

regulation of a state underground storage tank program which has been authorized by EPA.

Effective May, 4, 1998, pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c, and 40 C.F.R. Part 281, Subpart A, the District of Columbia was granted final authorization to administer a state UST management program *in lieu* of the Federal UST management program established under Subtitle 1 of RCRA, 42 U.S.C. §§ 6991-6991m. The provisions of the District of Columbia UST management program, through this final authorization, are enforceable by EPA pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e. The District of Columbia's authorized UST program regulations are set forth in the District of Columbia Municipal Regulations, Title 20, Chapters 55 *et seq.*, and will be cited hereinafter as 20 DCMR §§ 5500 *et seq.*

EPA has given the District of Columbia notice of the issuance of this Order in accordance with Section 9006(a)(2) of RCRA, 42 U.S.C. § 6991e(a)(2).

In support of this Order, the EPA makes the following findings of fact and conclusions of law:

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The United States Environmental Protection Agency - Region III ("EPA" or the "Region") and EPA's Office of Administrative Law Judges have jurisdiction over this matter pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e, 40 C.F.R. Part 280 and 40 C.F.R. § 22.1(a)(4) and .4(c).
2. Crabbs Branch Property, LLC ("Respondent") is a Maryland corporation doing business in the District of Columbia.
3. Respondent is a "person" as defined in Section 9001(5) of RCRA, 42 U.S.C. § 6991(5), and 20 DCMR § 6899.1.
4. Respondent has been the "owner" and/or "operator," as those terms are defined in Section 9001(3) and (4) of RCRA, 42 U.S.C. § 6991(3) and (4), and 20 DCMR § 6899.1, of "underground storage tanks" ("UST") and "UST systems" as those terms are defined in Section 9001(10) of RCRA, 42 U.S.C. § 6991(10), and 20 DCMR § 6899.1, located at 7000 Blair Road NW, Washington DC (the "Facility").
5. On March 6, 2009, an EPA representative conducted a Compliance Evaluation Inspection ("CEI") of the Facility pursuant to Section 9005 of RCRA, 42 U.S.C. § 6991d.
6. On April 16, 2009, Jeanna Henry, a duly designated employee of EPA, sent to Respondent, via Federal Express next day delivery, an Information Request Letter ("IRL") pursuant to Section 9005 of RCRA, 42 U.S.C. § 6991d, regarding the UST

systems located at the Facility.

7. The IRL required Respondent to provide a response to the IRL within fifteen (15) calendar days after receipt of the letter.
8. On May 11, 2009, Mr. Kenneth Wilhelm contacted EPA via telephone and spoke with Jeanna Henry, an EPA Enforcement Officer, and requested an extension of time in which to submit to EPA a response to the IRL. Ms. Henry granted Mr. Wilhelm's request, setting the IRL response due date for May 28, 2009.
9. On July 22, 2009, Jeanna Henry, a duly designated employee of EPA, sent a letter dated July 22, 2009, via Federal Express next day delivery to Respondent, advising Respondent that it was in violation of Section 9005(a) of RCRA for failing to submit an IRL response to EPA. EPA's July 22, 2009 letter further required Respondent to submit a response to the IRL within five (5) days of Respondent's receipt of the letter.
10. Federal Express delivery records show that the July 22, 2009 letter was received on July 29, 2009.
11. Respondent has not submitted a response to the April 16, 2009 EPA IRL or the July 22, 2009 letter.
12. Section 9005(a) of RCRA, 42 U.S.C. § 6991d(a), provides that for the purposes of, *inter alia*, enforcing the provisions of RCRA Subtitle I, 42 U.S.C. §§ 6991 *et seq.*, any owner or operator of an UST shall furnish information regarding such UST to a duly designated officer, employee or representative of the EPA.
13. Respondent is in violation of Section 9005(a) of RCRA for failing to submit a response to an IRL issued by EPA to Respondent pursuant to Section 9005 of RCRA, 42 U.S.C. § 6991d.

