

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM

TO BE FILLED OUT BY ORIGINATING OFFICE:

(Attach a copy of the final order and transmittal letter to Defendant/Respondent)

This form was originated by: Donzetta Thomas 11/15/07
Name of Contact person Date

in the ORC at (215) 814-2474
Office Phone number

Non-SF Jud. Order/Consent Decree. DOJ COLLECTS
 Administrative Order/Consent Agreement FMD COLLECTS PAYMENT

SF Jud. Order/Consent Decree. FMD COLLECTS

This is an original debt This is a modification

Name of Person and/or Company/Municipality making the payment
The Westchester Corporation

The Total Dollar Amount of Receivable \$8,065.00

The Case Docket Number RCRA-03-2008-0012
(If in installments, attach schedule of amounts and respective due dates)

The Site-Specific Superfund Acct. Number _____
The Designated Regional/HQ Program Office _____

TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:

The IFMS Accounts Receivable Control Number _____

If you have any questions call: _____
Name of Contact Date

in the Financial Management Office, phone number: _____

JUDICIAL ORDERS: Copies of this form with an attached copy of the front page of the final judicial order should be mailed to:

1. U.S. Environmental Protection Agency
Cincinnati Finance Center
26 W. Martin Luther King Drive (MS-002)
Cincinnati, OH 45268
Attn: Lori Weidner
2. Originating Office (ORC)
3. Designated Program Office

ADMINISTRATIVE ORDERS: Copies of this form with an attached copy of the front page of the administrative order should be sent to:

1. Originating Office
2. Designated Program Office
3. Regional Hearing Clerk
3. Regional Counsel

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

RECEIVED
MAY 15 2 15 PM '98
EPA REGION III

| | | |
|-----------------------------|---|---|
| In the Matter of: |) | |
| The Westchester Corporation |) | |
| 4000 Cathedral Avenue, NW |) | Docket Number: RCRA-3-2008-0012 |
| Washington, D.C. 20016 |) | |
| |) | Proceeding Under Section 9006 of the |
| RESPONDENT |) | Resource Conservation and Recovery Act, |
| |) | as amended, 42 U.S.C. § 6991e. |

CONSENT AGREEMENT

This Consent Agreement ("CA") is entered into by the Director, Waste and Chemicals Management Division, U.S. Environmental Protection Agency, Region III ("EPA" or "Complainant") and The Westchester Corporation ("Respondent"), pursuant to Section 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 District of Columbia's federally authorized underground storage tank program by Respondent in connection with its underground storage tanks at Respondent's facility located at 4000 Cathedral Avenue, NW, Washington, D.C. (the "Facility").

Effective May 4, 1998, pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c, and 40 C.F.R. Part 281, Subpart A, the District of Columbia 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 District of Columbia UST management program, through this final authorization, are enforceable by EPA pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e. The District of Columbia's authorized UST program regulations are set forth in the District of Columbia Municipal Regulations, Title 20, Chapters 55 *et. seq.*, and will be cited hereinafter as 20 DCMR §§ 5500 *et. seq.*

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

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. Further, nothing in this CA shall be construed as a determination by EPA that there has been any release of regulated substances from the UST located at the Facility
3. Respondent agrees not to contest EPA's jurisdiction with respect to the execution of this CA, the issuance of the attached Final Order ("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 District of Columbia's federally authorized underground storage tank program set forth at 20 DCMR §§ 5500 *et. seq.* 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. Respondent agrees not to deduct for civil taxation purposes the civil penalty specified in this Consent Agreement and the attached Final Order.
12. EPA has given the District of Columbia 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

