

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

<b>In the Matter of:</b>	:
	:
<b>Mars, Roshni and Raj, Inc.</b>	: <b>U.S. EPA Docket No. RCRA-03-2022-0036</b>
<b>5311 Jefferson Davis Highway</b>	:
<b>Fredericksburg, VA 22408</b>	: <b>Proceeding under Section 9006 of the Resource</b>
	: <b>Conservation and Recovery Act, as amended,</b>
<b>Respondent.</b>	: <b>42 U.S.C. Section 6991e</b>
	:
<b>Chubby’s BP</b>	:
<b>5311 Jefferson Davis Highway</b>	:
<b>Fredericksburg, VA, 22408</b>	:
	:
<b>Facility.</b>	:
	:
	:

**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 Mars, Roshni and Raj, Inc. (“Respondent”) (collectively the “Parties”), 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 for the violations contained 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 Commonwealth of 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. Section 9006(d) of RCRA, 42 U.S.C. § 6991e(d), authorizes EPA to assess civil penalties 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 October 28, 1998, pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c, and 40 C.F.R. Part 281, Subpart A, EPA approved the Commonwealth of 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 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. Virginia’s authorized UST management program regulations are set forth in the Virginia Code as “Underground Storage Tanks: Technical Standards and Corrective Action Requirements” (“VA UST Regulations”), 9 VAC § 25-580-10 *et seq.*<sup>1</sup>
15. At all times relevant to this Consent Agreement, Respondent has been a Virginia corporation.
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 9 VAC § 25-580-10.
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 9 VAC § 25-580-10, of 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, at Chubby’s BP facility located at 5311 Jefferson Davis Highway, Fredericksburg, VA (“the Facility”).
18. On August 16, 2019, under the authority of Section 9005(a) of RCRA, 42 U.S.C. § 6991d(a), an EPA inspector conducted an inspection at the Facility.
19. On February 11, 2020, under the authority of Section 9005(a) of RCRA, 42 U.S.C. § 6991d(a), EPA sent a Request for Information Letter to the Respondent. On March 20, 2020, Respondent responded to the letter. The response supported the time periods of missing tank release detection.
20. At the time of the February 11, 2020 inspection, and at all times relevant to the applicable violations alleged herein, three (3) USTs, as described below, 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 9 VAC § 25-580-10, were located at the Facility:
  - a. One 6,000 gallon tank, installed in January 1982, that routinely contained premium gasoline, (hereinafter “Tank 1”);

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<sup>1</sup> Effective May 3, 2021, EPA approved revisions to the Commonwealth of Virginia’s Underground Storage Tank (UST) program. Since the alleged violations of this Consent Agreement and Final Order occurred prior to May 3, 2021, these newly approved revisions do not apply to this Agreement.

- b. One 8,000 gallon tank, installed in January 1982, that routinely contained regular gasoline (hereinafter “Tank 2”); and
  - c. One 8,000 gallon tank, installed in January 1982, that routinely contained diesel (hereinafter “Tank 3”).
21. At all times relevant to this Consent Agreement, Tank 1, Tank 2, and Tank 3 were existing tank systems, as defined in 9 VAC 25-580-10, Definitions, which states that “an “existing tank system” means a tank system used to contain an accumulation of regulated substances or for which installation has commenced on or before December 22, 1988.”
22. Tank 1, Tank 2, and Tank 3 utilize fiberglass-reinforced plastic piping that routinely contained regulated substances conveyed using a pressurized pumping system.
23. Tank 1, Tank 2, and Tank 3 used a Veeder Root TLS-350 ATG monitoring system (“ATG system”) to detect leaks.
24. At all times relevant to the applicable violations alleged herein, Tank 1, Tank 2, and Tank 3 and the respective underground piping associated with each, was a “petroleum UST system” and “existing UST system” as these terms are defined in 9 VAC § 25-580-10.

