

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III**

Philadelphia, Pennsylvania

In the Matter of:	:
	:
U-SAVE Food Store, Inc.	:
196 Middletown Road	:
Richwood, WV 26261	:
Respondent.	:
	:
U-SAVE #4	:
181 Main St.	:
Craigsville, WV 26205; and	:
	:
U-SAVE #5	:
RR 19	:
Mt. Nebo, WV 26679,	:
	:
Facilities	:

U.S. EPA Docket No. RCRA-03-2022-0005
Proceeding under Section 9006 of the Resource
Conservation and Recovery Act, as amended,
42 U.S.C. Section 6991e

CONSENT AGREEMENT

PRELIMINARY STATEMENT

1. This Consent Agreement is entered into by the Director of the Enforcement & Compliance Assurance Division, U.S. Environmental Protection Agency, Region III (“Complainant”) and U-SAVE Food Store, Inc., doing business as U-SAVE #4 and U-SAVE #5 (“Respondent”) pursuant to Section 9006 of the Solid Waste Disposal Act, commonly referred to as the Resource Conservation and Recovery Act of 1976, as amended (“RCRA”), 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 of Practice”), 40 C.F.R. Part 22. Section 9006 of RCRA, 42 U.S.C. § 6991e, authorizes the Administrator of the U.S. Environmental Protection Agency to assess penalties and undertake other actions required by this Consent Agreement. The Administrator has delegated this authority to the Regional Administrator who, in turn, has delegated it to the Complainant. This Consent Agreement and the attached Final Order (hereinafter jointly referred to as the “Consent Agreement and Final Order”) resolve Complainant’s civil penalty claims against Respondent under RCRA Subtitle I.

2. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant hereby simultaneously commences and resolves this administrative proceeding.

JURISDICTION

3. The U.S. Environmental Protection Agency has jurisdiction over the above-captioned matter, as described in Paragraph 1, above.
4. The Consolidated Rules of Practice govern this administrative adjudicatory proceeding pursuant to 40 C.F.R. § 22.1(a)(4).
5. EPA has given the West Virginia Department of Environmental Protection (“DEP”) notice of the issuance of this Consent Agreement and Final Order on April 21, 2021 in accordance with Section 9006(a)(2) of RCRA, 42 U.S.C. § 6991e(a)(2).

GENERAL PROVISIONS

6. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this Consent Agreement and Final Order.
7. Except as provided in Paragraph 6, above, Respondent neither admits nor denies the specific factual allegations set forth in this Consent Agreement.
8. 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 Consent Agreement and Final Order.
9. For purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in **this Consent Agreement and Final Order** and waives its right to appeal the accompanying Final Order.
10. Respondent consents to the assessment of the civil penalty stated herein, to the issuance of any specified compliance order herein, and to any conditions specified herein.
11. Respondent shall bear its own costs and attorney’s fees in connection with this proceeding.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

12. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant alleges and adopts the Findings of Fact and Conclusions of Law set forth immediately below.
13. Section 9006(d) of RCRA, 42 U.S.C. § 6991e(d), authorizes civil penalties to be assessed against any owner or operator of an underground storage tank (“UST”) who fails to

comply with, *inter alia*, any requirement or standard of a State program that has been approved pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c (or the “Act”) for the violations alleged herein.

14. Effective July 1, 1996, EPA authorized the West Virginia Underground Storage Tank Regulations (“WVUSTR”), pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c, and 40 C.F.R. Part 281, Subpart A. By its authorization of the WVUSTR, EPA approved the State of West Virginia to administer a state UST management program *in lieu* of the Federal UST management program established under RCRA Subtitle I of RCRA, 42 U.S.C. §§ 6991-6991m. The provisions of the West Virginia UST management program which EPA approved have become requirements of RCRA Subtitle I and are, accordingly, enforceable by EPA pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e. West Virginia’s authorized UST management program regulations are set forth under Title 33, Legislative Rules, Division of Environmental Protection, Office of Waste Management, Series 30, 30CSR33, as “Underground Storage Tanks.” The WVUSTR authorized in 1996 incorporated by reference the federal underground storage tank program regulations set forth at 40 C.F.R. Part 280 (1995 ed.).¹
15. At all times relevant to this Consent Agreement, Respondent has been a West Virginia corporation which is authorized to do business in the State of West Virginia.
16. At all times relevant to this Consent Agreement, Respondent has been a “person” as defined by Section 9001(5) of RCRA, 42 U.S.C. § 6991(5), and 40 C.F.R. Part 280 (1995), which has been incorporated by reference by the State of West Virginia under WV § 33-30-2, “Adoption of Federal Regulations,” Section 2.1., “Incorporation by Reference.”
17. At all times relevant to this Consent Agreement, Respondent has been the “owner” and/or “operator” as those terms are defined by Section 9001(3) and (4) of RCRA, 42 U.S.C. § 6991(3) and (4), and 40 C.F.R. Part 280 (1995), which has been incorporated by reference by the State of West Virginia under WV § 33-30-2, “Adoption of Federal Regulations,” Section 2.1., “Incorporation by Reference...” of underground storage tank systems at the U-SAVE #4 facility located at 181 Main Street, Craigsville, WV 26205 (“USAVE4”) and U-SAVE #5 located at RR 19, Mt. Nebo, WV 26679 (“USAVE5”) (collectively, “the Facilities”).
18. On March 4, 2020 EPA Region III conducted an inspection of the USAVE4 and USAVE5 facilities under the authority of Section 9005(a) of RCRA, 42 U.S.C. § 6991d(a). Both inspection reports were provided to Respondent via email on their dates of issue.

