

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

In Re:	:	
	:	
Nathaniel W. Garnett	:	Docket No. RCRA-03-2018-0145
d/b/a East End Spirit Chevron	:	U.S. EPA-REGION 3-RHC
912 E. 3rd Street	:	FILED-26SEP2018am7:08
Farmville, Virginia 23901	:	
	:	CONSENT AGREEMENT
RESPONDENT,	:	
	:	Proceeding under 9006 of
East End Spirit Chevron	:	the Resource Conservation and Recovery
912 E. 3rd Street	:	Act, <i>as amended</i> , 42 U.S.C. §§ 6991e
Farmville, Virginia 23901	:	
	:	
FACILITY.	:	

CONSENT AGREEMENT

This Consent Agreement ("CA") is entered into by the Director, Land and Chemicals Division, U.S. Environmental Protection Agency, Region III ("Complainant"), and Nathaniel W. Garnett, individually, doing business as East End Spirit Chevron ("Respondent") pursuant to Sections 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 22.18(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 Commonwealth of Virginia's federally authorized underground storage tank program by Respondent in connection with its underground storage tanks at Respondents' facility located at 912 E. 3rd Street, Virginia (the "Facility").

Section 9006(d) of RCRA, 42 U.S.C. § 6991e(d), authorizes EPA to assess a civil penalty against any owner or operator of an underground storage tank who fails to comply with, *inter alia*, any requirement or standard promulgated under Section 9003 of RCRA, 42 U.S.C. § 6991b (40 C.F.R. Part 280) or any requirement or standard of a State underground storage tank program that has been approved by EPA pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c.

Effective October 28, 1998, pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c, and 40 C.F.R. Part 281, Subpart A, the Commonwealth of Virginia was granted final authorization to 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. The provisions of the Virginia UST management program, through these final authorizations, 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 authorized UST program regulations are set forth in the Virginia Administrative Code as Underground Storage Tanks: Technical Standards and Corrective Action Requirements ("VA UST Regulations"), 9 VAC § 25-580-10 *et seq.*

GENERAL PROVISIONS

1. For purposes of this proceeding only, Respondent admits to 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. In accordance with 40 C.F.R. §§ 22.13(b) and .18(b)(2) and (3) of the *Consolidated Rules of Practice*, Complainant hereby simultaneously commences and resolves, as part of the settlement set forth herein, EPA's civil claims alleged in this Consent Agreement.
3. Respondent agrees not to contest EPA's jurisdiction with respect to the execution of this Consent Agreement ("CA"), the issuance of the attached Final Order ("FO"), or the enforcement thereof.
4. For the purposes of this proceeding only, Respondent hereby expressly waives his 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 set forth therein. The settlement agreed to by the parties in this CAFO reflects the desire of the parties to resolve this matter without litigation. This CAFO resolves whatever liability for civil penalties Respondent may have for the violations alleged in the factual allegations and conclusions of law set forth in the CA.
6. Respondent shall bear his own costs and attorney's fees.
7. The provisions of this CAFO shall be binding upon EPA, Respondent, and Respondent's employees, successors and assigns.
8. This CAFO shall not relieve Respondent of his 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. Respondent reserves all available rights and defenses he may have, consistent with the terms of this CAFO, to defend himself in any such action.

10. EPA has given the Commonwealth of Virginia prior notice of the issuance of this CAFO in accordance with Section 9006(a)(2) of RCRA, 42 U.S.C. § 6991e(a)(2).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

11. 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).
12. Respondent is a "person" as defined in Section 9001(5) of RCRA, 42 U.S.C. § 6991(5), and 9 VAC § 25-580-10.
13. 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 9 VAC § 25-580-10, of the "underground storage tanks" ("USTs") and "UST systems" as those terms are defined in Section 9001(10) of RCRA, 42 U.S.C. § 6991(10), and 9 VAC § 25-580-10, located at 912 E. 3rd Street, Farmville, Virginia (the "Facility").
14. On May 18, 2017, EPA performed a Compliance Evaluation Inspection ("CEI") at Facility. At the time of the May 18, 2017 CEI, and at all times relevant to the violations alleged herein, seven (7) USTs were located at the Facility as described in the following subparagraphs:
 - A. A four thousand (4,000) gallon cathodically protected steel tank that was installed in or about 1984, and that, at all times relevant hereto, routinely contained and was used to store plus grade gasoline, 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 four thousand (4,000) gallon cathodically protected steel tank that was installed in or about 1984, and that, at all times relevant hereto, routinely contained and was used to store regular grade gasoline, 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");
 - C. A four thousand (4,000) gallon cathodically protected steel tank that was installed in or about 1984, and that, at all times relevant hereto, routinely contained and was used to store regular grade gasoline, 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”);

