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**BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III**

In the Matter of: :
: **CONSENT AGREEMENT**
Berkeley County Board of Education :
728 South Raleigh Street :
Berkeley, West Virginia 25401 : **Docket No. RCRA-03-2008-0154**
Respondent :
:
:
Berkeley County School Board Bus Garage :
2050 Grade Road : **Proceeding under Section 9006 of**
Martinsburg, West Virginia : **the Resource Conservation and**
: **Recovery Act, 42 U.S.C. § 6991e**
Facility :

CONSENT AGREEMENT

General Provisions

This Consent Agreement is entered into by the Director of the Waste and Chemicals Management Division, U.S. Environmental Protection Agency - Region III ("Complainant") and the Berkeley County Board of Education ("Respondent") pursuant to Section 9006 of the Solid Waste Disposal Act, commonly referred to as the Resource Conservation and Recovery Act of 1976, as amended by, *inter alia*, the Hazardous and Solid Waste Amendments of 1984 (collectively referred to hereinafter as "RCRA"), 42 U.S.C. § 6991e, and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22 ("Consolidated Rules of Practice"). Pursuant to Sections 22.13(b), 22.18(b)(2), and 22.18(b)(3) of the Consolidated Rules of Practice, this Consent Agreement and the accompanying Final Order (collectively referred to as the "CA/FO"), both commence and conclude an administrative proceeding to resolve violations of RCRA Subtitle I, 42 U.S.C. §§ 6991-6991m, at the Berkeley County School Bus Garage, a facility owned by Respondent, located at 2050 Grade Road in Martinsburg, West Virginia ("the Facility").

Effective February 10, 1998, pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c, and 40 C.F.R. Part 281, Subpart A, the State of West Virginia was granted final authorization to administer its state underground storage tank management program *in lieu* of the Federal underground storage tank management program established under Subtitle I of RCRA, 42 U.S.C. §§ 6991-6991m. The provisions of the West Virginia underground storage tank management

program, through this final authorization, have become requirements of Subtitle I of RCRA and are, accordingly, enforceable by EPA pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e. The provisions of West Virginia's authorized underground storage tank program regulations ("WVUSTR") are set forth in Title 33, Legislative Rules, Division of Environmental Protection, Office of Waste Management, Series 30, Underground Storage Tanks, Regulations Sections 33-30-1. *et seq.* The WVUSTR incorporate by reference the federal underground storage tank program regulations set forth at 40 C.F.R. Part 280 (1995) with certain modifications not relevant here. EPA has given the State of West Virginia prior notice of the issuance of this CA/FO in accordance with Section 9006(a)(2) of RCRA, 42 U.S.C. § 6991e(a)(2), in a letter dated May 13, 2005.

General Provisions

1. This Consent Agreement is entered into by Complainant and Respondent to resolve Complainant's claims for civil penalties based upon the violations alleged in the Findings of Fact, as set forth below.
2. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CA/FO.
3. Except as provided in Paragraph 2, above, Respondent neither admits nor denies the Findings of Fact and Conclusions of Law contained in this CA/FO.
4. The settlement agreed to by the parties in the CA/FO reflects the desire of the parties to resolve this matter without litigation.
5. Each party shall bear its own costs and attorney's fees in connection with this proceeding.
6. Respondent agrees not to contest EPA's jurisdiction with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of this CA/FO.
7. For purposes of this proceeding only, Respondent hereby expressly waives its right to contest any issue of law or fact set forth in this Consent Agreement and any right to appeal the accompanying Final Order.
8. Respondent consents to the issuance of this Consent Agreement and the attached Final Order and agrees to comply with their terms and conditions.
9. This Consent Agreement and the attached Final Order resolve whatever liability for civil penalties Respondent may have for the violations alleged in this Consent Agreement. Nothing herein shall be construed to limit the authority of the Complainant to undertake action against any person, including the Respondent, in response to any condition which Complainant determines may present an imminent and substantial endangerment to the

public health, public welfare or the environment, nor shall anything in this Consent Agreement and the attached Final Order be construed to limit the United States' authority to pursue criminal sanctions against any person or entity.

