

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

In the Matter of:

**Mighty Fuel, LLC.
PO Box 9492
Washington, D.C. 20016-9492**

RESPONDENT,

**Washingtonian Express
22 Florida Avenue NW
Washington, D.C. 20001**

FACILITY.

CONSENT AGREEMENT

Docket No.: RCRA-03-2013-0011

**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

2012 DEC 31 AM 11:00

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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 Mighty Fuel, LLC. (“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 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 its underground storage tanks at Respondent’s facility located at 22 Florida Avenue NW, Washington, D.C. (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, are 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.*

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 ("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 will 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 District of Columbia's federally authorized underground storage tank program set forth at 20 DCMR §§ 5500 *et seq.* at the Facility referenced herein.
8. The provisions of this CAFO shall be binding upon Respondent, and its officers, directors, employees, successors and assigns.
9. This CAFO does not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor may 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 any regulations promulgated 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 CA 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 District of Columbia prior notice of the issuance of this CAFO in accordance with Section 9006(a)(2) of RCRA, 42 U.S.C. § 6991e(a)(2).

II. FACTUAL ALLEGATIONS AND CONCLUSIONS OF LAW

13. 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, 40 C.F.R. Part 280 and 40 C.F.R. § 22.1(a)(4) and .4(c).

14. At all times relevant to the violations alleged herein, Mighty Fuel, LLC. ("Respondent") has been a limited liability company doing business in the District of Columbia.
15. Respondent is a "person" as defined in Section 9001(5) of RCRA, 42 U.S.C. § 6991(5), and 20 DCMR § 6899.1.
16. At all times relevant to the violations alleged herein, Respondent has been the "owner" and "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 22 Florida Avenue NW, Washington, D.C., (the "Facility").
17. On February 1, 2011, an EPA representative conducted a Compliance Evaluation Inspection ("CEI") of the Facility pursuant to Section 9005 of RCRA, 42 U.S.C. § 6991d.
18. At the time of the February 1, 2011 CEI, and at all times relevant to the violations alleged herein, three USTs, as described in the following subparagraphs, were located at the Facility:
 - A. a twelve thousand (12,000) gallon single-walled cathodically-protected steel tank that was installed in or about 1961 and that, at all times relevant hereto, routinely contained and was used to store regular 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 No. 1"), and
 - B. a ten thousand (10,000) gallon single-walled cathodically-protected steel tank that was installed in or about 1961 and that, at all times relevant hereto, routinely contained and was used to store premium 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 No. 2"), and
 - C. a ten thousand (10,000) gallon single-walled cathodically-protected steel tank that was installed in or about 1961 and that, at all times relevant hereto, routinely contained and was used to store diesel fuel, 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 No. 3").
19. At all times relevant to the violations alleged herein, USTs Nos. 1, 2, and 3 have been a "petroleum UST system" and "existing UST system" as these terms are defined in 20 DCMR § 6899.1, respectively.
20. USTs Nos. 1, 2, and 3 are and were, at all times relevant to the violations alleged herein, used to store "regulated substance(s)" at Respondent's Facility, as defined in Section

9001(7) of RCRA, 42 U.S.C. § 6991(7), and 20 DCMR § 6899.1, and have not been “empty” as that term is defined at 20 DCMR § 6100.7.

21. Pursuant to RCRA Section 9005, 42 U.S.C. § 6991d, on April 6, 2011, EPA issued an Information Request to Respondent concerning its petroleum UST systems at the Facility.

COUNT #1

(Failure to perform release detection on USTs No. 3)

22. Paragraphs 1 through 21 of this CA are incorporated herein by reference.
23. 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.
24. 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.
25. From November 12, 2010 until March 5, 2011, the method of release detection selected by Respondent for UST No. 3 was statistical inventory reconciliation in accordance with 20 DCMR § 6012.
26. From November 12, 2010 until March 5, 2011, Respondent failed to perform statistical inventory reconciliation for UST No. 3 in accordance with 20 DCMR § 6012.
27. During the periods of time indicated in the preceding paragraph, 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 No. 3.
28. Respondent’s acts and/or omissions as alleged above constitute violations by Respondent of 20 DCMR §§ 6000.1 and 6003.