¹ Effective November 10, 2020, EPA reauthorized the WVUSTR, which incorporates by reference the federal underground storage tank program regulations set forth at 40 C.F.R. Part 280 (2016 ed.). Since the alleged violations of this Consent Agreement and Final Order occurred prior to November 10, 2020, the newly approved UST program revisions do not apply to this Agreement. Thus citations to the 40 C.F.R. Part 280 regulations incorporated into the approved UST program are to the 1995 edition.

19. At the time of the EPA Region III March 4, 2020 inspection (“Inspection”), and at all times relevant to the applicable violations alleged herein, there were at USAVE4 the following five (5) USTs, each of which contained a “regulated substance” as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and 40 C.F.R. Part 280:
 - a. Tank 1: 10,000 gallons; containing diesel fuel; fiberglass reinforced plastic (“FRP”) tank with FRP piping; installed in 10/91;
 - b. Tank 2: 6,000 gallons; containing non-ethanol gasoline; FRP tank with FRP piping; installed in 10/91;
 - c. Tank 3: 10,000 gallons; containing regular gasoline; FRP tank with FRP piping; installed in 10/91;
 - d. Tank 4: 8,000 gallons; containing mid-grade gasoline; FRP tank with FRP piping; installed in 10/91; and
 - e. Tank 5: 8,000 gallons; containing premium gasoline; FRP tank with FRP piping; installed in 10/91.
20. At all times relevant to this Consent Agreement, since the tanks at USAVE4 were installed in October 1991, they are considered “new tank systems,” as defined in 40 C.F.R. § 280.12, Definitions, which states that “a *new tank system* means a tank system that will be used to contain an accumulation of regulated substances and for which installation has commenced after December 22, 1988.”
21. All five (5) USTs at USAVE4 utilize pressurized piping and Respondent uses inventory reconciliation as its form of release detection.
22. At the time of the Inspection and at all times relevant to the applicable violations alleged herein, there were eight (8) USTs at USAVE5, each of which contained a “regulated substance” as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and 40 C.F.R. Part 280:
 - a. Tank 1: 12,000 gallons; containing regular gasoline; FRP tank with flexible double-walled (“FDW”) piping; installed in 1998;
 - b. Tank 2: 10,000 gallons; containing mid-grade gasoline; FRP tank with FDW piping; installed in 1998;
 - c. Tank 3: 10,000 gallons; containing premium gasoline; FRP tank with FDW piping; installed in 1998;
 - d. Tank 4: 6,000 gallons; containing diesel fuel; FRP tank with FDW piping; installed in 1998;
 - e. Tank 5: 6,000 gallons; containing kerosene; FRP tank with FDW piping; installed in 1998;
 - f. Tank 6: 10,000 gallons; containing diesel fuel; FRP tank with FDW piping; installed in 1998;
 - g. Tank 7: 10,000 gallons; containing diesel fuel; FRP tank with FDW piping; installed in 1998; and
 - h. Tank 5: 10,000 gallons; containing diesel fuel; FRP tank with FDW piping; installed in 1998.

- 23. At all times relevant to this Consent Agreement, since the above tanks at USAVE5 were installed in 1998, they are considered “new tank systems,” as defined in 40 C.F.R. § 280.12, Definitions, which states that “a *new tank system* means a tank system that will be used to contain an accumulation of regulated substances and for which installation has commenced after December 22, 1988.”
- 24. All eight (8) USTs at USAVE5 utilize pressurized piping and Respondent uses automatic tank gauging as its form of release detection.

