



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

Office of Regional Counsel
Underground Asbestos, Lead, Pesticides Branch
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UNITED PARCEL SERVICE (UPS) - CONFIRMATION OF RECEIPT REQUESTED

Charles A. Quagliato, Assistant Attorney General
Major Crimes and Emerging Threats Section
Office of the Attorney General
900 East Main Street
Richmond, VA 23219

Re: Consent Agreement and Final Order
In the Matter Of: Virginia State Police
Corrected Docket Number (RCRA-03-2016-0052)

RECEIVED
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REGIONAL HEARING CLERK
EPA REGION III PHILADELPHIA, PA

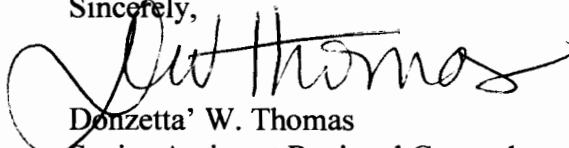
Dear Mr. Quagliato:

Enclosed is a marked-up version of the fully executed Consent Agreement and Final Order ("CAFO") entered into between EPA, Region III, and the Virginia State Police and previously filed on December 24, 2015. After the CAFO was filed and mailed, it was determined that the CAFO had been filed with an incorrect docket number (RCRA-03-2016-0010). While all the terms of the original agreement remain in effect and the filing date remains the same, a new docket number has been assigned by the Regional Hearing Clerk.

Going forward, please use **Docket Number: RCRA-03-2016-0052** when referencing this matter or making payment under the terms of the CAFO. Enclosed with this notice is the marked-up version of the previously filed CAFO which lists the new document number in the following places: caption on the Consent Agreement; pages 2-11 of the Consent Agreement; paragraph 36 of the Consent Agreement; caption on the Final Order; and page 2 of the Final Order. Both this letter and a marked up version of the CAFO are being filed with the Regional Hearing Clerk today. My apologies for any inconvenience.

If you have any questions, please do not hesitate to call me at (215) 814-2474.

Sincerely,


Donzetta W. Thomas
Senior Assistant Regional Counsel

Enclosure: marked-up CAFO
cc: Regional Hearing Clerk



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Customer Service Hotline: 1-800-438-2474*

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

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In the Matter of:)
)
VIRGINIA STATE POLICE) Docket Number: RCRA-03-2016-0010
)
RESPONDENT,)
)
Virginia State Police Division 7) CONSENT AGREEMENT
Headquarters)
9801 Braddock Road)
Fairfax, VA 22039)
) Proceeding Under Section 9006 of the
) Resource Conservation and Recovery
FACILITY.) Act, as amended, 42 U.S.C. § 6991e.
)

CONSENT AGREEMENT

This Consent Agreement (“CA”) is entered into by the Director, Land and Chemicals Division, U.S. Environmental Protection Agency, Region III (“EPA” or “Complainant”) and the Virginia State Police (“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 .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 located at its Division 7 Headquarters Facility, 9801 Braddock Road, Fairfax, VA 22039 (the “Facility”).

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 UST management program established under Subtitle I of RCRA, 42 U.S.C. §§ 6991-6991m. The provisions of the Commonwealth of Virginia’s UST management program, through this final authorization, are enforceable by EPA pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e. The Commonwealth of 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 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.
3. Respondent agrees not to contest EPA's jurisdiction with respect to the execution of this CA, the issuance of the attached FO, or the enforcement of the CAFO.
4. For the purposes of this proceeding only, Respondent hereby expressly waives its 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.
6. Respondent shall bear its own costs and attorney's fees.
7. The person signing this CA on behalf of the Respondent certifies to EPA by his/her signature herein that Respondent, as of the date 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 Chapter 580 of Title 9 of the VAC at the Facility referenced herein.
8. The provisions of this CAFO shall be binding upon Respondent, and its officers, directors, employees, successors and assigns.
9. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit, nor does this CAFO constitute a waiver, suspension or modification of the requirements of RCRA Subtitle I, 42 U.S.C. §§ 6991-6991m, or any regulations promulgated thereunder.
10. 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.

11. 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).

FACTUAL ALLEGATIONS AND CONCLUSIONS OF LAW

12. 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).
13. Respondent is a "person" as defined in Section 9001(5) of RCRA, 42 U.S.C. § 6991(5), and 9 VAC § 25-580-10.
14. 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 the Facility.
15. On April 2, 2015, an EPA representative conducted a Compliance Evaluation Inspection ("CEI") at the Facility pursuant to Section 9005 of RCRA, 42 U.S.C. § 6991d.
16. At the time of the April 2, 2015 CEI, and at all times relevant to the applicable violations alleged herein, two Underground Storage Tanks existed at the Facility.
 - a. a five hundred (500) gallon fiberglass reinforced plastic tank that was installed in or about April 22, 1981 and that, at all times relevant hereto, routinely contained diesel, 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") was located at the Facility.
 - b. a ten thousand (10,000) gallon fiberglass reinforced plastic tank that was installed in or about April 22, 1981 and that, at all times relevant hereto, routinely contained 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") was located at the Facility.

