

**BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103**

IN RE:

NUSTAR TERMINALS OPERATING  
PARTNERSHIP, L.P., and  
SUPPORT TERMINAL SERVICES, INC.  
Respondents

Docket No. CWA/RCRA-03-2009-0320

CONSENT AGREEMENT

Facility Address:

1800 Frankfurst Avenue  
Baltimore, Maryland 21226

**I. STATUTORY AUTHORITY**

1. This Consent Agreement, ("CA"), and the accompanying Final Order, ("FO"), (collectively "CAFO"), are entered into by the Director of the Office of Enforcement, Compliance and Environmental Justice, United States Environmental Protection Agency Region III, ("Complainant" or "EPA"), and NuStar Terminals Operating Partnership, L.P., also known as NuStar Terminals Operations Partnership, L.P., and Support Terminal Services, Inc., now known as NuStar Terminal Services, Inc., (collectively "Respondents"), pursuant to Section 309(g)(2)(B) of the Clean Water Act, as amended, ("CWA"), 33 U.S.C. §§ 1319(g)(2)(B), Section 3008(a) and (g) of the Resource Conservation and Recovery Act, as amended, ("RCRA"), 42 U.S.C. § 6928(a) and (g), and 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").

**II. PRELIMINARY STATEMENTS**

2. On September 30, 2009, Complainant issued a Complaint and Notice of Opportunity for Hearing, Docket No. CWA/RCRA-03-2009-0320.
3. The Complaint alleged that Respondents violated the regulations promulgated in accordance with:
  - A. Section 402 of the CWA, 33 U.S.C. § 1342; and

- B. Maryland's federally authorized Hazardous Waste Management Program which operates in lieu of the federal hazardous waste management program established under RCRA Subtitle C, 42 U.S.C. §§ 6921-6939e. The provisions of Maryland's current authorized Hazardous Waste Management Regulations are set forth in the Code of Maryland Regulations, ("COMAR"), Title 26, Subtitle 13 et seq., and are enforceable by EPA pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).
4. EPA notified the State of Maryland, through the Maryland Department of the Environment, of its intent to commence this administrative action against Respondents in accordance with Section 309(a) of the CWA, 33 U.S.C. § 1319(a), and Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).
  5. EPA provided public notice and an opportunity to comment on the Complaint in accordance with Section 309(g)(4)(A) of the CWA, 33 U.S.C. §§ 1319(g)(4)(A), prior to issuing the Final Order, and received no comments thereto.
  6. For purposes of this CAFO, Respondents admit the jurisdictional allegations of the Complaint.
  7. For purposes of this CAFO, Respondents agree not to contest EPA's jurisdiction to execute this Consent Agreement, the issuance of the Final Order, or the enforcement thereof.
  8. For purposes of this CAFO, Respondents hereby expressly waive their rights to a hearing under Section 309(g) of the CWA, 33 U.S.C. §§ 1319(g), and Section 3008(b) of RCRA, 42 U.S.C. § 6928(b), on any issue of law or fact in the Complaint.
  9. For purposes of this CAFO, Respondents hereby expressly waive any right to contest the allegations set forth in this Consent Agreement and any right to appeal the accompanying Final Order.
  10. Respondents neither admit nor deny the specific factual allegations contained in this CAFO, except as provided in paragraph 6. Respondents neither admit nor deny the specific factual allegations and conclusions of law contained in Section III of this CAFO.
  11. Each party to this CAFO shall pay its own costs and attorneys' fees associated with this proceeding under Docket No. CWA/RCRA-03-2009-0320.
  12. The provisions of this CAFO shall be binding upon Complainant and Respondents, including the officers, directors, employees, successors and assigns of the Respondents.
  13. Respondents certify to EPA by their signatures herein, to the best of Respondents' knowledge and belief, that they are presently in compliance with the specific regulatory sections and subsections of the CWA and RCRA referenced in the claims and allegations herein.
  14. Complainant and Respondents agree to settle this matter by their execution of this CAFO. The parties agree that the settlement of this matter is in the public interest and that this

CAFO is consistent with the applicable requirements of the CWA and RCRA with respect to this matter.

15. This CAFO shall not relieve Respondents of their obligations 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.

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

16. NuStar Terminals Operating Partnership, L.P., and Support Terminal Services, Inc., (collectively "Respondents"), are the owners and/or operators of the facility located at 1800 Frankfurst Avenue, Baltimore, Maryland, 21226, (hereinafter "Frankfurst Avenue Facility"), which is adjacent to the Patapsco River, which empties into the Chesapeake Bay.
17. Each Respondent is a person within the meaning of:
  - A. Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), 40 C.F.R. § 260.10, COMAR 26.13.01.03.B; and
  - B. Section 502(5) of the CWA, 33 U.S.C. § 1362(5).
18. The Respondents' facility is a bulk-liquid terminal used as a storage and handling intermediary for import/export of various liquid products.
19. Respondents are the "owners" and/or "operators" of the facility as those terms are defined at COMAR 26.13.01.03.B.
20. On October 29th and 30th, 2008, a team of inspectors from EPA's Office of Enforcement, Compliance and Environmental Justice conducted a multi-media inspection of the Frankfurst Avenue Facility.
21. The Patapsco River and the Chesapeake Bay, are both navigable waters of the United States within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7).
22. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant from a point source to waters of the United States except in compliance with, among other things, a National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.
23. Section 402(a) of the CWA, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States. The discharges are subject to specific terms and conditions as prescribed in the permit.
24. Pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, MDE issued NPDES Permit Number MD0052191 to Support Terminal Services, Inc., on October 5, 2004, ("Permit"),

for discharges from its bulk liquid storage terminal located at 1800 Frankfurst Avenue, Baltimore, Maryland. The Permit expired on October 31, 2009.

