

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

FILED

Sep 21, 2023

1:32 pm

**U.S. EPA REGION III
HEARING CLERK**

In the Matter of: :
 :
Davis GMC Truck, Inc. : **U.S. EPA Docket No. RCRA-03-2023-0140**
2707 W 3rd Street :
Farmville, VA 23901 : **Proceeding under Section 9006 of the Resource**
 : **Conservation and Recovery Act, 42 U.S.C.**
Respondent. : **Section 6991e**
 :

CONSENT AGREEMENT

PRELIMINARY STATEMENT

1. This Consent Agreement is entered into by the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region III (“Complainant”) and Davis GMC Truck, Inc. (“Respondent”) (collectively the “Parties”), pursuant to Section 9006 of the Resource Conservation and Recovery Act, 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 the Resource Conservation and Recovery Act, 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 the authority to enter into agreements concerning administrative penalties 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, 42 U.S.C. §§ 6991-6991m (“RCRA” or the “Act”) for the violations alleged herein.
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 (“EPA”) 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 Virginia Department of Environmental Quality (“VADEQ”) notice of the issuance of this Consent Agreement and Final Order 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. The Commonwealth of Virginia is approved to administer and enforce an underground storage tank program in lieu of the Federal program under Subtitle I of the Act, 42 U.S.C. §§ 6991-6991m. The program, as administered by VADEQ, was approved by EPA, pursuant to 42 U.S.C. 6991c and 40 CFR part 281. EPA approved the Virginia underground storage tank (“UST”) program, set forth in the Virginia Administrative Code (“Va. Admin. Code”), Title 9, Agency 25, Chapter 580 “Underground Storage Tanks,” on September 28, 1998, and approval of the Virginia UST program became effective on October 28, 1998. A subsequent UST program revision application was approved by EPA on March 2, 2021, and it became effective on May 3, 2021.
14. The federally approved Virginia UST program is enforceable by EPA pursuant to Section 9006(a) of RCRA, 42 U.S.C. § 6991e(a).
15. Section 9006(d) of RCRA, 42 U.S.C. § 6991e(d), authorizes the assessment of civil penalties against any owner or operator of an 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, for the violations alleged herein.

16. The Virginia UST program regulates USTs used to contain “regulated substances,” as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and 9 Va. Admin. Code § 25-580-10.
17. At all times relevant to this Consent Agreement, Respondent is, and has been, a “person,” as defined by Section 9001(5) of RCRA, 42 U.S.C. § 6991(5), and 9 Va. Admin. Code § 25-580-10.
18. At all times relevant to this Consent Agreement, Respondent is, and has been, the “operator” and/or “owner” of “USTs,” as those terms are defined by Sections 9001(3), (4), and (10) of RCRA, 42 U.S.C. § 6991(3), (4), and (10), and 9 Va. Admin. Code § 25-580-10, respectively, at Respondent’s automobile dealership located at 2707 W 3rd Street, Farmville, VA 23901 (the “Facility”).
19. At all times relevant to this Consent Agreement, there is, and there has been one 3,000-gallon UST for regular gasoline on site. The UST was installed on or about September 1998. The UST is constructed of composite material and equipped with fiberglass-reinforced plastic no-valve suction piping. The Facility uses statistical inventory reconciliation (“SIR”) for tank release detection for the UST.
20. On August 9, 2022, pursuant to Section 9005(a) of RCRA, 42 U.S.C. § 6991d(a), EPA conducted an inspection of the Facility (the “Inspection”) to determine Respondent’s compliance with RCRA Subtitle I and the Va. Admin. Code.
21. On December 14, 2022, EPA then sent Respondent an Information Request Letter (the “IRL”) requesting information not previously provided by Respondent. Respondent partially responded to the IRL in January 2023.

Count I

Failure to Monitor for Releases At Least Every 30 Days

22. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
23. Pursuant to 9 Va. Admin. Code § 25-580-140.1.a, “[o]wners and operators of petroleum UST systems must provide release detection for tanks . . .” Specifically, if the tanks were installed before September 15, 2010, they “must be monitored for releases at least every 30 days for releases using one of the methods listed in subdivisions 4 through 9 of 9 Va. Admin. Code § 25-580-160,” with exceptions that do not apply here.
24. Respondent has indicated that it uses Statistical Inventory Reconciliation (“SIR”) as its method of leak detection. SIR is a listed method of release detection under 9 Va. Admin. Code § 25-580-160.8. SIR meets the requirements of 9 Va. Admin. Code § 25-580-140.1.a if the method reports a quantitative result with a calculated leak rate; is capable of

detecting a leak rate of 0.2 gallon per hour or a release of 150 gallons within 30 days; and uses a threshold that does not exceed one-half the minimum detectible leak rate.¹

