

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM

This form was originated by: JIM HEENATHAN 5/20/10
Name of Contact person Date

in the EPA-III ORC. at 215-814-2640
Office Phone number

- Non-SF Jud. Order/Consent Decree. DOJ COLLECTS
- Administrative Order/Consent Agreement FMD COLLECTS PAYMENT
- SF Jud. Order/Consent Decree. FMD COLLECTS
- This is an original debt This is a modification

Name of Company making payment: U.S. DEPT. OF THE ARMY

The Total Dollar Amount of Receivable: \$15,120
(If in installments, attach schedule of amounts and respective due dates)

The Case Docket Number RCRA-03-2010-0257

The Site-Specific Superfund Acct. Number _____

The Designated Regional/HQ Program Office OFFICE OF LAND ENFORCEMENT

TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:

The IFMS Accounts Receivable Control Number _____

If you have any questions call: _____
Name of Contact Date

in the Financial Management Office, phone number: _____

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

- 1. Rosemarie Pacheco
Environmental Enforcement Section
Lands Division, Room 130044
1425 New York Avenue, N.W.
Washington, D.C. 20005
- 2. Originating Office (ORC)
- 3. Designated Program Office

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

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

On October 28, 1998, pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c, and 40 C.F.R. Part 281, Subpart A, the Commonwealth of Virginia was granted final authorization by EPA to administer a state underground storage tank management program *in lieu* of the Federal underground storage tank management program established under Subtitle I of RCRA, 42 U.S.C. §§ 6991-6991m. The provisions of the Commonwealth of Virginia underground storage tank management program, through this final authorization, have become requirements of Subtitle I of RCRA and are, accordingly, enforceable by EPA pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e. The provisions of the Commonwealth of Virginia's authorized underground storage tank program are cited as Underground Storage Tanks: Technical Standards and Corrective Action Requirements ("VA UST Regulations"), 9 VAC § 25-580-10 *et seq.*

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

EPA provided the Commonwealth of Virginia with notice of the issuance of this CAFO on July 10, 2008 in accordance with Section 9006(a) of RCRA, 42 U.S.C. § 6991e(a).

General Provisions

1. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CAFO.
2. Respondent neither admits nor denies the specific factual allegations and conclusions of law set forth in this CAFO, except as provided in Paragraph 1, above.
3. Respondent agrees not to contest EPA's jurisdiction with respect to the execution of this CA, the issuance of the attached Final Order, or the enforcement of the CAFO.
4. For the purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in this Consent Agreement and any right to appeal the accompanying Final Order. Respondent also waives its right to confer with the EPA Administrator under Section 6001(b)(2) of RCRA, 42 U.S.C. § 6961(b)(2), on any issue of law or fact set forth in this CAFO.
5. Respondent consents to the issuance of this CAFO and agrees to comply with its terms and conditions.
6. Each party shall bear its own costs and attorney's fees.
7. The provisions of this CAFO shall be binding upon EPA and Respondent.
8. This CAFO shall not relieve Respondent of its obligation to comply with all applicable

provisions of federal, state, or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit, nor does this CAFO constitute a waiver, suspension or modification of the requirements of Subtitle I of RCRA, or any regulations promulgated thereunder.

9. Complainant shall have the right to institute further actions to recover appropriate relief if Complainant obtains evidence that the information provided by and/or representations made by Respondent to EPA regarding matters at issue in the CAFO are false or in any material respect inaccurate.