### **Count I**

#### **Failure to conduct tank release detection**

25. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
26. Pursuant to 9 VAC 25-580-140(1), with exceptions provided at 9 VAC 25-580-140(1)(a)-(c) not applicable to any of the USTs at the Facility, owners and operators of petroleum UST systems are required to monitor tanks at least every 30 days for releases using one of the methods listed in 9 VAC 25-580-160(4)-(8).
27. At all times relevant to the violations alleged herein, Respondent selected automatic tank gauging (“ATG”) under 9 VAC 25-580-160(4) as its method of release detection for all USTs at the Facility.
28. In response to EPA’s Inspection, Request for Information Letter, and subsequent communications requesting release detection records, Respondent was unable to produce tank release detection records for the tanks and periods listed below:
- a. For Tank 1, Respondent was unable to produce tank release detection records for the periods from February 1, 2019 to April 1, 2019 and from June 6, 2019 to March 23, 2020.

- b. For Tank 2, Respondent was unable to produce tank release detection records for the periods from April 1, 2019 to July 1, 2019 and from August 1, 2019 to the May 13, 2021.
  - c. For Tank 3, Respondent was unable to produce tank release detection records during the following periods: March 4, 2019 to April 1, 2019; May 1, 2019 to July 1, 2019; August 1, 2019 to August 31, 2019; and December 4, 2019 to March 30, 2020.
29. During the periods of time indicated in Paragraph 28 above, Respondent did not monitor the tanks at least every 30 days, for releases, by any of the other release detection monitoring methods specified in 9 VAC 25-580-160(4)-(8).
30. Respondent's acts and/or omissions as alleged in Paragraphs 25 through 29 above, constitute violations by Respondent of 9 VAC 25-580-140(1).
31. In failing to comply with 9 VAC 25-580-140(1), Respondent is subject to the assessment of penalties under Section 9006(d) of RCRA, 42 U.S.C. § 6991e(d).

### **CIVIL PENALTY**

32. 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 **TWO THOUSAND FIVE-HUNDRED dollars (\$2,500.00)**, which Respondent shall be liable to pay in accordance with the terms set forth below.
33. 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, the compliance history of the owner or operator 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 2018 Interim Consolidated Enforcement Penalty Policy for Underground Storage Tank Regulations ("Enforcement Penalty Policy") (collectively the "UST Penalty Policies) 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.
34. The civil penalty is also based upon an analysis of Respondent's ability to pay a civil penalty. This analysis was based upon information submitted to EPA by Respondent. Based upon this analysis EPA has determined that the Respondent is unable to pay a civil

penalty in excess of the dollar amount set forth in Paragraph 32, above, in settlement of the above-captioned action.

35. 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-03-2022-0036;
- 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:

Lou Ramalho.  
Assistant Regional Counsel  
[ramalho.louis@epa.gov](mailto:ramalho.louis@epa.gov)

and

U.S. EPA Region III Regional Hearing Clerk  
[R3\\_Hearing\\_Clerk@epa.gov](mailto:R3_Hearing_Clerk@epa.gov)

36. 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.

37. 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).
38. 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).
39. 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.
40. 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).
41. Respondent agrees not to deduct for federal tax purposes the civil penalty assessed in this Consent Agreement and Final Order.

#### **GENERAL SETTLEMENT CONDITIONS**

42. 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.
43. Respondent certifies that any information or representation it has supplied or made to EPA concerning this matter, including information on ability to pay, 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**

44. 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**

45. 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**

46. This Consent Agreement and Final Order resolves only EPA's claims for civil penalties for the specific violation[s] 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**

47. 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**

48. 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**

49. 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: November 25, 2021

By:



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Chandravadan Patel, President  
Mars, Roshni and Raj, Inc.  
5311 Jefferson Davis Highway  
Fredericksburg, VA 22408

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: \_\_\_\_\_

By: \_\_\_\_\_

Louis Ramalho  
Assistant Regional Counsel  
U.S. EPA – Region III

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
Philadelphia, Pennsylvania 19103

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	: <b>Resource Conservation and Recovery Act, as</b>
<b>Respondent.</b>	: <b>amended, 42 U.S.C. Section 6991e</b>
	:
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**FINAL ORDER**

Complainant, the Director of the Enforcement & Compliance Assurance Division, U.S. Environmental Protection Agency, Region III, and Respondent, Mars, Roshni and Raj 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 2018 Interim Consolidated Enforcement Penalty Policy for Underground Storage Tank Regulations (“Enforcement Penalty Policy”) (collectively the “UST Penalty Policies) which reflects the statutory penalty criteria and factors set forth Section 9006(c) of RCRA, and 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 polices to account for inflation.

**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 **TWO THOUSAND FIVE-HUNDRED dollars (\$2,500.00)**, 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