

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029**

In the Matter of:)	
)	
Washington Hospital Center Corporation)	
110 Irving Street, NW)	U.S. EPA Docket Number
Washington, DC 20010)	RCRA-03-2088-0143
)	
RESPONDENT,)	Proceeding Under Section 9006 of the
)	Resource Conservation and Recovery Act,
)	as amended, 42 U.S.C. Section 6991e
110 Irving Street, NW)	
Washington, DC 20010)	
)	
FACILITY.)	
)	
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 REGION III

CONSENT AGREEMENT

This Consent Agreement ("CA") is entered into by the Director, Waste and Chemicals Management Division, U.S. Environmental Protection Agency, Region III ("EPA" or "Complainant") and the Washington Hospital Center Corporation ("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"), 40 C.F.R. Part 22, including, specifically 40 C.F.R. §§ 22.13(b) and .18(b)(2) and (3).

This CA and the Final Order (collectively "CAFO"), resolve violations of RCRA Subtitle I, 42 U.S.C. §§ 6991-6991m, and the District of Columbia's federally authorized underground storage tank program by Respondent in connection with its underground storage tank at Respondent's facility located at 110 Irving Street NW, Washington, DC (the "Facility").

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 I 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.*

GENERAL PROVISIONS

1. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CAFO.
2. Respondent neither admits nor denies the specific factual allegations and conclusions of law set forth in this CAFO, except as provided in Paragraph 1, above.
3. Respondent agrees not to contest EPA's jurisdiction with respect to the execution of this CA, the issuance of the attached Final Order ("FO"), or the enforcement of the CAFO.
4. For the purposes of this proceeding only, Respondent hereby expressly waives its right to a hearing on any issue of law or fact set forth in this CA and any right to appeal the accompanying FO.
5. Respondent consents to the issuance of this CAFO, and agrees to comply with its terms and conditions.
6. Respondent shall bear its own costs and attorney's fees.
7. The provisions of this CAFO shall be binding upon Respondent, and its officers, directors, employees, successors and assigns.
8. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit, nor does this CAFO constitute a waiver, suspension or modification of the requirements of RCRA Subtitle I, 42 U.S.C. §§ 6991-6991m, or any regulations promulgated thereunder.
9. Complainant shall have the right to institute further actions to recover appropriate relief if Complainant obtains evidence that the information provided and/or representations made by Respondent to EPA regarding matters at issue in this CAFO are false or, in any material respect, inaccurate. Respondent is aware that the submission of false or misleading information to the United States government may subject Respondent to separate civil and/or criminal liability.
10. Respondent agrees not to deduct for civil taxation purposes the civil penalty specified in this Consent Agreement and the attached Final Order.
11. EPA has given the District of Columbia prior notice of the issuance of this CAFO in accordance with Section 9006(a)(2) of RCRA, 42 U.S.C. § 6991e(a)(2).

FACTUAL ALLEGATIONS AND CONCLUSIONS OF LAW

12. 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).
13. At all times relevant to this CAFO, Respondent has been a Delaware corporation doing business in the District of Columbia.
14. Respondent is a "person" as defined in Section 9001(5) of RCRA, 42 U.S.C. § 6991(5), and 20 DCMR § 6899.1.
15. At all times relevant to this CAFO, 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 the "underground storage tank" ("UST") and "UST system" as those terms are defined in Section 9001(10) of RCRA, 42 U.S.C. § 6991(10), and 20 DCMR § 6899.1, located at the Facility.
16. On June 7, 2007, an EPA representative conducted a Compliance Evaluation Inspection ("CEI") of the Facility, including all UST systems present at the Facility, pursuant to Section 9005 of RCRA, 42 U.S.C. § 6991d.
17. At the time of the June 7, 2007 CEI, and at all times relevant to the applicable violations alleged herein, the following UST was located at the Facility: one twelve thousand gallon jet fuel tank constructed of double-walled fiberglass-reinforced plastic ("FRP") that was installed in or about 1987 and that, at all times relevant hereto, routinely contained and was used to jet fuel, a "regulated substance" as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and 20 DCMR § 6899.1.
18. At all times relevant to the applicable violations alleged herein, the UST has been a "petroleum UST system" and an "existing UST system" as these terms are defined in 20 DCMR § 6899.1.
19. The UST was and is, at all times relevant to the applicable violations alleged in this CAFO, used to store "regulated substance(s)" at Respondent's Facility, as defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and 20 DCMR § 6899.1, and have not been "empty" as that term is defined at 20 DCMR § 6100.7.
20. Pursuant to RCRA Section 9005, 42 U.S.C. § 6991d, on June 29, 2007, EPA issued and Information Request to Respondent Washington Hospital Center concerning its petroleum UST system at the Facility.

