

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 3
Philadelphia, Pennsylvania 19103



In the Matter of:	:	
	:	
Sims ARG, Inc.	:	U.S. EPA Docket No. RCRA-03-2025-0012
1 Linden Avenue East	:	
Jersey City, New Jersey 07305,	:	Proceeding under Proceeding under Section
	:	9006 of the Resource Conservation and Recovery
Respondent.	:	Act, as amended, 42 U.S.C. Section 6991e
	:	
Sims ARG, Inc.	:	
15000 Southlawn Lane	:	
Rockville, Maryland 20850,	:	
	:	
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 3 (“the Complainant”) and Sims ARG, Inc. (“SIMS” or “the 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 (“the 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. 40 C.F.R. Part 22. Section 9006 of the 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 the authority to enter into agreements concerning administrative penalties to the Complainant. This Consent Agreement and the attached Final Order (hereinafter jointly referred to as the “Consent Agreement and Final Order”) resolve the Complainant’s civil penalty claims against Respondent under the RCRA (or “the Act”) for the violations alleged herein.
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).

GENERAL PROVISIONS

5. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this Consent Agreement and Final Order.
6. Except as provided in Paragraph 5, above, the Respondent neither admits nor denies the specific factual allegations set forth in this Consent Agreement.
7. The 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.
8. For purposes of this proceeding only, the 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.
9. The 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.
10. The Respondent shall bear its own costs and attorney’s fees in connection with this proceeding.
11. On May 24, 2023, the EPA provided notice to the Maryland Department of the Environment (“MDE”) that the EPA intended to issue a notice of violations and an administrative enforcement action for any violations determined to exist at the Respondent’s facility.

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.

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13. The State of Maryland is approved to administer and enforce an underground storage tank program in lieu of the Federal program in accordance with Subtitle I of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6991 – 6991m. The State’s program, as administered by the Maryland Department of the Environment, was approved by the EPA pursuant to 42 U.S.C. 6991c and 40 C.F.R. Part 281. The EPA approved the Maryland underground storage tank program on June 30, 1992, and approval was effective on July 30, 1992.
14. The State of Maryland has primary responsibility for enforcing its underground storage tank program. However, the EPA retains the authority to exercise its inspection and enforcement authorities in accordance with sections 9005 and 9006 of Subtitle I of RCRA, 42 U.S.C. 6991d and 6991e, regardless of whether the State has taken its own actions, as well as in accordance with other statutory and regulatory provisions.
15. The Complainant alleges that the Respondent failed to comply with specific requirements of Subtitle I of RCRA, 42 U.S.C. § 6991 – 6991m, 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, the Respondent has been a Delaware Corporation which is authorized to do business in the State of Maryland.
17. At all times relevant to this Consent Agreement, the 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, the 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 15000 Southlawn Lane Rockville, Maryland 20850 (“the Facility”).
19. On January 5, 2023, pursuant to the EPA’s authority under Section 9005(a) of RCRA, 42 U.S.C. § 6991d(a), the EPA conducted a Compliance Evaluation Inspection (“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 January 5, 2023 Inspection, the EPA inspector noted that there are two (2) Underground Storage Tanks (“USTs”) at the Facility.
21. At all times relevant to the applicable violations alleged herein, there were at the Facility the two (2) 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):

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- a. Tank 1: 6,000 gallons; containing diesel; fiberglass-reinforced plastic (“FRP”) tank; installed June 1987; piping construction appeared to be steel with a plastic sleeve;
 - b. Tank 2: 1,000 gallons; containing kerosene; FRP tank; installed 12/31/1986; piping construction appeared to be steel with a plastic sleeve.
22. During the time relevant to this Consent Agreement, the Facility conducted manual tank gauging and inventory control in conjunction with statistical inventory reconciliation (“SIR”) by sending the inventory data to a 3rd party vendor for release detection analysis as their method of tank release detection.
 23. On January 5, 2023, the EPA inspectors observed that the Facility did not have all monthly records of tank release detection for Tank 1 as specified below.

