



## II. JURISDICTION

4. The U.S. Environmental Protection Agency and EPA, Region III's Regional Judicial Officer have jurisdiction over the above-captioned matter pursuant to Sections 9006 and 9007 of RCRA, 42 U.S.C. §§ 6991e and 6991f; 40 C.F.R. Part 280; and 40 C.F.R. §§ 22.1(a)(4) and 22.4.

## III. GENERAL PROVISIONS

5. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth in this Consent Agreement and the attached Final Order, hereinafter collectively referred to as the "CAFO."

6. Except as provided in Paragraph 5 of this Consent Agreement, for purposes of this proceeding, Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this Consent Agreement.

7. 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.

8. For purposes of this proceeding only, 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. In addition, Respondent waives its right to confer with the Administrator pursuant to Section 6001(b)(2) of RCRA, 42 U.S.C. § 6961(b)(2).

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

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

11. The provisions of this CAFO shall be binding upon Respondent, and its officers, directors, employees, successors and assigns.

12. 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.

## IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

13. 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.

14. 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 October 28, 1998, EPA granted final authorization to the Commonwealth of Virginia to administer its state UST management program (“Virginia UST Management Program”) in lieu of the Federal Underground Storage Tank Management Program. Because of the final authorization, provisions of the Virginia UST Management Program have become requirements of Subtitle I of RCRA and are, accordingly, enforceable by EPA pursuant to Sections 9006 and 9007 of RCRA, 42 U.S.C. §§ 6991e and 6991f. Virginia’s UST Management Program regulations are set forth in the Virginia Administrative Code (“VAC”) as Underground Storage Tanks: Technical Standards and Corrective Action Requirements (VA UST Regulations”), 9 VAC § 25-580-10 *et seq.*
15. EPA has given the Commonwealth of Virginia notice of the issuance of this CAFO in accordance with Section 9006(a)(2) of RCRA, 42 U.S.C. § 6991e(a)(2).
16. At all times relevant to this CAFO, Respondent has been the “owner” and/or “operator,” as those terms are defined in Sections 9001(3) and (4) of RCRA, 42 U.S.C. §§ 6991(3) and (4), and 9 VAC § 25-580-10, of “underground storage tanks” as that term is defined in Section 9001(10) of RCRA, 42 U.S.C. § 6991(10), and 9 VAC § 25-580-10 and of “UST systems” as that term is defined in 40 C.F.R. § 280.12 and 9 VAC § 25-580-10, located at the Facility.
17. On June 5, 2013, an EPA representative conducted a Compliance Evaluation Inspection (“CEI”) at the Facility pursuant to Section 9005 of RCRA, 42 U.S.C. § 6991d.
18. At the time of the June 5, 2013 CEI, and at all times relevant to the applicable violations alleged herein, one Underground Storage Tank existed at the Facility, as described in the following subparagraph:
  - a. An eight thousand (8,000) gallon single walled fiberglass reinforced plastic (FRP) tank that was installed in or about July 1991 and that, at all times relevant hereto, routinely contained gasoline, a “regulated substance” as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and 9 VAC § 25-580-10 (hereinafter “UST No. 1”) was located at the Facility.
19. At all times relevant to the applicable violations alleged herein, UST No. 1 has been a “petroleum UST system” and “new tank system” as those terms are defined in 9 VAC § 25-580-10.
20. UST No. 1 was, at all times relevant to the applicable violations alleged in this CAFO, used to store a “regulated substance,” as defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and 9 VAC § 25-580-10, at Respondent’s Facility and has not been “empty” as that term is defined at 9 VAC § 25-580-310.1.

COUNT 1  
(Failure to perform release detection)

21. The allegations of Paragraphs 1 through 20 of the CA are incorporated herein by reference.

22. Pursuant to 9 VAC §§ 25-580-130.A and C, owners and operators of new and existing UST systems must provide a method or combination of methods that can detect a release from tanks and that meets the requirements described the regulations.

23. 9 VAC § 25-580-140.1 provides, in pertinent part, that a tank shall be monitored at least every 30 days for releases using one of the methods listed in 9 VAC §§ 25-580-160.4-8, unless it meets the requirements for release detection in either 9 VAC § 25-580-140.1.a, § 25-580-140.1.b, or § 25-580-140.1.c.

24. From February 20, 2009, to June 17, 2009; September 20, 2009, to May 18, 2010; September 20, 2010, to October 20, 2010; November 20, 2010, to June 27, 2011; October 20, 2011, to March 2, 2012; March 20, 2012, to April 24, 2012; June 20, 2012, to August 16, 2012; September 20, 2012, to October 11, 2012; December 20, 2012, to January 1, 2013; February 20, 2013, to May 21, 2013 and July 20, 2013, to August 7, 2013 Respondent's UST No. 1 at the Facility was not monitored in compliance 9 VAC §§ 25-580-140.1.a-c or 9 VAC § 25-580-160.4-8.

25. Respondent's acts and/or omissions as alleged above, constitute a violation by Respondent of 9 VAC § 25-580-130.A and C, and 9 VAC § 25-580-140.1.

## COUNT II

(Failure to perform automatic line leak detector testing annually)

26. The allegations of Paragraphs 1 through 25 of the CA are incorporated herein by reference.

27. Pursuant to 9 VAC § 25-580-130.A and C, owners and operators of new and existing UST systems must provide a method or combination of methods that can detect a release from underground piping and that meets the requirements described in the regulations.