- D. A two thousand (2,000) gallon cathodically protected steel tank that was installed in or about 1991, and that, at all times relevant hereto, routinely contained and was used to store premium grade gasoline, 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. 4”);
- E. A four thousand (4,000) gallon cathodically protected steel tank that was installed in or about 1991, and that, at all times relevant hereto, routinely contained and was used to store premium grade gasoline, 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. 5”);
- F. A twenty-five hundred (2,500) gallon cathodically protected steel tank that was installed in or about 2001, and that, at all times relevant hereto, routinely contained and was used to store 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. 6”); and
- G. A fifteen hundred (1,500) gallon cathodically protected steel tank that was installed in or about 2001, and that, at all times relevant hereto, routinely contained and was used to store 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. 7”)

- 15. At all times relevant to the applicable violations alleged herein, USTs No. 1, 2, and 3 have been a “petroleum UST system” and “existing UST system” as these terms are defined in 9 VAC § 25-580-10.
- 16. At all times relevant to the applicable violations alleged herein, USTs No. 4, 5, 6, and 7 have been a “petroleum UST system” and “new tank system” as these terms are defined in 9 VAC § 25-580-10.
- 17. USTs Nos. 1 through 7 are and were, at all times relevant to applicable violations alleged in this CA, 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 9 VAC § 25-580-10, and have not been “empty” as that term is defined at 9 VAC § 25-580-310.1.

COUNT 1

(Failure to perform release detection on
USTs Nos. 1 through 7)

18. The allegations of Paragraphs 1 through 17 of this CA are incorporated herein by reference.
19. Pursuant to 9 VAC § 25-580-130.A. and C., owners and operators of new and existing UST systems must provide a method or combination of methods of release detection monitoring that meets the requirements described therein.
20. 9 VAC § 25-580-140.1. provides, in pertinent part, that USTs shall be monitored at least every 30 days for releases using one of the methods listed in 9 VAC § 25-580-160.4.-8., except that:
 - (a) UST systems that meet the performance standards in subsections 1 through 5 of 9 VAC § 25-580-50 (Performance Standards for New UST Systems) or subsections 1 through 4 of 9 VAC § 25-580-60 (Upgrading of Existing UST Systems), and the monthly inventory control requirements in subsections 1 or 2 of 9 VAC § 25-580-160 (Inventory Control or Manual Tank Gauging), and tank tightness testing, conducted in accordance with subsection 3 of 9 VAC § 25-580-160 (Tank Tightness Test), at least every 5 years until December 22, 1998, or until 10 years after the UST is installed or upgraded under subsection 2 of 9 VAC § 25-580-60 (Tank Upgrading Requirements); and
 - (b) UST systems that do not meet the performance standards in 9 VAC § 25-580-50 (Performance Standards for New UST Systems) or 9 VAC § 25-580-60 (Upgrading of Existing UST Systems), may use monthly inventory controls, conducted in accordance with subsections 1 or 2 of 9 VAC § 25-580-160 (Inventory Control or Manual Tank Gauging) and annual tank tightness testing, conducted in accordance with subsection 3 of 9 VAC § 25-580-160 (Tank Tightness Test) until December 22, 1998, when the tank must be upgraded under 9 VAC § 25-580-60 (Tank Upgrading Requirements) or permanently closed under 9 VAC § 25-580-320; and
 - (c) Tanks with a capacity of 550 gallons or less and not metered may use weekly tank gauging, conducted in accordance with subsection 2 of 9 VAC § 25-580-160.
21. From at least November 1, 2013 until June 1, 2017, the method of release detection selected by Respondent for the USTs Nos. 1 through 7 was statistical inventory reconciliation in accordance with 9 VAC § 25-580-160.8.