Count 1

Failure to provide adequate release detection on Tank 1

24. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
25. COMAR § 26.10.05.02(B), requires that an owner and operator of a regulated petroleum UST system shall monitor the tanks for releases of a regulated substance by conducting one of the methods of release detection described in COMAR §26.10.05.04(E-I) at least every 30 days.
26. At the time of the January 5, 2023, Inspection, the EPA observed that the Respondent did not conduct one of the methods of release detection described in COMAR §26.10.05.04(E-I) every 30 days for Tank 1 from February 1, 2022 to September 28, 2022. The most recent prior passing result of release detection for Tank 1 at the Facility was on January 7, 2021, under a previous operator. Respondent began operating the Facility on January 1, 2022 and therefore release detection was next due by January 31, 2022 and every 30 days thereafter.
27. In response to the EPA’s request for additional release detection records, Respondent indicated that it did not conduct one of the methods of release detection described in COMAR §26.10.05.05.04 (E-I) for Tank 1 from April 7, 2023 to July 24, 2023. The most recent prior passing result of release detection for Tank 1 at the Facility was on March 7, 2023, therefore release detection was next due by April 6, 2023 and every 30 days thereafter. Respondent further stated that while manual tank gauging and inventory control were conducted on Tank 1 at the Facility for the time period of March 8, 2023 to July 25, 2023 and the data collected by Respondent was sent to a 3rd party vendor for

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statistical inventory reconciliation for purposes of complying with the release detection requirements, the data was not analyzed in a timely manner as the account was delinquent.

28. In response to the EPA's request for additional release detection records, Respondent indicated that it did not conduct one of the methods of release detection described in COMAR §26.10.05.05.04 (E-I) for Tank 1 from September 4, 2023 to January 3, 2024. The most recent prior passing result of release detection for Tank 1 at the Facility was August 4, 2023, therefore release detection was next due by September 3, 2023 and every 30 days thereafter. Respondent further stated that while manual tank gauging and inventory control were conducted on Tank 1 at the Facility for the applicable time period, the data collected by Respondent was not timely sent to the 3rd party vendor for statistical inventory reconciliation for purposes of complying with the release detection requirements due to communication issues.
29. Respondent violated COMAR § 26.10.05.02(B) from February 1, 2022 to September 28, 2022; from April 7, 2023 to July 24, 2023; and from September 4, 2023 to January 3, 2024; when Respondent failed to provide release detection every 30 days for Tank 1, which is a total of 469 days of noncompliance with the tank release detection requirement.
30. In failing to comply with COMAR § 26.10.05.02(B), Respondent has violated Subtitle I of RCRA, 42 U.S.C. §§ 6991-6991m, and is subject to the assessment of penalties under Section 9006(d) of RCRA, 42 U.S.C. § 6991e(d).

CIVIL PENALTY

31. In settlement of the 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 **NINE-THOUSAND EIGHTY-FOUR dollars (\$9,084.00)**, which Respondent shall be liable to pay in accordance with the terms set forth below.
32. The civil penalty is based upon the EPA's consideration of a number of factors, including the penalty criteria ("statutory factors") set forth in the RCRA, Section 9006(c) and (e), 42 U.S.C. § 6991e(c) and (e), which includes the seriousness of the violation, and good faith efforts to comply with the applicable requirements, and any other factors considered appropriate.
33. These factors were applied to the particular facts and circumstances of this case with specific reference to the EPA's 1990 U.S. E.P.A. Penalty Guidance for Violations of UST Regulations, and the EPA's 2023 *Revised Consolidated Enforcement Penalty Policy for Underground Storage Tank (UST) Regulations and Revised Field Citation Program and ESA Pilot* (collectively "UST Penalty Guidance") which reflects the statutory penalty

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criteria and factors set forth in Section 9006 (c) of the RCRA, and the appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to 40 C.F.R. Part 19, and the applicable EPA memoranda addressing EPA's civil penalty policies to account for inflation.

34. The Respondent agrees to pay a civil penalty in the amount of **\$9,084.00** ("Assessed Penalty") within thirty (30) days of the Effective Date of this Consent Agreement and Final Order.
35. The Respondent shall pay the Assessed Penalty and any interest, fees, and other charges due using any method, or combination of appropriate methods, as provided on the EPA website: <https://www.epa.gov/financial/makepayment>. For additional instructions see: <https://www.epa.gov/financial/additional-instructions-making-payments-epa>.
36. When making a payment, the Respondent shall:
 - a. Identify every payment with Respondent's name and the docket number of this Consent Agreement, **EPA Docket Number RCRA-03-2025-0012**;
 - b. Concurrently with any payment or within 24 hours of any payment, the Respondent shall serve Proof of Payment simultaneously **by email** to the following person(s):

Jeffrey S. Nast
Sr. Assistant Regional Counsel
nast.jeffrey@epa.gov,

U.S. Environmental Protection Agency
Cincinnati Finance Center
CINWD_AcctsReceivable@epa.gov,

and

U.S. EPA Region 3 Regional Hearing Clerk
R3_Hearing_Clerk@epa.gov.