EPA's Findings of Fact and Conclusions of Law

10. In accordance with the Consolidated Rules at §§ 22.13(b) and 22.18(b)(2) and (3), Complainant makes the following findings of fact and conclusions of law:
 - a. Respondent is a department, agency and/or instrumentality of the United States and is a "person" as defined by Section 9001(6) of RCRA, 42 U.S.C. § 6991(6), and 9 VAC § 25-580-10.
 - b. Respondent is, and was at all times relevant hereto, the "owner" and "operator" of "underground storage tanks" ("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 9 VAC § 25-580-10, located at the Joint Base Myer-Henderson Hall, Fort Myer, Virginia facility (hereinafter, the "Facility") which include the following USTs at the Facility's Building 452, the AAFES Service Station:
 - i. a 10,000 gallon UST identified as UST #1 used to store gasoline;
 - ii. a 10,000 gallon UST identified as UST #2 used to store gasoline;
 - iii. a 10,000 gallon UST identified as UST #3 used to store gasoline;
 - iv. a 10,000 gallon UST identified as UST #4 used to store gasoline;
 - v. a 10,000 gallon UST identified as UST #5 used to store diesel fuel; and
 - vi. a 1,000 gallon UST identified as UST #6 used to store used oil.
 - c. Respondent's USTs at its Facility referenced above in Paragraph 10.b. are, and were at all times relevant to this CAFO, used to store "regulated substance(s)" at Respondent's Facility, as defined in 9 VAC § 25-580-10 and RCRA § 9001(7), 42 U.S.C. § 6991(7).
 - d. On March 14, 2008, EPA conducted a Compliance and Evaluation Inspection ("CEI") at Respondent's Facility to review compliance with RCRA Subtitle I requirements and that of the VA UST Regulations.

- e. On March 20, 2009 and July 13, 2009, EPA sent Respondent information request letters (“IRLs”) concerning UST operations at the Facility and Respondent responded to these requests in letters dated April 23, 2009 and August 10, 2009, respectively.

COUNT I

11. Paragraphs 1–10 of this CAFO are incorporated by reference as though fully set forth herein.
12. 9 VAC § 25-580-140 requires owners and operators of petroleum UST systems to provide release detection for tanks and piping that meet the requirements described therein.
13. 9 VAC § 25-580-140.1 provides that, with exceptions not applicable here, that USTs must be monitored at least every thirty days for releases using one of the release detection methods listed in 9 VAC § 25-580-160.4 - .8.
14. From at least July 1, 2005 through April 30, 2007, Respondent did not provide an approved method of release detection set forth in VAC § 25-580-160.4 - .8 for Facility UST #6.
15. From at least July 1, 2005 through April 30, 2007, Respondent violated 9 VAC § 25-580-140.1 by failing to use an approved method of release detection to monitor Facility UST #6 every thirty days.

COUNT II

16. 9 VAC § 25-580-140.2(a) provides that underground piping that routinely contains and conveys under pressure regulated substances must be equipped with an automatic line leak detector (“LLD”) conducted in accordance with 9 VAC § 25-580-170.
17. 9 VAC § 25-580-170.1 specifies that UST system owners and operators using automatic LLDs must use “[m]ethods which alert the operator to the presence of a leak by restricting or shutting off the flow of regulated substances through piping or triggering an audible or visible alarm may be used only if they detect leaks of three gallons per hour at 10 pounds per square inch line pressure within one hour;” and that “[a]n annual test of the operation of the leak detector must be conducted in accordance with the manufacturer’s requirements.”
18. The underground piping for USTs Nos. 1, 2, 4, and 5 at the Facility at all times relevant to this CAFO routinely contained and conveyed under pressure regulated substances as set forth in 9 VAC § 25-580-140.2(a).
19. From July 12, 2007 through November 27, 2007, Respondent failed to have an automatic

LLD using an approved method which would alert the UST operator to the presence of a leak by restricting or shutting off the flow of regulated substances through piping or triggering an audible or visible alarm.

20. From July 12, 2007 through November 27, 2007, Respondent violated 9 VAC § 25-580-140.2(a) by failing to equip the underground pressurized piping for UST Nos. 1, 2, 4, and 5 with an automatic LLD meeting the requirements of 9 VAC § 25-580-170.1.