25. Respondent failed to monitor for releases using SIR, or any other method of release detection, at least every 30 days for the release detection periods of October 2020, December 2020, January 2021, and March 2021 to January 2022. *See Table 1*, below, for an extensive list of dates of Respondent’s failure.
26. Respondent violated 9 Va. Admin. Code § 25-580-140.1.a by failing to monitor for releases at least every 30 days for the release detection periods of October 2020, December 2020, January 2021, and March 2021 to January 2022. *See Table 1*.

Table 1. The Facility’s UST SIR Release Detection.

Release Detection Month	Release Detection Period	Date Evaluation was Performed
October 2020	10/01/2020 – 10/30/2020	12/17/2020 – SIR data analyzed on 48th day
December 2020	12/01/2020 – 12/30/2020	02/08/2021 – SIR data analyzed tested on 40th day
January 2021	12/31/2020 – 01/29/2021	03/23/2021 – SIR data analyzed on 53rd day
March 2021	03/01/2021 – 03/30/2021	08/09/2022 – SIR data analyzed on 497th day
April 2021	03/31/2021 – 04/29/2021	08/09/2022 – SIR data analyzed on 467th day
May 2021	04/30/2021 – 05/29/2021	08/09/2022 – SIR data analyzed on 437th day
June 2021	05/30/2021 – 06/28/2021	08/09/2022 – SIR data analyzed on 407th day
July 2021	06/29/2021 – 07/28/2021	08/09/2022 – SIR data analyzed on 377th day
August 2021	07/29/2021 – 08/27/2021	08/09/2022 – SIR data analyzed on 347th day
September 2021	08/28/2021 – 09/26/2021	08/09/2022 – SIR data analyzed on 317th day
October 2021	09/27/2021 – 10/26/2021	08/09/2022 – SIR data analyzed on 287th day
November 2021	10/27/2021 – 11/25/2021	08/09/2022 – SIR data analyzed on 257th day

¹ The time frame for Count I occurred during Virginia’s 1998 UST program authorization and Virginia’s 2021 UST program authorization. The changes made to the relevant regulations for Count I are only non-substantive language changes. The citations for the relevant regulations between the two authorizations are the same. SIR is not specifically listed in the 1998 authorization; however, the 1998 authorization lists the qualifications necessary for “other methods” of release detection to be acceptable in 9 Va. Admin. Code § 25-580-160-8, and SIR qualifies as an “other method” under the 1998 authorization.

December 2021	11/26/2021 – 12/25/2021	08/09/2022 – SIR data analyzed on 228th day
January 2022	12/26/2021 – 01/24/2022	08/09/2022 – SIR data analyzed on 198th day

- 27. In failing to comply with 9 Va. Admin. Code § 25-580-140.1.a, Respondent is subject to the assessment of penalties under 9006(d)(2) of RCRA, 42 U.S.C. § 6991e(d)(2).

Count II
Failure to Test Spill Prevention Equipment At Least Once Every Three Years

- 28. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
- 29. Pursuant to 9 Va. Admin. Code § 25-580-82.A.1.b, owners and operators of UST systems with spill prevention equipment (such as a catchment basin, a spill bucket, or other spill containment devices) must test the spill prevention equipment “at least once every three years to ensure the equipment is liquid tight by using vacuum, pressure, or liquid testing in accordance with” requirements developed by the equipment’s manufacturer, code of practice developed by a nationally recognized association or independent testing laboratory, or requirements determined by Virginia’s State Water Control Board to be no less protective of human health and the environment than the requirements listed by the first two options.²
- 30. At the time of the Inspection, EPA inspectors observed a spill bucket at the Facility, and documentation provided by VADEQ confirms that the Facility uses spill prevention equipment.
- 31. On January 5, 2023, a Facility representative provided EPA information that the spill bucket at the Facility had been replaced with a new one on that same date, but no information was provided concerning the last time that the spill bucket was tested. At the time of the Inspection, Respondent’s UST system was due for the three-year spill prevention equipment inspection by May 3, 2021.
- 32. From May 3, 2021 to January 5, 2023, Respondent failed to test its spill prevention equipment to ensure the equipment is liquid tight by using vacuum, pressure, or liquid testing in accordance with specified requirements.
- 33. From May 3, 2021 to January 5, 2023, Respondent violated 9 Va. Admin. Code § 25-580-82.A.1.b by failing to test its spill prevention equipment at least once every three years to ensure the equipment is liquid tight by using vacuum, pressure, or liquid testing in accordance with specified requirements.

