

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

In Re: :
: **Docket No. RCRA-03-2015-0221**
United States Air Force :
Army and Air Force Exchange Service :
: **CONSENT AGREEMENT**
RESPONDENTS :
: Proceeding under 9006 and 9007 of
Joint Base Langley-Eustis : the Resource Conservation and Recovery
37 Sweeney Boulevard : Act, *as amended*, 42 U.S.C. §§ 6991e
Joint Base Langley-Eustis, : and 6991f
Virginia 23665 :
:
FACILITY :

CONSENT AGREEMENT

This Consent Agreement ("CA") is entered into by the Director, Land and Chemicals Division, U.S. Environmental Protection Agency, Region III ("Complainant") and the United States Air Force ("USAF") and the Army and Air Force Exchange Service ("AAFES") (collectively referred to as "Respondents") pursuant to Sections 9006 and 9007 of the Resource Conservation and Recovery Act ("RCRA"), as amended, 42 U.S.C. §§ 6991e and 6991f, 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 at Respondent's facility located at 27 Sweeney Boulevard, Joint Base Langley-Eustis, Virginia (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 underground storage tank management program established under Subtitle I of RCRA, 42 U.S.C. §§ 6991-6991m. The provisions of the Virginia UST management program, through these final authorizations, 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. 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.*

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GENERAL PROVISIONS

1. For purposes of this proceeding only, Respondents admit to the jurisdictional allegations set forth in this CAFO.
2. Respondents neither admit nor deny the specific factual allegations, the alleged violations, and conclusions of law set forth in this CAFO, except as provided in Paragraph 1, above.
3. Respondents agree not to contest EPA's jurisdiction with respect to the execution of this Consent Agreement ("CA"), the issuance of the attached Final Order ("FO"), or the enforcement thereof.
4. For the purposes of this proceeding only, Respondents hereby expressly waive their right to a hearing on any issue of law or fact set forth in this CA and any right to appeal the accompanying FO, and any right to confer with the Administrator pursuant to Section 6001(b)(2) of RCRA, 42 U.S.C. § 6961(b)(2).
5. Respondents consent to the issuance of this CAFO, and agree to comply with its terms and conditions set forth therein. The settlement agreed to by the parties in this CAFO reflects the desire of the parties to resolve this matter without litigation. This CAFO resolves whatever liability for civil penalties Respondents may have for the violations alleged in the Factual Allegations and Conclusions of Law.
6. Respondents shall bear their own costs and attorney's fees.
7. The provisions of this CAFO shall be binding upon EPA, Respondents, and Respondents' officers, directors, employees, successors and assigns.
8. This CAFO shall not relieve Respondents of their 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.
9. 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 Respondents to EPA regarding matters at issue in the CAFO are false or, in any material respect, inaccurate. Respondents are aware that the submission of false or misleading information to the United States government may subject Respondents to separate civil and/or criminal liability. Respondents reserves all available rights and defenses it may have, consistent with the terms of this CAFO, to defend itself in any such action.
10. 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

11. 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).
12. Respondent U.S. Air Force is a department of the United States, and Respondent AAFES is a component of the Department of Defense, and a joint command of the Army and the Air Force. Each Respondent is a department, agency, or instrumentality of the executive branch of the United States federal government as referred to in Section 9007 of RCRA, 42 U.S.C. § 6991f, and is a "person" as defined in Section 9001(5) of RCRA, 42 U.S.C. § 6991(5), and VAC § 25-580-10.
13. At all times relevant to this CA/FO, the USAF has been the "owner" and AAFES has been the "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 "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.
14. On October 24, 2013, EPA performed a Compliance Evaluation Inspection ("CEI") at Facility. At the time of the CEI, and at all times relevant to the violations alleged herein, the following USTs were located at the Facility as described in the following subparagraphs:

Building 245

- (i) A twenty thousand (20,000) gallon double-walled fiberglass reinforced plastic tank that was installed in or about 2006, and that, at all times relevant hereto, routinely contained and was used to store gasoline fuel, a "regulated substance" as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and VAC § 25-580-10 (hereinafter "UST No. 1");
- (ii) A ten thousand (10,000) gallon double-walled fiberglass reinforced plastic tank that was installed in or about 2006, and that, at all times relevant hereto, routinely contained and was used to store gasoline fuel, a "regulated substance" as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and VAC § 25-580-10(hereinafter "UST No. 2");
- (iii) A ten thousand (10,000) gallon double-walled fiberglass reinforced plastic tank that was installed in or about 2006, and that, at all times relevant hereto, routinely contained and was used to store gasoline fuel, a "regulated substance" as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and VAC § 25-580-10(hereinafter "UST No. 3");

