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

In the Matter of:	)	
	)	
<b>D.C. Materials, Inc.</b>	)	
6860 Commercial Drive	)	U.S. EPA Docket Number
Springfield VA 22151	)	RCRA-03-2009-0258
	)	
RESPONDENT,	)	Proceeding Under Section 9006 of the
	)	Resource Conservation and Recovery Act,
	)	as amended, 42 U.S.C. Section 6991e
<b>25 Potomac Avenue SE</b>	)	
Washington, DC 20003	)	<b>CONSENT AGREEMENT</b>
	)	
FACILITY.	)	

**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 **D.C. Materials Inc.** ("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 25 Potomac Avenue SE, in 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

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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.*

### **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 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/or 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 Consent Agreement 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©.
  14. At all times relevant to this CAFO, Respondent has been a District of Columbia 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 an "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 25 Potomac Avenue, SE., Washington, D.C. 20003 (the "Facility").
  17. On June 27, 2008, 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 June 27, 2008 CEI, and at all times relevant to the applicable violations alleged herein, a twelve thousand (12,000) gallon steel and fiberglass reinforced plastic tank that was installed in or about 1985 and that, at all times relevant hereto, routinely contained and was used to store diesel fuel, 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.
  19. At all times relevant to the applicable violations alleged herein, the UST has been a "petroleum UST system" and an "existing tank system" as these terms are defined in 20 DCMR § 6899.1.
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20. The UST was, at all times relevant to the violations 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 has not been “empty” as that term is defined at 20 DCMR § 6100.7.

**COUNT 1**

(Failure to Perform Release Detection)

21. The allegations of Paragraphs 1 through 20 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, with exceptions not pertinent here, petroleum USTs and petroleum UST systems must be monitored at least every 30 days for releases using one of the methods listed in 20 DCMR §§ 6008 through 6012.
24. During the months of December 2004, January 2005, December 2005, January 2006, February 2006, November 2006, December 2006, January 2007, February 2007, November 2007, December 2007, January 2008 and February 2008, for a total of 392 days, Respondent’s UST located at the Facility was not monitored in compliance with any of the applicable methods set forth in 20 DCMR § 6003.1 through 6003.5 and/or 20 DCMR §§ 6008 through 6012.
25. Respondent’s acts and/or omissions as alleged in Paragraphs 24, above, constitute violations by Respondent of 20 DCMR §§ 6000.1 and 6003.

**COUNT 2**

(Failure to Comply with Record Keeping Requirements)

26. The allegations of Paragraphs 1 through 25 are incorporated herein by reference.
27. 20 DCMR §§ 5602.4 provides that each owner or operator shall maintain recent records of compliance with the release detection requirements of 20 DCMR § 6001.
28. 20 DCMR § 6001.3 and .4 provide that the results of any sampling, testing, or monitoring shall be maintained for 3 years, except the results for tank tightness testing conducted in accordance with 20 DCMR § 6007 shall be retained until the next test of the UST system is conducted.
29. Respondent performed release detection for its UST pursuant to 20 DCMR §§ 6003.1 through 6003.5 for the following months: September 2005, October 2005, November

2005, March 2006, April 2006, May 2006, June 2006, July 2006, August 2006, September 2006, October 2006, November 2006, April 2007, May 2007 and June 2007..

30. Respondent did not maintain records regarding compliance with the release detection requirements of 20 DCMR §6001, above as required by 20 DCMR §§ 5602.4 for the following months: September 2005, October 2005, November 2005, March 2006, April 2006, May 2006, June 2006, July 2006, August 2006, September 2006, October 2006, November 2006, April 2007, May 2007 and June 2007.
31. Respondent's act and/or omission as alleged in Paragraph 30, above constitutes violations by Respondent of 20 DCMR § 5602.4 and 20 DCMR § 6001.

### CIVIL PENALTY

32. 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 four thousand six hundred forty two dollars (\$4,642.00). The civil penalty amount is due and payable immediately upon Respondent's receipt of a true and correct copy of this CAFO. If Respondent pays the entire civil penalty of four thousand six hundred forty two dollars (\$4,642.00) 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).
  33. 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.
  34. 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).
  35. 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.
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36. 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©. 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).
37. 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.
38. Respondents shall pay the amount described in Paragraph 32, above, by sending a certified or cashier's check payable to the "United States Treasury," as follows:
- a. All payments by Respondents shall reference each Respondent's name and address, and the Docket Number of this action, *i.e.*, RCRA-03-2009-0258;
  - 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. Environmental Protection Agency—Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