COUNT #2

(Failure to inspect the impressed current system on USTs Nos. 1, 2, and 3)

29. Paragraphs 1 through 28 of this CA are incorporated herein by reference.
30. 20 DCMR § 5901.1 provides that each owner and operator of a steel UST system or a steel-fiberglass-reinforced plastic composite UST system with corrosion protection shall comply with the requirements of 20 DCMR § 5901 to ensure that releases due to

corrosion are prevented for as long as the UST system is used to store regulated substances.

31. 20 DCMR § 5901.6 provides that each UST system with an impressed current cathodic protection systems shall be inspected every 60 days to ensure that the equipment is running properly.
32. USTs Nos. 1, 2, and 3 were, from December 10, 2010 to February 1, 2011, steel UST systems used to store regulated substances and were equipped with an impressed current system.
33. From December 10, 2010 to February 1, 2011, Respondent failed to inspect the impressed current protection system every 60 days for USTs Nos. 1, 2, and 3 at the Facility.
34. Respondent's acts and/or omissions as alleged in the preceding paragraph constitute violations by Respondent of 20 DCMR § 5901.6.

III. CIVIL PENALTY

35. In settlement of Complainant's claims for civil penalties for the violations alleged in this CA, Respondent agrees to pay a civil penalty of Four Thousand Two Hundred Fifty Dollars (\$4,250). The civil penalty 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 within 30 calendar days of the date on which this CAFO is mailed to Respondent, no interest will be assessed against Respondent pursuant to 40 C.F.R. § 13.11(a)(1).
36. 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.
37. 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 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).
38. 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 30 day period after the payment is due and an additional \$15.00 for each subsequent 30 days the penalty remains unpaid.
39. 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 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).

40. 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 Section 9006(c), 42 U.S.C. § 6991e(c), and with EPA's Penalty Guidance for Violations of UST Regulations ("UST Guidance") dated November 4, 1990.

IV. 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.

V. 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.

VI. OTHER APPLICABLE LAWS

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

VII. 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.

VIII. 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.

IX. EFFECTIVE DATE

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

X. SIGNATURES

For Respondent:

Mighty Fuel, LLC.

Date 11-30-12

By:



Mark Yuen
Managing Partner

For Complainant:

U.S. Environmental Protection Agency, Region 3

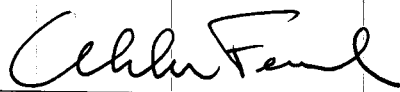
Date: 12/6/12



Louis F. Rarnalho
Senior Assistant Regional Counsel
U.S. EPA Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

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.

Date: 12/14/12



Abraham Ferdas, Director
Land and Chemicals Division
U.S. EPA Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

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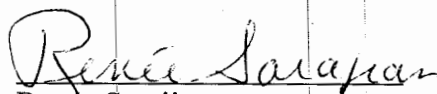
FINAL ORDER

Complainant, the Director, Land and Chemicals Division, U.S. Environmental Protection Agency–Region III, and Mighty Fuel, LLC., Respondent, 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, 40 C.F.R. Part 22 (“Consolidated Rules of Practice”). The terms of the foregoing Consent Agreement are incorporated into this Final Order as if fully set forth at length herein.

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) and (d) of RCRA, 42 U.S.C. § 6991e(c) and (d), IT IS HEREBY ORDERED that Respondent pay a civil penalty of \$4,250 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 the accompanying Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk of U.S Environmental Protection Agency–Region III.

12/31/12
Date



Renee Sarajian
Regional Judicial Officer
U.S. Environmental Protection Agency, Region III

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CERTIFICATE OF SERVICE

I certify that on the date provided below, I hand-delivered the original and one copy of the Consent Agreement and Final Order in the case captioned *In re* Mighty Fuel LLC and , Docket No. RCRA-03-2013-0011 to Lydia Guy, Regional Hearing Clerk, U.S. EPA, Region 3, 1650 Arch St, Philadelphia, PA 19134, and sent one copy of the signed original of the document by certified mail–return receipt requested to Mark Yuen, Mighty Fuel, LLC., 9921 Mayfield Drive, Bethesda, MD 20817.

Dated: 12/31/12


Louis Ramalho
Senior Assistant Regional Counsel
U.S. EPA Region 3