Building 1796

- (iv) A twenty thousand (20,000) gallon double-walled fiberglass reinforced plastic tank that was installed in or about 2007, and that, at all times relevant hereto, routinely contained and was used to store gasoline fuel, a "regulated substance" as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and VAC § 25-580-10(hereinafter "UST No. 4"); and
- (v) A fifteen thousand (15,000) gallon double-walled fiberglass reinforced plastic tank that was installed in or about 2007, and that, at all times relevant hereto, routinely contained and was used to store gasoline fuel, a "regulated substance" as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and VAC § 25-580-10(hereinafter "UST No. 5").

15. At all times relevant to the violations alleged herein, USTs Nos. 1 through 5 have been "petroleum UST systems" and "new tank systems" as these terms are defined in 9 VAC § 25-580-10.

COUNT I

(Failure to test annually the line leak detectors for USTs No. 1 through 5)

- 16. The allegations of Paragraphs 1 through 15 of this CAFO are incorporated herein by reference.
- 17. 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.
- 18. 9 VAC § 25-580-140.2.a. provides, in pertinent part, that underground piping that conveys regulated substances under pressure shall:
 - (1) Be equipped with an automatic line leak detector conducted in accordance with subdivision 1 of 9 VAC § 25-580-170.; and
 - (2) Have an annual line tightness test conducted in accordance with subdivision 2 of 9 VAC § 25-580-170 or have monthly monitoring conducted in accordance with subdivision 3 of 9 VAC § 25-580-170.
- 19. 9 VAC § 25-580-170.1. provides, in pertinent part, that an annual test of the operation of the leak detector shall be conducted in accordance with the manufacturer's requirements.
- 20. Respondents conducted a testing of the automatic line leak detectors for the piping associated with USTs Nos. 1 through 5 on May 21, 2014.
- 21. From September 12, 2012 until May 20, 2014, the piping for USTs Nos. 1 through 5 was underground and routinely conveyed regulated substances under pressure.

22. Respondents failed to perform an annual test of the automatic line leak detectors for the underground piping for USTs Nos. 1 through 5 from September 12, 2012 until May 20, 2014.
23. Respondents' acts and/or omissions as alleged in Paragraph 22, above, constitute violations by Respondent of 9 VAC § 25-580-140.2.a. and 9 VAC § 25-580-170.1.

CIVIL PENALTY

24. 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 Thirty-Seven Thousand Five Hundred Eighty-Three Dollars (\$37,583.00).
25. 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 Respondents 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.
26. Respondents shall pay the civil penalty set forth in Paragraph 24, above, by sending either a cashier's check, certified check, or electronic wire transfer, in the following manner:
 - A. All payments by Respondent shall reference Respondent's name and address, and the Docket Number of this action, *i.e.*, RCRA-03-2015-0221;
 - 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 to:

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

Contact: Eric Volck 513-487-2105
 - D. All payments made by check and sent by overnight delivery service shall be addressed for delivery to:

U.S. Bank
Government Lockbox 979077
U.S. EPA, Fines & Penalties
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

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

Federal Reserve Bank of New York
ABA = 021030004
Account No. = 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

- G. 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

H. On-Line Payment Option:

WWW.PAY.GOV/PAYGOV

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

I. Additional payment guidance is available at:

http://www.epa.gov/ocfo/finservices/make_a_payment.htm

A copy of Respondents' check or a copy of Respondents' electronic transfer shall be sent simultaneously to:

Regional Hearing Clerk (3RC00)
EPA Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103 - 2029, and

Louis F. Ramalho
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency - Region III
1650 Arch Street
Philadelphia, PA 19103-2029.

27. In accordance with 40 C.F.R. § 13.3, any debt owed to EPA as a result of Respondents failure to timely pay the civil penalty set forth in Paragraph 24, above, shall be resolved by negotiation between EPA and Respondents or by referral to the General Accounting Office (since 2004, referred to as the Government Accountability Office (PL-188-271)).