17. At all times relevant to the applicable violations alleged herein, UST Nos. 1 and 2 have been “petroleum UST systems” and “existing tank systems” as those terms are defined in 9 VAC § 25-580-10.
18. UST Nos. 1 and 2 were, at all times relevant to the applicable violations alleged in this CAFO, used to store “regulated substances” 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 meet the UST system performance standards
for spill and overfill prevention on UST No. 1)

19. The allegations of Paragraphs 1 through 18 of the CA are incorporated herein by reference.
20. 9 VAC § 25-580-50 provides, in pertinent part, that all owners and operators of new UST systems shall meet certain requirements in order to prevent releases due to structural failure, corrosion, or spills and overfills for as long as the UST system is used to store regulated substances.
21. 9 VAC § 25-580-50.3.a. provides that owners and operators of new UST systems shall use certain spill and overfill prevention equipment to prevent spilling and overfilling associated with product transfer to the UST system as follows:
 - (1) Spill prevention equipment that will prevent release of product into the environment when the transfer hose is detached from the fill pipe - for example a spill catchment basin; and
 - (2) Overfill prevention equipment that will do one or more of the following:
 - (a) Automatically shut off flow into the tank when the tank is more than 95 percent full, or
 - (b) Alert the transfer operator when the tank is no more than 90 percent full by restricting the flow into the tank or triggering a high level alarm.

22. The requirements set forth at 9 VAC § 25-580-50.3.a., above, have been incorporated by reference into 9 VAC § 25-580-60.4., and are therefore applicable to existing UST systems as well as new UST systems.
23. From September 30, 2010 until September 30, 2015, Respondent failed to install certain spill and/or overflow prevention equipment for UST No. 1 as described in 9 VAC § 25-580-50.3.a., and such UST did not fall within the exception in 9 VAC § 25-580-50.3.b. and such UST was not in compliance with the closure requirements of 9 VAC § 25-580-320.
24. Respondent's acts and/or omissions as alleged in Paragraph 23, above, constitutes a violation by Respondent of 9 VAC § 25-580-50.3.a..

COUNT 2

(Failure to maintain release detection records at the Facility)

25. The allegations of Paragraphs 1 through 24 of the CA are incorporated herein by reference.
26. 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.
27. 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.
28. 9 VAC § 25-580-120.2.c. provides that UST system owners and operators shall maintain information of current compliance with release detection requirements pursuant to 9 VAC § 25-580-180.
29. Pursuant to Pursuant to 9 VAC § 25-580-180., owners and operators of UST systems shall maintain records in accordance with 9 VAC § 25-580-120 demonstrating compliance with all applicable requirements of 9 VAC § 25-580-180. These records must include the following:
- 1. Written performance claims pertaining to a release detection system used, and the manner in which these claims have been justified or tested by the equipment manufacturer or installer, shall be maintained for 5 years from the date of installation or as long as the method of release detection is used, whichever is greater;
 - 2. The results of any sampling, testing, or monitoring shall be maintained for at least 1 year; and
 - 3. Written documentation of all calibration, maintenance, and repair of release detection equipment permanently located on-site shall be maintained for at least 1 year after the service work is completed, and any schedules of required calibration and maintenance provided by the release detection equipment manufacturer shall be retained for 5 years from the date of installation.
30. From at least May 1, 2014 until January 31, 2015, Respondent performed release detection for UST No. 2 at the Facility.
31. From at least May 1, 2014 until January 31, 2015, Respondent failed to maintain records of release detection monitoring for UST No. 2 in accordance with 9 VAC § 25-580-120.2.c. and 9 VAC § 25-580-180.
32. Respondent's acts and/or omissions as alleged in Paragraph 31, above, constitutes a violation by Respondent of 9 VAC § 25-580-120.2.c. and 9 VAC § 25-580-180.

CIVIL PENALTY

33. In settlement of Complainant's claims for civil penalties for the violations alleged in this CA, Respondent agrees to pay a civil penalty in the amount of Six Thousand Six Hundred Forty Dollars (\$6,640.00). The civil penalty amount is due and payable immediately upon Respondent's receipt of a true and correct copy of this CA and attached FO.
34. 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.
35. 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), 42 U.S.C. § 6991e(c), and with EPA's Penalty Guidance for Violations of UST Regulations ("UST Guidance") dated November 4, 1990.
36. Respondent shall pay the amount described in Paragraph 33 above, by sending a certified or cashier's check payable as follows:
- a. All payments by Respondent shall reference Respondent's name and address, and the Docket Number of this action, *i.e.*, ~~RCRA-03-2016-0010~~,
0052
 - 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 and mailed to:

