

BEFORE THE UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION III

REGIONAL HEARINGS CLERK  
EPA REGION III, PHILA. PA

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In the Matter of: : Consent Agreement and  
: Final Order  
Bureau of Utilities :  
8250 Old Montgomery Road : U.S. EPA Docket Number  
Columbia, MD 21045, : RCRA-03-2013-0157  
and :  
: Proceeding Under Section 9006 of the  
Long Reach Fire Station #9 : Resource Conservation and Recovery  
5950 Tamar Drive : Act, as amended, 42 U.S.C. § 6991e  
Columbia, MD 21045, :  
Facilities of :  
Howard County, Maryland :  
George Howard Building :  
3430 Court House Drive :  
Ellicott City, MD 21043, :  
Respondent. :  
:

CONSENT AGREEMENT

I. PRELIMINARY STATEMENT

1. This Consent Agreement is entered into by the Director of the Land and Chemicals Division, U. S. Environmental Protection Agency, Region III ("Complainant" or "EPA" or "Agency") and Howard County, Maryland, a body corporate and politic ("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 of Practice*"), 40 C.F.R. Part 22 (with specific reference to 40 C.F.R. §§ 22.13(b), 22.18(b)(2), and (3)).

2. This Consent Agreement and the attached Final Order, hereinafter collectively referred to as the "CAFO," resolve the violations EPA has alleged of Subtitle I of RCRA, 42 U.S.C. §§ 6991-6991m, and the State of Maryland's federally authorized Underground Storage Tank ("UST") Program by the Respondent that occurred at the Respondent's facilities located at the Bureau of Utilities, 8250 Old Montgomery Road, Columbia, MD 21045 ("Bureau of Utilities") and the Long Reach Fire Station #9, 5950 Tamar Drive, Columbia, MD 21045 ("Fire Station #9") (together referred to as the "Facilities").

3. In accordance with 40 C.F.R. §§ 22.13(b), 22.18(b)(2), and (3), Complainant hereby simultaneously commences and resolves, as part of the settlement set forth herein, EPA's civil claims alleged in Section III ("Findings of Fact and Conclusions of Law") of this Consent Agreement.

## II. GENERAL PROVISIONS

4. The settlement agreed to by the parties in this Consent Agreement reflects the desire of the parties to resolve this matter without litigation.

5. The Respondent consents to the issuance of this CAFO and agrees to comply with its terms and conditions.

6. For purposes of this proceeding only, the Respondent admits the jurisdictional allegations set forth in this CAFO.

7. Except as provided in Paragraph 6 of this Consent Agreement, for purposes of this proceeding, the Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this Consent Agreement.

8. 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 CAFO.

9. For purposes of this proceeding only, the Respondent hereby expressly waives any right to contest any issue of law or fact set forth in this Consent Agreement and any right to appeal the accompanying Final Order.

10. Each Party to this Consent Agreement shall bear its own costs and attorney's fees in connection with this proceeding.

11. The Respondent, by signing this Consent Agreement, certifies, to the best of its knowledge, to EPA that Respondent, as of the date of this CA, is in compliance with the provisions of Subtitle I of RCRA, 42 U.S.C. §§ 6991-6991m, and the State of Maryland's UST Management Program regulations set forth at COMAR § 26.10.01.01, *et seq.*, at the Facilities referenced in this Consent Agreement.

12. This Consent Agreement and the accompanying Final Order shall apply to and be binding upon the Respondent and Respondent's successors and assigns.

13. 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, 42 U.S.C. §§ 6991-6991m, or any regulations promulgated thereunder.

14. The Respondent is aware that the submission of false or misleading information to the United States government may subject the Respondent to separate civil and/or criminal liability. Complainant reserves the right to seek and obtain appropriate relief if Complainant obtains evidence that the information provided and/or representations made by the Respondent to Complainant regarding the matters at issue in the Findings of Fact and Conclusions of Law are false or, in any material respect, inaccurate.

### III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

15. In accordance with 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and (3), Complainant alleges and adopts the Findings of Fact and Conclusions of Law set forth immediately below.

16. Pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c, and 40 C.F.R. Part 281, a state may administer a state UST management program in lieu of the Federal Underground Storage Tank Management Program established under Subtitle I of RCRA, 42 U.S.C. §§ 6991-6991m. Effective July 30, 1992, pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c, and 40 C.F.R. Part 281, EPA granted the State of Maryland final authorization to administer a state underground storage tank management program

("Maryland UST Management Program") *in lieu* of the Federal Underground Storage Tank Management Program established under Subtitle I. *See 57 Fed. Reg.* 29034 (June 30, 1992). Through this final authorization, the provisions of the Maryland UST Management Program became requirements of RCRA Subtitle I and are, accordingly, enforceable by EPA pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e. The Maryland UST Management Program's regulations are set forth in the Maryland Administrative Code as Underground Storage Tanks ("MD UST Regulations"), COMAR § 26.10.01.01 *et seq.* For purposes of federal enforcement of the Maryland UST Management Program, the MD UST Regulations cited below are those regulations in effect when EPA granted the State of Maryland final authorization to administer the State's UST management program.