13. 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).
14. At all times relevant to this CAFO, Respondent has been a Delaware corporation doing business in the District of Columbia.
15. Respondent is a "person" as defined in Section 9001(5) of RCRA, 42 U.S.C. § 6991(5), and 20 DCMR § 6899.1.
16. 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 20 DCMR § 6899.1, of the "underground storage tank" ("UST") and "UST system" as those terms are defined in Section 9001(10) of RCRA, 42 U.S.C. § 6991(10), and 20 DCMR § 6899.1, located at the Facility.
17. On February 22, 2007, an EPA representative conducted a Compliance Evaluation Inspection ("CEI") of the Facility pursuant to Section 9005 of RCRA, 42 U.S.C. § 6991d.
18. At the time of the February 22, 2007 CEI, and at all times relevant to the applicable violation alleged herein, the following UST was located at the Facility: a three thousand (3,000) gallon polyethylene tank that was installed in or about October 1998 and that, at all times relevant hereto, routinely contained and was used to store gasoline, a "regulated substance" as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and 20 DCMR § 6899.1(hereinafter "UST No. 1").

19. At all times relevant to the applicable violation alleged herein, UST No. 1 has been a "petroleum UST system" and "new tank system" as these terms are defined in 20 DCMR § 6899.1, respectively.
20. UST No. 1 was and is, at all times relevant to the applicable violation alleged in this CAFO, 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 20 DCMR § 6899.1, and have not been "empty" as that term is defined at 20 DCMR § 6100.7.

COUNT 1

(Failure to Provide Tank Release Detection)

21. The allegations contained in Paragraphs 13 - 20, above, are incorporated herein by reference.
22. 20 DCMR § 6000.1 provides that each owner and operator of a new or existing UST system shall provide a method, or combination of methods, of release detection that meets the requirements described therein.
23. Pursuant to 20 DCMR §§ 6003.1 through 6003.5, tanks which are part of a petroleum UST system must be monitored at least every 30 days for releases using one of the methods listed in 20 DCMR §§ 6008 through 6012, except that: (1) prior to December 22, 1995, certain UST systems could have been monitored using a combination of inventory control and tank tightness testing in compliance with the requirements of 20 DCMR §§ 6005 through 6007; and (2) tanks with a capacity of 550 gallons or less may use weekly tank gauging conducted in accordance with 20 DCMR § 6006.
24. From at least October 1, 2002 until at least February 26, 2007, UST No. 1 has not been monitored in compliance with any of the methods set forth in 20 DCMR § 6003.3 through 6003.5 and/or 20 DCMR §§ 6005 through 6012, except that said UST passed a tank tightness test in December 2006.
25. Respondent's act and/or omission as alleged in Paragraph 24, above, constitutes a violation of 20 DCMR §§ 6000.1 and 6003.

CIVIL PENALTY

26. 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 eight thousand sixty-five dollars (\$8,065.00). 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. If Respondent pays the entire civil penalty of eight thousand sixty-five dollars (\$8,065.00) 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 Respondent pursuant to 40 C.F.R. § 13.11(a)(1).

27. 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.
28. In accordance with 40 C.F.R. § 13.11(a), interest on any civil penalty assessed in a CAFO begins to accrue on the date that a copy of the CAFO is mailed or hand-delivered to the Respondent. However, EPA will not seek to recover interest on any amount of such 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).
29. 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.
30. A late payment penalty of six percent per year will be assessed monthly on any portion of a civil penalty which remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on a debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
31. 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.
32. Respondent shall pay the amount described in Paragraph 26 above, by sending a certified or cashier's check payable to the "United States Treasury," as follows:

By Regular US Postal Service Mail:

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

By Private Commercial Overnight Delivery:

U.S. EPA
Fines and Penalties
U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101
Contact: Natalie Pearson
(314) 418-4087

Payment of the penalty as required by this CAFO may also be made by electronic transfer to:

Wire Transfers

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")

Automated Clearing House (ACH) Transfers

PNC Bank
ABA = 051036706
Environmental Protection Agency
Account 310006

CTX Format
Transaction Code 22 - checking
808 17th Street, NW
Washington, DC 20074

Payment by Respondent shall reference Respondent's name and address, and the EPA Docket Number of this CAFO. 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 (3RC30)
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency - Region III
1650 Arch Street
Philadelphia, PA 19103-2029.

FULL AND FINAL SATISFACTION

33. 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

34. 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.