III. COMPLIANCE ORDER

14. Pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e, Respondent is hereby ordered to submit a complete response to the IRL within ten business days of: (1) Respondent's receipt of this Compliance Order or (2) The date on which this Compliance Order becomes a Final Order pursuant to the Consolidated Rules at 40 C.F.R. § 22.31 and .37, whichever is later.
15. Any notice, report, certification, data presentation, or other document submitted by Respondent pursuant to this Compliance Order shall be certified by a responsible representative of Respondent, as described in 40 C.F.R. § 270.11(a).
16. The certification of the responsible representative required above shall be in the following form:

I certify that the information contained in or accompanying this [type of submission] is true, accurate, and complete. As to [the/those] identified portions of this [type of submission] for which I cannot personally verify [its/their] accuracy, I certify under penalty of law that this [type of submission] and all attachments were prepared in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

Signature: _____
Name: _____
Title: _____

17. All documents and reports to be submitted pursuant to this Compliance Order shall be sent to the following persons:

- a. Documents to be submitted to EPA shall be sent certified mail, return receipt requested to the attention of:

Jeanna Henry
Enforcement Officer
Office of Land Enforcement (3LC70)
U.S. Environmental Protection Agency - Region III
1650 Arch Street
Philadelphia, PA 19103-2029

and

Joyce A. Howell
Sr. Assistant Regional Counsel (3RC30)
U.S. Environmental Protection Agency - Region III
1650 Arch Street
Philadelphia, PA 19103-2029

- b. One copy of all documents submitted to EPA shall also be sent by regular mail to the attention of:

Fianna Phill
Chief, UST/LUST Branch
Toxic Substances Division
District Department of the Environment
51 N Streets, NE 6th Floor
Washington, DC 20002-3327

18. Respondent is hereby notified that failure to comply with any of the terms of this Compliance Order may subject it to imposition of a civil penalty of up to \$37,500 for each day of continued noncompliance, pursuant to Section 9006(a)(3) of RCRA, 42 U.S.C. § 6991e(a)(3), the Debt Collection Improvement Act of 1996 ("DCIA"), and the subsequent Civil Monetary Penalty Inflation Adjustment Rules, 61 *Fed. Reg.* 69360 (December 31, 1996), 69 *Fed. Reg.* 7121, 7126 (February 13, 2004), and 73 *Fed. Reg.* 75340 (December 11, 2008), codified in part at 40 C.F.R. Part 19.
19. The term "days" as used herein shall mean calendar days unless specified otherwise.

IV. OPPORTUNITY TO REQUEST A HEARING

20. Pursuant to the Consolidated Rules of Practice at 40 C.F.R. § 22.15, Respondent has the right to request a hearing to contest any matter or material fact set forth in this Compliance Order. To request a hearing, Respondent must file a written Answer to the Compliance Order with the Regional Hearing Clerk, within (30) thirty days of receipt of this Compliance Order, at the following address:

Regional Hearing Clerk (3RC00)
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029.

In addition, please send a copy of any request for a hearing to the attention of:

Joyce A. Howell (MC3RC30)
Sr. Assistant Regional Counsel
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029.

The Answer must clearly and directly admit, deny or explain each of the factual allegations contained in this Compliance Order of which Respondent has any knowledge. Where Respondent has no knowledge of a particular factual allegation and so states, such a statement is deemed to be a denial of the allegation. The Answer should contain: (1) the circumstances or arguments which are alleged to constitute the grounds of any defense; (2) the facts which Respondent disputes; (3) the basis for opposing any proposed relief; and (4) a statement of whether a hearing is requested. All material facts not denied in the Answer will be considered to be admitted.

Failure of the Respondent to admit, deny or explain any material allegation in the Complaint shall constitute an admission by Respondent of such allegation. Failure to Answer may result in the filing of a Motion for Default Order and the possible issuance of a Default Order imposing the penalties proposed herein without further proceedings.