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

Contact: Eric Volck, 513-487-2105 or
Craig Steffen 513-487-2091
 - d. All payments made by check and sent by overnight delivery service shall be addressed and mailed to:

U.S. EPA - Fines and Penalties
U.S. Bank
Government Lockbox 979077

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

37. Respondent may also pay the amount described in Paragraph 33 above, electronically or on-line as follows:

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

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT Address = FRNYUS33
33 Liberty Street
New York, NY 10045
(Field Tag 4200 of the wire transfer message should read:
"D 68010727 Environmental Protection Agency")

- b. 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

Environmental Protection Agency, Account No. 310006
CTX Format Transaction Code 22 - checking

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

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

- c. On-Line Payment Option:

WWW.PAY.GOV/PAYGOV

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

- d. 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

Donzetta Thomas (3RC50)
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency - Region III
1650 Arch Street
Philadelphia, PA 19103-2029.

FULL AND FINAL SATISFACTION

38. 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 Consent Agreement.

RESERVATION OF RIGHTS

39. 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.
40. 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.

41. Failure to obtain adequate funds or appropriations from Congress does not release Respondent from its obligation to comply with RCRA, the applicable regulations thereunder, or with this CAFO. Nothing in this CAFO shall be interpreted to require obligation or payment of funds in violation of the Antideficiency Act, 31 U.S.C. § 1341.

OTHER APPLICABLE LAWS

42. Nothing in this CAFO shall relieve Respondent of any duties otherwise imposed on it by applicable federal, state or local law and/or regulations.

AUTHORITY TO BIND THE PARTIES

43. The settlement negotiated between the Complainant and Respondent has been approved by the necessary authorities of the Commonwealth as required by Va. Code section 2.2-514.
44. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this CA and bind Respondent hereto.

ENTIRE AGREEMENT

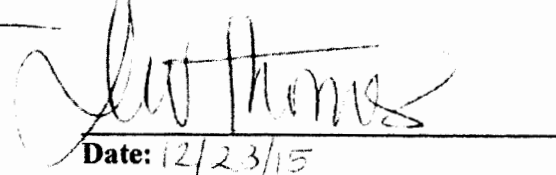
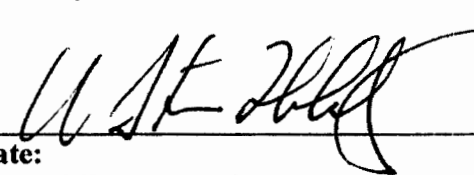
45. This CA and the attached FO constitute the entire Agreement and understanding of the parties concerning settlement of the above-captioned action and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this CA and the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

EFFECTIVE DATE

46. This CA and attached FO shall become effective upon filing with the Regional Hearing Clerk.

For Respondent:

For Complainant:

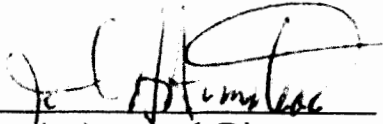


Date:
Colonel W. Steven Flaherty
Superintendent
Virginia State Police
7700 Midlothian Turnpike
North Chesterfield, VA 23235

Date: 12/23/15
Donzetta Thomas
Senior Assistant Regional Counsel
US EPA, Region III
1650 Arch Street (3RC50)
Philadelphia, PA 19103

After reviewing the foregoing Consent Agreement and other pertinent information, the Land and Chemicals Division, EPA Region III, recommends that the Regional Administrator or the Regional Judicial Officer issue the Final Order attached hereto.

Date: 12.23.15

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

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

In the Matter of:)	
)	
VIRGINIA STATE POLICE)	EPA Docket No.: RCRA-03-2016-0010
)	0052
RESPONDENT,)	FINAL ORDER
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Virginia State Police Division 7)	
Headquarters)	Proceeding Under Section 9006 of the
9801 Braddock Road)	Resource Conservation and Recovery
Fairfax, VA 22039)	Act, as amended, 42 U.S.C.
)	§ 6991e.
FACILITY.)	

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FINAL ORDER

Complainant, the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency - Region III, and Respondent, the Virginia State Police, 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 representation of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon consideration of, *inter alia*, EPA's Penalty Guidance for

Violations of UST Regulations (“UST Guidance”) dated November 4, 1990, and the statutory factors set forth in RCRA Section 9006(c), 42 U.S.C. § 6991e(c).

NOW, THEREFORE, PURSUANT TO Section 9006(c) of the Resource Conservation and Recovery Act, 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 in the amount of Six Thousand Six Hundred Forty Dollars (\$6,640.00) in accordance with the payment provisions set forth in the Consent Agreement, and comply with the terms and conditions of the Consent Agreement.

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: 12/23/2015



Shawn M. Garvin, Regional Administrator *for SVE*
U.S. Environmental Protection Agency, Region III