Contact: Natalie Pearson, 314-418-4087
  - d. All payments made by check and sent by overnight delivery service shall be addressed and mailed to:
 

U.S. Environmental Protection Agency—Fines and Penalties  
U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101

Contact: Natalie Pearson, 314-418-4087
  - e. 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 Fedwire message should read "D 68010727 Environmental Protection Agency"

- f. 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  
Account No.: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22 - Checking

Physical location of U.S. Treasury facility:  
5700 Rivertech Court  
Riverdale, MD 20737  
Contact: Jesse White 301-887-6548 or REX, 1-866-234-5681

- g. On-Line Payment Option:

WWW.PAY.GOV

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

- h. The customer service phone numbers for the above payment centers are:

212-720-5000 (wire transfers, Federal Reserve Bank of New York)  
800-762-4224 (ACH/Wire Info, PNC Bank)

Additional payment guidance is available at:

[http://www.epa.gov/ocfo/finservices/make\\_a\\_payment\\_.htm](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

Rodney T. Carter  
Senior Assistant Regional Counsel  
U.S. Environmental Protection Agency - Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029.

**FULL AND FINAL SATISFACTION**

39. 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**

40. 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© 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**

41. 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**

42. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Agreement and bind Respondent hereto.
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**ENTIRE AGREEMENT**

43. This Consent Agreement and the attached Final Order 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 Consent Agreement and the attached Final Order.

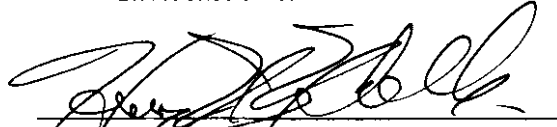
**EFFECTIVE DATE**

44. This CAFO shall become effective upon filing with the Regional Hearing Clerk.

For Respondent:

**D.C. Materials Inc.**


9/23/2009  
Date

  
by: Henry W. Nehilla, President

For Complainant:

**U.S. Environmental Protection Agency,  
Region III**

9/25/2009  
Date

  
Rodney T. Carter  
Senior Assistant Regional Counsel

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.

9/29/09  
Date

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

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

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OFFICE OF THE REGIONAL ADMINISTRATOR

In the Matter of:	)	
	)	
<b>D.C. Materials, Inc.</b>	)	
6860 Commercial Drive	)	<b>U.S. EPA Docket Number</b>
Springfield VA 22151	)	<b>RCRA-03-2009-0258</b>
	)	
RESPONDENT,	)	<b>Proceeding Under Section 9006(a) of</b>
	)	<b>the Resource Conservation and</b>
	)	<b>Recovery Act, as amended, 42 U.S.C.</b>
<b>25 Potomac Avenue SE</b>	)	<b>§ 6991e(a).</b>
Washington, DC 20003	)	
	)	<b>FINAL ORDER</b>
	)	
FACILITY.	)	
	)	

**FINAL ORDER**

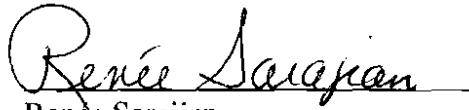
Complainant, the Director,, Land and Chemicals Division U.S. Environmental Protection Agency - Region III, and Respondent, **D.C. Materials Inc.**, have executed a document entitled "Consent Agreement" which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice 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. 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) of RCRA, 42 U.S.C. § 6991e(c), **IT IS HEREBY ORDERED** that Respondent pay a civil penalty of **four thousand six hundred and forty two dollars (\$4,642.00)** in accordance with the payment provisions set forth in the attached Consent Agreement and comply with the 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: 9/30/09

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

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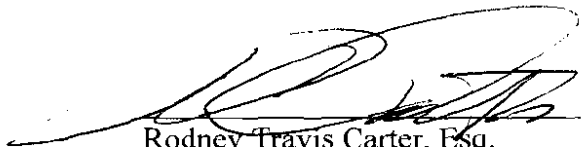
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**CERTIFICATE OF SERVICE**

I certify that on September 30, 2009 I caused to be sent, by Overnight Delivery Service, a copy of the Consent Agreement and Final Order, U.S. EPA Docket Number RCRA-03-2009-0258, to the persons and addresses listed below. The original Consent Agreement and Final Order were hand-delivered to the Regional Hearing Clerk, U.S. EPA Region III.

Mr. Henry W. Nehilla, President  
D.C. Materials, Inc.  
6860 Commercial Drive  
Springfield VA 22151

Dated: **September 30, 2009**



Rodney Travis Carter, Esq.  
Senior Assistant Regional Counsel  
Office of Regional Counsel  
EPA, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

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