25. The Frankfurst Avenue Facility is a "point source" which has "discharged" and continues to "discharge" "pollutants", as those terms are defined at Sections 502(14), (16) and (6) of the CWA, 33 U.S.C. §§ 1362(14), (16) and (6), respectively, and 40 C.F.R. § 122.2, contained in storm water runoff, steam condensate and hydrostatic test water to navigable waters of the United States.
26. RCRA establishes a comprehensive program to be administered by the Administrator of EPA for regulating the generation, transportation, treatment, storage, and disposal of hazardous waste. 42 U.S.C. §§ 6901 et seq.
27. Pursuant to its authority under RCRA, EPA has promulgated regulations at 40 C.F.R. Parts 260 through 273 applicable to hazardous waste generators, transporters, and treatment, storage and disposal facilities. These regulations generally prohibit treatment, storage and disposal of hazardous waste without a permit or "interim status." They prohibit land disposal of certain hazardous wastes, and provide detailed requirements to govern the activities of those who are lawfully permitted to store, treat and dispose of hazardous waste.
28. Under Section 3006 of RCRA, 42 U.S.C. § 6926, state hazardous waste programs may be authorized by EPA to operate in lieu of the federal hazardous waste program. The requirements of the authorized state hazardous waste management programs apply in lieu of federal RCRA regulations to persons who generate, treat, store, transport or dispose of hazardous wastes in a state which has received authorization to administer a state hazardous waste program.
29. Where a Respondent has violated RCRA Subtitle C, 42 U.S.C. §§ 6921-6939e, the regulations promulgated thereunder at 40 C.F.R. Parts 260-266, 268, and 270 or 273, or COMAR, Title 26, Subtitle 13 et seq., Section 3008(a) of RCRA authorizes EPA to take enforcement action. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), authorizes the assessment of a civil penalty against any person who violates any requirement of Subtitle C of RCRA.
30. On February 11, 1985, pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), and 40 C.F.R. Part 271, Subpart A, the State of Maryland was granted final authorization to administer its hazardous waste management program set forth at the COMAR, Title 10, Subtitle 51 et seq., in lieu of the federal hazardous waste management program established under RCRA Subtitle C, 42 U.S.C. §§ 6921-6939e. Through this final authorization, the provisions of the Maryland Hazardous Waste Management Regulations (Original Authorized Program) became requirements of RCRA Subtitle C and are, accordingly, enforceable by EPA on and after that date pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a). A revised Maryland hazardous waste management program set forth at COMAR, Title 26, Subtitle 13 (Revised Authorized Program) was authorized by EPA on July 31, 2001, and accordingly, the provisions of the Revised Authorized

program are enforceable by EPA on and after that date pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

31. To the extent that factual allegations or legal conclusions in this CAFO are based on provisions of Maryland's final authorized hazardous waste management program, those provisions are cited as authority for such allegations or conclusions, with the corresponding federal regulatory provisions cited as reference. Factual allegations or legal conclusions based solely on the provisions of the federal hazardous waste management program cite those federal provisions as authority for such allegations or conclusions.
32. Respondents' Frankfurst Avenue Facility is a "facility" as that term is defined at COMAR 26.13.01.03B.
33. Respondents are "generators" of and have been engaged in the "storage" in "containers" of materials that are "solid wastes" and "hazardous wastes" at a "facility" as those terms are defined at COMAR 26.13.01.03B.

**COUNT I**  
**(CWA - Failure To Monitor)**

34. The allegations contained in Paragraphs 1 through 33 of this Consent Agreement are incorporated herein by reference.
35. Respondents' Frankfurst Avenue facility discharges pollutants directly into the Patapsco River, which is a "water of the United States," as that term is defined at 40 C.F.R. § 122.2.
36. The Permit contains certain terms and conditions, *inter alia*, the requirement that Respondents monitor their discharge at least once a month for biochemical oxygen demand, ("BOD"), and once a quarter for total nitrogen, ("N"), and the sum of the concentrations of benzene, toluene, ethylbenzene and xylene, ("BTEX"). See Permit Section A on Effluent Limitations and Monitoring Requirements.
37. From January through March of 2007, Respondents failed to monitor their discharge for BOD as required by the Permit.
38. From April through June of 2007, Respondents failed to monitor their discharge for N and BTEX as required by the Permit.
39. From January through June of 2007, Respondents failure to comply with the monitoring requirements of the Permit under Section A on Effluent Limitations and Monitoring Requirements was a violation of Section 301 of the CWA, 33 U.S.C. § 1311, for which a penalty may be assessed pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

**COUNT II**  
**(CWA - Failure To Meet Effluent Limitations)**

40. The allegations contained in Paragraphs 1 through 39 of this Consent Agreement are incorporated herein by reference.
41. Respondents' Frankfurst Avenue facility discharges pollutants directly into the Patapsco River, which is a "water of the United States," as that term is defined at 40 C.F.R. § 122.2.
42. The Permit contains certain terms and conditions, *inter alia*, the requirement that Respondents' discharge contain a concentration of no greater than 60 mg/L per day of Total Suspended Solids, ("TSS"), and an average concentration of no greater than 30 mg/L per month of TSS. See Permit Section A on Effluent Limitations and Monitoring Requirements.
43. From April through June of 2007, Respondents' discharge contained a daily maximum concentration of 67 mg/L of TSS and a monthly average concentration of 67 mg/L of TSS which are in excess of the maximum TSS concentration set by the Permit.
44. From July through September of 2007, Respondents' discharge contained a monthly average concentration of 36 mg/L of TSS which is in excess of the maximum TSS concentration set by the Permit.
45. From April through September of 2007, Respondents failure to meet the TSS discharge limitations of the Permit under Section A on Effluent Limitations and Monitoring Requirements was a violation of Section 301 of the CWA, 33 U.S.C. § 1311, for which a penalty may be assessed pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