COUNT I

(Failure to Provide Release Detection)

21. The allegations of Paragraphs 12 through 20 of the CA are incorporated herein by reference.
22. 20 DCMR § 6000.1 provides that each owner and operator of a new or existing UST system shall provide a method, or combination of methods, of release detection that meets the requirements described therein.
23. Pursuant to 20 DCMR §§ 6003.1 through 6003.5, tanks which are part of a petroleum UST system must be monitored at least every 30 days for releases using one of the methods listed in 20 DCMR §§ 6008 through 6012, except that: (1) prior to December 22, 1995, UST systems could have been monitored using a combination of inventory control and tank tightness testing in compliance with the requirements of 20 DCMR §§ 6005 through 6007; and (2) tanks with a capacity of 550 gallons or less may use weekly tank gauging conducted in accordance with 20 DCMR § 6006.
24. From April 1, 2003 until July 18, 2007, Respondent failed to perform tank release detection for one 12,000 gallon jet fuel UST in accordance with 20 DCMR § 6003.
25. Respondent's acts and/or omissions as alleged in Paragraphs 24, above, constitute violations by Respondents of 20 DCMR §§ 6000.1 and 6003.

COUNT II

(Failure to Comply with Financial Responsibility Requirements)

26. The allegations in Paragraphs 13 through 25, of this CAFO are incorporated herein by reference.
27. 20 DCMR §§ 6700.1 and 6700.10 through 6700.17 provide that owners and operators of petroleum UST systems are required, with exceptions not here relevant, to demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of diesel USTs. Subject to the limitations set forth in 20 DCMR §§ 6701.1 through 6701.7, an owner or operator may demonstrate financial responsibility using any of the mechanisms set forth in 20 DCMR §§ 6703 through 6711.
28. From April 1, 2003 until September 19, 2007, Respondent did not demonstrate financial responsibility for the UST described in Paragraph 17, above, by any of the methods set forth in 20 DCMR §§ 6703 through 6711.
29. Respondent's act and/or omission as alleged in Paragraph 28, above, constitutes a violation by Respondent of 20 DCMR § 6700.1 and §§ 6700.10 through 6700.17.

COUNT III

(Failure to Install an Automatic Line Leak Detector)

30. The allegations of Paragraphs 13 through 29 of the CA are incorporated herein by reference.
31. 20 DCMR § 6000.1 provides that each owner and operator of a new or existing UST system shall provide a method, or combination of methods, of release detection that meets the requirements described therein.
32. 20 DCMR § 6000.2 provides that the owner and operator of each UST system, regardless of the date of installation, shall immediately comply with the release detection requirements for all pressurized piping as set forth in 20 DCMR §§ 6004.2 and 6004.3.
33. 20 DCMR § 6004.1 provides that the owner and operator of a petroleum UST system shall regularly monitor all underground piping that contains or conveys regulated substances for releases in accordance with 20 DCMR § 6004.
34. 20 DCMR § 6004.2 provides that underground piping that conveys regulated substances under pressure shall be equipped with an automatic line leak detector, in accordance with § 6013.2 of this chapter.
35. From April 1, 2003 up to at least March 31, 2008, the underground piping for the UST conveyed regulated substances under pressure.
36. Respondent failed to install an automatic line leak detectors for the underground piping associated with the UST from April 1, 2003 up to at least March 31, 2008.
37. Respondent's acts and/or omissions as alleged in Paragraph 36, above, constitute violations by Respondents of 20 DCMR § 6004.2.

COMPLIANCE ORDER

Pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e, Respondent is hereby ordered to:

38. Within 90 days after the effective date of this CAFO, comply with the release detection requirements of 20 DCMR §§ 6003.1 and 6004.1 for the 12,000 gallon jet fuel UST located at the Facility subject to this CAFO.
39. Within 90 days after the effective date of this CAFO, provide a report and any and all test results to demonstrate Respondent's compliance with Paragraph 38 of this CAFO, above.
40. Provide monthly release detection monitoring results to EPA and DC Department of Environment in accordance with 20 DCMR §§ 6003.1 and 6004.1 for the six month period after the effective date of this CAFO for the 12,000 gallon jet fuel UST located at the Facility subject to this CAFO.
41. Any notice, report, certification, data presentation, or other document submitted by Respondents pursuant to this CAFO which discusses, describes, demonstrates, supports

any finding or makes any representation concerning Respondents's compliance or noncompliance with any requirement of this CAFO shall be certified by Respondents in accordance with 40 C.F.R. § 270.11(a) as follows:

