

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

| | | |
|---|---|--|
| In the Matter of: |) | |
| |) | Docket No.: RCRA-03-2015-0204 |
| Department of the Army |) | |
| |) | Proceeding Under Sections 9006 and |
| Department of Defense |) | 9007 of the Resource Conservation and |
| Washington Headquarters Services |) | Recovery Act, as amended, 42 U.S.C. |
| Pentagon |) | §§ 6991e and 6991f |
| |) | |
| Respondents |) | CONSENT AGREEMENT |
| |) | |
| |) | |
| Pentagon Motor Pool |) | |
| 501 15th Street South |) | |
| Arlington, VA 22202 |) | |
| |) | |
| Facility |) | |
| |) | |

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 REGIONAL HEARING CLERK
 EPA REGION III PHILA. PA

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 Department of the Army (“Army”) and the Department of Defense, Washington Headquarters Services, Pentagon (“WHS”), 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 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)). The Army and WSH are collectively referred to as the “Respondents.”

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, EPA granted the Commonwealth of Virginia 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. Section 9007 of RCRA, 42 U.S.C. § 6991f, provides, *inter alia*, that each department, agency and instrumentality of the executive, legislative, and judicial branches of the Federal Government (1) having jurisdiction over any underground storage tank system, or (2) engaged in activity resulting, or which may result, in installation, operation, management, or closure of any underground storage tank, release response activities related thereto, or in the delivery, acceptance or deposit of any regulated substance to an underground storage tank or underground storage system shall be subject to, and comply with, all Federal, State, interstate, and local requirements, both substantive and procedural, respecting underground storage tanks in the same manner, and to the same extent, as any person is subject to such requirements.
4. 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

5. 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

6. For purposes of this proceeding, Respondents admit the jurisdictional allegations set forth in this Consent Agreement and the attached Final Order, hereinafter collectively referred to as the "CAFO."
7. Except as provided in Paragraph 6, above, Respondents neither admit nor deny the specific factual allegations and conclusions of law set forth in this Consent Agreement.
8. Respondents agree 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.
9. 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 Consent Agreement, any right to appeal the accompanying Final Order, and any right to confer with the Administrator.
10. Respondents consent to the issuance of this CAFO and agree to comply with its terms and conditions.
11. Respondents shall bear their own costs and attorney fees.
12. 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

13. 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.
14. Each respondent is a “person” as defined in Section 9001(5) of RCRA, 42 U.S.C. § 6991(5), and 9 VAC 25-580-10.
15. At all times relevant to this CAFO, the Army has been the “operator,” and WHS has functioned as the “owner” of two “underground storage tanks” (“UST”) and “UST systems,” at the Pentagon Motor Pool facility, located off of the Pentagon campus at 501 15th Street South, Arlington, VA 22202 (“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.
16. At all times relevant to the applicable violations alleged herein, there was one 20,000-gallon tank containing gasoline (“Tank 1”) and one 600-gallon tank containing used oil (“Tank 3”) located at the Facility. Tank 1 and Tank 3 are and were, at all relevant times, double-walled fiberglass-reinforced plastic “petroleum UST systems,” with connected underground piping, 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.
17. On October 9, 2014, representatives of EPA conducted a Compliance Evaluation Inspection (“CEI”) at the Facility, pursuant to Section 9005 of RCRA, 42 U.S.C. § 6991d.
18. Pursuant to RCRA Section 9005, 42 U.S.C. § 6991d, EPA issued an Information Request Letter (“IRL”) to WHS on December 18, 2014, concerning the petroleum UST systems at the Facility. WHS responded to the IRL on February 5, 18 and 19, 2015.

V. VIOLATIONS ALLEGED

COUNT 1

FAILURE TO CONDUCT TANK RELEASE DETECTION

19. Paragraphs 1 through 18 are incorporated by reference as if fully set forth herein.
20. 9 VAC § 25-580-130.A. and C. requires that 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.
21. 9 VAC § 25-580-140.1. provides, in pertinent part, that USTs shall be monitored at least every 30 days for releases using one of the methods listed in 9 VAC § 25-580-160.4. through .8, with exceptions not applicable here.

22. At all times relevant to the violations alleged herein, the petroleum UST systems described in Paragraph 16, above, were equipped with an automatic tank gauge system as their form of release detection, as described in 9 VAC 25-580-160.4.
23. When EPA representatives requested leak detection records, during the CEI and in the IRL, Respondents were unable to provide leak detection records for Tank 1 or Tank 3, for the period August 1, 2010 through February 13, 2015.
24. From August 1, 2010 through February 13, 2015, Respondents failed to monitor Tank 1 and Tank 3 for releases using an automatic tank gauge system or any other form of release detection listed in 9 VAC 25-580-160.4 through .8, as required by 9 VAC § 25-580-140.1.
25. Respondents violated 9 VAC § 25-580-140.1 by failing to conduct tank release detection every 30 days for Tanks #1 and #3, from August 1, 2010 through February 13, 2015.