**COUNT III**  
**(CWA - Failure To Report Proper BTEX Concentrations)**

46. The allegations contained in Paragraphs 1 through 45 of this Consent Agreement are incorporated herein by reference.
47. The Permit contains certain terms and conditions, *inter alia*, the requirement to report, within 28 days of the conclusion of each calendar quarter, the monitoring results for BTEX, which is calculated by taking the sum of the concentrations of benzene, toluene, ethylbenzene and xylene.
48. On their April 19, 2006 submission to MDE, Respondents reported a BTEX concentration that was not the sum of benzene, toluene, ethylbenzene and xylene on their quarterly Discharge Monitoring Report for the Monitoring Period from January 1, 2006 to March 31, 2006.
49. On their July 21, 2006 submission to MDE, Respondents reported a BTEX concentration that was not the sum of benzene, toluene, ethylbenzene and xylene on their quarterly

Discharge Monitoring Report for the Monitoring Period from April 1, 2006 to June 30, 2006.

50. On their October 6, 2006 submission to MDE, Respondents reported a BTEX concentration that was not the sum of benzene, toluene, ethylbenzene and xylene on their quarterly Discharge Monitoring Report for the Monitoring Period from July 1, 2006 to September 30, 2006.
51. On their January 15, 2007 submission to MDE, Respondents reported a BTEX concentration that was not the sum of benzene, toluene, ethylbenzene and xylene on their quarterly Discharge Monitoring Report for the Monitoring Period from October 1, 2006 to December 31, 2006.
52. On their April 13, 2007 submission to MDE, Respondents reported a BTEX concentration that was not the sum of benzene, toluene, ethylbenzene and xylene on their quarterly Discharge Monitoring Report for the Monitoring Period from January 1, 2007 to March 31, 2007.
53. By reporting incorrect BTEX concentrations on April 19, 2006, July 21, 2006, October 6, 2006, January 15, 2007, and April 13, 2007, Respondents failed to comply with the reporting requirements of the Permit for the monitoring period from January 1, 2006 through March 31, 2007 in violation of Section 301 of the CWA, 33 U.S.C. § 1311, for which a penalty may be assessed pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

#### COUNT IV

##### (CWA - Failure To Report Monthly Monitoring Results)

54. The allegations contained in Paragraphs 1 through 53 of this Consent Agreement are incorporated herein by reference.
55. The Permit contains certain terms and conditions, *inter alia*, the requirement to report the monthly monitoring results, within 28 days of the conclusion of each calendar quarter, for the following parameters: flow, BOD, Oil & Grease, TSS, and pH.
56. On their April 19, 2006 submission to MDE, Respondents failed to report the monthly monitoring results for flow, BOD, Oil & Grease, TSS, and pH on their quarterly Discharge Monitoring Report for the Monitoring Period from January 1, 2006 to March 31, 2006.
57. On their July 21, 2006 submission to MDE, Respondents failed to report the monthly monitoring results for flow, BOD, Oil & Grease, TSS, and pH on their quarterly Discharge Monitoring Report for the Monitoring Period from April 1, 2006 to June 30, 2006.
58. On their October 6, 2006 submission to MDE, Respondents failed to report the monthly monitoring results for flow, BOD, Oil & Grease, TSS, and pH on their quarterly

Discharge Monitoring Report for the Monitoring Period from July 1, 2006 to September 30, 2006.

59. On their January 15, 2007 submission to MDE, Respondents failed to report the monthly monitoring results for flow, BOD, Oil & Grease, TSS, and pH on their quarterly Discharge Monitoring Report for the Monitoring Period from October 1, 2006 to December 31, 2006.
60. On their April 13, 2007 submission to MDE, Respondents failed to report the monthly monitoring results for flow, BOD, Oil & Grease, TSS, and pH on their quarterly Discharge Monitoring Report for the Monitoring Period from January 1, 2007 to March 31, 2007.
61. On their July 16, 2007 submission to MDE, Respondents failed to report the monthly monitoring results for flow, BOD, Oil & Grease, TSS, and pH on their quarterly Discharge Monitoring Report for the Monitoring Period from April 1, 2007 to June 30, 2007.
62. On their October 25, 2007 submission to MDE, Respondents failed to report the monthly monitoring results for flow, BOD, Oil & Grease, TSS, and pH on their quarterly Discharge Monitoring Report for the Monitoring Period from July 1, 2007 to September 30, 2007.
63. On their January 28, 2008 submission to MDE, Respondents failed to report the monthly monitoring results for flow, BOD, Oil & Grease, TSS, and pH on their quarterly Discharge Monitoring Report for the Monitoring Period from October 1, 2007 to December 31, 2007.
64. On their April 14, 2008 submission to MDE, Respondents failed to report the monthly monitoring results for flow, BOD, Oil & Grease, TSS, and pH on their quarterly Discharge Monitoring Report for the Monitoring Period from January 1, 2008 to March 31, 2008.
65. On their July 16, 2008 submission to MDE, Respondents failed to report the monthly monitoring results for flow, BOD, Oil & Grease, TSS, and pH on their quarterly Discharge Monitoring Report for the Monitoring Period from April 1, 2008 to June 30, 2008.
66. On their October 8, 2008 submission to MDE, Respondents failed to report the monthly monitoring results for flow, BOD, Oil & Grease, TSS, and pH on their quarterly Discharge Monitoring Report for the Monitoring Period from July 1, 2008 to September 30, 2008.
67. On their January 9, 2009 submission to MDE, Respondents failed to report the monthly monitoring results for flow, BOD, Oil & Grease, TSS, and pH on their quarterly Discharge Monitoring Report for the Monitoring Period from October 1, 2008 to December 31, 2008.