"Proof of Payment" means, as applicable, a copy of the check, confirmation of credit card or debit card payment, or confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with the appropriate docket number and Respondent's name.

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37. Interest, Charges, and Penalties on Late Payments. Pursuant to 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to timely pay the full amount of the Assessed Penalty per this Consent Agreement, EPA is authorized to recover, in addition to the amount of the unpaid Assessed Penalty, the following amounts.
- a. Interest. Interest begins to accrue from the Effective Date of this Consent Agreement. If the Assessed Penalty is paid in full within thirty (30) days, interest accrued is waived. If the Assessed Penalty is not paid in full within thirty (30) days, interest will continue to accrue until any unpaid portion of the Assessed Penalty as well as any interest, penalties, and other charges are paid in full. To protect the interests of the United States, the rate of interest is set at the IRS standard underpayment rate; any lower rate would fail to provide the Respondent adequate incentive for timely payment.
- b. Handling Charges. The Respondent will be assessed monthly a charge to cover EPA's costs of processing and handling overdue debts. If the Respondent fails to pay the Assessed Penalty in accordance with this Consent Agreement, EPA will assess a charge to cover the costs of handling any unpaid amounts for the first thirty (30) day period after the Effective Date. Additional handling charges will be assessed every thirty (30) days, or any portion thereof, until the unpaid portion of the Assessed Penalty as well as any accrued interest, penalties, and other charges are paid in full.
- c. Late Payment Penalty. A late payment penalty of six percent (6%) per annum, will be assessed monthly on all debts, including any unpaid portion of the Assessed Penalty, interest, penalties, and other charges, that remain delinquent more than ninety (90) days. Any such amounts will accrue from the Effective Date.
38. Late Penalty Actions. In addition to the amounts described in the prior Paragraph, if Respondent fails to timely pay any portion of the Assessed Penalty, interest, or other charges and penalties per this Consent Agreement, EPA may take additional actions. Such actions EPA may take include, but are not limited to, the following.
- a. Refer the debt to a credit reporting agency or a collection agency, per 40 C.F.R. §§ 13.13 and 13.14.
- b. Collect the debt by administrative offset (i.e., the withholding of money payable by the United States government to, or held by the United States government for, a person to satisfy the debt the person owes the United States government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, per 40 C.F.R. Part 13, Subparts C and H.
- c. Suspend or revoke the Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, per 40 C.F.R. § 13.17.

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- d. Refer this matter to the United States Department of Justice for litigation and collection, per 40 C.F.R. § 13.33.
39. Allocation of Payments. Pursuant to 31 C.F.R. § 901.9(f) and 40 C.F.R. § 13.11(d), a partial payment of debt will be applied first to outstanding handling charges, second to late penalty charges, third to accrued interest, and last to the principal that is the outstanding Assessed Penalty amount.
40. Tax Treatment of Penalties. Penalties, interest, and other charges paid pursuant to this Consent Agreement shall not be deductible for purposes of federal taxes.
41. Payment of the civil penalty 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 the Respondent or the 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 to the EPA by the Respondent in accordance with 40 C.F.R. § 13.9(a).
42. The parties consent to service of the Final Order by e-mail at the following valid email addresses nast.jeffrey@epa.gov (for the Complainant), and scott.miller@simsmm.com (for the Respondent).