² 9 Va. Admin. Code § 25-580-82.A.1.b was effective in Virginia starting January 1, 2018 and federally effective starting May 3, 2021.

34. In failing to comply with 9 Va. Admin. Code § 25-580-82.A.1.b, Respondent is subject to the assessment of penalties under 9006(d)(2) of RCRA, 42 U.S.C. § 6991e(d)(2).

Count III
Failure to Inspect Overfill Prevention Equipment At Least Once
Every Three Years

35. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
36. Pursuant to 9 Va. Admin. Code § 25-580-82.A.2, owners and operators of UST systems with overfill prevention equipment must inspect the equipment at least once every three years. Specifically, “[a]t a minimum, the inspection must ensure that overfill prevention equipment is set to activate at the correct level specified in subdivision 3 of 9 Va. Admin. Code § 25-580-50 and will activate when [the] regulated substance reaches that level.” The inspections must be conducted in accordance with requirements developed by the equipment’s manufacturer, code of practice developed by a nationally recognized association or independent testing laboratory, or requirements determined by Virginia’s State Water Control Board to be no less protective of human health and the environment than the requirements listed by the first two options.³
37. At the time of the Inspection, EPA inspectors did not observe overfill prevention equipment at the Facility; however, documentation provided by VADEQ states that the Facility uses a ball float. At the time of the Inspection, Respondent’s UST system was due for the three-year overfill prevention equipment inspection by May 3, 2021.
38. On January 5, 2023, a Facility representative provided EPA information that the ball float at the Facility had been removed and an overfill cutoff valve had been installed on the UST system on that same date, but no information was provided concerning the last time that the overfill prevention was tested.
39. From May 3, 2021 to January 5, 2023, Respondent failed to inspect overfill prevention equipment.
40. From May 3, 2021 to January 5, 2023, Respondent violated 9 Va. Admin. Code § 25-580-82.A.2 by failing to inspect overfill prevention equipment at least once every three years.
41. In failing to comply with 9 Va. Admin. Code § 25-580-82.A.2, Respondent is subject to the assessment of penalties under 9006(d)(2) of RCRA, 42 U.S.C. § 6991e(d)(2).

³ 9 Va. Admin. Code § 25-580-82.A.2 was effective in Virginia starting January 1, 2018 and federally effective starting May 3, 2021.

Count IV
Failure to Conduct Walkthrough Inspections

42. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
43. Pursuant to 9 Va. Admin. Code § 25-580-85.A, “[t]o properly operate and maintain UST systems, not later than January 1, 2021, owners and operators must meet one of the following:” (1) conduct a walkthrough inspection that, at a minimum, checks spill prevention equipment and release detection equipment every 30 days and containment sumps and handheld release detection equipment annually with requirements specified in the subdivision; (2) conduct operation and maintenance walkthrough inspections according to a standard code of practice developed by a nationally recognized association or independent testing laboratory that checks equipment comparable to subdivision (1), above; or (3) conduct operation and maintenance walkthrough inspections according to a protocol developed by Virginia’s State Water Control Board that checks equipment comparable to subdivision (1), above.⁴
44. On January 23, 2023, a Facility representative provided EPA documentation of walkthrough inspections from September 2022 to December 2022. The inspection reports provided, however, contained incorrect information, such as statements that the Facility had an automatic tank gauging monitoring system even though none is present at the Facility and statements that SIR reports were available and passing even though the Facility could not produce such reports (*see* Count I, above).
45. From May 3, 2021 to September 1, 2022, Respondent failed to conduct walkthrough inspections following the methods specified in 9 Va. Admin. Code § 25-580-85.A.
46. From May 3, 2021 to September 1, 2022, Respondent violated 9 Va. Admin. Code § 25-580-85.A by failing to conduct walkthrough inspections following the methods specified in 9 Va. Admin. Code § 25-580-85.A.1.
47. In failing to comply with 9 Va. Admin. Code § 25-580-85.A, Respondent is subject to the assessment of penalties under 9006(d)(2) of RCRA, 42 U.S.C. § 6991e(d)(2).

Count V
Failure to Designate Class A and Class B Operators &
Maintain a List of Current Designated Operators

48. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.