10. Complainant reserves any rights and remedies available to it to enforce the provisions of this CA/FO under RCRA and regulations promulgated thereunder, and any other federal laws or regulations for which Complainant has jurisdiction, following the entry of this CA/FO.
11. Nothing in this CA/FO shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations.
12. Respondent is aware that the submission of false or misleading information to the United States government may subject it to separate civil and/or criminal liability. Complainant reserves the right to seek and obtain appropriate relief if Complainant obtains evidence that the information provided and/or representations made by Respondent to Complainant regarding the matters at issue in this Consent Agreement are false or, in any material respect, inaccurate.
13. In accordance with Section 9006(a)(2) of RCRA, 42 U.S.C. § 6991e(a)(2), EPA has notified the West Virginia Department of Environmental Protection of EPA's intent to commence this civil action in response to the violations alleged herein.

Findings of Fact and Conclusions of Law

14. Respondent, the Berkeley County Board of Education ("BCBE" or "Respondent"), is a "person" as defined in 40 C.F.R. § 280.12, as incorporated by reference into WVUSTR § 33-30-2.1 and RCRA § 9001, 42 U.S.C. § 6991.
15. Respondent is and, at all times relevant to the violations alleged in this CA/FO, was the "owner" and "operator" of four "underground storage tanks" ("USTs") and associated connected underground piping and ancillary equipment, as defined in 40 C.F.R. § 280.12, as incorporated by reference into WVUSTR § 33-30-2.1, and RCRA § 9001, 42 U.S.C. § 6991, at Respondent's facility located at 2050 Grade Road in Martinsburg, West Virginia ("the Facility").
16. On February 8, 2006 EPA conducted a Compliance Evaluation Inspection ("CEI") at the Facility and initiated a review of other pertinent information acquired during the investigation of the Facility.
17. The four USTs referenced above (collectively the "Facility USTs") and the connected piping and ancillary equipment are each an "underground storage tank system" ("UST system") as defined in 40 C.F.R. § 280.12, as incorporated by reference into WVUSTR § 33-30-2.1 and RCRA § 9001, 42 U.S.C. § 6991. The four USTs systems are referred to

collectively as the "Facility USTs Systems."

18. The four USTs Systems were installed in 1989 and therefore are "new tank systems" as defined in 40 C.F.R. § 280.12, as incorporated by reference into WVUSTR § 33-30-2.1, and RCRA § 9001, 42 U.S.C. § 6991.
19. From at least 1989 through at least the date of this CA/FO, one of the four Facility USTs Systems was used to store and dispense gasoline, which is a "regulated substance" as defined in 40 C.F.R. § 280.12, as incorporated by reference into WVUSTR § 33-30-2.1, and RCRA § 9001, 42 U.S.C. § 6991.
20. From at least 1989 through at least the date of this CA/FO, two of the four Facility USTs Systems were used to store and dispense diesel fuel, which is a "regulated substance" as defined in 40 C.F.R. § 280.12, as incorporated by reference into WVUSTR § 33-30-2.1, and RCRA § 9001, 42 U.S.C. § 6991.
21. From at least 1989 through at least the date of this CA/FO, one of the four Facility USTs Systems was used to store and dispense oil, which is a "regulated substance" as defined in 40 C.F.R. § 280.12, as incorporated by reference into WVUSTR § 33-30-2.1, and RCRA § 9001, 42 U.S.C. § 6991.
22. The four Facility USTs Systems are, and at all times relevant to the violations alleged in herein, were "Petroleum UST Systems," as that term is defined in 40 C.F.R. § 280.12, as incorporated by reference into WVUSTR § 33-30-2.1, and routinely contained regulated substances.

COUNT I
(Maintaining Corrosion Protection)

23. Paragraphs 1-22 of this Consent Agreement are incorporated by reference as though fully set forth herein.
 24. Pursuant to 40 C.F.R. § 280.31(a), as incorporated by reference into WVUSTR § 33-30-2.1, all owners and operators of steel UST systems with corrosion protection must ensure that the corrosion protection systems for such UST systems are operated and maintained to continuously provide corrosion protection to the metal components of that portion of the tank and piping that routinely contain regulated substances and are in contact with the ground.
 25. From at least February 8, 2006 to March 1, 2007 Respondent failed to ensure that the corrosion protection systems for two of its UST systems were operated and maintained in order to continuously provide corrosion protection to the metal components of those portions of the tank and piping that routinely contain regulated substances and were in contact with the ground.
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26. Respondent violated 40 C.F.R. § 280.31(a), as incorporated by reference into WVUSTR § 33-30-2.1, by failing to ensure that the corrosion protection systems for two of its UST systems were operated and maintained in order to continuously provide corrosion protection to the metal components of those portions of the tank and piping that routinely contain regulated substances and were in contact with the ground.

