

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

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REGIONAL EARLY INTERMEDIATE PERMITS
EPA REGION III PHILADELPHIA PA

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In the Matter of:)	
)	
Town of Leesburg Fleet Maintenance)	Docket No.: RCRA-03-2015-0088
1393 Market Street)	
Leesburg, Virginia 20176)	Proceeding Under Section 9006 of the
)	Resource Conservation and Recovery
Facility,)	Act, as amended, 42 U.S.C. Section
)	6991e
Town of Leesburg)	
25 West Market Street)	CONSENT AGREEMENT
Leesburg, Virginia 20176)	
)	
Respondent.)	

CONSENT AGREEMENT

This Consent Agreement is entered into by the Director, Land and Chemicals Division, U.S. Environmental Protection Agency, Region III (“EPA” or “Complainant”) and the Town of Leesburg, Virginia (“Leesburg” or “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)).

I. PRELIMINARY STATEMENT AND STIPULATIONS

1. Effective October 28, 1998 pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c, and 40 C.F.R. Part 281, the Commonwealth of Virginia was granted final authorization to administer a state UST management program (“Virginia 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 Virginia UST Management Program as finally authorized are enforceable by EPA pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e. The Virginia UST Management Program regulations are set forth in the Virginia Administrative Code (“VAC”), Title 9, Agency 25, Chapter 580, Sections 10 *et seq.*, and will be cited hereinafter as 9 VAC § 25-580-10 *et seq.*
2. Section 9006(d)(2)(B) of RCRA, 42 U.S.C. § 6991e(d)(2)(B), authorizes EPA to assess a civil penalty against any owner or operator of an underground storage tank who fails to comply with any requirement or standard of a state underground storage tank program that has been approved by EPA pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c.
3. In accordance with 40 C.F.R. § 22.13(b) and .18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant hereby simultaneously commences and resolves, as part of the

settlement set forth herein, EPA's civil claims alleged in Section IV ("Findings of Fact and Conclusions of Law") of this Consent Agreement.

II. JURISDICTION

4. The U.S. Environmental Protection Agency 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.

III. GENERAL PROVISIONS

5. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth in this Consent Agreement and the attached Final Order, hereinafter collectively referred to as the "CAFO."
6. Except as provided in Paragraph 5 above, Respondent neither admits nor denies the specific factual allegations and conclusions of law set forth in this Consent Agreement.
7. 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 the CAFO.
8. 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 Consent Agreement and any right to appeal the accompanying Final Order.
9. Respondent consents to the issuance of this CAFO and agrees to comply with its terms and conditions.
10. Respondent shall bear its own costs and attorney's fees.
11. 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).

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

12. In accordance with 40 C.F.R. § 22.13(b) and .18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant alleges and adopts the Findings of Fact and Conclusions of Law set forth immediately below.
13. Respondent is a "person" as defined in Section 9001(5) of RCRA, 42 U.S.C. § 6991(5), and 9 VAC 25-580-10.
14. At all times relevant to this CAFO, Respondent has been the "operator" and/or "owner", of an "underground storage tank" ("UST") and "UST system," located at 1393 Market Street, Leesburg, Virginia 20176 ("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 9 VAC 25-580-10.

15. On July 31, 2012, an EPA representative conducted a Compliance Evaluation Inspection (“CEI”) at the Facility pursuant to Section 9005 of RCRA, 42 U.S.C. § 6991d.
16. At all times relevant to the applicable violations alleged herein, a 550 gallon steel “petroleum UST system” with connected underground piping (hereinafter “Tank 1”), that routinely contained a “regulated substance,” as those terms are defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and 9 VAC 25-280-10, was located at the Facility.
17. Pursuant to RCRA Section 9005, 42 U.S.C. § 6991d, EPA issued an Information Request letter to Respondent on September 30, 2013 concerning the petroleum UST systems at the Facility.

V. VIOLATIONS ALLEGED

COUNT 1

FAILURE TO MONITOR TANK 1 FOR RELEASES

18. Paragraphs 1 through 17 are incorporated by reference as if fully set forth herein.
19. At all times relevant to the applicable violations alleged herein, the petroleum UST system, Tank 1, described in Paragraph 16, above, was equipped with a “groundwater monitoring” system as its form of release detection as such system is described in 9 VAC 25-580-160(6).
20. Pursuant to 9 VAC 25-580-140, owners and operators of petroleum UST systems must monitor UST systems at least every thirty (30) days for releases using one of the methods listed in 9 VAC 25-580-160(4)–(8), except in certain circumstances not applicable here.
21. From December 11, 2010 to February 14, 2011; November 17, 2011 to December 4, 2011; January 4, 2012 to May 28, 2012; and August 24, 2012 to October 9, 2012, Respondent failed to monitor for releases using groundwater monitoring or any other form of release detection listed in 9 VAC 25-580-160(4)–(8).
22. Under 9 VAC 25-580-140, Respondent’s failure to monitor Tank 1 at least every thirty days (30) for releases using one of the methods listed in 9 VAC 25-580-160(4)–(8) constitutes a violation of Section 9006(d)(2)(B) of RCRA, 42 U.S.C. § 6991e(d)(2)(B).