OTHER APPLICABLE LAWS

35. 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

36. 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

37. 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

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

For Respondent:

Oct. 9, 2007
Date

The Westchester Corporation

Ann Benefield
by: Ann Benefield, General Manager

For Complainant:

10/25/07
Date

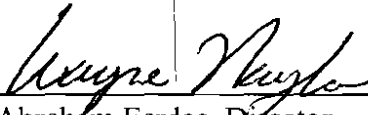
U.S. Environmental Protection Agency,
Region III

Donzetta Thomas
Donzetta Thomas (3RC30)
Senior Assistant Regional Counsel

In Re: Westchester
CAFO (RCRA-03-2008-0012)

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

11/2/07
Date

By: 
Abraham Ferdas, Director
Waste and Chemicals Management
Division, EPA Region III

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

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| In the Matter of: |) | |
| The Westchester Corporation |) | |
| 4000 Cathedral Avenue, NW |) | Docket Number: RCRA-3-2008-0012 |
| Washington, D.C. 20016 |) | |
| |) | Proceeding Under Section 9006 of the |
| RESPONDENT |) | Resource Conservation and Recovery Act, |
| |) | as amended, 42 U.S.C. § 6991e. |

FINAL ORDER

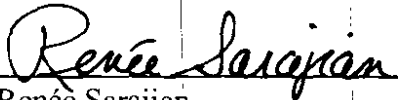
Complainant, the Director of the Waste and Chemicals Management Division, U.S. Environmental Protection Agency - Region III, and Respondent, The Westchester Corporation, have executed a document entitled "Consent Agreement" which I hereby ratify as a Consent Agreement in accordance with the Consolidated 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. The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated herein as if set forth at length.

NOW, THEREFORE, PURSUANT TO Section 22.18(b)(3) of the *Consolidated Rules of Practice* and Section 9006(c) of the Resource Conservation and Recovery Act, 42 U.S.C. § 6991e(c) ("RCRA"), and having determined, based on the representations of the parties in the attached Consent Agreement, that the civil penalty agreed to therein was based upon a consideration of the factors set forth in Section 9006(c) and (d) of RCRA, 42 U.S.C. § 6991e(c) and (d), **IT IS HEREBY ORDERED** that Respondent pay a civil penalty of eight thousand sixty-five dollars (\$8,065.00) in accordance with the payment provisions set forth in the attached

Consent Agreement and comply with each of the additional terms and conditions as specified in the attached Consent Agreement .

The effective date of this Final Order and the accompanying Consent Agreement is the date on which the Final Order, signed by the Regional Administrator of U.S. EPA Region III or the Regional Judicial Officer, is filed with the Regional Hearing Clerk of U.S. EPA - Region III.

Date: 11/14/07


Renée Sarajian
Regional Judicial Officer
U.S. EPA, Region III

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

In the Matter of:
The Westchester Corporation
4000 Cathedral Avenue, NW
Washington, D.C. 20016

RESPONDENT)

) Docket Number: RCRA-3-2008-0012
)
) Proceeding Under Section 9006 of the
) Resource Conservation and Recovery Act
) as amended, 42 U.S.C. § 6991e.

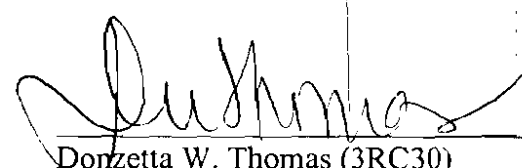
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PHILADELPHIA

CERTIFICATE OF SERVICE

I hereby certify that the original and one copy of the foregoing Consent Agreement and Final Order, Docket No. RCRA-03-2008-0012, has been filed with the EPA Region III Regional Hearing Clerk, and that copies of the same were sent in the following manner to the persons listed below:

Via Federal Express Overnight to:
Richard F. Waddington, Esq.
Whiteford, Taylor & Preston, L.L.P
7 St. Paul Street
Baltimore, MD 21202

11/15/07
Date



Dorzetta W. Thomas (3RC30)
Counsel for Complainant
U.S. Environmental Protection Agency, Region III
(215) 814-2474