FULL AND FINAL SATISFACTION

28. 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

29. EPA reserves the right to commence action against any person, including Respondents, 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. Respondents reserve all available rights and defenses it may have, consistent with the terms of this CAFO, to defend itself in any such action. This CAFO and any provision herein shall not be construed as an admission of liability in any criminal or civil action or other administrative proceeding, except in an action of proceeding to enforce or seek compliance with this CA and accompanying FO.
30. Failure to obtain adequate funds or appropriations from Congress does not release Respondents from their obligation to comply with RCRA, the applicable regulations thereunder, or with this CAFO.

OTHER APPLICABLE LAWS

31. Nothing in this CA shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341, or other applicable law.

CERTIFICATION

32. The person signing this CA on behalf of each Respondent certifies to EPA by his or her signature herein that such Respondent, as of the date of execution 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 9 VAC § 25-580-10 *et seq.* at the Facility referenced herein. This certification is based on the personal knowledge of the signer or based on an inquiry of the person or persons responsible for the Facility's compliance with Subtitle I of RCRA.

AUTHORITY TO BIND THE PARTIES

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

ENTIRE AGREEMENT

34. 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

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

For the Respondent:

United States Air Force

Date: SEP 3 2015

By: 
Caroline M. Miller, Colonel, USAF
Commander, 633 ABW

For the Respondent:

Army and Air Force Exchange

Date: _____

By: _____

For Complainant:

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

9/22/15
Date



Louis F. Ramalho
Senior Assistant Regional Counsel

For the Respondent:

Army and Air Force Exchange

Date: August 18, 2015

By: Antonio M. Porter
Antonio M. Porter
General Manager
Joint Base Langley-Eustis Exchange

The Land and Chemicals Division, United States Environmental Protection Agency - Region III, recommend that the Regional Administrator of the U.S. EPA Region III or the Regional Judicial Officer issue the accompanying Final Order.

Date: 9.23.15

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

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

In Re:

**United States Air Force
Army and Air Force Exchange Service**

Docket No. RCRA-03-2015-0221

RESPONDENTS

**Joint Base Langley-Eustis
37 Sweeney Boulevard
Joint Base Langley-Eustis,
Virginia 23665**

FINAL ORDER

Proceeding under 9006 and 9007 of
the Resource Conservation and Recovery
Act, *as amended*, 42 U.S.C. §§ 6991e
and 6991f

FACILITY

FINAL ORDER

Complainant, the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency - Region III, and Respondents, **United States Air Force, and Army and Air Force Exchange Service** (“Respondents”), have executed a document entitled “Consent Agreement” which I 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 40 C.F.R. §§ 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 representations of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon consideration of, *inter alia*, EPA’s U.S. Penalty Guidance for Violation of UST Regulations” dated November, 1990, and the statutory factors set forth in Section 9006(c) and (e) of RCRA, 42 U.S.C. § 6991e(c) and (e).

NOW, THEREFORE, PURSUANT TO Section 9006(a) of the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6991e(a), and Section 22.18(b)(3) of the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondents pay a civil penalty in the amount of **THIRTY SEVEN THOUSAND FIVE-HUNDRED EIGHTY-THREE DOLLARS (\$37,583.00)** in accordance with the payment provisions set forth in the Consent Agreement, and comply with the terms and conditions of the Consent Agreement.

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The effective date of the attached Consent Agreement and this Final Order is the date on which the Final Order is filed with the Regional Hearing Clerk.

Date: Sept. 29, 2015

BY: 

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

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the date listed below, the original of the foregoing Consent Agreement and Final Order, **Docket No. RCRA-03-2015-0221**, was filed with the Regional Hearing Clerk, U.S. EPA - Region III, 1650 Arch Street, Philadelphia, Pennsylvania, 19103-2029, and that a true and correct copy was sent by email transmission to the following party:

Major Troy C. Wallace
Associate General Counsel
General Law Branch
Office of the General Counsel
Army and Air Force Exchange Service
P (214) 312-3067
F (214) 465-2389
Email: wallacetr@aafes.com

Major David Feith
Regional Counsel (AFLOA/JACE-ER)
U.S. Air Force
1492 First Street, Bldg. 922 (Room 212)
Dobbins ARB, GA 30069
P (678) 655-9534
Email: david.feith@us.af.mil

Date

9/29/15



Louis F. Ramalho
Sr. Assistant Regional Counsel
U.S. EPA - Region III
1650 Arch Street
Philadelphia, PA 19103-2029