28. 9 VAC § 25-580-140.2.a(1) provides, in pertinent part, that underground piping that conveys regulated substances under pressure shall be equipped with an automatic line leak detector conducted in accordance with 9 VAC § 25-580-170.1.

29. 9 VAC § 25-580-170.1 provides, in pertinent part, that an annual test of the operation of the line leak detector shall be conducted in accordance with the manufacturer's requirements.

30. From March 13, 2009 to June 4, 2013, the piping for UST No. 1 was underground and routinely conveyed regulated substances under pressure.

31. Respondent conducted testing of the automatic line leak detector for the piping associated with UST No. 1 on March 13, 2009, July 19, 2011, July 23, 2012 and June 4, 2013.

32. Respondent failed to perform an annual test of the automatic line leak detector for the underground piping for UST No. 1 from March 13, 2010 to July 19, 2011.

33. Respondent's acts and/or omissions as alleged above, constitute a violation by Respondent of 9 VAC § 25-580-130.A and C, 9 VAC § 25-580-140.2.a(1), and 9 VAC § 25-580-170.1.

## V. CIVIL PENALTY

34. 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.

35. In this matter, in settlement of EPA's claims for civil penalties assessable for the violations alleged in this Consent Agreement, Respondent consents to the assessment of a civil penalty in the amount of Fourteen Thousand One Hundred Forty Three Dollars (\$14,143) which Respondent shall be liable to pay in accordance with the terms set forth below. Such civil penalty amount shall become due and payable immediately upon Respondent's receipt of a true and correct copy of this CAFO. However, in accordance with 40 C.F.R. § 13.11(a)(1), EPA will not seek to recover interest on any amount of the penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue.

36. 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 any good faith efforts to comply with the applicable requirements. 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 amendment to 40 C.F.R. Part 19, published at 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*

modified the *UST Penalty Guidance* and also authorized EPA to assess penalties using penalty matrix values larger than those stated in the *UST Penalty Guidance*.

37. Payment of the civil penalty amount assessed in Paragraph 35, 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-03-2014-0058;
- 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  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

Contact: Craig Steffen 513-487-2091

- D. All payments made by check and sent by overnight delivery service (FedEx, DHL, UPS, etc.) shall be addressed for delivery to:

U.S. Environmental Protection Agency  
Government Lockbox 979077  
1005 Convention Plaza  
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 ML King Drive  
Cincinnati, OH 45268-0001

- F. All payments made by electronic wire transfers shall be made through the Federal Reserve Bank of New York using the following information:

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: John Schmid 202-874-7026 or REX 866-234-5681

H. On-Line Payment Option:

[WWW.PAY.GOV/PAYGOV](http://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:  
[www2.epa.gov/financial/makepayment](http://www2.epa.gov/financial/makepayment)

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

#### VI. EFFECT OF SETTLEMENT

38. This CAFO constitutes a settlement by EPA of its claims for civil penalties pursuant to Section 9006(d) of RCRA, 42 U.S.C. § 6991e(d), 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.

#### VII. OTHER APPLICABLE LAWS

39. 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.

#### VIII. CERTIFICATION OF COMPLIANCE

40. The person signing this CA on behalf of the Respondent certifies to Complainant, upon investigation, to the best of their knowledge and belief, that the Respondent is in compliance with the provisions of Subtitle I of RCRA, 42 U.S.C. §§ 6991-6991m, and the Commonwealth of Virginia's UST Management Program regulations set forth at 9 VAC § 25-580-10 *et seq.* at the Facility referenced in this Consent Agreement.

#### IX. RESERVATION OF RIGHTS

41. This Consent Agreement and the accompanying Final Order resolve only EPA's claims for civil monetary penalties for the specific violations alleged in Section IV ("Findings of Fact and Conclusions of Law") herein. EPA reserves the right to commence action against any person, including Respondent, in response to any condition that 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 40 C.F.R. § 22.18(c). 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.

42. 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.

#### X. PARTIES BOUND

43. This Consent Agreement and the accompanying Final Order shall apply to and be binding upon the EPA and the Respondent.

#### XI. AUTHORITY TO BIND THE PARTIES

44. 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.

#### XII. EFFECTIVE DATE

45. 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 this Consent Agreement are filed with the EPA Regional Hearing Clerk pursuant to the *Consolidated Rules of Practice*.

#### XIII. ENTIRE AGREEMENT

46. 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 CA and the attached Final Order.

For Respondent:

Date:

*March 4, 2014* *Patrick LaShuan*  
*District Ranger*

For Complainant:

Date: 5/15/14

  
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Philip Yeany  
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: 5.21.14

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

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

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In the Matter of:	:	Consent Agreement and
	:	Final Order
	:	
U.S. Department of Agriculture	:	U.S. EPA Docket Number
	:	RCRA-03-2014-0058
	:	
RESPONDENT,	:	Proceeding Under Sections 9006 and
	:	9007 of the Resource Conservation
USDA Forest Service	:	and Recovery Act, as amended, 42
Lake Moomaw Marina Store	:	U.S.C. §§ 6991e and 6991f
8446 Bolars Draft Road	:	
Warm Springs, VA 24484	:	
	:	
FACILITY	:	
	:	
	:	
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**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.

**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 (e) of RCRA, 42 U.S.C. §§ 6991e(c) and (e), IT IS HEREBY ORDERED** that Respondent pay a civil penalty of Fourteen Thousand One Hundred Forty Three Dollars (\$14,143) 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.

In Re: United States  
Department of Agriculture  
RCRA-03-2014-0058

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: 5-27-14



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Heather Gray  
Regional Judicial Officer  
U.S. EPA - Region III