

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

IN THE MATTER OF:

Chestertown Besche
513 Washington Avenue
Chestertown, MD 21620

Facility,

EPP – Besche Acquisition, LLC
8350 N. Central Expressway, Suite M2185
Dallas, TX 75206

Respondent.

Docket No.: RCRA-03-2018-0023

**EXPEDITED SETTLEMENT
AGREEMENT AND FINAL ORDER**

GENERAL HEARING CLERK
REGION III, PHILA. PA.

2018 FEB 22 PM 1:36

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EXPEDITED SETTLEMENT AGREEMENT

1. This Expedited Settlement Agreement (“Agreement”), is entered into by the Director, Land and Chemicals Division, U.S. Environmental Protection Agency, Region III (“EPA” or “Complainant”), and EPP – Besche Acquisition, LLC (“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 of Practice”), 40 C.F.R. Part 22 (with specific reference to 40 C.F.R. §§ 22.13(b), 22.18(b)(2), and (3)).
2. EPA alleges that Respondent, owner and/or operator of the Underground Storage Tanks located at Chestertown Besche, 513 Washington Avenue, Chestertown, Maryland (“Facility”), failed to comply with specific requirements of Subtitle I of RCRA, 42 U.S.C. §§ 6991 *et seq.*, its implementing regulations at 40 C.F.R. Part 280, and the federally authorized State of Maryland’s Underground Storage Tank (“UST”) program, Code of Maryland Regulations (“COMAR”), Title 26, Subtitle 10 *et seq.*
3. EPA has jurisdiction over the above-captioned matter pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e, and 40 C.F.R. §§ 22.1(a)(4) and 22.4 of the Consolidated Rules of Practice.
4. Respondent is a “person” as defined in Section 9001(5) of RCRA, 42 U.S.C. § 6991(5), COMAR § 26.10.02.04, and is the “operator” and/or “owner” of “underground storage tanks” (“USTs”) and “UST systems,” located at the Facility, as those terms are defined in Sections 9001(3), (4) and (10) of RCRA, 42, U.S.C. §§ 6991(3), (4), and (10); 40 C.F.R. § 280.12; and COMAR § 26.10.02.04.

5. At the time of the May 11, 2017 Compliance Evaluation Inspection, and at all times relevant to the applicable violations alleged herein, five USTs, as described in the following subparagraphs, were located at the facility:
 - A. A ten thousand (10,000) gallon tank that was installed in or about February 1991, and that, at all times relevant hereto, routinely contained regular-grade gasoline, a “regulated substance” as that term is defined in Section 9001(7) of RCRA, 42. U.S.C. § 6991(7), and COMAR § 26.10.02.04 (hereinafter UST No. 1).
 - B. A ten thousand (10,000) gallon tank that was installed in or about February 1991, and that, at all times relevant hereto, routinely contained mid-grade gasoline, a “regulated substance” as that term is defined in Section 9001(7) of RCRA, 42. U.S.C. § 6991(7), and COMAR § 26.10.02.04 (hereinafter UST No. 2).
 - C. A ten thousand (10,000) gallon tank that was installed in or about February 1991, and that, at all times relevant hereto, routinely contained premium-grade gasoline, a “regulated substance” as that term is defined in Section 9001(7) of RCRA, 42. U.S.C. § 6991(7), and COMAR § 26.10.02.04 (hereinafter UST No. 3).
 - D. A four thousand (4,000) gallon tank that was installed in or about February 1991, 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 COMAR § 26.10.02.04 (hereinafter UST No. 4).
 - E. A two thousand (2,000) gallon tank that was installed in or about October 1989, and that, at all times relevant hereto, routinely contained kerosene, a “regulated substance” as that term is defined in Section 9001(7) of RCRA, 42. U.S.C. § 6991(7), and COMAR § 26.10.02.04 (hereinafter UST No. 5).
6. EPA has identified the following violation:
 - From at least March 1, 2017 until June 30, 2017, Respondent failed to conduct tank release detection on UST No. 5 as required by COMAR § 26.10.05.02(B).
7. The EPA and the Respondent agree that settlement of this matter for a penalty of **\$ 1,700**. is in the public interest, and has been calculated in accordance with the statutory factors set forth in Section 9006(c) of RCRA, 42 U.S.C. § 6991e(c), the EPA’s Penalty Guidance for Violations of UST Regulations (“UST Guidance”) dated November 4, 1990, and the UST Expedited Settlement Agreement Pilot Program initiated on July 23, 2014, with extensions granted through April 23, 2018.
8. Respondent agrees that within 30 days of the effective date of this Agreement (the date it is filed with the Regional Hearing Clerk), Respondent shall submit a check with the case name, address and docket number of this Agreement (RCRA-03-2018-0023), for the amount specified above, payable to “**United States Treasury**,” U.S. Environmental Protection