GENERAL SETTLEMENT CONDITIONS

43. By signing this Consent Agreement, the Respondent acknowledges that this Consent Agreement and Final Order will be available to the public and represents that, to the best of the Respondent's knowledge and belief, this Consent Agreement and Final Order does not contain any confidential business information or personally identifiable information from the Respondent.
44. The Respondent certifies that any information or representation it has supplied or made to the 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. The EPA shall have the right to institute further actions to recover appropriate relief if the EPA obtains evidence that any information provided and/or representations made by the Respondent to the EPA regarding matters relevant to this Consent Agreement and Final Order, **including information about the Respondent's ability to pay a penalty**, are false or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action that the EPA may have, civil or criminal, under law or equity in such event. The

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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

45. The Respondent certifies to the 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

46. Nothing in this Consent Agreement and Final Order shall relieve the Respondent of its obligation to comply with all applicable federal, state, and local laws and regulations, nor shall it restrict the 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 the RCRA or any regulations promulgated thereunder.

RESERVATION OF RIGHTS

47. This Consent Agreement and Final Order resolves only the EPA's claims for civil penalties for the specific violations alleged against the Respondent in this Consent Agreement and Final Order. The EPA reserves the right to commence action against any person, including the Respondent, in response to any condition which the 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 the RCRA, 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

48. 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 the Respondent. By his or her signature below, the person who signs this Consent Agreement on behalf of the Respondent is acknowledging that he or she is fully authorized by the Respondent to execute this Consent Agreement and to legally bind the Respondent to the terms and conditions of this Consent Agreement and Final Order.

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EFFECTIVE DATE

49. The effective date of this Consent Agreement and Final Order (“Effective Date”) is the date on which the Final Order, signed by the Regional Administrator of EPA, Region 3, 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

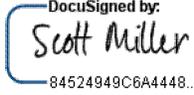
50. This Consent Agreement and Final Order constitutes the entire agreement and understanding between the Parties regarding settlement of all claims for civil penalties pertaining to the specific violations alleged herein and there are no representations, warranties, covenants, terms, or conditions agreed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

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For the Respondent: Sims ARG, Inc.

Date:

By:  _____
Scott Miller
Secretary

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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 3, 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 3
Complainant

Attorney for Complainant:

By: _____
[*Digital Signature and Date*]
Jeffrey S. Nast
Sr. Assistant Regional Counsel
U.S. EPA – Region 3

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Jersey City, New Jersey 07305	:	Proceeding under Section 9006 of the Resource
	:	Conservation and Recovery Act, as amended,
	:	42 U.S.C. Section 6991e
	:	
Respondent.	:	
	:	
Sims ARG, Inc.	:	
15000 Southlawn Lane	:	
Rockville, Maryland 20850,	:	
	:	
Facility.	:	

FINAL ORDER

Complainant, the Director of the Enforcement and Compliance Assurance Division, the U.S. Environmental Protection Agency, Region 3, and the Respondent, Sims ARG, Inc., 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 EPA's consideration of a number of factors, including the penalty criteria ("statutory factors") set forth in the 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 the EPA's November 1990 U.S. E.P.A. Penalty Guidance for Violations of UST Regulations, and the EPA's 2023 *Revised Consolidated Enforcement Penalty Policy for Underground Storage Tank (UST) Regulations and Revised Field*

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Citation Program and ESA Pilot (collectively “UST Penalty Guidance”) which reflects the statutory penalty criteria and factors set forth in Section 9006(c) of the 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 the RCRA, 42 U.S.C. § 6991e(d), and Section 22.18(b)(3) of the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that the Respondent pay a civil penalty in the amount of ***NINE-THOUSAND EIGHTY-FOUR DOLLARS (\$9,084.00)***, 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 the Respondent’s obligation to comply with all applicable provisions of the 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: _____
Joseph J. Lisa
Regional Judicial and Presiding Officer
U.S. EPA Region 3

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

CERTIFICATE OF SERVICE

I certify that the foregoing **Consent Agreement and Final Order** was filed with the EPA Region 3 Regional Hearing Clerk on the date that has been electronically stamped on the **Consent Agreement and Final Order**. I further certify that on the date set forth below, I caused to be served a true and correct copy of the foregoing to each of the following persons, in the manner specified below, at the following addresses:

Copies served via email to:

Scott Miller, Secretary
Sims ARG, Inc.
Scott.Miller@simsmm.com
1 Linden Avenue East
Jersey City, NJ 07305

Jeffrey S. Nast
Sr. Assistant Regional Counsel
U.S. EPA, Region 3
nast.jeffrey@epa.gov

Andrew Ma
Enforcement Officer
U.S. EPA, Region 3
ma.andrew@epa.gov

[Digital Signature and Date]
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 3