The certification of the responsible officer 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: _____

42. All documents and reports to be submitted pursuant to this CAFO shall be sent to the following persons:
- a. Documents to be submitted to EPA shall be sent either by overnight mail or by certified mail, return receipt requested to:

Stacie Peterson, Environmental Engineer
US EPA Region III - RCRA Compliance & Enforcement (3WC31)
1650 Arch Street
Philadelphia, PA 19103
 - b. One copy of all documents submitted to EPA shall be sent by first class mail to:

Sharon Hamilton
Department of the Environment
District of Columbia
51 N Street, NE
6th Floor
Washington, DC 20002

CIVIL PENALTY

43. In settlement of Complainant's claims for civil penalties for the violations alleged in this CA, Respondent agrees to pay a civil penalty in the amount of Twelve Thousand One Hundred Seventy Five Dollars (\$12,175.00). The civil penalty amount is due and payable immediately upon Respondent's receipt of a true and correct copy of this CAFO. If Respondent pays the entire civil penalty of Twelve Thousand One Hundred Seventy Five Dollars (\$12,175.00) within thirty (30) calendar days of the date on which this CAFO is mailed or hand-delivered to Respondent, no interest will be assessed against Respondent pursuant to 40 C.F.R. § 13.11(a)(1).
44. 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.
45. 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 the Respondent. 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).
46. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period a debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives - Cash Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.
47. A late payment penalty of six percent 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).
48. The aforesaid settlement amount was based upon Complainant's consideration of a number of factors, including, but not limited to, the statutory factors of the seriousness of Respondent's violations and any good faith efforts by Respondent to comply with all applicable requirements as provided in RCRA Section 9006(c), 42 U.S.C. § 6991e(c), and with EPA's Penalty Guidance for Violations of UST Regulations ("UST Guidance") dated November 4, 1990.
49. Respondent shall pay the amount described in Paragraph 43, above, by sending a certified or cashier's check payable to the "United States Treasury," as follows:

By Regular US Postal Service Mail:

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

By Private Commercial Overnight Delivery:

U.S. EPA, Fines and Penalties
U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101
Contact: Natalie Pearson
(314) 418-4087

Payment of the penalty as required by this CAFO may also be made by electronic transfer to:

Wire Transfers

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 wire transfer message should read:
"D 68010727 Environmental Protection Agency")

Automated Clearing House (ACH) Transfers

PNC Bank
ABA = 051036706
Environmental Protection Agency
Account 310006
CTX Format
Transaction Code 22 - checking
808 17th Street, NW
Washington, DC 20074

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

Regional Hearing Clerk (3RC00)

EPA Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103 - 2029, and

Louis Ramalho
Assistant Regional Counsel
U.S. Environmental Protection Agency - Region III
1650 Arch Street
Philadelphia, PA 19103-2029.

FULL AND FINAL SATISFACTION

50. This CAFO constitutes a settlement by EPA of its claims for civil penalties pursuant to 9006(a) of RCRA, 42 U.S.C. § 6991e(a), for the violations alleged in this Consent Agreement in connection with the 12,000 gallon jet fuel UST located at the Respondent's Facility.

RESERVATION OF RIGHTS

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

OTHER APPLICABLE LAWS

52. Nothing in this CAFO shall relieve Respondent of any duties otherwise imposed on it by applicable federal, state or local law and/or regulations.

AUTHORITY TO BIND THE PARTIES

53. The undersigned representative of Respondent certifies that he is fully authorized to enter into the terms and conditions of this Consent Agreement and bind Respondent hereto.

ENTIRE AGREEMENT

54. This Consent Agreement and the attached Final Order constitute the entire agreement and understanding of the parties concerning settlement of the above-captioned action and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Consent Agreement and the attached Final Order.

EFFECTIVE DATE

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

For Respondent:

Washington Hospital Center Corporation

4/1/08

Date



James F. Caldas, President
Washington Hospital Center Corporation

For Complainant:

U.S. Environmental Protection Agency,
Region III

4/7/08

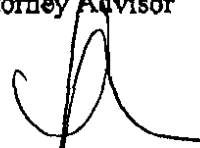
Date



Antoinette Powell Dickson
Office of Enforcement & Compliance
Assurance, Headquarters
Attorney Advisor

4-8-08

Date



Louis F. Ramalho
Senior Assistant Regional Counsel

After reviewing the foregoing Consent Agreement and other pertinent information, the Waste and Chemicals Management Division, EPA Region III, recommends that the Regional Administrator or the Regional Judicial Officer issue the Final Order attached hereto.