22. From November 1, 2013 until January 1, 2014 and from January 1, 2015 until February 1, 2016, Respondent failed to perform statistical inventory reconciliation for the UST No. 1 in accordance with 9 VAC § 25-580-160.8.
23. From October 1, 2013 until January 1, 2014, from February 1, 2014 until June 1, 2014, from July 1, 2014 until September 1, 2014, from January 1, 2015 until March 1, 2016, from July 1, 2016 until September 1, 2016, and from October 1, 2016 until April 1, 2017, Respondent failed to perform statistical inventory reconciliation for the USTs Nos. 2 and 3 in accordance with 9 VAC § 25-580-160.8.
24. From November 1, 2013 until January 1, 2014, from January 1, 2015 until February 1, 2016, and from October 1, 2016 until April 1, 2017 Respondent failed to perform statistical inventory reconciliation for the UST No. 4 in accordance with 9 VAC § 25-580-160.8.
25. From April 1, 2014 until June 1, 2014, and from January 1, 2015 until February 1, 2016 Respondent failed to perform statistical inventory reconciliation for the UST No. 5 in accordance with 9 VAC § 25-580-160.8.
26. From January 1, 2015 until February 1, 2016 Respondent failed to perform statistical inventory reconciliation for the USTs Nos. 6 and 7 in accordance with 9 VAC § 25-580-160.8.
27. During the periods of time indicated in Paragraphs 22 through 26, above, Respondent did not use any of the other release detection methods specified in 9 VAC § 25-580-140.1.a.-c. and/or 9 VAC § 25-580-160.4.-8. on USTs Nos. 1 through 7 located at the Facility.
28. Respondent's acts and/or omissions as alleged in Paragraphs 21 through 27, above, constitute violations by Respondent of Pursuant to 9 VAC § 25-580-130.A. and C. and 9 VAC § 25-580-140.1.

COMPLIANCE ORDER

29. Pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e, Respondent is hereby ordered to: Within thirty (30) days of the effective date of this Compliance Order, comply with the release detection requirements of 9 VAC § 25-580-130 for all UST systems located at the Facility subject to this CA or close such UST systems in accordance with 9 VAC § 25-580-320.
30. If Respondent elects to close any or all of the USTs subject to this Compliance Order, Respondent must submit to EPA, within fifteen (15) calendar days after the effective date of this Compliance Order, a notice of intent to permanently close, identifying which UST(s) Respondent intends to close. Such notice shall be sent to Melissa Toffel at the address set forth below. A copy of such notice shall also be sent to Virginia Department of Environmental Quality ("VADEQ") at the address set forth below.

31. Within 180 days of the effective date of this Compliance Order, submit to EPA a report which documents and certifies Respondent's compliance with the terms of this Compliance Order, including release detection monitoring results for the previous six months for all the USTs at the Facility indicating compliance with the release detection requirements of 9 VAC § 25-580-130.
32. Any notice, report, certification, data presentation, or other document submitted by Respondent pursuant to this Compliance Order which discusses, describes, demonstrates, supports any finding or makes any representation concerning Respondent's compliance or noncompliance with any requirement of this Compliance Order shall be certified personally by Respondent.

The certification 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: _____

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

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

Melissa Toffel
Land and Chemicals Division (3LC31)
U.S. Environmental Protection Agency - Region III
1650 Arch Street
Philadelphia, PA 19103-2029

and

Louis F. Ramalho
Sr. Assistant Regional Counsel (3RC50)
U.S. Environmental Protection Agency - Region III
1650 Arch Street
Philadelphia, PA 19103-2029

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

Russell P. Ellison
UST Program Coordinator
Virginia Department of Environmental Quality
Office of Spill Response & Remediation
P.O. Box 1105
Richmond, VA 23218

34. If activities undertaken by the Respondent in connection with this Compliance Order or otherwise indicate that a release of a regulated substance from any UST at the Facilities may have occurred, Respondent may be required to undertake corrective action pursuant to applicable regulations in 9 VAC § 25-580-230.
35. 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 \$25,000 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) and 69 *Fed. Reg.* 7121, 7126 (February 13, 2004), codified at 40 C.F.R. Part 19. (Enclosure “D” and “E”).
36. The term “days” as used herein shall mean calendar days unless specified otherwise.

CIVIL PENALTY

37. 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 Ten Thousand Dollars (\$10,000) 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. If Respondent pays the entire penalty of \$10,000 dollars 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 the Respondent pursuant to 40 C.F.R. § 13.11(a)(1).
38. 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) and (e), 42 U.S.C.

§ 6991e(c) and (e), with specific reference to EPA's Penalty Guidance for Violations of UST Regulations ("UST Guidance") dated November 4, 1990. In addition, the proposed civil penalty considered the appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to 40 C.F.R. Part 19, and the January 11, 2018 memorandum by EPA Assistant Administrator Susan Parker Bodine, entitled *Amendments to EPA's Civil Penalty Policies to Account for Inflation (Effective January 15, 2018)*.