COUNT 2

FAILURE TO CONDUCT TIMELY ANNUAL FUNCTIONALITY TESTING OF AUTOMATIC LINE LEAK DETECTOR

26. Paragraphs 1 through 25 are incorporated by reference as if fully set forth herein.
27. 9 VAC 25-580-140.2.a.(1) requires that owners and operators of petroleum UST systems with underground piping that routinely contains regulated substances under pressure must be equipped with an automatic line leak detector operated in accordance with VAC 25-580-170.1 through 9.
28. 9 VAC § 25-580-170.1 requires that owners and operators conduct an annual test of the operation of the automatic line leak detector in accordance with the manufacturer's requirements.
29. At all times relevant to the violations alleged herein, Tank #1 was equipped with a line leak detector regulated under 9 VAC § 25-580-170.1.
30. When EPA representatives requested line leak detector functionality test records, during the CEI and in the IRL, Respondents were unable to provide a line leak detector functionality test record for 2014.
31. Respondents violated 9 VAC § 25-580-170.1 by failing to conduct an annual functionality testing of the line leak detector for Tank #1 for the year 2014.

COUNT 3

FAILURE TO CONDUCT A SECONDARY METHOD OF PIPING RELEASE DETECTION

32. Paragraphs 1 through 31 are incorporated by reference as if fully set forth herein.

33. 9 VAC § 25-580-140.2.a.(1) requires that owners and operators of petroleum UST systems with underground piping that routinely contains regulated substances under pressure must monitor the underground piping for releases in a manner that meets specified requirements. For pressurized piping, the piping must have an annual line tightness test conducted in accordance with 9 VAC 25-580-170.2, or have monthly monitoring conducted in accordance with 9 VAC 25-580-170.3.
34. At all times relevant to the violations alleged herein, Tank #1 utilized pressurized piping.
35. When EPA representatives requested line tightness records, during the CEI and in the IRL, Respondents were unable to provide a line tightness record for 2014.
36. Furthermore, during the CEI, the sump sensor was in alarm, and was positioned above the manufacturer's recommended height of within 1" from the bottom of the sump. As a result, the sensor was set too high in the sump to properly detect releases from the underground piping. While the sump sensor could have served as a method of monthly monitoring conducted in accordance with 9 VAC 25-580-170.3, it was not functioning properly.
37. Respondents failed to conduct a secondary method of piping release detection from November 21, 2014 to February 13, 2015. They did not conduct a tightness test for the year 2014.
38. Respondents violated 9 VAC § 25-580-140.2.a.(1) by failing to conduct a secondary method of piping release detection from November 21, 2014 to February 13, 2015.

COUNT 4

FAILURE TO INVESTIGATE AN ALARM

39. Paragraphs 1 through 38 are incorporated by reference as if fully set forth herein.
40. 9 VAC 25-580-210 requires owners and operators of petroleum UST systems to immediately investigate and confirm all suspected releases of regulated substances requiring reporting under 9 VAC 25-580-190 within seven days.
41. During the CEI, several alarms were going off, including a Veeder Root alarm on the interstitial space of Tank #1.
42. Respondents did not investigate the Veeder Root alarm on Tank #1 from April 23, 2013 until February 2, 2015.
43. Respondents violated 9 VAC § 25-580-210 by failing to timely investigate an alarm on Tank #1, from April 23, 2013 until February 2, 2015.

VI. CIVIL PENALTY

44. In settlement of Complainant’s claims for civil penalties for the violations alleged in this CA, Respondents agree to pay a civil penalty in the amount of **THIRTY EIGHT THOUSAND DOLLARS (\$38,000.00)**. The civil penalty amount is due and payable no later than **THIRTY (30)** calendar days after the date on which this CAFO is mailed or hand-delivered to Respondent.
45. 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.
46. 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 Respondents shall reference each Respondent’s name and address, and the Docket Number of this action, *i.e.*, RCRA-03-2015-0204;
 - 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
Fines and Penalties
Cincinnati Finance Center
Government Lockbox 979077
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

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

Natalie L. Katz
Senior Assistant Regional Counsel
U.S. EPA, Region III (3RC30)
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

48. In accordance with 40 C.F.R. § 13.3, any debt owed to the EPA as a result of Respondents' failure to make timely payments in accordance with Paragraph 44 above, shall be resolved by negotiation between the EPA and Respondents or by referral to the Government Accountability Office.

VII. FULL AND FINAL SATISFACTION

49. 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.

VIII. OTHER APPLICABLE LAWS

50. Nothing in this CAFO shall relieve Respondent of the obligation to comply with all applicable federal, state, and local laws and regulations.
51. 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.