68. The failure to provide the monthly monitoring results for flow, BOD, Oil & Grease, TSS, and pH as required by the Permit on the quarterly Discharge Monitoring Reports, for the period beginning January 1, 2006 through March 31, 2009, was a violation of Section 301 of the CWA, 33 U.S.C. § 1311, for which a penalty may be assessed pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

**COUNT V**

**(RCRA - Failure To Provide Proper Manifest Information)**

69. The allegations contained in Paragraphs 1 through 68 of this Consent Agreement are incorporated herein by reference.
70. Respondents hold EPA identification number MDD069371847 and submit biennial reports under the name, NuStar Terminals Operating Partnership, L.P., for the Frankfurst Avenue facility.
71. COMAR 26.13.03.04(A)(1) requires that a generator who offers a hazardous waste for transportation for off-site treatment, storage, or disposal shall prepare an approved manifest on EPA Form 8700-22 or an equivalent state form.
72. COMAR 26.13.03.04(C)(1)(b) requires, *inter alia*, the generator's name and EPA identification number on the manifest.
73. On July 31, 2007, Respondents did not provide EPA identification number MDD069371847 on EPA Form 8700-22 with Manifest Tracking Number 000178743.
74. On August 3, 2007, Respondents did not provide EPA identification number MDD069371847 on EPA Form 8700-22 with Manifest Tracking Number 000178740.
75. On September 19, 2007, Respondents did not provide EPA identification number MDD069371847 on EPA Form 8700-22 with Manifest Tracking Number 000178708.
76. On January 16, 2008, Respondents did not provide EPA identification number MDD069371847 on EPA Form 8700-22 with Manifest Tracking Number 000178705.
77. On May 28, 2008, Respondents did not provide EPA identification number MDD069371847 on EPA Form 8700-22 with Manifest Tracking Number 000178415.
78. On August 29, 2008, Respondents did not provide EPA identification number MDD069371847 on EPA Form 8700-22 with Manifest Tracking Number 000178646.
79. On July 31, 2007, August 3, 2007, September 19, 2007, January 16, 2008, May 28, 2008, and August 29, 2008, Respondents' failure to provide the proper EPA identification number on EPA Form 8700-22 constituted a violation of COMAR 26.13.03.04(C)(1)(b) for which a penalty can be assessed pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g).

**COUNT VI**  
**(RCRA - Operation Without A Permit Or Interim Status)**

80. The allegations contained in Paragraphs 1 through 79 of this Consent Agreement are incorporated herein by reference as though fully set forth at length.
81. At the time of the inspection on October 29th and 30th, 2008, and at all times relevant to the Complaint, Respondents were storing the following hazardous waste at the Frankfurst Avenue facility: caustic drippings, phosphoric acid slop, glacial acrylic acid slop and spent caustic cleaning sponges.
82. Caustic drippings are a “hazardous waste” within the meaning of RCRA Section 1004(5), 42 U.S.C. § 6903(5), and COMAR 26.13.02.03, and exhibit the characteristic of corrosivity under 40 C.F.R. § 261.22 and COMAR 26.13.02.12, which is identified by EPA Hazardous Waste Number D002.
83. Phosphoric acid slop is a “hazardous waste” within the meaning of RCRA Section 1004(5), 42 U.S.C. § 6903(5), and COMAR 26.13.02.03(31), and exhibits the characteristic of corrosivity under 40 C.F.R. § 261.22 and COMAR 26.13.02.12, which is identified by EPA Hazardous Waste Number D002.
84. Glacial acrylic acid slop is a “hazardous waste” within the meaning of RCRA Section 1004(5), 42 U.S.C. § 6903(5), and COMAR 26.13.02.03(31), and exhibits the characteristic of ignitability under 40 C.F.R. § 261.21 and COMAR 26.13.02.11, which is identified by EPA Hazardous Waste Number D001, the characteristic of corrosivity under 40 C.F.R. § 261.22 and COMAR 26.13.02.12, which is identified by EPA Hazardous Waste Number D002, and is a listed hazardous waste under 40 C.F.R. § 261.33 and COMAR 26.13.02.19, which is identified by EPA Hazardous Waste Number U008.
85. Spent caustic cleaning sponges are a “hazardous waste” within the meaning of RCRA Section 1004(5), 42 U.S.C. § 6903(5), and COMAR 26.13.02.03(31), and exhibit the characteristic of corrosivity under 40 C.F.R. § 261.22 and COMAR 26.13.02.12, which is identified by EPA Hazardous Waste Number D002.
86. During 2006, 2007, and October 2008, Respondents were engaged in the “storage” of hazardous waste at the Frankfurst Avenue facility within the meaning of RCRA Section 1004(33), 42 U.S.C. § 6903(33), COMAR 26.13.01.03(76), and 40 C.F.R. § 260.10.
87. COMAR 26.13.03.05(E)(1) provides that a generator may accumulate hazardous waste on-site without a permit for 90 days or less, if, *inter alia*:
- A. Containers are clearly and visibly marked with their accumulation start dates in accordance with COMAR 26.13.03.05(E)(1)(e), see also 40 C.F.R. § 262.34(a)(2);
  - B. Containers are always closed during storage, except when it is necessary to add or remove waste in accordance with COMAR 26.13.05.09(D), see also 40 C.F.R. § 265.173(a); and

- C. The owner or operator inspects areas where containers are stored, at least weekly, for leaks and deterioration of containers and the containment system caused by corrosion or other factors in accordance with COMAR 26.13.05.09(E), see also 40 C.F.R. § 265.174.