4/11/08
Date

By:



Abraham Ferdas, Director
Waste and Chemicals Management
Division, EPA Region III

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

In the Matter of:)	
)	
)	
Washington Hospital Center Corporation)	U.S. EPA Docket Number
110 Irving Street, NW)	RCRA-03-2008-0143
Washington, DC 20010)	
)	Proceeding Under Section 9006(a) of
RESPONDENT,)	the Resource Conservation and
)	Recovery Act, as amended, 42 U.S.C.
)	§ 6991e(a).
110 Irving Street, NW.)	
Washington, DC 20010)	
)	Final Order
FACILITY.)	
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FINAL ORDER


Complainant, the Associate Director for Enforcement, Waste and Chemicals Management Division, U.S. Environmental Protection Agency - Region III, and Respondent, Washington Hospital Center Corporation, 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. 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 Section 22.18(b)(3) of the *Consolidated Rules of Practice* and Section 9006(c) of the Resource Conservation and Recovery Act, 42 U.S.C. § 6991e(c)("RCRA"), 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 Section 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 Twelve Thousand One Hundred Seventy-Five Dollars (\$12,175.00) in accordance with the payment provisions set forth in the attached Consent Agreement, and comply with the terms and conditions of the attached Consent Agreement.

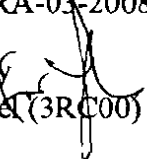
The effective date of this Final Order and the accompanying Consent Agreement is the date on which the Final Order, signed by the Regional Administrator of U.S. EPA Region III or the Regional Judicial Officer, is filed with the Regional Hearing Clerk of U.S. EPA - Region III.


Date: April 17, 2008


Renée Sarajian
Regional Judicial Officer
U.S. EPA, Region

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029**

SUBJECT: Transmittal Memorandum
Consent Agreement and Final Order
In the Matter of Washington Hospital Center Corporation
Docket No. RCRA-03-2008-0143

FROM: William C. Early 
Regional Counsel (3RC00)

Abraham Ferdas, Director 
Waste and Chemicals Management Division (3WC30)

TO: Renée Sarajian
Regional Judicial Officer (3RC00)

The attached Consent Agreement and Final Order (“CAFO”) have been negotiated 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”), 40 C.F.R. Part 22, including, specifically 40 C.F.R. §§ 22.13(b) and .18(b)(2) and (3).

The CAFO resolves violations of RCRA Subtitle I, 42 U.S.C. §§ 6991-6991m, and the District of Columbia’s federally authorized underground storage tank program by Respondent in connection with its underground storage tanks at Respondent’s facility located at 110 Irving Street, NW, Washington, DC (the “Facility”). Please refer to the CAFO for further details concerning the violations at this Facility.

Under the terms of the settlement, Respondent will pay a civil penalty in the amount of \$12,175.00. This settlement was determined after consideration of the statutory factors set forth in Section 9006(c) of RCRA, 42 U.S.C. § 6991e(c), and other settlement adjustment factors set forth in the “U.S. Penalty Guidance for Violation of UST Regulations” dated November, 1990 (“UST Penalty Policy”).

We concur with the terms of the enclosed Consent Agreement and Final Order. Accordingly, we recommend that you sign the Final Order and return it to the Office of Regional Counsel for further processing.

cc: Roderick T. Chen, Esq.
MedStar Health for Washington Hospital

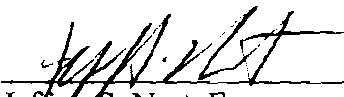
Louis F. Ramalho, Esq.
U.S. EPA, Region III

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on April 17, 2008, the original and one true and correct copy of the foregoing Consent Agreement and Final Order ("CAFO") (RCRA-03-2008-0143) was hand-delivered to and filed with the Regional Hearing Clerk (3RC00), U.S. EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania, and that, on April 17, 2008, a true and correct copy of the CAFO was sent via express delivery upon the following:

Roderick T. Chen, Esq.
MedStar Health for Washington Hospital Center Corporation
110 Irving Street, NW
Washington, DC 20010

4/17/08
Date



Jeffrey S. Nast, Esq.
Assistant Regional Counsel
U.S. EPA - Region III
Philadelphia, PA 19103-2029