X. CERTIFICATION OF COMPLIANCE

52. Respondents certify to EPA, upon personal investigation and to the best of their knowledge and belief, that they are currently 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.*

XI. RESERVATION OF RIGHTS

53. 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.

XII. ANTIDEFICIENCY ACT

54. 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. Nothing in this CAFO shall be interpreted to require obligation or payment of funds in violation of the Antideficiency Act, 31 U.S.C. § 1341.

XIII. AUTHORITY TO BIND THE PARTIES

55. 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.

XIV. EFFECTIVE DATE

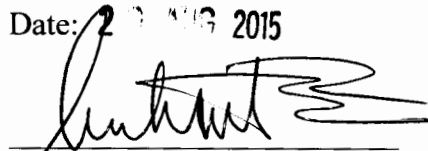
56. The effective date of this Consent Agreement and the accompanying Final Order (which is signed by the Regional Administrator of EPA Region III, or his designee, the Regional Judicial Officer), shall be the date the CAFO is filed with the EPA Regional Hearing Clerk pursuant to the Consolidated Rules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

XV. ENTIRE AGREEMENT

57. 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.

**For Respondent:
Department of the Army**

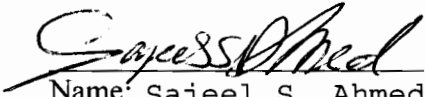
Date: 20 AUG 2015



Name: Michael E. Reheuser
Title: Executive Director
Army Headquarters Services
Office of the Administrative Assistant to
the Secretary of the Army

For Respondent:
Department of Defense, Washington Headquarters Services, Pentagon

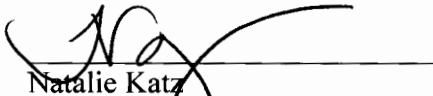
Date: August 20, 2015



Name: Sajeel S. Ahmed
Title: Director, Facilities, WHS

For Complainant:
Director, Land and Chemicals Division, U.S. Environmental Protection Agency, Region III:

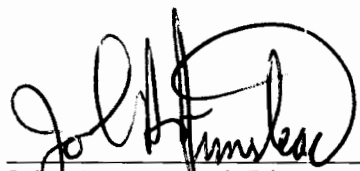
Date: August 26, 2015



Natalie Katz
Senior Assistant Regional Counsel
US EPA, Region III

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: 8.26.15

By: 
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, Pennsylvania 19103-2029**

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| In the Matter of: |) | |
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| Respondents |) | FINAL ORDER |
| |) | |
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| 501 15th Street South |) | |
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| Facility |) | |

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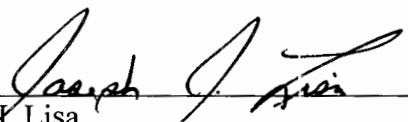
FINAL ORDER

Complainant, the Director, Land and Chemical Division, U.S. Environmental Protection Agency, Region III, and Respondents, Department of the Army and Department of Defense, Washington Headquarters Services Pentagon, 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. § 22.13(b) and 22.28(b)(2) and (3). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated herein as if 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 Penalty Guidance for Violations of UST Regulations ("UST Guidance") dated November 4, 1990, and the statutory factors set forth in Section 9006(c) of RCRA, 42 U.S.C. § 6991e(c).

NOW, THEREFORE, PURSUANT TO Section 3008(a) and (g) of the Resource Conservation and Recovery Act, 42 U.S.C. § 6928(a) and (g) ("RCRA"), and Section 22.18(b)(3) of the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty payment of **THIRTY EIGHT THOUSAND DOLLARS (\$38,000.00)**, in accordance with the payment provisions set forth in of the Consent Agreement, and comply with the terms and conditions of the Consent Agreement.

Date: Sept. 1, 2015



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

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

In the Matter of:)

Department of the Army)
Office of the Administrative Assistant)
to the Secretary of the Army)

Department of Defense)
Washington Headquarters Services)
Pentagon)

Respondents,)

Pentagon Motor Pool)
501 15th Street South)
Arlington, VA 22202)

Facility.

Docket No.: RCRA-03-2015-0204

**Proceeding Under Section 9006 of the
Resource Conservation and Recovery
Act, as amended, 42 U.S.C. § 6991c**

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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
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103

Copy by UPS Overnight:

Paul V. DeAgostino
Chief Attorney and Legal Services
Office of the Administrative Assistant to
the Secretary of the Army
Room 3E733
105 Army Pentagon
Washington, DC 20310-0105

John F. McCarthy
Chief Counsel
Facilities, Fiscal & Administrative Law
DOD Washington Headquarters Services and
Pentagon Force Protection Agency
1155 Defense Pentagon, Room 2E1035
Washington, DC 20301-1155

9/11/15
Date


Natalie L. Katz
Senior Assistant Regional Counsel
U.S. EPA, Region III