17. On November 16, 2011, EPA gave the State of Maryland notice of the issuance of this CAFO in accordance with Section 9006(a)(2) of RCRA, 42 U.S.C. § 6991e(a)(2).

18. The Respondent is a "person" as defined in Section 9001 of RCRA, 42 U.S.C. § 6991, and in COMAR § 26.10.02.04.B(40).

19. At all times relevant to this CAFO, the Respondent has been the "owner" and/or "operator" of "underground storage tanks" ("USTs") and "UST systems," as those terms are defined in Section 9001 of RCRA, 42 U.S.C. § 6991, and COMAR § 26.10.02.04.B, located at the Facilities.

20. On April 20, 2011, an EPA representative conducted a Compliance Evaluation Inspection ("CEI") of the Facilities pursuant to Section 9005 of RCRA, 42 U.S.C. § 6991d.

21. At the time of the April 20, 2011 CEI, and at all times relevant to the applicable violations alleged herein, five USTs, as described in the following subparagraphs, were located at the Bureau of Utilities:

A. Two ten thousand (10,000) gallon tanks ("Tanks One and Two") constructed of double walled fiberglass reinforced plastic that were installed on or about January 1990, and that, at all times relevant hereto, routinely contained regular gasoline;

B. One ten thousand (10,000) gallon tank ("Tank Three") constructed of double walled fiberglass reinforced plastic that was installed on or about January 1990, and that, at all times relevant hereto, routinely contained diesel fuel;

C. One six thousand (6,000) gallon tank ("Tank Four") constructed of double walled fiberglass reinforced plastic that was installed on or about January 1990, and that, at all times relevant hereto, routinely contained heating oil; and

D. One one thousand (1,000) gallon tank ("Tank Five") constructed of double walled fiberglass reinforced plastic that was installed on or about January 1990, and that, at all times relevant hereto, routinely contained used oil.

22. At the time of the April 20, 2011 CEI, and at all times relevant to the applicable violations alleged herein, three USTs, as described in the following subparagraphs, were located at the Fire Station #9:

A. One two thousand (2,000) gallon tank ("Tank One") constructed of double walled fiberglass reinforced plastic that was installed on or about June 1991, and that, at all times relevant hereto, routinely contained heating oil;

B. One two thousand five hundred (2,500) gallon tank ("Tank Two") constructed of double walled fiberglass reinforced plastic that was installed on or about June 1991, and that, at all times relevant hereto, routinely contained diesel fuel; and

C. One two thousand five hundred (2,500) gallon tank ("Tank Three") constructed of double walled fiberglass reinforced plastic that was installed on or about June 1991, and that, at all times relevant hereto, routinely contained regular gasoline.

23. At all times relevant to the applicable violations alleged in this CA, the tanks at the Facilities have been used to store regular gasoline, diesel fuel, heating oil and/or used oil, which are petroleum products. These liquids are "regulated substances" as that term is defined in Section 9001 of RCRA, 42 U.S.C. § 6991, and COMAR § 26.10.02.04.B(48). The tanks at the Facilities and their associated piping therefore constitute "petroleum UST systems" as that term is defined in COMAR § 26.10.02.04.B(43).

24. During the CEI of the Bureau of Utilities, the inspector observed that certain records demonstrating the Respondent's monitoring for release detection were not available for Tank Five.

25. On August 9, 2011, EPA sent an Information Request Letter to the Respondent, which the Respondent replied to on September 8, 2011 ("September 8, 2011 Response").

26. In the September 8, 2011 Response, the Respondent stated that, for the period from at least April 1, 2008 to September 6, 2011, Tank Five at the Bureau of Utilities was not monitored for releases on a regular basis.

27. During the CEI of the Fire Station #9, the inspector observed that Tank Two's metal piping components were in contact with gravel backfill in the access pit without any cathodic protection.

28. In the September 8, 2011 Response, the Respondent provided information that showed it had cathodic protection for Tank Two's piping in the access pit installed on May 5, 2011.

Count 1

29. Paragraphs 1 through 28 of this Consent Agreement are incorporated by reference as if fully set forth herein.

30. Pursuant to COMAR § 26.10.05.02.B, all owners and operators of petroleum UST systems must perform release detection every 30-days.



31. From at least April 1, 2008, to September 6, 2011, the Respondent did not perform release detection in accordance with certain regulatory requirements for Tank Five at the Bureau of Utilities every 30-days.