***Failure to Mark Container with Accumulation Start Date***

88. At the time of the inspection on October 29th and 30th, 2008, Respondents were storing phosphoric acid slop, which is a D002 hazardous waste, in a 55-gallon container approximately 25-30 feet from the entrance to the building where this hazardous waste was generated.
89. At the time of the inspection on October 29th and 30th, 2008, Respondents had not marked this 55-gallon container of phosphoric acid slop with an accumulation start date.
90. To qualify for “satellite accumulation” under COMAR 26.13.03.06(E)(3), containers must be located at or near the point of generation, under the control of the operator of the process generating the waste, and comply with, *inter alia*, COMAR 26.13.05.09(D), which requires containers to be closed, except when necessary to add or remove waste.
91. The phosphoric acid slop container’s location 25-30 feet from the entrance to the building where this waste is being generated is not at or near the point of generation nor is this location under the control of the operator of the process generating the waste nor was this container kept closed except when necessary to add or remove waste.
92. At the time of the inspection on October 29th and 30th, 2008, Respondents had not marked a 55-gallon container of phosphoric acid slop that did not qualify as “satellite accumulation” under COMAR 26.13.03.06(E)(3) with its accumulation start date as required by COMAR 26.13.03.05(E)(1)(e), see also 40 C.F.R. § 262.34(a)(2).

***Failure to Keep Container Closed***

93. At the time of the inspection on October 29th and 30th, 2008, Respondents had not closed a 55-gallon container of phosphoric acid slop, which is a D002 hazardous waste, as required by COMAR 26.13.05.09(D), see also 40 C.F.R. § 265.173(a).

***Failure to Conduct Weekly Inspections***

94. For the weeks ending January 13, 2007, January 20, 2007, January 27, 2007, February 3, 2007, February 17, 2007, February 24, 2007, March 3, 2007, March 17, 2007, March 24, 2007, March 31, 2007, April 3, 2007, April 14, 2007, and April 21, 2007, Respondents failed to inspect areas where containers of hazardous waste were stored as required by COMAR 26.13.05.09(E), see also 40 C.F.R. § 265.174.

### ***Failure to Qualify for Ninety Day Storage Exemption***

95. Respondents failed to qualify for the less than 90 day generator accumulation exemption of COMAR 26.13.03.05(E)(1) by failing to satisfy the conditions for that exemption as set forth in COMAR 26.13.03.05(E).
96. During January 2007, February 2007, March 2007, April 2007, and October 2008, Respondents owned and operated a hazardous waste storage facility without a permit or interim status in violation of COMAR 26.13.05, 40 C.F.R. § 270.1(c), and Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), for which a penalty can be assessed pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g).

### **COUNT VII**

#### **(RCRA - Failure To Mark Container With Accumulation Start Date)**

97. The allegations contained in Paragraphs 1 through 96 of this Consent Agreement are incorporated herein by reference as though fully set forth at length.
98. COMAR 26.13.03.05(E)(1)(e) and 40 C.F.R. § 265.262.34(a)(2) require generators such as Respondents to clearly and visibly mark containers of hazardous waste with their accumulation start dates.
99. At the time of the inspection on October 29th and 30th, 2008, Respondents were storing phosphoric acid slop, which is a D002 hazardous waste, in a 55-gallon container approximately 25-30 feet from the entrance to the building where this hazardous waste was generated.
100. At the time of the inspection on October 29th and 30th, 2008, Respondents had not marked this 55-gallon container of phosphoric acid slop with an accumulation start date.
101. To qualify for "satellite accumulation" under COMAR 26.13.03.06(E)(3), containers must be located at or near the point of generation, under the control of the operator of the process generating the waste, and comply with, *inter alia*, COMAR 26.13.05.09(D), which requires containers to be closed, except when necessary to add or remove waste.
102. The phosphoric acid slop container's location 25-30 feet from the entrance to the building where this waste is being generated is not at or near the point of generation nor is this location under the control of the operator of the process generating the waste nor was this container kept closed except when necessary to add or remove waste.
103. At the time of the inspection on October 29th and 30th, 2008, Respondents had not marked a 55-gallon container of phosphoric acid slop that did not qualify as "satellite accumulation" under COMAR 26.13.03.06(E)(3) with its accumulation start date as required by COMAR 26.13.03.05(E)(1)(e), see also 40 C.F.R. § 262.34(a)(2).
104. At the time of the inspection on October 29th and 30th, 2008, Respondents violated COMAR 26.13.03.05(E)(1)(e) and 40 C.F.R. § 262.34(a)(2) by failing to mark a

container with its accumulation start date for which a penalty can be assessed pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g).