**Count I (USAVE4)
Failure to conduct tank release detection on five (5) USTs**

- 25. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
- 26. WV Title 33 Series 30-2.1, which incorporates 40 C.F.R. § 280.41 by reference, requires the following:

Owners and operators of petroleum UST systems must provide release detection for tanks and piping as follows:

- (a) *Tanks*. Tanks must be monitored at least every 30 days for releases using one of the methods listed in § 280.43 (d) through (h)...

40 C.F.R. § 280.43(h) allows the use of any other type of release detection method or combination of methods if it meets the detection requirements of 40 C.F.R. § 280.43(h)(1) or (2).

- 27. At all times relevant to the violations alleged herein Statistical Inventory Reconciliation (“SIR”) was the method of monthly release detection identified by Respondent in use at the USAVE4 Facility pursuant to WV Title 33 Series 30-2.1, which incorporates 40 C.F.R. § 280.41. SIR properly and timely implemented could meet the requirements of 40 C.F.R. § 280.43(h) for other types of release detection.
- 28. At the time of the March 4, 2020 inspection, the records provided to EPA indicate that Respondent failed to conduct timely monthly tank release detection for all 5 USTs at the USAVE4 facility for 18 months.

Month Being Monitored	Report Due Date	Actual Report Date	Days Past Due
Feb 2019	Mar 8, 2019	Mar 9, 2020	368
Mar 2019	Apr 8, 2019	Mar 16, 2020	344
Apr 2019	May 8, 2019	Mar 16, 2020	313
May 2019	Jun 8, 2019	Mar 16, 2020	283
Jun 2019	Jul 8, 2019	Mar 16, 2020	252

Jul 2019	Aug 8, 2019	Mar 16, 2020	222
Aug 2019	Sep 8, 2019	Mar 18, 2020	193
Sep 2019	Oct 8, 2019	No report	N/A
Oct 2019	Nov 8, 2019	Mar 17, 2020	131
Nov 2019	Dec 8, 2019	Mar 17, 2020	99
Dec 2019	Jan 8, 2020	Mar 18, 2020	70
Jan 2020	Feb 8, 2020	Apr 27, 2020	79
Feb 2020	Mar 8, 2020	Apr 27, 2020	49
Mar 2020	Apr 8, 2020	Jul 27, 2020	111
Apr 2020	May 8, 2020	Jul 27, 2020	80
May 2020	Jun 8, 2020	Jul 30, 2020	53
Jun 2020	Jul 8, 2020	Jul 31, 2020	23
Jul 2020	Aug 8, 2020	Aug 18, 2020	10

29. From February 2019 through July 2020, Respondent failed to conduct SIR or any other method or combination of methods of release detection on any USTs at USAVE4 at least every 30 days or conduct any other type of release detection monitoring method specified in § 280.43 (d) through (h) that complied with the performance requirements of 40 C.F.R. § 280.43(h)(1) or (2).
30. Respondent’s acts and/or omissions as alleged in Paragraph 27-29 above, constitute violations by Respondent of WV Title 33 Series 30-2.1, which incorporates 40 C.F.R. § 280.41(a) by reference and therefore Respondent is subject to the assessment of penalties under Section 9006(d) of RCRA, 42 U.S.C. § 6991e(d).

Count II (USAVE4)

Failure to conduct annual line tightness testing or utilize a monthly method of piping release detection on five (5) UST systems

31. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
32. WV Title 33 Series 30-2.1, which incorporates 40 C.F.R. § 280.41(b)(1)(ii) by reference, requires that underground piping that conveys regulated substances under pressure must have either an annual line tightness test conducted in accordance with § 280.44(b) or monthly monitoring conducted in accordance with § 280.44(c).
33. At the time of the March 4, 2020 inspection, the records provided to EPA indicate that Respondent failed to conduct annual line tightness testing for all 5 (five) USTs at USAVE4 in accordance with 40 C.F.R. § 280.44(b) or have monthly monitoring conducted in accordance with 40 C.F.R. § 280.44(c) in a timely manner at the USAVE4 facility for 18 months.