CIVIL PENALTY

21. Respondent consents to the assessment of a civil penalty of FIFTEEN THOUSAND ONE HUNDRED TWENTY DOLLARS (\$15,120.00) in full satisfaction of all claims for civil penalties for the violations alleged in Counts I and II of this CAFO. Such civil penalty amount shall become due and payable immediately upon Respondent's receipt of a true and correct copy of this CAFO. Respondent must pay the civil penalty no later than THIRTY (30) calendar days after the date on which this CAFO is mailed or hand-delivered to Respondent.
22. The aforesaid settlement amount is based upon Complainant's consideration of a number of factors, including, but not limited to, the statutory factors provided in RCRA Section 9006(c) - (e), 42 U.S.C. § 6991e(c) - (e), and in accordance with EPA's Penalty Guidance for Violations of UST Regulations ("UST Guidance") dated November 4, 1990. EPA has also considered the *Adjustment of Civil Penalties for Inflation* as set forth in 40 C.F.R. Part 19 and the September 21, 2004 memorandum by Acting EPA Assistant Administrator Thomas V. Skinner entitled, *Modifications to EPA Penalty Policies to Implement the Civil Monetary Penalty Inflation Adjustment Rule* ("2004 Skinner Memorandum"). 40 C.F.R. Part 19 and the 2004 Skinner Memorandum specify, *inter alia*, that for violations occurring after January 30, 1997, statutory penalties and penalties under the UST Guidance for, *inter alia*, RCRA Subtitle I violations, were increased 10% above the maximum amount to account for inflation, and, statutory penalties for, *inter alia*, RCRA Subtitle I violations occurring after March 15, 2004, were increased by and an additional 17.23% above the maximum amount to account for inflation.
23. Payment of the civil penalty amount described in Paragraph 21, 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-03-2010-0257;
 - 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: Eric Volck, 513-487-2105

- d. All payments made by check and sent by overnight delivery service shall be addressed and mailed to:

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

Contact: 314-418-1028

- e. All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance
U.S. EPA, MS-NWD
26 W. M. L. King Drive
Cincinnati, OH 45268-0001

- f. 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"

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

US Treasury REX/ Cashlink ACH Receiver
ABA = 051036706
Account No.: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – Checking

Physical Location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737
Contact: Jesse White 301-887-6548 or REX, 1-866-234-5681

- h. On-Line Payment Option:

WWW.PAY.GOV

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

- i. Additional payment guidance is available at:

http://www.epa.gov/ocfo/finservices/make_a_payment.htm

- j. Payment by the Respondent shall reference Respondent's name and address, and the EPA Docket Number of this CA/FO (RCRA-03-2010-0257). A copy of Respondent's check or a copy of Respondent's electronic fund transfer shall be sent simultaneously to:

James Heenehan
Sr. 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

24. Pursuant to 40 C.F.R. § 22.18(c), this CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 9006(a) of RCRA, 42 U.S.C. § 6991e(a), for the specific violations alleged in this CAFO. Compliance with this CAFO shall not be a defense to any action commenced at any time for any other violations of the federal laws and regulations administered by EPA.

CERTIFICATION OF COMPLIANCE

25. 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 Commonwealth of Virginia's federally authorized underground storage tank program set forth at 9 VAC § 25-580-10 *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.

RESERVATION OF RIGHTS

26. This CAFO resolves only the civil claims for the specific violations alleged in the CAFO. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under RCRA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk. Respondent reserves all available rights and defenses it may have to defend itself in any such action.

ANTIDEFICIENCY ACT

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

OTHER APPLICABLE LAWS

28. 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

29. The undersigned representative of the Respondent certifies that he or she is fully authorized by the Respondent to enter into the terms and conditions of this CAFO and to bind the Respondent to it.

ENTIRE AGREEMENT

30. 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 attached Final Order.

EFFECTIVE DATE

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

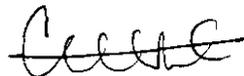
For Respondent:

U. S. Army
Joint Base Myer-Henderson Hall

5/14/10

Date

5/14/10 date added by
James Heenehan in request
of Mike Egan - JH 5/24/10



Carl R. Coffman, Jr.
Colonel, U. S. Army
Commanding

For Complainant:

U.S. Environmental Protection Agency,
Region III

5/24/10

Date



James Heenehan
Senior Assistant Regional Counsel

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

6/2/10

Date



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