Agency, Fines and Penalties, Cincinnati Finance Center, P.O. Box 979077, St. Louis, MO 63197-9000. Copies of the payment are to be sent to: Melissa Toffel, UST Compliance Officer, U.S. Environmental Protection Agency, Region III (Mail Code 3LC31), 1650 Arch Street, Philadelphia, PA 19103; and, Regional Hearing Clerk, U.S. Environmental Protection Agency, Region III (Mail Code 3RC00), 1650 Arch Street, Philadelphia, PA 19103-2029.

9. In signing this Agreement, the Respondent: admits the jurisdictional allegations set forth in this Agreement; neither admits nor denies the specific factual allegations and conclusions of law set forth in this Agreement, except as provided in the jurisdictional admission above; agrees not to contest EPA's jurisdiction with respect to the execution of this Agreement, the issuance of the attached Final Order, or the enforcement the Agreement; expressly waives its right to a hearing on any issue of law or fact set forth in this Agreement and any right to appeal the accompanying Final Order; consents to the issuance of the Agreement and agrees to comply with its terms; and bear its own costs and attorney's fees.
10. By its signature below, the Respondent certifies, subject to civil and criminal penalties for making a false submission to the United States Government, that he or she has: (1) corrected the alleged violations, and (2) submitted true and accurate documentation of those corrections.
11. This Agreement and attached Final Order constitute a settlement by EPA of its claims for civil penalties for the violations alleged in this Agreement.
12. 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.
13. This Agreement is binding on the parties signing below, and in accordance with 40 C.F.R. § 22.31(b), is effective upon filing.
14. The undersigned representative certifies that she/he is fully authorized to execute this Agreement and to legally bind EPP – Besche Acquisition, LLC to this Agreement.

APPROVED BY,


Name (print): Dennie Mathes

Title (print): Director of Environmental

Signature: 

Date 2.15.18

FOR COMPLAINANT:

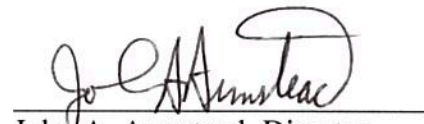


Carol Amend, Associate Director
Office of RCRA Programs

Date 2/20/18

Accordingly, the Land and Chemicals Division, United States Environmental Protection Agency, Region III, recommends that the Regional Administrator, or his designee, issue the Final Order set forth below.

2.20.18
Date




John A. Armstead, Director
Land and Chemicals Division

§ 6991e(c) and the EPA’s Penalty Guidance for Violations of UST Regulations (“UST Guidance”) dated November 4, 1990.

WHEREFORE, pursuant to Section 9006 of the Resource Conservation and Recovery Act (“RCRA”), as amended, 42 U.S.C. Section 6991e, and Section 22.18(b)(2) and (3) of the Consolidated Rules of Practice, and having determined, based upon the representations of the parties in the attached Expedited Settlement Agreement, that the civil penalty agreed to therein was based upon consideration of the factors set forth in Section 9006(c) of RCRA, 42 U.S.C. 6991e(c), EPA’s Penalty Guidance for Violations of UST Regulations, and the UST Expedited Settlement Agreement Pilot Program initiated July 23, 2014 and extended until April 23, 2018, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty of One Thousand and Seven Hundred Dollars (\$1,700.00) in accordance with the payment provisions set forth in the attached Expedited Settlement Agreement and comply with the terms and conditions as specified in the attached Expedited Settlement Agreement.

The effective date of the foregoing Expedited Settlement Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

Feb. 22, 2018
Date



Joseph J. Lisa
Regional Judicial Officer
U.S. EPA - Region III


CERTIFICATE OF SERVICE

I hereby certify that, on the date listed below, the original and one copy of the foregoing Expedited Settlement Agreement and Final Order, RCRA-03-2018-0023, was filed with the EPA Region III Regional Hearing Clerk, and that a correct copy of the same was sent in the following manner to the persons listed below:

Via United Parcel Service to:

Dennie Mathes, Corporate Director of Environmental Compliance
EPP – Besche Acquisition, LLC
8350 North Central Expressway, Suite M2185
Dallas, TX 75206

2/22/18
Date



Melissa Toffel
RCRA Underground Storage Tank Branch
U.S. Environmental Protection Agency, Region III
(215) 814-2060
Toffel.melissa@epa.gov