Month Being Monitored	Report Due Date	Actual Report Date	Days Past Due
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Feb 2019	Mar 8, 2019	Mar 9, 2020	368
Mar 2019	Apr 8, 2019	Mar 16, 2020	344
Apr 2019	May 8, 2019	Mar 16, 2020	313
May 2019	Jun 8, 2019	Mar 16, 2020	283
Jun 2019	Jul 8, 2019	Mar 16, 2020	252
Jul 2019	Aug 8, 2019	Mar 16, 2020	222
Aug 2019	Sep 8, 2019	Mar 18, 2020	193
Sep 2019	Oct 8, 2019	No report	N/A
Oct 2019	Nov 8, 2019	Mar 17, 2020	131
Nov 2019	Dec 8, 2019	Mar 17, 2020	99
Dec 2019	Jan 8, 2020	Mar 18, 2020	70
Jan 2020	Feb 8, 2020	Apr 27, 2020	79
Feb 2020	Mar 8, 2020	Apr 27, 2020	49
Mar 2020	Apr 8, 2020	Jul 27, 2020	111
Apr 2020	May 8, 2020	Jul 27, 2020	80
May 2020	Jun 8, 2020	Jul 30, 2020	53
Jun 2020	Jul 8, 2020	Jul 31, 2020	23
Jul 2020	Aug 8, 2020	Aug 18, 2020	10

34. From February 2019 through July 2020 Respondent failed to conduct annual line tightness testing for all 5 (five) USTs at USAVE4 in accordance with 40 C.F.R. § 280.44(b) or have monthly monitoring conducted in accordance with 40 C.F.R. § 280.44(c) in a timely manner at the USAVE4 facility.
35. Respondent’s acts and/or omissions as alleged in Paragraphs 33-34 above, constitute violations by Respondent of WV Title 33 Series 30-2.1, which incorporates 40 C.F.R. § 280.44(a) by reference and therefore Respondent is subject to the assessment of penalties under Section 9006(d) of RCRA, 42 U.S.C. § 6991e(d).

**Count III (USAVE5)
Failure to provide tank release detection on one (1) UST**

36. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
37. WV Title 33 Series 30-2.1, which incorporates 40 C.F.R. § 280.41(a)(1)(2)(3) by reference, requires that:
 - (a) *Tanks.* Tanks must be monitored at least every 30 days for releases using one of the methods listed in § 280.43 (d) through (h)...
38. WV Title 33 Series 30-2.1, which incorporates 40 C.F.R. §§ 280.34 and 280.45 by reference, requires UST owners and operators to maintain records of release detection monitoring.

39. At all times relevant to the violations alleged herein, Respondent selected automatic tank gauging (“ATG”) under 40 C.F.R. § 280.43(d) as its method of release detection for all USTs at the USAVE5 Facility.
40. On the day of the inspection, the ATG system at USAVE5, a Veeder Root model TLS-350, displayed the following warning “T7 NO CSLD IDLE TIME”. A USAVE5 Facility representative present during inspection was not familiar with the ATG operation.
41. On June 26, 2020, EPA emailed the facility and stated that results for Tank 7 at USAVE5 for March 2019 through February 2020 indicated “No Results Available”. EPA requested the facility representative explain the method of tank release detection for UST #7 and provide monthly test results. In response, on August 14, 2020 the facility representative stated “Daily inventory was taken and reconciled to determine there was no loss of fuel. It did take some time to determine why the Continuous Statistical Leak Detection (“CSLD”) test was failing, but we did get to the bottom of it. There was a Gilbarco pump board that was faulty causing the submersible pump to run continuous. This led to no down time and the CSLD test failing [...] After the board was replaced, within 24 hours the test was passing, and has continued to do so.”
42. EPA emailed Respondent and requested it provide a copy of the inventory and reconciliation performed for Tank 7 from March 2019 through February 2020. On November 18, 2020 Respondent replied “...no records available. Reconciliation was done and after the issues were fixed, and the CSLD test came back clear we did not know the internal reconciliation records had to be kept.”
43. From at least March 2019 through February 2020, Respondent did not conduct ATG release detection on Tank 7 at USAVE5 as required by 40 C.F.R. § 280.41(a) nor were any other methods listed in § 280.43 (d) through (h) utilized for Tank 7.
44. From at least March 2019 through February 2020, Respondent did not maintain records of release detection for Tank 7 at the USAVE5 facility as required by WV Title 33 Series 30-2.1, which incorporates 40 C.F.R. §§ 280.34 and 280.45 by reference.
45. Respondent’s acts and/or omissions as alleged in Paragraphs 39 -44 above, constitute violations by Respondent of WV Title 33 Series 30-2.1, which incorporates 40 C.F.R. §§ 280.34, 280.45, and 280.41(a) by reference and Respondent is therefore subject to the assessment of penalties under Section 9006(d) of RCRA, 42 U.S.C. § 6991e (d).