### **COUNT VIII**

#### **(RCRA - Failure To Keep Container Closed)**

105. The allegations contained in Paragraphs 1 through 104 of this Consent Agreement are incorporated herein by reference as though fully set forth at length.
106. COMAR 26.13.05.09(D) and 40 C.F.R. § 265.173(a) require containers holding hazardous waste remain closed, except when it is necessary to add or remove waste.
107. At the time of the inspection on October 29th and 30th, 2008, Respondents had not closed a 55-gallon container of phosphoric acid slop, which is a D002 hazardous waste, nor was it necessary to keep the container open to add or remove waste.
108. At the time of the inspection on October 29th and 30th, 2008, Respondents violated COMAR 26.13.05.09(D) and 40 C.F.R. § 265.173(a) by failing to close a container of hazardous waste for which a penalty can be assessed pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g).

### **COUNT IX**

#### **(RCRA - Failure To Conduct Weekly Inspections)**

109. The allegations contained in Paragraphs 1 through 108 of this Consent Agreement are incorporated herein by reference as though fully set forth at length.
110. COMAR 26.13.05.09(E) and 40 C.F.R. § 265.174 require the owner or operator to inspect areas where containers are stored, at least weekly, for leaks and deterioration of containers and the containment system caused by corrosion or other factors.
111. For the weeks ending January 13, 2007, January 20, 2007, January 27, 2007, February 3, 2007, February 17, 2007, February 24, 2007, March 3, 2007, March 17, 2007, March 24, 2007, March 31, 2007, April 3, 2007, April 14, 2007, and April 21, 2007, Respondents failed to inspect areas where containers of hazardous waste were stored for leaks and deterioration of containers as required by COMAR 26.13.05.09(E), see also 40 C.F.R. § 265.174.
112. For the weeks ending January 13, 2007, January 20, 2007, January 27, 2007, February 3, 2007, February 17, 2007, February 24, 2007, March 3, 2007, March 17, 2007, March 24, 2007, March 31, 2007, April 3, 2007, April 14, 2007, and April 21, 2007, Respondents violated COMAR 26.13.05.09(E) and 40 C.F.R. § 265.174 by failing to inspect areas where containers of hazardous waste were stored for leaks and deterioration of containers for which a penalty can be assessed pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g).

### **COUNT X**

#### **(RCRA - Failure To Provide EPA Id. No. For Treatment, Storage Or Disposal Facility)**

113. The allegations contained in Paragraphs 1 through 112 of this Consent Agreement are incorporated herein by reference as though fully set forth at length.
114. COMAR 26.13.03.06(B)(1)(d)(iii) and 40 C.F.R. § 262.41(a)(3) require the person who generates hazardous waste to submit a biennial report with the EPA identification number, name, and address for each off-site treatment, storage, or disposal facility to which waste was shipped during the reporting period.
115. For the biennial report submitted April 1, 2008 concluding the prior two year reporting period, Respondents provided an EPA identification number for the destination of waste acrylic acid that contradicts manifest tracking numbers 000178787, 000178743, 000178708, 000178740, 000178705, 000178415, and 000178646, in violation of COMAR 26.13.03.06(B)(1)(d)(iii), see also 40 C.F.R. § 262.41(a)(3).
116. For 2006 and 2007, Respondents violated COMAR 26.13.03.06(B)(1)(d)(iii) and 40 C.F.R. § 262.41(a)(3) by failing to provide accurate EPA identification numbers for the destination of waste acrylic acid for which a penalty can be assessed pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g).

### **COUNT XI**

#### **(RCRA - Failure To Provide Name And EPA Identification Number For Transporter)**

117. The allegations contained in Paragraphs 1 through 116 of this Consent Agreement are incorporated herein by reference as though fully set forth at length.
118. COMAR 26.13.03.06(B)(1)(d)(iv) and 40 C.F.R. § 262.41(a)(4) require the person who generates hazardous waste to submit a biennial report with the name and EPA identification number of each transporter used during the reporting period for shipments to a treatment, storage, or disposal facility.
119. For the biennial report submitted April 1, 2008, concluding the prior two year reporting period, Respondents failed to provide the name and EPA identification number of each transporter used for shipments of hazardous waste to a treatment, storage, or disposal facility as required by COMAR 26.13.03.06(B)(1)(d)(iv), see also 40 C.F.R. § 262.41(a)(4).
120. For 2006 and 2007, Respondents violated COMAR 26.13.03.06(B)(1)(d)(iv) and 40 C.F.R. § 262.41(a)(4) by failing to provide the name and EPA identification number of each transporter used for shipments of hazardous waste to a treatment, storage, or disposal facility for which a penalty can be assessed pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g).

## COUNT XII

### **(RCRA - Failure To Keep Universal Waste Container Closed)**

121. The allegations contained in Paragraphs 1 through 120 of this Consent Agreement are incorporated herein by reference as though fully set forth at length.
122. COMAR 26.13.01.03 defines "Lamp" as "the bulb or tube portion of an electric lighting device and specifically designed to produce radiant energy. . . ."
123. A used lamp becomes a waste on the date it is discarded and an unused lamp becomes a waste on the date the handler decides to discard it under COMAR 26.13.10.09. See also 40 C.F.R. § 273.5.
124. Lamps that meet the description for waste under COMAR 26.13.10.09 are "universal waste" by definition under COMAR 26.13.01.03 and universal waste is considered hazardous waste under COMAR 26.13.01.03 to be managed under the requirements of COMAR 26.13.10.06-.25.
125. COMAR 26.13.10.15 requires containers or packages of any lamp being handled as universal waste be closed except when adding waste to, or removing waste from the container or package. See also 40 C.F.R. § 273.13(d)(1).
126. At the time of the inspection on October 29th and 30th, 2008, Respondents were storing the universal waste of spent fluorescent lamps.
127. At the time of the inspection on October 29th and 30th, 2008, Respondents had not closed two containers of spent fluorescent lamps, which are a universal waste, nor were the containers open for purposes of adding or removing waste from the container.
128. At the time of the inspection on October 29th and 30th, 2008, Respondents violated COMAR 26.13.10.15 and 40 C.F.R. § 273.13(d)(1) by failing to close containers of universal waste for which a penalty can be assessed pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g).