COUNT 2

FAILURE TO PROVIDE CONTINUOUS CORROSION PROTECTION FOR TANK 1

23. Paragraphs 1 through 22 are incorporated by reference as if fully set forth herein.
24. Pursuant to 9 VAC 25-580-90(1), all steel UST systems equipped with cathodic protection systems must be 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 April 30, 2012 to December 4, 2012 Respondent failed to continuously provide corrosion protection to the metal components of that portion of Tank 1 and related piping that routinely contain regulated substances and are in contact with the ground.
26. Under 9 VAC 25-580-90(1), Respondent's failure to continuously provide corrosion protection to the metal components of that portion of Tank 1 and related piping that routinely contain regulated substances and are in contact with the ground constitutes a violation of 9006(d)(2)(B) of RCRA, 42 U.S.C. § 6991e(d)(2)(B).

VI. CIVIL PENALTY

27. In settlement of Complainant's claims for civil penalties for the violations alleged in this Consent Agreement, Respondent agrees to pay a civil penalty in the amount of **seven thousand six hundred and forty eight dollars (\$7648.00) plus applicable interest**, in accordance to the payment schedule in the following chart:

Payment	Due	Principal	Interest	Payment Amount
1	w/in 30 days	\$637.34	\$0.00	\$637.34
2	w/in 60 days	\$634.50	\$11.49	\$645.99
3	w/in 90 days	\$635.23	\$5.31	\$640.54
4	w/in 120 days	\$635.60	\$4.94	\$640.54
5	w/in 150 days	\$636.29	\$4.25	\$640.54
6	w/in 180 days	\$636.69	\$3.85	\$640.54
7	w/in 210 days	\$637.24	\$3.30	\$640.54
8	w/in 240 days	\$637.88	\$2.66	\$640.54
9	w/in 270 days	\$638.34	\$2.20	\$640.54
10	w/in 300 days	\$638.94	\$1.60	\$640.54
11	w/in 330 days	\$639.44	\$1.10	\$640.54
12	w/in 360 days	\$640.51	\$0.45	\$640.96
Total:		\$7,648.00	\$41.15	\$7,689.15

The first payment of the civil penalty is due and payable immediately upon Respondent's receipt of a true and correct copy of this CAFO. If Respondents pay the entire civil penalty of seven thousand six hundred and forty eight dollars (\$7648.00) within thirty (30) calendar days after Respondent's receipt of a true and correct copy of this CAFO, no interest will be assessed against Respondents pursuant to 40 C.F.R. § 13.11(a)(1).

28. Respondent consents to the issuance of this Consent Agreement and consents for the purposes of settlement to the payment of the civil penalty cited in paragraph 27.
29. 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 Respondents' violations and any good faith efforts by Respondents to comply with all applicable requirements as provided in Section 9006(c) of RCRA, 42 U.S.C. § 6991e(c),

and with EPA's Penalty Guidance for Violations of UST Regulations ("UST Guidance") dated November 4, 1990.

30. Payment of the civil penalty amount shall be made by either 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.*, TSCA-03-2015-0088;
 - 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
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Primary Contact: Craig Steffen, (513) 487-2091
Secondary Contact: Molly Williams, (513) 487-2076

- d. All payments made by check and sent by overnight delivery service shall be addressed and mailed to:

U.S. Environmental Protection Agency
Cincinnati Finance Center
P.O. Box 979077
1005 Convention Plaza 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

31. Respondent may also pay the civil penalty amount electronically or on-line as follows:
- a. All payments made by electronic wire transfer shall be directed to:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 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")

- b. 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 Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - Checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737

Contact: John Schmid, (202) 874-7026 or
Remittance Express (REX): 1-866-234-5681

- c. On-Line Payment Option:

WWW.PAY.GOV/PAYGOV

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

- d. Additional payment guidance is available at:

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:

Jennifer J. Nearhood
Assistant Regional Counsel
U.S. EPA, Region III (3RC50)
1650 Arch Street
Philadelphia, PA 19103-2029

and

Lydia Guy
Regional Hearing Clerk
U.S. EPA, Region III (3RC00)
1650 Arch Street
Philadelphia, PA 19103-2029

32. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest 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. Accordingly, Respondent's failure to make timely payment or to comply with the conditions in this Consent Agreement and the attached Final Order shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.
33. Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of this CAFO is received by Respondent. However, EPA will not seek to recover interest on any amount of the 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 account rate in accordance with 40 C.F.R. § 13.11(a).
34. The costs of the EPA's administrative handling of overdue debts will be charged and assessed monthly throughout the period the 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.
35. A late penalty payment of six percent (6%) per year will be assessed monthly on any portion of the 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 the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
36. Respondent agrees not to deduct for federal tax purposes the civil monetary penalty specified in this Consent Agreement and the accompanying Final Order.

