

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

In the Matter of:	:	Consent Agreement and
	:	Final Order
Naval Support Activity, Hampton Roads Building NH94 7918 Blandy Street Norfolk, VA 23551,	:	U.S. EPA Docket Number RCRA-03-2012-0026
Facility,	:	Proceeding Under Sections 9006 and 9007 of the Resource Conservation and Recovery Act, as amended, 42
Naval Support Activity, Hampton Roads 7918 Blandy Street Norfolk, VA 23551,	:	U.S.C. §§ 6991e and 6991f
Respondent.	:	

RECEIVED
2012 MAR -7 AM 10:17
REGIONAL HEARING CLERK
EPA REGION III, PHILA. PA

CONSENT AGREEMENT

I. PRELIMINARY STATEMENT

1. This Consent Agreement ("CA") is entered into by the Director of the Land and Chemicals Division, U. S. Environmental Protection Agency, Region III ("Complainant" or "EPA" or "Agency") and Naval Support Activity, Hampton Roads ("Respondent"), pursuant to Sections 9006 and 9007 of the Resource Conservation and Recovery Act ("RCRA"), as amended, 42 U.S.C. §§ 6991e and 6991f, and the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* ("*Consolidated Rules of Practice*"), 40 C.F.R. Part 22 (with specific reference to 40 C.F.R. §§ 22.13(b), 22.18(b)(2), and (3)).

 2. This CA and the Final Order resolve Respondent's violations of Subtitle I of RCRA, 42 U.S.C. §§ 6991-6991m, and the Commonwealth of Virginia's federally authorized
-

Underground Storage Tank (“UST”) Program that occurred at the Respondent’s facility located at Naval Support Activity, Hampton Roads, Building NH94, 7918 Blandy Street, Norfolk, VA 23551 (the “Facility”).

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

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 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

12. 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.

13. 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 Section 9006 of RCRA, 42 U.S.C. § 6991e. 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, 9 VAC § 25-580-10 *et seq.*

14. On August 24, 2011, EPA gave 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).

15. 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.

16. From March 15 to 17, 2011, an EPA representative conducted a Compliance Evaluation Inspection ("CEI") of the Facility pursuant to Section 9005 of RCRA, 42 U.S.C. § 6991d.

17. At the time of the March 15-17, 2011 CEI, and at all times relevant to the applicable violations alleged herein, three USTs, as described in the following subparagraphs, were located at the Facility:

A. A twenty-five thousand (25,000) gallon single-walled steel tank with lined interior that was installed in or about January 1988, and that, at all times relevant hereto, routinely contained diesel fuel, 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");

B. A twenty-five thousand (25,000) gallon single-walled steel tank with lined interior that was installed in or about January 1988, and that, at all times relevant hereto, routinely contained diesel fuel, 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. 2"); and

C. A twenty-five thousand (25,000) gallon single-walled steel tank with lined interior that was installed in or about January 1988, and that, at all times relevant hereto, routinely contained diesel fuel, 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. 3").

18. USTs Nos. 1, 2, and 3 are and were, at all times relevant to the applicable violations alleged in this CA, used to store regulated substances at the Respondent's Facility.

19. During the March 15-17 CEI, Naval Support Activity, Hampton Roads personnel stated that the cathodic protection systems for UST Nos. 1, 2, and 3 were last tested on May 18, 2004.

20. Pursuant to RCRA Section 9005, 42 U.S.C. § 6991d, on June 9, 2011, EPA issued an Information Request Letter ("IRL") to Respondent concerning its petroleum UST systems at the Facility.

21. In response to the IRL, the Respondent provided results from cathodic protection testing conducted on May 18, 2004, and April 4, 2011.

22. In response to an August 12, 2011 electronic mail inquiry from EPA, Respondent staff stated that the Respondent had not conducted cathodic protection testing from May 18, 2004, until April 4, 2011.

Counts 1-3

23. Paragraphs 1 through 22 of this Complaint are incorporated by reference as if fully set forth herein.

24. 9 VAC § 25-580-90.2.a. provides that all owners and operators of steel UST systems equipped with corrosion protection and used to store regulated substances must have the UST system's cathodic protection systems tested at least every three years by a qualified cathodic protection tester.

25. "Cathodic protection" is, as that term is defined in 40 C.F.R. § 280.12 and 9 VAC § 25-580-10, a technique to prevent corrosion of a metal surface by making that surface the cathode of an electrochemical cell.

26. USTs Nos. 1, 2 and 3 are and were, at the time of the violations alleged herein, "steel UST systems with corrosion protection" and were used to store regulated substances and, as a result, subject to the requirements of 9 VAC § 25-580-90.2.a.