COUNT II
(Corrosion Protection Inspection)

27. Paragraphs 1-26 of this Consent Agreement are incorporated by reference as though fully set forth herein.
28. Pursuant to 40 C.F.R. § 280.31(b)(1), as incorporated by reference into WVUSTR § 33-30-2.1, all UST systems equipped with cathodic protection systems must be inspected for proper operation by a qualified cathodic protection tester within 6 months of installation and at least every three years thereafter.
29. Between November 30, 2002 and December 18, 2006, Respondent failed on two occasions to have its four Facility UST systems, all of which were equipped with cathodic protection systems, inspected for proper operation by a qualified cathodic protection tester at least once every three years as required by 40 C.F.R. § 280.31(b)(1), as incorporated by reference into WVUSTR § 33-30-2.1.
30. Respondent violated 40 C.F.R. § 280.31(b)(1), as incorporated by reference into WVUSTR § 33-30-2.1, by failing on two occasions to have its four Facility UST systems, equipped with cathodic protection systems, inspected by a qualified cathodic protection tester at least once every three years.

COUNT III
(Annual Line Leak Detector Testing)

31. Paragraphs 1-30 of this Consent Agreement are incorporated by reference as though fully set forth herein.
32. At all times relevant to the violations alleged in this Count, the piping for the four Facility UST systems routinely contained regulated substances and conveyed such regulated substances under pressure.
33. Pursuant to 40 C.F.R. § 280.41(b)(1)(i), as incorporated by reference into WVUSTR § 33-30-2.1, owners and operators of petroleum UST systems must provide release detection monitoring for underground piping that routinely contains regulated substances and conveys such under pressure by, among other methods, equipping such piping with

an automatic line leak detector conducted in accordance with §280.44(a).

34. Pursuant to 40 C.F.R. § 280.44(a), as incorporated by reference into WVUSTR § 33-30-2.1, an annual test of the operation of the leak detectors for two of the Facility USTs was required to be conducted in accordance with the manufacturer's requirements.
35. From at least November 30, 2002 to February 8, 2006 Respondent failed to perform the required annual testing of the line leak detectors for two of its four Facility UST systems as required by 40 C.F.R. § 280.41(b)(1)(i) and .44(a), as incorporated by reference into WVUSTR § 33-30-2.1.
36. From at least September 30, 2002 to February 8, 2006 Respondent violated WVUSTR § 33-30-2.1, which incorporates by reference 40 C.F.R. §280.41(b)(1)(i) and .44(a) by failing to conduct annual testing of the line leak detectors for two of Respondent's four Facility UST systems.

COUNT IV
(Annual Line Leak Tightness Testing)

37. Paragraphs 1-36 of this Consent Agreement are incorporated by reference as though fully set forth herein.
38. Pursuant to 40 C.F.R. § 280.41(b)(1)(ii), as incorporated by reference into WVUSTR § 33-30-2.1, owners and operators of petroleum UST systems must provide release detection monitoring for tanks and piping. Underground piping that routinely contains regulated substances and conveys regulated substances under pressure must, among other things, have an annual line tightness test conducted in accordance with 40 C.F.R. § 280.44(b), or have monthly monitoring conducted in accordance with 40 C.F.R. § 280.41(b)(1)(ii) and 40 C.F.R. § 280.44(b) or (c).
39. From at least November 30, 2002 to June 15, 2006 Respondent failed to perform annual line tightness testing or have monthly monitoring for two of its four Facility UST systems as required by 40 C.F.R. § 280.41(b)(1)(ii) and .44(b) or (c), as incorporated by reference into WVUSTR § 33-30-2.1.
40. Respondent violated WVUSTR § 33-30-2.1, which incorporates by reference 40 C.F.R. § 280.41(b)(1)(ii) and 40 C.F.R. § 280.44(b) and (c), by failing to perform annual line tightness testing or have monthly monitoring for two of its four Facility UST systems.