32. The Respondent has violated COMAR § 26.10.05.02.B by failing to provide release detection for Tank Five in accordance with certain regulatory requirements.

33. The Respondent's failure to perform release detection in accordance with certain regulatory requirements constitutes separate violations of COMAR § 26.10.05.02.B for each day that Tank Five contained petroleum.

Count 2

34. Paragraphs 1 through 33 of this Consent Agreement are incorporated by reference as if fully set forth herein.

35. Pursuant to COMAR § 26.10.03.02.C, all owners and operators of UST systems must provide cathodic protection for piping that is in contact with the ground.

36. From April 20, 2011 to May 5, 2011, the Respondent failed to provide cathodic protection for Tank Two's piping at Fire Station #9.

37. The Respondent has violated COMAR § 26.10.03.02.C by failing to provide cathodic protection for Tank Two's piping in the access pit that was in contact with the gravel backfill from April 20, 2011 to May 5, 2011.

38. The Respondent's failure to provide cathodic protection for Tank Two's piping constitutes separate violations of COMAR § 26.10.03.02.C for each day that portions of the piping was in contact with the ground.

#### IV. CIVIL PENALTY

39. Section 9006(d)(2) of RCRA, 42 U.S.C. § 6991e(d)(2), authorizes the Administrator of EPA to assess a penalty not to exceed \$ 10,000 for each tank for each day of violation of any requirement or standard promulgated by EPA under Section 9003 of RCRA, 42 U.S.C. § 6991b, or that is part of an authorized state underground storage tank program that EPA has approved by pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c. Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. 101-410, as amended, and its implementing regulation, the *Adjustment of Civil Monetary Penalties for Inflation Rule*, codified at 40 C.F.R. Part 19, EPA has subsequently raised the maximum civil penalty not to exceed \$11,000 for each tank for each day of violation for all violations occurring from March 15, 2004 through January 12, 2009, and to \$ 16,000 for each tank for each day of violation for all violations occurring after January 12, 2009 and to the present.

40. In this matter, in settlement of EPA's claims for civil penalties assessable for the violations alleged in this Consent Agreement, the Respondent consents to the assessment of

a civil penalty in the amount of nine thousand, seven hundred and twenty-seven dollars (\$9,727.00) which the Respondent shall be liable to pay in accordance with the terms set forth below.

41. The penalty becomes due and payable within thirty (30) days after Respondent's receipt of a true and correct copy of this CAFO.

42. The Parties represent that the settlement terms are reasonable and are based upon EPA's consideration of a number of factors, including the penalty criteria set forth in Section 9006(c) of RCRA, 42 U.S.C. § 6991e(c), *i.e.*, the seriousness of the violation and the Respondent's good faith efforts to comply with the applicable requirements, including the Respondent's timely corrective action and the Respondent's cooperation in the investigation. Section 9006(e) of RCRA, 42 U.S.C. § 6991e(e) authorizes EPA to also take into consideration the compliance history of the owner or operator and any other factors that EPA considers appropriate. EPA applied these factors to the particular facts and circumstances of this case with specific reference to EPA's *Penalty Guidance for Violations of UST Regulations ("UST Penalty Guidance")*. In applying these factors, EPA took into account that the last amendment to 40 C.F.R. Part 19 (See 73 Fed. Reg. 75340 (2008)) and the December 29, 2008, memorandum by EPA Assistant Administrator Granta Y. Nakayama entitled, *Amendments to EPA's Civil Penalty Policies to Implement the 2008 Civil Monetary Penalty Inflation Adjustment Rule*, which modified the *UST Penalty Guidance* and authorized EPA to assess penalties using penalty matrix values larger than those stated in the *UST Penalty Guidance*.

43. Payment of the civil penalty amount assessed in Paragraph 40, 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 Respondent's name and address, and the Docket Number of this action, i.e., RCRA-03-2013-0157;

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 for delivery to:

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

Contact: Heather Russell 513-487-2044

D. All payments made by check and sent by overnight delivery service shall be addressed for delivery to:

U.S. Bank  
Government Lockbox 979077  
U.S. EPA, Fines & 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  
US 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 No. = 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/PAYGOV

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

I. Additional payment guidance is available at the following internet address:

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

J. Payment by Respondent shall reference the Respondent's name and address, and the EPA Docket Number of this CAFO. A copy of the Respondent's check or a copy of the Respondent's electronic fund transfer shall be sent simultaneously to:

Philip Yeany  
Senior Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region III (Mail Code 3RC50)  
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

#### V. EFFECT OF SETTLEMENT

44. This CAFO constitutes a settlement by EPA of its claims for civil penalties pursuant to Section 9006(a) of RCRA, 42 U.S.C. § 6991e(a), for the violations alleged in this Consent Agreement. Compliance with this CAFO shall not be a defense to any action commenced at any time for any other violation of the federal laws and regulations administered by EPA.