## COUNT XIII

### **(RCRA - Failure To Label Or Mark Universal Waste Container)**

129. The allegations contained in Paragraphs 1 through 128 of this Consent Agreement are incorporated herein by reference as though fully set forth at length.
130. COMAR 26.13.01.03 defines "Lamp" as "the bulb or tube portion of an electric lighting device and specifically designed to produce radiant energy. . . ."
131. A used lamp becomes a waste on the date it is discarded and an unused lamp becomes a waste on the date the handler decides to discard it under COMAR 26.13.10.09. See also 40 C.F.R. § 273.5.

132. Lamps that meet the description for waste under COMAR 26.13.10.09 are “universal waste” by definition under COMAR 26.13.01.03 and universal waste is considered hazardous waste under COMAR 26.13.01.03 to be managed under the requirements of COMAR 26.13.10.06-.25.
133. COMAR 26.13.10.17(A)(2)(e) requires containers of universal waste lamps to be clearly labeled or marked with one of the following phrases: “Universal Waste-Lamp(s)”; “Waste Lamp(s)”; or “Used Lamp(s)”. See also 40 C.F.R. § 274.14(e).
134. At the time of the inspection on October 29th and 30th, 2008, Respondents were storing the universal waste of spent fluorescent lamps.
135. At the time of the inspection on October 29th and 30th, 2008, Respondents had not labeled or marked two containers of spent fluorescent lamps with “Universal Waste-Lamp(s)”; “Waste Lamp(s)”; or “Used Lamp(s)”.
136. At the time of the inspection on October 29th and 30th, 2008, Respondents violated COMAR 26.13.10.17(A)(2)(e) and 40 C.F.R. § 274.14(e) by failing to label or mark containers of universal waste lamps with “Universal Waste-Lamp(s)”; “Waste Lamp(s)”; or “Used Lamp(s)” for which a penalty can be assessed pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g).

#### **IV. CIVIL PENALTY**

137. Based on the foregoing and having taken into account the penalty factors set forth at Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), and the penalty factors set forth at Sections 309(g)(3) of the CWA, 33 U.S.C. §§ 1319(g)(3), Complainant has determined that the total appropriate civil penalty for the violations alleged in the Complaint is \$90,000.00, which shall be paid within THIRTY (30) calendar days of receipt of this CAFO by Respondents and in accordance with paragraphs 139 through 144 of this CAFO.
138. The penalty factors were applied to the particular facts and circumstances of this case with specific reference to EPA’s Interim Clean Water Act Settlement Penalty Policy, March 1, 1995, RCRA Civil Penalty Policy, June 2003, and the Civil Monetary Penalty Adjustment Rule, 40 C.F.R. Part 19.
139. Payment of the civil penalty amount of \$90,000.00, shall be made by either cashier’s check, certified check or electronic wire transfer, in the following manner:
  - A. All payments by Respondents shall reference their names and addresses and the Docket Number of this action (Docket No. CWA/RCRA-03-2009-0320);
  - 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

The Customer Service contact for the above method of payment is Natalie Pearson at 314-418-4087.

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

U.S. Environmental Protection Agency, Fines and Penalties  
U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101

The Customer Service contact for the above method of payment is Natalie Pearson at 314-418-4087.

- E. All electronic wire transfer payments 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"

The Federal Reserve Bank of New York Customer Service phone number for the above method of payment is 212-720-5000.

- F. All payments through the Automated Clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

Automated Clearinghouse (ACH) for receiving U.S. currency  
PNC Bank  
808 17th Street NW  
Washington, DC 20074  
ABA = 051036706  
Transaction Code 22 - checking  
Environmental Protection Agency  
Account 310006  
CTX Format

The Customer Service contact for the above method of payment is Jesse White at 301-887-6548.

- G. There is an on-line payment option available through the Department of the Treasury. This payment option can be accessed from: [www.pay.gov](http://www.pay.gov). Enter sfo 1.1 in the search field and complete all required fields in the form.
- H. At the same time that any payment is made, Respondents shall mail copies of any corresponding check, or written notification confirming any electronic wire transfer, to:

Lydia Guy  
Regional Hearing Clerk (3RC00)  
U.S. Environmental Protection Agency  
Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

And

T. Chris Minshall  
Assistant Regional Counsel (3EC00)  
U.S. Environmental Protection Agency  
Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

- 140. 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.
- 141. 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 Respondents. However, EPA will not seek to recover interest on any amount of such civil penalty that is paid within thirty (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).
- 142. In accordance with 40 C.F.R. § 13.11(b), costs of the EPA's administrative handling of overdue debts will be charged and assessed monthly throughout the period a debt is overdue.
- 143. A late payment penalty of six percent (6%) per year will be assessed monthly on any portion of a civil penalty which remains delinquent more than ninety (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).