CIVIL PENALTY

46. In settlement of EPA’s claims for civil penalties for the violations alleged in this Consent Agreement, Respondent consents to the assessment of a civil penalty in the amount of **THIRTY-THREE THOUSAND dollars (\$33,000.00)**, which Respondent shall be liable to pay in accordance with the terms set forth below.

47. The civil penalty is based upon EPA's consideration of a number of factors, including the penalty criteria ("statutory factors") set forth in the Resource Conservation and Recovery Act ("RCRA"), Sections 9006(c) and (e), 42 U.S.C. §§ 6991e(c) and (e), which includes the seriousness of the violation, any good faith efforts to comply with the applicable requirements, and any other factors considered appropriate. In developing a proposed penalty for the violations alleged in this Consent Agreement, EPA will take into account the particular facts and circumstances of this case with specific reference to EPA's November 1990 U.S. E.P.A. Penalty Guidance for Violations of UST Regulations ("UST Penalty Policy"), the appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to 40 C.F.R. Part 19, and the applicable EPA memoranda addressing EPA's civil penalty policies to account for inflation.

48. Payment of the civil penalty amount, and any associated interest, administrative fees, and late payment penalties owed, shall be made by either cashier's check, certified check or electronic wire transfer, in the following manner:

- a. All payments by Respondent shall include reference to Respondent's name and address, and the Docket Number of this action, *i.e.*, EPA Docket Number RCRA-03-2022-0005;
- b. All checks shall be made payable to the "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
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

- d. For additional information concerning other acceptable methods of payment of the civil penalty amount see:

<https://www.epa.gov/financial/makepayment>

- e. A copy of Respondent's check or other documentation of payment of the penalty using the method selected by Respondent for payment shall be sent simultaneously by email to:

Jeffrey S. Nast
Sr. Assistant Regional Counsel
nast.jeffrey@epa.gov

and

U.S. EPA Region III Regional Hearing Clerk

R3_Hearing_Clerk@epa.gov.

49. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest 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. Accordingly, Respondent's failure to make timely payment of the penalty as specified herein shall result in the assessment of late payment charges including interest, penalties and/or administrative costs of handling delinquent debts.
50. Payment of the civil penalty is due and payable immediately upon receipt by Respondent of a true and correct copy of the fully executed and filed Consent Agreement and Final Order. Receipt by Respondent or Respondent's legal counsel of such copy of the fully executed Consent Agreement and Final Order, with a date stamp indicating the date on which the Consent Agreement and Final Order was filed with the Regional Hearing Clerk, shall constitute receipt of written initial notice that a debt is owed EPA by Respondent in accordance with 40 C.F.R. § 13.9(a).
51. INTEREST: In accordance with 40 C.F.R § 13.11(a)(1), interest on the civil penalty assessed in this Consent Agreement and Final Order will begin to accrue on the date that a copy of the fully executed and filed Consent Agreement and Final Order is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalties 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).
52. ADMINISTRATIVE COSTS: The costs of the EPA'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 – Case 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.
53. LATE PAYMENT PENALTY: A late payment penalty of six percent per year will be assessed monthly on any portion of the civil penalty that remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
54. Respondent agrees not to deduct for federal tax purposes the civil penalty assessed in this Consent Agreement and Final Order.

GENERAL SETTLEMENT CONDITIONS

55. By signing this Consent Agreement, Respondent acknowledges that this Consent Agreement and Final Order will be available to the public and represents that, to the best

of Respondent's knowledge and belief, this Consent Agreement and Final Order does not contain any confidential business information or personally identifiable information from Respondent.

56. Respondent certifies that any information or representation it has supplied or made to EPA concerning this matter was, at the time of submission true, accurate, and complete and that there has been no material change regarding the truthfulness, accuracy or completeness of such information or representation. EPA shall have the right to institute further actions to recover appropriate relief if EPA obtains evidence that any information provided and/or representations made by Respondent to the EPA regarding matters relevant to this Consent Agreement and Final Order, **including information about respondent's ability to pay a penalty**, are false or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action that EPA may have, civil or criminal, under law or equity in such event. Respondent and its officers, directors and agents are aware that the submission of false or misleading information to the United States government may subject a person to separate civil and/or criminal liability.