⁴ 9 Va. Admin. Code § 25-580-85.A.1 was effective in Virginia starting January 1, 2018 and federally effective starting May 3, 2021

49. Pursuant to 9 Va. Admin. Code § 25-580-125.B.1, owners and operators of UST systems shall designate Class A and Class B operators, as the terms are defined in Va. Admin. Code § 25-580-125.A, for each UST system or facility that has USTs. Pursuant to 9 Va. Admin. Code § 25-580-125.F.1, owners and operators of UST facilities shall prepare and maintain a list of current designated Class A and Class B operators. The list shall include the “name of each operator, class of operation trained for, the date each operator successfully completed initial training and refresher training, if any, and the contact number of Class A and Class B operators that are not permanently onsite or assigned to more than one facility.”⁵
50. On January 5, 2023, a Facility representative provided EPA documentation for Class A operator training completed by an employee on January 4, 2023, confirming that the employee is the designated Class A operator for the Facility. On January 23, 2023, a Facility representative provided EPA documentation for Class B operator training completed by an employee on January 21, 2023, confirming that the employee is the designated Class B operator for the Facility.
51. From May 3, 2021 to January 21, 2023, Respondent failed to designate Class A and Class B operators for each UST system or facility that has USTs and maintain a list of current designated operators.
52. From May 3, 2021 to January 21, 2023, Respondent violated 9 Va. Admin. Code § 25-580-125.B.1 and 9 Va. Admin. Code § 25-580-125.F.1 by failing to designate Class A and Class B operators for each UST system or facility that has USTs and maintain a list of current designated operators.
53. In failing to comply with 9 Va. Admin. Code § 25-580-125.B.1 and 9 Va. Admin. Code § 25-580-125.F.1, Respondent is subject to the assessment of penalties under 9006(d)(2) of RCRA, 42 U.S.C. § 6991e(d)(2).

Count VI

Failure to Train Class A and Class B Operators As Soon As Practicable

54. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
55. Pursuant to 9 Va. Admin. Code § 25-580-125.C.1 and .2, Class A and B operators must successfully complete a training course that is approved by Virginia’s State Water Control Board and that includes specified requirements. Pursuant to 9 Va. Admin. Code § 25-580-125.D.1, Class A and Class B operators should be trained “as soon as practicable...contingent upon availability of approved training providers.”⁶

⁵ 9 Va. Admin. Code § 25-580-125.B.1 and 9 Va. Admin. Code § 25-580-125.F.1 were effective in Virginia starting January 1, 2018 and federally effective starting May 3, 2021.

⁶ 9 Va. Admin. Code § 25-580-125.C.1 and .2 and 9 Va. Admin. Code § 25-580-125.D.1 were effective in Virginia starting January 1, 2018 and federally effective starting May 3, 2021.

56. On January 5, 2023, a Facility representative provided EPA documentation for Class A operator training completed by an employee on January 4, 2023. On January 23, 2023, a Facility representative provided EPA documentation for Class B operator training completed by an employee on January 21, 2023.
57. From May 3, 2021 to January 21, 2023, Respondent failed to train its Class A and Class B operators through a training course that is approved by Virginia's State Water Control Board and that includes specified requirements as soon as practicable.
58. From May 3, 2021 to January 21, 2023, Respondent violated 9 Va. Admin. Code § 25-580-125.C.1 and Code § 25-580-125.D.1 by failing to train its Class A and Class B operators through a training course that is approved by Virginia's State Water Control Board and that includes specified requirements as soon as practicable .
59. In failing to comply with 9 Va. Admin. Code § 25-580-125.C.1 and .2 and 9 Va. Admin. Code § 25-580-125.D.1, Respondent is subject to the assessment of penalties under 9006(d)(2) of RCRA, 42 U.S.C. § 6991e(d)(2).

CIVIL PENALTY

60. 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 FIFTY-EIGHT THOUSAND FOUR HUNDRED and FORTY-NINE dollars (\$58,449.00), which Respondent shall be liable to pay in accordance with the terms set forth below.
61. The civil penalty is based upon EPA's consideration of a number of factors, including the penalty criteria ("statutory factors") set forth in Section 9006(c) and (e) of RCRA, 42 U.S.C. § 6991e(c) and (e), including, the following the seriousness of the violation, any good faith efforts to comply with the applicable requirements, and any other factors considered appropriate, including Respondent's agreement to settle in order to resolve disputed facts and legal conclusions. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA's October 5, 2018, *Interim Consolidated Enforcement Penalty Policy for Underground Storage Tank (UST) Regulations and Revised Field Citation Program and ESA Pilot* and November 1990 *U.S. EPA Penalty Guidance for Violations of UST Regulations* which reflect the statutory penalty criteria and factors set forth at Section 9006(c) and (e) of RCRA, 42 U.S.C. § 6991e(c) and (e); 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.
62. 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.*, **RCRA-03-2023-0140**;

- 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 979078
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:

Promy Tabassum
Assistant Regional Counsel
tabassum.promy@epa.gov

and

U.S. EPA Region III Regional Hearing Clerk
R3_Hearing_Clerk@epa.gov.