COUNT V
(Financial Assurance)

41. Paragraphs 1-40 of this Consent Agreement are incorporated by reference as though fully

set forth herein.

1. Pursuant to 40 C.F.R. § 280.93(a), as incorporated by reference into WVUSTR § 33-30-2.1, owners or operators of petroleum USTs must demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of such USTs.
2. From at least November 30, 2002 to December 6, 2006 Respondent was unable to demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of two of Respondent's four Facility USTs as required by 40 C.F.R. § 280.93(a), as incorporated by reference into WVUSTR § 33-30-2.1.
3. Respondent violated WVUSTR § 33-30-2.1, which incorporates by reference 40 C.F.R. § 280.93(a), by failing to demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of two of Respondent's four Facility USTs.

Civil Penalty

45. Respondent agrees to pay a civil penalty in the amount of Thirty Nine Thousand and Forty Two Dollars (**\$39,042.00**), which Respondent agrees to pay in accordance with the terms set forth below. Such civil penalty amount shall become due and payable immediately upon Respondent's receipt of a true and correct copy of this CA/FO fully executed by all parties. In order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with such civil penalty as described in this CA/FO, Respondent must pay the civil penalty no later than thirty (30) calendar days after the date on which a copy of this CA/FO is mailed or hand-delivered to Respondent.
46. The civil penalty amount agreed to herein was determined after consideration of the statutory factors set forth in Section 9006(c) of RCRA, 42 U.S.C. § 6991e(c), which include the seriousness of the violation and any good faith efforts to comply with the applicable requirements, as well as EPA's Penalty Guidance for Violations of UST Regulations (1990), the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. Part 19, and the Modifications to EPA's Penalty Policies to Implement the Civil Monetary Penalty Inflation Adjustment Rule (Pursuant to the Debt Collection Improvement Act of 1996 (Effective October 1, 2004)), dated September 21, 2004.
47. Payment of the civil penalty amount required under the terms of Paragraph 45, above, shall be made via one of the following methods:
 - a. Via U.S. Postal Service regular mail of a certified or cashier's check, made payable to the "United States Treasury", sent to the following address:

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

- b. Via Private Commercial Overnight Delivery of a certified or cashier's check, made payable to the "United States Treasury", sent to the following address:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

Contact: Natalie Pearson
314-418-4087;

- c. Via electronic funds transfer ("EFT") in one of the following manners, to the specified account:

Wire Transfers shall be made 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");

Automated Clearing House (ACH) Transfers shall be made to:
Automated Clearinghouse (ACH) for receiving U.S. currency
PNC Bank
808 17th Street, NW
Washington, D.C. 20074

ABA = 05136706
Transaction Code 22 - checking

Contact: Jesse White
(301) 887-6548).

48. All payments by Respondent shall reference its names and addresses and the Docket Number of this action (Docket No. RCRA-03-2008-0154);
49. At the same time of payment, Respondent shall send a notice of such payment, including a copy of the check or EFT authorization, as applicable, to:

Ms. Lydia Guy
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region III (Mail Code 3RC00)
1650 Arch Street
Philadelphia, PA 19103-2029

and to

Rodney Travis Carter
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency
Region III (Mail Code 3RC30)
1650 Arch Street
Philadelphia, PA 19103-2029

50. 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.
51. In accordance with 40 C.F.R. § 13.11(a), interest on any civil penalty assessed in a Consent Agreement and Final Order begins to accrue on the date that a copy of the Consent Agreement and Final Order 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).
52. 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.
53. 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).

54. Respondent agrees not to deduct for federal tax purposes the civil monetary penalty specified in this CA/FO.

Certifications

55. As to the relevant provisions of RCRA and the WVUSTR allegedly violated as set forth in the Findings of Fact and Conclusions of Law, above, Respondent certifies to EPA that, upon investigation, to the best of Respondent's knowledge and belief, Respondent is currently in compliance with all such relevant provisions and regulations.

Other Applicable Laws

56. Nothing in this CA/FO shall relieve Respondent of any duties otherwise imposed upon it by any applicable federal, state or local law and/or regulation.