#### VI. RESERVATION OF RIGHTS

45. This Consent Agreement and the accompanying Final Order resolve EPA's claims for civil monetary penalties for the violations alleged in Section III ("Findings of Fact and Conclusions of Law") herein. 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.

#### VII. AUTHORITY TO BIND THE PARTIES

46. 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 Respondent hereto.

#### VIII. EFFECTIVE DATE

47. The effective date of this Consent Agreement and the accompanying Final Order is the date on which the Final Order, signed by the Regional Administrator of EPA Region III,

or his designee, the Regional Judicial Officer, and the Consent Agreement are filed with the EPA Regional Hearing Clerk pursuant to the *Consolidated Rules of Practice*.

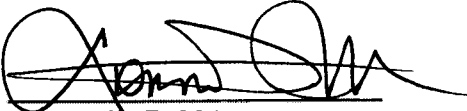
#### IX. ENTIRE AGREEMENT

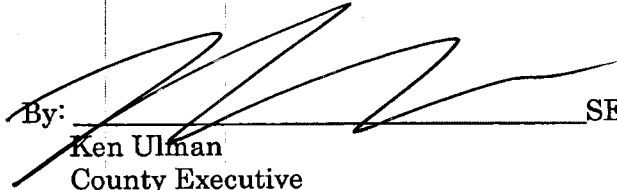
48. This Consent Agreement and the accompanying Final Order constitute the entire agreement and understanding of the parties regarding settlement of all claims pertaining to the specific violations alleged herein and there are no representations, warranties, covenants, terms, or conditions agreed upon between the parties other than those expressed in this CAFO.



HOWARD COUNTY, MARYLAND

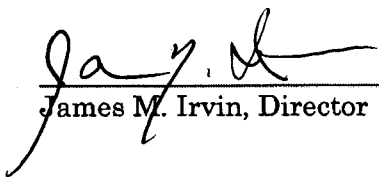
ATTEST:

  
Lonnie R. Robbins  
Chief Administrative Officer


By:  SEAL)  
Ken Ulman  
County Executive

Date: 7-12-13

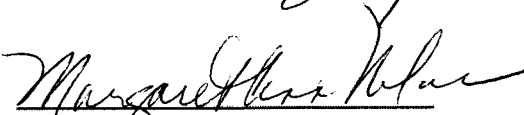
APPROVED: DEPARTMENT OF  
PUBLIC WORKS

 7/10/13  
James M. Irvin, Director


APPROVED FOR SUFFICIENCY  
OF FUNDS:

 7/8/13  
Stanley J. Milesky, Director  
Department of Finance

APPROVED as to Form and Legal Sufficiency  
this 3 day of July, 2013:

  
Margaret Ann Nolan  
County Solicitor

Reviewing Attorney

  
Name: Tracey E. Skinner

For Complainant:

Date: 8/5/13

Philip Yeary  
Philip Yeary  
Senior Assistant  
Regional Counsel

After reviewing the foregoing Consent Agreement and other pertinent information, I hereby recommend that the Regional Administrator, or his designee, the Regional Judicial Officer, issue the attached Final Order.

Date: 9/19/13

George Taylor  
for John A. Armstead, Director  
Land and Chemicals Division  
U.S. EPA Region III

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

In the Matter of:	:	Consent Agreement and
	:	Final Order
Bureau of Utilities	:	
8250 Old Montgomery Road	:	U.S. EPA Docket Number
Columbia, MD 21045,	:	RCRA-03-2012-0157
	:	
and	:	Proceeding Under Section 9006 of the
	:	Resource Conservation and Recovery
Long Reach Fire Station #9	:	Act, as amended, 42 U.S.C. § 6991e
5950 Tamar Drive	:	
Columbia, MD 21045,	:	
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<u>Respondent.</u>	:	

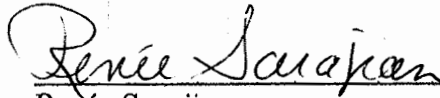
**FINAL ORDER**

Complainant, the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency - Region III, and the above-captioned 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. The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated herein as if set forth at length.

In Re: Howard County Government  
RCRA-03-2013-0157

NOW, THEREFORE, PURSUANT TO 40 C.F.R. § 22.18(b)(3) and Section 9006(c) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6991e(c), 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 Sections 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 nine thousand, seven hundred and twenty-seven dollars (\$9,727.00) 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 the foregoing Consent Agreement and this FINAL ORDER is the date on which the Consent Agreement and this FINAL ORDER are filed with the EPA Regional Hearing Clerk.

Date: 9/24/13



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