CERTIFICATION OF COMPLIANCE

57. Respondent certifies to EPA, upon personal investigation and to the best of its knowledge and belief, that it currently is in compliance with regard to the violations alleged in this Consent Agreement.

OTHER APPLICABLE LAWS

58. Nothing in this Consent Agreement and Final Order shall relieve Respondent of its obligation to comply with all applicable federal, state, and local laws and regulations, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on the validity of any federal, state or local permit. This Consent Agreement and Final Order does not constitute a waiver, suspension or modification of the requirements of the Resource Conservation and Recovery Act ("RCRA"), Subtitle I, or any regulations promulgated thereunder.

RESERVATION OF RIGHTS

59. This Consent Agreement and Final Order resolves only EPA's claims for civil penalties for the specific violations alleged against Respondent in this Consent Agreement and Final Order. 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. 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, 40 C.F.R. § 22.18(c). EPA reserves any rights and remedies available to it under RCRA, Subtitle I, the regulations promulgated thereunder and any other federal law or regulation to enforce the terms of this Consent Agreement and Final Order after its effective date.

EXECUTION /PARTIES BOUND

60. This Consent Agreement and Final Order shall apply to and be binding upon the EPA, the Respondent and the officers, directors, employees, contractors, successors, agents and assigns of Respondent. By his or her signature below, the person who signs this Consent Agreement on behalf of Respondent is acknowledging that he or she is fully authorized by the Respondent to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of this Consent Agreement and Final Order.

EFFECTIVE DATE

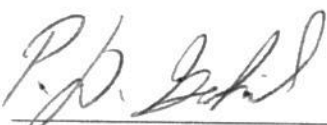
61. The effective date of this Consent Agreement and Final Order is the date on which the Final Order, signed by the Regional Administrator of EPA, Region III, or his/her designee, the Regional Judicial Officer, is filed along with the Consent Agreement with the Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

ENTIRE AGREEMENT

62. This Consent Agreement and Final Order constitutes the entire agreement and understanding between the Parties regarding settlement of all claims for civil penalties 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 Consent Agreement and Final Order.

For Respondent:

Date: 11-1-21

By: 

P.D. Gohil, Owner
U-SAVE Food Store, Inc.

For the Complainant:

After reviewing the Consent Agreement and other pertinent matters, I, the undersigned Director of the Enforcement & Compliance Assurance Division of the United States Environmental Protection Agency, Region III, agree to the terms and conditions of this Consent Agreement and recommend that the Regional Administrator, or his/her designee, the Regional Judicial Officer, issue the attached Final Order.

Date: _____

By: _____

Karen Melvin, Director
Enforcement & Compliance Assurance Division
U.S. EPA – Region III
Complainant

Attorney for Complainant:

Date: 11/4/2021

By:  _____

Jeffrey S. Nast
Sr. Assistant Regional Counsel
U.S. EPA – Region III

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

In the Matter of:	:
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U-SAVE Food Store, Inc. 196 Middletown Road Richwood, WV 26261	:
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Respondent.	:
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U-SAVE #4 181 Main St. Craigsville, WV 26205; and	:
	:
U-SAVE #5 RR 19 Mt. Nebo, WV 26679,	:
	:
Facility.	:

FINAL ORDER

Complainant, the Director of the Enforcement & Compliance Assurance Division, U.S. Environmental Protection Agency, Region III, and Respondent, U-SAVE Food Store, 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 upon the representations of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon consideration of, *inter alia*, EPA’s November 1990 U.S. E.P.A. Penalty Guidance for Violations of UST Regulations (“UST Penalty Policy”), and the statutory factors set forth in the Resource Conservation and Recovery Act (“RCRA”), Sections 9006 (c) and (e), 42 U.S.C. §§ 6991e(c) and (e).

NOW, THEREFORE, PURSUANT TO Section 9006(d) of the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6991e(d), and Section 22.18(b)(3) of the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty in the amount of **THIRTY-THREE THOUSAND dollars (\$33,000.00)**, in accordance with the payment provisions set forth in the Consent Agreement and in 40 C.F.R. § 22.31(c), and comply with the terms and conditions of the Consent Agreement.

This Final Order constitutes the final Agency action in this proceeding. This Final Order

shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief, or criminal sanctions for any violations of the law. This Final Order resolves only those causes of action alleged in the Consent Agreement and does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of RCRA and the regulations promulgated thereunder.

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

Date: _____

By: _____

Joseph J. Lisa
Regional Judicial and Presiding Officer
U.S. EPA Region III