39. Respondents have asserted that it will not be able to pay the civil penalty amount in full within thirty (30) calendar days of the date on which this CAFO is mailed or hand-delivered. As a result, the Respondent has agreed to pay the civil penalty in the amount of Ten Thousand dollars (\$10,000) in six (6) equal monthly installments with interest at the rate of 1% per annum on the outstanding principal balance according to the following schedule:

1st payment is due within 30 days of the date on which the CAFO is mailed or hand-delivered to the Respondent = \$1,674.89;

2nd payment is due within 60 days of the date on which the CAFO is mailed or hand-delivered to the Respondent = \$1,673.52;

3rd payment is due within 90 days of the date on which the CAFO is mailed or hand-delivered to the Respondents = \$1,672.15;

4th payment is due within 120 days of the date on which the CAFO is mailed or hand-delivered to the Respondents = \$1,670.78;

5th payment is due within 150 days of the date on which the CAFO is mailed or hand-delivered to the Respondents = \$1,669.41; and

6th payment is due within 180 days of the date on which the CAFO is mailed or hand-delivered to the Respondents = \$1,668.04.

40. Under this proposed repayment schedule, the Respondent will pay the civil penalty of \$10,000.00 plus interest of \$28.77 as further outlined in the chart below:

Payment	Principal	Interest	Payment Amount Due
1	\$ 1,666.67	\$8.22	\$ 1,674.89
2	\$1,666.67	\$6.85	\$1,673.52
3	\$1,666.67	\$5.48	\$ 1,672.15

4	\$1,666.67	\$4.11	\$ 1,670.78
5	\$1,666.67	\$2.74	\$1,669.41
6	\$1,666.65	\$1.37	\$1,668.04
TOTAL:	\$10,000.00	\$28.77	\$10,028.77

41. Respondents shall pay the civil penalty monthly installments set forth in Paragraph 39, above, by sending either a 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-03-2018-0145;
- 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 to:

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

Contact: Craig Steffen 513-487-2091

- 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: John Schmid (202) 874-7026 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:

http://www.epa.gov/ocfo/finservices/make_a_payment.htm

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

42. 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. Accordingly, Respondents' failure to make timely payment or to comply with the conditions in this CAFO shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.
43. Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a true and correct copy of this CAFO is mailed or hand-delivered to Respondents. However, EPA will not seek to recover interest on any amount of the 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).
44. 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.
45. A late payment penalty of six percent (6%) 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). The late payment penalty on any portion of the civil penalty that remains delinquent more than ninety days shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

46. The Respondent agrees not to deduct for federal tax purposes the civil monetary penalty specified in this Consent Agreement and the accompanying Final Order.

FULL AND FINAL SATISFACTION

47. 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 CA.

RESERVATION OF RIGHTS

48. 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. Respondent reserves all available rights and defenses he may have, consistent with the terms of this CAFO, to defend himself in any such action. This CAFO and any provision herein shall not be construed as an admission of liability in any criminal or civil action or other administrative proceeding, except in an action of proceeding to enforce or seek compliance with this CA and accompanying FO.

OTHER APPLICABLE LAWS

48. Nothing in this CAFO shall relieve Respondent of his obligation to comply with all applicable federal, state, and local laws and regulations.

CERTIFICATION

46. Respondent certifies to EPA by his signature herein that Respondent, as of the date of execution of this CA, is in compliance with the provisions of RCRA, Subtitle I, 42 U.S.C. §§ 6991-6991m, and the Commonwealth of Virginia's federally authorized underground storage tank program set forth at 9 VAC § 25-580-10 *et seq.* at the Facility referenced herein. This certification is based on his personal knowledge of the Facility's compliance with Subtitle I of RCRA.

AUTHORITY TO BIND THE PARTIES

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

ENTIRE AGREEMENT

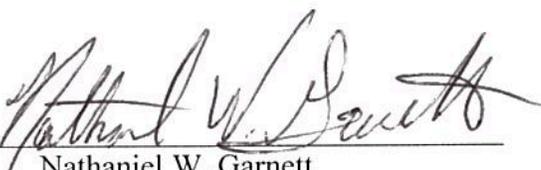
48. This Consent Agreement and the attached Final Order constitute the entire agreement and understanding of the parties concerning settlement of the above-captioned action and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed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

EFFECTIVE DATE

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

For the Respondent:

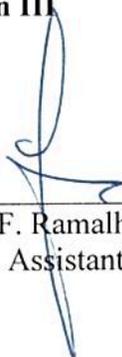
Date: 8/31/18

By: 
Nathaniel W. Garnett

For Complainant:

**U.S. Environmental Protection Agency,
Region III**

Date: 9/10/18

By: 
Louis F. Ramalho
Senior Assistant Regional Counsel

The Land and Chemicals Division, United States Environmental Protection Agency - Region III, recommend that the Regional Administrator of the U.S. EPA Region III or the Regional Judicial Officer issue the accompanying Final Order.

