsel  
Office of Regional Counsel  
EPA, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029