Full and Final Satisfaction

57. Payment of the penalty specified in Paragraph 45, above, shall constitute full and final satisfaction of all civil claims for penalties which Complainant may have under Section 9006 of RCRA, 42 U.S.C. § 6991e, for the specific violations alleged in this Consent Agreement, above. Compliance with this Consent Agreement shall not be a defense to any action commenced at any time for any other violation of the federal laws and regulations administered by EPA.

Parties Bound

58. This Consent Agreement and the accompanying Final Order shall apply to and be binding upon the EPA, Respondent, Respondent's officers and directors (in their official capacity) and Respondent's successors and assigns. By his/her signature below, the person signing this Consent Agreement on behalf of Respondent acknowledges that he or she is fully authorized to enter into this Consent Agreement and to bind the Respondent to the terms and conditions of this Consent Agreement and the accompanying Final Order.

Entire Agreement

59. This Consent Agreement constitutes 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 herein.

Effective Date

60. The effective date of this CA/FO is the date on which the Final Order is filed with the Regional Hearing Clerk after signature by the Regional Administrator of EPA Region III, or his designee, the Regional Judicial Officer.

FOR RESPONDENT:

1/14/08
Date

By: 
**Dr. William Queen, President
Berkeley County Board of Education**


FOR COMPLAINANT:

Date: 3/4/08

By: 
**Rodney T. Carter
Senior Assistant Regional Counsel**

After reviewing the Findings of Fact, Conclusions of Law and other pertinent matters, I recommend that the Regional Administrator or the Regional Judicial Officer issue the attached Final Order.

Date: 3/7/2008

By: 
**Abraham Ferdas, Director
Waste and Chemicals Management
Division**

Entire Agreement


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Effective Date

60. The effective date of this CA/FO is the date on which the Final Order is filed with the Regional Hearing Clerk after signature by the Regional Administrator of EPA Region III, or his designee, the Regional Judicial Officer.

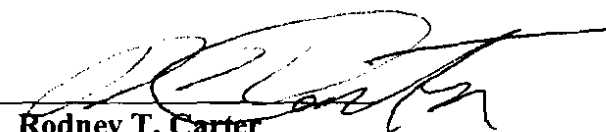
FOR RESPONDENT:

1/14/08
Date

By: 
Manny P. Arvon, Superintendent
Berkeley County Board of Education


FOR COMPLAINANT:

Date: 2/20/08

By: 
Rodney T. Carter
Senior Assistant Regional Counsel

After reviewing the Findings of Fact, Conclusions of Law and other pertinent matters, I recommend that the Regional Administrator or the Regional Judicial Officer issue the attached Final Order.

Date: 3/17/2008

By: 
Abraham Ferdas, Director
Waste and Chemicals Management Division

**BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III**

In the Matter of:

Berkeley County Board of Education	:	FINAL ORDER
728 South Ralceigh Street	:	
Berkeley, West Virginia 25401	:	Docket No. RCRA-03-2008-0154
	:	
Respondent	:	
	:	
	:	
	:	
Berkeley County School Board Bus Garage	:	
2050 Grade Road	:	Proceeding under Section 9006 of
Martinsburg, West Virginia	:	the Resource Conservation and
	:	Recovery Act, 42 U.S.C. § 6991e
Facility	:	

FINAL ORDER

Complainant, the Director, Waste and Chemicals Management Division, U.S. Environmental Protection Agency - Region III, and Respondent, Berkeley County Board of Education 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, 40 C.F.R. Part 22 ("Consolidated Rules of Practice"). 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.

NOW, THEREFORE, PURSUANT TO Section 9006 of the Resource Conservation and Recovery Act of 1976, as amended by, *inter alia*, the Hazardous and Solid Waste Amendments of 1984 (collectively referred to hereinafter as "RCRA"), 42 U.S.C. § 6991e, and the Consolidated Rules of Practice, and based on the representations in the Consent Agreement that the penalty agreed to in the Consent Agreement is based on a consideration of the factors set forth in Section 9006(c) of RCRA, 42 U.S.C. § 6991e(c), IT IS HEREBY ORDERED that Respondent pay a penalty of Thirty Nine Thousand and Forty Two Dollars (**\$39,042.00**) and comply with the terms and conditions of the Consent Agreement.

The effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk after signature by the Regional Administrator or the Regional Judicial Officer.

Date: 3/14/08

A handwritten signature in cursive script, reading "Renée Sarajian", written over a horizontal line.

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