Date: 9.20.18

By: 
John A. Armstead, Director
Land and Chemicals Division
U.S. EPA - Region III

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

In Re:	:	
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d/b/a East End Spirit	:	
912 E. 3rd Street	:	
Farmville, Virginia 23901	:	U.S. EPA-REGION 3-RHC
	:	FILED-26SEP2018AM7:08
	:	FINAL ORDER
RESPONDENT,	:	
	:	Proceeding under 9006 of
East End Spirit Chevron	:	the Resource Conservation and Recovery
912 E. 3rd Street	:	Act, <i>as amended</i> , 42 U.S.C. §§ 6991e
Farmville, Virginia 23901	:	
	:	
FACILITY.	:	

FINAL ORDER

Complainant, the Director, Land and Chemicals Division, U.S. Environmental Protection Agency–Region III, and Nathaniel W. Garnett, individually, doing business as East End Spirit Chevron (“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 (“Consolidated Rules of Practice”), 40 C.F.R. Part 22 (with specific reference to 40 C.F.R. §§ 22.13(b) and .18(b)(2) and (3)). The terms of the foregoing Consent Agreement are acceptable to the undersigned and incorporated into this Final Order as if fully set forth at length herein.

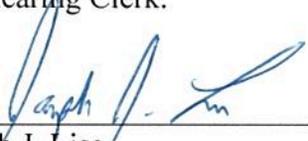
Based upon the representations of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon the consideration of a number of factors, including, but not limited to, the statutory factors of the seriousness of Respondent’s violations and any good faith efforts by Respondent to comply with all applicable requirements as provided in Section 9006(c) and (e) of the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6991e(c) and (e), with specific reference to EPA’s Penalty Guidance for Violations of UST Regulations (“UST Guidance”) dated November 4, 1990. In addition, the proposed civil penalty considered the appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to 40 C.F.R. Part 19, and the January 11, 2018 memorandum by EPA Assistant Administrator Susan

Parker Bodine, entitled *Amendments to EPA's Civil Penalty Policies to Account for Inflation (Effective January 15, 2018)*.

NOW, THEREFORE, PURSUANT TO Section 9006(c) of RCRA, 42 U.S.C. § 6991e(c), and Section 22.18(b)(3) of the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty of **Ten Thousand Dollars (\$10,000.00)** in accordance with the payment provisions set forth in the Consent Agreement, and comply with the terms and conditions of the Consent Agreement including the terms and condition of the Compliance Order.

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.

Sept. 25 2018
Date



Joseph J. Lisa
Regional Judicial and Presiding Officer
U.S. Environmental Protection Agency, Region III

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

In Re:	:	
	:	
Nathaniel W. Garnett	:	Docket No. RCRA-03-2018-0145
d/b/a East End Spirit	:	
912 E. 3 rd Street	:	
Farmville, Virginia 23901	:	
	:	
RESPONDENT,	:	
	:	
East End Spirit Chevron	:	Proceeding under 9006 of
912 E. 3 rd Street	:	the Resource Conservation and Recovery
Farmville, Virginia 23901	:	Act, <i>as amended</i> , 42 U.S.C. §§ 6991e
	:	
	:	
FACILITY.	:	

CERTIFICATE OF SERVICE

I certify that on SEP 26 2018, the original and one (1) copy of foregoing *Consent Agreement and Final Order*, were filed with the EPA Region III Regional Hearing Clerk. I further certify that on the date set forth below, I served a true and correct copy of the same to each of the following persons, in the manner specified below, at the following addresses:

Copy served via UPS Overnight Commercial Delivery to:

Nathaniel W. Garnett
5274 Lockett Road
Rice, Virginia 23966

Copy served via **Hand Delivery or Inter-Office Mail** to:

Louis F. Ramalho
Senior Assistant Regional Counsel
Office of Regional Counsel (3RC50)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029
(Attorney for Complainant)

Dated: SEP 26 2018

Berlin Esposito
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region III

TRACKING NUMBER(S): 1Z A43 F71 24 9887 7831