144. Respondents agree not to deduct for federal tax purposes the civil monetary penalty specified in this CAFO.

#### **V. CERTIFICATIONS**

145. Respondents certify to Complainant by the signatures hereto, to the best of Respondents' knowledge and belief, that Respondents and the facility currently are in compliance with all relevant provisions of the current authorized Maryland Hazardous Waste Management Regulations, RCRA Subtitle C, 42 U.S.C. §§ 6921-6939e, and CWA, 33 U.S.C. §§ 1251 et seq., for which violations are alleged in this CAFO.

#### **VI. EFFECT OF SETTLEMENT**

146. Payment of the penalty specified in paragraph 137, in the manner set forth in paragraphs 139 through 144, shall constitute full and final satisfaction of all civil claims for penalties which Complainant may have under CWA and RCRA, for the specific violations alleged in Counts I through XIII. 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. RESERVATION OF RIGHTS**

147. This CAFO resolves only the civil claims for monetary penalties for the specific violations alleged in the CAFO. EPA reserves the right to commence action against any person(s), including Respondents, 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. EPA also reserves any rights and remedies available to it under CWA and 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.

#### **VIII. FULL AND FINAL SATISFACTION**

148. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e, and Section 309 of the CWA, 33 U.S.C. § 1319, for the specific violations alleged in this CAFO. This CAFO constitutes the entire agreement and understanding of the parties regarding settlement of all claims pertaining to 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.

#### **IX. PARTIES BOUND**

149. This CAFO shall apply to and be binding upon the EPA, Respondents, Respondents' officers and directors (in their official capacity) and Respondents' successors and assigns. By his or her signature below, the person signing this CA on behalf of Respondents

acknowledges that he or she is fully authorized to enter into this CAFO and to bind the Respondents to the terms and conditions of this CAFO.


**X. EFFECTIVE DATE**

150. The effective date of this CAFO is the date on which the Final Order is filed with the Regional Hearing Clerk after signature by the Regional Administrator or his designee, the Regional Judicial Officer.

For Respondents:

NuStar Terminals Operating Partnership, L.P.,  
also known as NuStar Terminals Operations Partnership, L.P.,  
by its General Partner, NuStar Terminal Services, Inc.

6 - 9 - 2010  
Date

  
Todd Denton, Vice President

Support Terminal Services, Inc.,  
now known as NuStar Terminal Services, Inc.

6 - 9 - 2010  
Date

  
Todd Denton, Vice President

For Complainant:

U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION III

6/16/10  
Date

T. Chris Minshall  
T. Chris Minshall, Assistant Regional Counsel

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

6/16/10  
Date

Samantha Phillips Beers  
Samantha Phillips Beers, Director  
Office of Enforcement, Compliance and Environmental Justice

OFFICE OF THE REGIONAL ADMINISTRATOR  
PHILADELPHIA, PA

**BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103**

IN RE: :

NUSTAR TERMINALS OPERATING : Docket No. CWA/RCRA-03-2009-0320  
PARTNERSHIP, L.P., and :  
SUPPORT TERMINAL SERVICES, INC. :  
Respondents :

Facility Address: :

1800 Frankfurst Avenue :  
Baltimore, Maryland 21226 :


**FINAL ORDER**

Complainant, the Director of the Office of Enforcement, Compliance and Environmental Justice, U.S. Environmental Protection Agency, Region III, and Respondents, NuStar Terminals Operating Partnership, L.P., also known as NuStar Terminals Operations Partnership, L.P., and Support Terminal Services, Inc., now known as NuStar Terminal Services, 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 on the representations of the parties set forth in the Consent Agreement, I have determined that the penalty assessed herein is based upon a consideration of the factors set forth in Section 3008(a) of the Resource Conservation and Recovery Act, 42 U.S.C. § 6928(a)(3), EPA's June 2003 *RCRA Civil Penalty Policy*, the factors set forth in Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3), EPA's 1995 *Interim Clean Water Act Settlement Penalty Policy*, and the Consolidated Rules of Practice. **IT IS HEREBY ORDERED** that Respondents pay a penalty of **NINETY THOUSAND DOLLARS (\$90,000.00)** in accordance with the foregoing Consent Agreement. Payment shall be made in the manner set forth in the foregoing Consent Agreement. Payment shall reference Respondents' names and address as well as the EPA Docket Number of this Final Order (Docket No. CWA/RCRA-03-2009-0320).

The effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

6/16/10  
Date

  
\_\_\_\_\_  
Renée Sarajian  
Regional Judicial Officer  
U.S. Environmental Protection Agency, Region III



IN RE: NUSTAR TERMINALS OPERATING PARTNERSHIP, L.P., and SUPPORT  
TERMINAL SERVICES, INC., Respondents

Docket No. CWA/RCRA-03-2009-0320

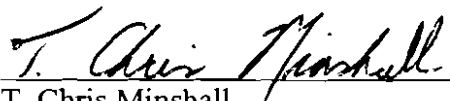
CLERK  
U.S. DISTRICT COURT  
PHILADELPHIA, PA

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of June, 2010, I sent a copy of the foregoing  
CONSENT AGREEMENT and FINAL ORDER by U.S. Mail, to the following persons:

Judge Barbara A. Gunning  
U.S. Environmental Protection Agency  
Office of Administrative Law Judges  
Mailcode 1900L  
1200 Pennsylvania Avenue NW  
Washington, DC 20460

Marlene Gomez, Esquire  
Ballard Spahr, LLP  
1735 Market Street, 51<sup>st</sup> Floor  
Philadelphia, PA 19103



T. Chris Minshall  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region III