27. From on or about May 18, 2007, until April 4, 2011, Respondent failed to conduct a test of the cathodic protection system as required by 9 VAC § 25-580-90.2.a. for the UST Nos. 1, 2, and 3 at the Facility.

28. Respondent's failure to conduct a test of the cathodic protection systems for UST Nos. 1, 2, and 3 constitutes a separate violation of 9 VAC § 25-580-90.2.a for each tank for each day the Respondent failed to conduct the test.

V. CIVIL PENALTY

29. 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.

30. 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 five thousand eight hundred and fifty five dollars (\$5,855.00) 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.

31. 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 last amendment to 40 C.F.R. Part 19 (See 73 Fed. Reg. 75340 (2008)) and the December 29, 2008, memorandum by EPA Assistant Administrator Granta Y. Nakayama entitled, *Amendments to EPA's Civil Penalty Policies to Implement the 2008 Civil Monetary Penalty Inflation Adjustment Rule*, which modified the *UST Penalty Guidance* and authorized EPA to assess penalties using penalty matrix values larger than those stated in the *UST Penalty Guidance*.

32. Payment of the civil penalty amount assessed in Paragraph 30, 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-03-2012-0026;

- B. All checks shall be made payable to "United States Treasury";
- C. All payments made by check and sent by regular mail shall be addressed for delivery to:

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

Contact: Heather Russell 513-487-2044

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

U.S. Bank
Government Lockbox 979077
U.S. EPA, Fines & Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

Contact: 314-418-1028

- E. All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance
US EPA, MS-NWD
26 W. M.L. King Drive
Cincinnati, OH 45268-0001

- F. All payments made by electronic wire transfer shall be directed to:

Federal Reserve Bank of New York
ABA = 021030004
Account No. = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

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

US Treasury REX / Cashlink ACH Receiver
ABA = 051036706
Account No.: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - Checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737

Contact: Jesse White 301-887-6548 or REX, 1-866-234-5681

H. On-Line Payment Option:

WWW.PAY.GOV/PAYGOV

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

I. Additional payment guidance is available at the following internet address:
http://www.epa.gov/ocfo/finservices/make_a_payment.htm

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

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

VII. OTHER APPLICABLE LAWS

34. 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

35. Respondent certifies to Complainant, upon investigation, to the best of its 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

36. 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.

37. 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

38. 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

39. 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

40. 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, is filed with the EPA Regional Hearing Clerk pursuant to the *Consolidated Rules of Practice*.

XIII. ENTIRE AGREEMENT

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

In Re: Naval Support Activity
Hampton Roads
RCRA-03-2012-0026

For Respondent:

Date: 2/9/12

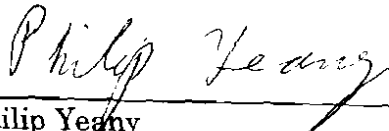
A handwritten signature in black ink, appearing to read 'C. P. Melcher', is written over a solid horizontal line.

C. P. MELCHER
Captain, U.S. Navy
Commanding Officer
Naval Support Activity, Hampton Roads

In Re: Naval Support Activity
Hampton Roads
RCRA-03-2012-0026

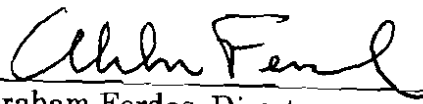
For Complainant:

Date: 2/22/12


Philip Yeany
Senior Assistant
Regional Counsel

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

Date: 2/24/12


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

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

In the Matter of:	:	Consent Agreement and
	:	Final Order
Naval Support Activity, Hampton Roads	:	
Building NH94	:	U.S. EPA Docket Number
7918 Blandy Street	:	RCRA-03-2012-0026
Norfolk, VA 23551,	:	
	:	Proceeding Under Sections 9006 and
Facility,	:	9007 of the Resource Conservation
	:	and Recovery Act, as amended, 42
Naval Support Activity, Hampton Roads	:	U.S.C. §§ 6991e and 6991f
7918 Blandy Street	:	
Norfolk, VA 23551,	:	
	:	
Respondent.	:	

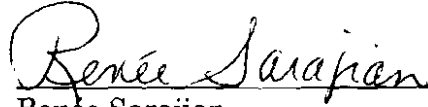
FINAL ORDER

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 (d) of RCRA, 42 U.S.C. §§ 6991e(c) and (d), IT IS HEREBY ORDERED that Respondent pay a civil penalty of five thousand eight hundred and fifty five dollars (\$5,855.00) in accordance with the payment provisions set forth in the attached Consent Agreement and comply with each of the additional terms and conditions as specified in the attached Consent Agreement. The effective date of the foregoing

Consent Agreement and this FINAL ORDER is the date on which this FINAL ORDER is filed with the EPA Regional Hearing Clerk.

Date: 3/6/12



Renee Sarajian
Regional Judicial Officer
U.S. EPA - Region III