VII. EFFECT OF SETTLEMENT

37. The settlement set forth in this CAFO shall constitute full and final satisfaction of all civil claims for penalties which Complainant may have under RCRA for the specific violations alleged in Section IV ("Findings of Fact and Conclusions of Law") above. Compliance with this CAFO 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.

VIII. OTHER APPLICABLE LAWS

38. Nothing in this CAFO shall relieve Respondent of the obligation to comply with all applicable federal, state, and local laws and regulations.

X. CERTIFICATION OF COMPLIANCE

39. Respondent certifies to EPA, upon personal investigation and to the best of its knowledge and belief, that it currently is complying with applicable provisions of Subtitle I of

RCRA, 42 U.S.C. §§ 6991-6991m, and corresponding Virginia UST Management Program regulations, set forth at 9 VAC 25-580-10 *et seq.* Respondent also certifies that it will change its form of release detection for Tank 1 at the Facility from groundwater monitoring to manual tank gauging within thirty (30) days of Respondent's receipt of this CAFO.

XI. RESERVATION OF RIGHTS

40. This Consent Agreement and the accompanying Final Order resolve only EPA's claims for civil monetary penalties for the specific violations alleged against the Respondent in the Complaint. 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, 40 C.F.R. § 22.18(c). Further, EPA reserves any rights and remedies available to it under Subtitle I of RCRA and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO following its filing with the EPA Regional Hearing Clerk.

XII. PARTIES BOUND

41. This Consent Agreement and the accompanying Final Order shall apply to and be binding upon the EPA, Respondent, and Respondent's successors, agents and assigns.

XIII. EFFECTIVE DATE

42. The effective date of this Consent Agreement and the accompanying Final Order (which is signed by the Regional Administrator of EPA Region III, or his designee, the Regional Judicial Officer), shall be the date the CAFO is filed with the EPA Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

XIV. ENTIRE AGREEMENT

43. This Consent Agreement and the accompanying Final Order constitute the entire agreement and understanding of the parties regarding settlement of all claims pertaining to the specific violations alleged herein and there are no representations, warranties, covenants, terms, or conditions agreed upon between the parties other than those expressed in this CAFO.

XV. EXECUTION

44. The person signing this Consent Agreement on behalf of Respondent acknowledges and certifies by her signature that she is fully authorized to enter into this Consent Agreement and to legally bind Respondent to the terms and conditions of this Consent Agreement and the accompanying Final Order.

For Respondent:

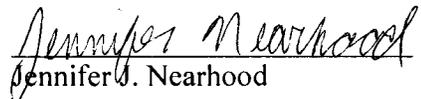
Date:



Kristen C. Umstatt
Town of Leesburg
Mayor

For Complainant:

Date: 3/10/15

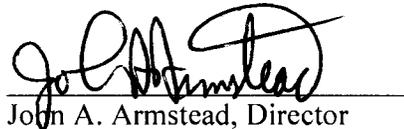


Jennifer J. Nearhood
US EPA, Region III
Assistant Regional Counsel

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.

Date: 3.10.15

By:



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

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1650 Arch Street
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Docket No.: RCRA-03-2015-0088
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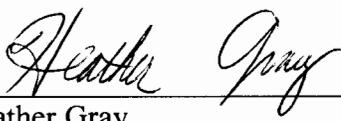
FINAL ORDER

Complainant, the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency - Region III, and the Respondent, Town of Leesburg ("Leesburg" or "Respondent"), 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 by reference.

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 ("RCRA"), 42 U.S.C. § 6991e(c), and based upon the representations of the parties set forth in the Consent Agreement that the civil penalty amount agreed to therein is 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 Respondents shall pay a civil penalty in the amount of seven thousand six hundred and forty eight dollars (\$7648.00) and any applicable interest in accordance with the payment provisions set forth in the attached Consent Agreement, and comply with each of the additional terms and conditions of the Consent Agreement.

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

Date: 3-16-15



Heather Gray
Regional Judicial Officer
U.S. EPA, Region III

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CERTIFICATE OF SERVICE

I certify that the foregoing CONSENT AGREEMENT AND FINAL ORDER in the above referenced matter was sent this day in the following manner to the below addressees.

Original and One Copy by Hand-Delivery:

Lydia Guy, Regional Hearing Clerk

Copy by UPS Overnight:

Barbara Notar, Town Attorney
 Town of Leesburg, Virginia
 25 W. Market St.
 Leesburg, VA 20176

3/16/2015
 Date

Jennifer J. Nearhood
 Jennifer J. Nearhood
 Assistant Regional Counsel
 U.S. EPA, Region III