Any hearing requested by Respondent will be conducted in accordance with the provisions of the Consolidated Rules of Practice. A copy of these rules is enclosed with this Compliance Order.

A copy of Respondent's Answer and all other documents that Respondent files in this action should be sent to the attorney assigned to represent EPA in this matter, as follows:

Joyce A. Howell (MC3RC30)
Sr. Assistant Regional Counsel
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029.

V. SETTLEMENT CONFERENCE

Complainant encourages settlement of the proceedings at any time after issuance of the Compliance Order if such settlement is consistent with the provisions and objectives of RCRA. Whether or not a hearing is requested, Respondent may request a settlement conference with the Complainant to discuss the allegations of the Compliance Order and the relief described therein. A request for a settlement conference does not relieve a Respondent of its responsibility to file a timely Answer.

The Quick Resolution settlement procedures set forth at 40 C.F.R. § 22.18 of the Consolidated Rules of Practice do not apply to this case.

In the event settlement is reached, the terms shall be expressed in a written Consent Agreement prepared by Complainant, signed by the parties, and incorporated into a Final Order signed by the Regional Administrator or his designee. The execution of such a Consent Agreement shall constitute a waiver of the Respondent's right to contest the allegations in the Complaint and its right to appeal the proposed Final Order accompanying the Consent Agreement.

If you wish to arrange a settlement conference or have legal questions concerning this matter, please contact Joyce A. Howell, Senior Assistant Regional Counsel, at (215) 814-2644. Once again, however, such a request for a settlement conference does not relieve Respondent of its responsibility to file an Answer within thirty (30) days following its receipt of this Compliance Order.

VI. SEPARATION OF FUNCTIONS AND EX PARTE COMMUNICATIONS

21. The following Agency officers, and the staffs thereof, are designated as the trial staff to represent the Agency as the party in this case: the Region III Office of Regional Counsel, the Region III Land and Chemicals Division, and the Office of the EPA Assistant Administrator for Enforcement and Compliance Assurance. Commencing from the date of issuance of this Order, neither the Administrator, members of the Environmental Appeals Board, Presiding Officer, Regional Administrator, nor Regional Judicial Officer, may have an *ex parte* communication with the trial staff on the merits of any issue involved in this proceeding. Please be advised that the Consolidated Rules prohibit any *ex parte* discussion of the merits of a case with, among others, the Administrator, members of the Environmental Appeals Board, Presiding Officer, Judicial Officer, Regional Administrator, Regional Judicial Officer, or any other person who is likely to advise these officials on any decision in this proceeding after issuance of this Order.

SO ORDERED.

Dated: 3/11/10



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

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

In the Matter of:

Crabbs Branch Property, LLC
12055 Tech Road # B
Silver Spring, Maryland 20904:

Docket No. RCRA-03-2010-0124

RESPONDENT

Blair Road BP
7000 Blair Road NW
Washington DC 20012

FACILITY

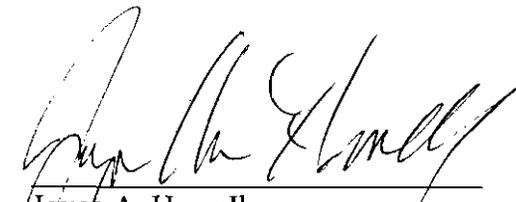
CERTIFICATE OF SERVICE

I certify that on the date noted below, I sent by Federal Express, a copy of the ADMINSTRATIVE ORDER to the addressee listed below. The original and two copies of the same were hand-delivered to the Regional Hearing Clerk, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103-2029.

Crabbs Branch Property, LLC
c/o Kenneth Wilhelm
12055 Tech Road #B
Silver Spring, MD 20904

Crabbs Branch Property, LLC
c/o Kenneth Wilhelm
18216 Wickham Road
Olney, MD 20832

Dated: March/5, 2010



Joyce A. Howell