- 63. 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.
- 64. 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).

65. **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 Respondent is notified of its debt to the United States as established upon the ratification and filing of the fully executed Consent Agreement and Final Order with the Regional Hearing Clerk. 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).
66. **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). If payment is not received within 30 calendar days of the effective date of this Consent Agreement, EPA will also 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.
67. **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).
68. Respondent agrees not to deduct for federal tax purposes the civil penalty assessed in this Consent Agreement and Final Order.
69. **The Parties consent to service of the Final Order by e-mail at the following valid email addresses: tabassum.promy@epa.gov (for Complainant), and twaynedavis@embarqmail.com (for Respondent).**

GENERAL SETTLEMENT CONDITIONS

70. 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.
71. 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

- 72. 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

- 73. 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 RCRA Subtitle I, or any regulations promulgated thereunder.

RESERVATION OF RIGHTS

- 74. 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

- 75. 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

76. 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 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

77. 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: DAVIS GMC TRUCK, INC.

Date: 9-18-23

By: T Wayne Davis
Wayne Davis
Dealer Operator
Davis GMC Truck, 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 designee, the Regional Judicial Officer, issue the attached Final Order.

By: _____
[*Digital Signature and Date*]
Karen Melvin, Director
Enforcement & Compliance Assurance Division
U.S. EPA – Region III
Complainant

Attorney for Complainant:

By: _____
[*Digital Signature and Date*]
Promy Tabassum
Assistant Regional Counsel
U.S. EPA – Region III

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
Philadelphia, Pennsylvania 19103

FILED

Sep 21, 2023

1:32 pm

U.S. EPA REGION III
HEARING CLERK

In the Matter of: :
: **Davis GMC Truck, Inc.** : **U.S. EPA Docket No. RCRA-03-2023-0140**
2707 W 3rd Street :
Farmville, VA 23901 : **Proceeding under Section 9006 of the Resource**
: **Conservation and Recovery Act, 42 U.S.C.**
Respondent. : **Section 6991e**
:

FINAL ORDER

Complainant, the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region III, and Respondent, Davis GMC, Truck, 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 October 5, 2018, *Interim Consolidated Enforcement Penalty Policy for Underground Storage Tank (UST) Regulations and Revised Field Citation Program and ESA Pilot* and November 1990 *U.S. EPA Penalty Guidance for Violations of UST Regulations*; the statutory factors set forth in Section 9006(c) and (e) of the Resource Conservation and Recovery Act (“RCRA” or the “Act”), 42 U.S.C. § 6991e(c) and (e); 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.

NOW, THEREFORE, PURSUANT TO Section 9006(d) of 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 **FIFTY-EIGHT THOUSAND FOUR HUNDRED and FORTY-NINE DOLLARS (\$58,449.00)**, 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.

By: _____
[*Digital Signature and Date*]
Joseph J. Lisa
Regional Judicial and Presiding Officer
U.S. EPA – Region III

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

In the Matter of:	:
	:
Davis GMC Truck, Inc.	: U.S. EPA Docket No. RCRA-03-2023-0140
2707 W 3rd Street	:
Farmville, VA 23901	: Proceeding under Section 9006 of the Resource
	: Conservation and Recovery Act, 42 U.S.C.
Respondent.	: Section 6991e
	:

CERTIFICATE OF SERVICE

I certify that the foregoing *Consent Agreement and Final Order* was filed with the EPA Region III Regional Hearing Clerk on the date that has been electronically stamped on the *Consent Agreement and Final Order*. I further certify that on the date set forth below, I caused to be served a true and correct copy of the foregoing to each of the following persons, in the manner specified below, at the following addresses:

Copies served via email to:

Wayne Davis, Dealer Operator
Davis GMC Truck, Inc.
2707 W Third Street
Farmville, VA 23901
twaynedavis@embarqmail.com

Promy Tabassum, Esq.
Assistant Regional Counsel
U.S. EPA, Region III
tabassum.promy@epa.gov

Melissa Toffel
UST Enforcement and Compliance Officer
U.S. EPA, Region III
toffel.melissa@epa.gov

By: _____
[*Digital Signature and Date*]
Regional Hearing Clerk
U.S. EPA – Region III