

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

In the Matter of:)
US Army - Fort Pickett)
Building 316, Fort Pickett)
Blackstone, VA 23824)

RESPONDENT,)

United States Army)
MTC-Fort Pickett)
VAFP-FE, Building T234,)
Blackstone, VA 23824)

FACILITY.)

Docket Number: RCRA-03-2017-017

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

2013 JUL 30 AM 9:35
REGIONAL HEARING CLERK
EPA REGION III, PHILA. PA

RECEIVED

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 US Army - Fort Pickett (“Respondent”), pursuant to Sections 9006 and 9007 of the Resource Conservation and Recovery Act (“RCRA”), as amended, 42 U.S.C. § 6991e and f, 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 located at MTC-Fort Pickett VAFP-FE, Building T234, Blackstone, VA 23824 (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 UST management program established under Subtitle I of RCRA, 42 U.S.C. §§ 6991-6991m. The provisions of the Commonwealth of Virginia’s UST management program, through this final authorization, are

enforceable by EPA pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e. The Commonwealth of 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.*, 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.*

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. Further, nothing in this CA shall be construed as a determination by EPA that there has been any release of regulated substances from the UST located at the Facility.
3. Respondent agrees not to contest EPA's jurisdiction with respect to the execution of this CA, the issuance of the attached 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. In addition, Respondent waives its right to confer with the Administrator pursuant to RCRA § 6001(b)(2), 42 U.S.C. § 69661(b)(2).
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/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 Commonwealth of Virginia's federally authorized underground storage tank program set forth at Chapter 580 of Title 9 of the VAC 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 CAFO 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. 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

12. 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).
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 "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 9 VAC § 25-580-10, of the "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.
15. On October 2-3, 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 the time of the October 2-3, 2012 CEI, and at all times relevant to the applicable violations alleged herein, the following USTs were located at the Facility:
 - A. A fifteen thousand (15,000) gallon double walled fiberglass reinforced plastic tank located at Station 1 – Building 2474 that was installed in or about May 1995 and

that, at all time relevant hereto, routinely contained diesel, a "regulated substance" as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and 9 VAC § 25-580-10 (hereinafter "UST No. 1").

- B. A fifteen thousand (15,000) gallon double walled fiberglass reinforced plastic tank located at Station 1 – Building 2474 that was installed in or about May 1995 and that, at all time relevant hereto, routinely contained diesel, a "regulated substance" as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and 9 VAC § 25-580-10 (hereinafter "UST No. 2").
- C. A ten thousand (10,000) gallon double walled fiberglass reinforced plastic tank that located at Station 1 – Building 2474 was installed in or about May 1995 and that, at all time relevant hereto, routinely contained gasoline, a "regulated substance" as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and 9 VAC § 25-580-10 (hereinafter "UST No. 3").
- D. A ten thousand (10,000) gallon double walled fiberglass reinforced plastic tank that located at Station 1 – Building 2474 was installed in or about May 1995 and that, at all time relevant hereto, routinely contained JP8, a "regulated substance" as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and 9 VAC § 25-580-10 (hereinafter "UST No. 4").
- E. A twenty thousand (20,000) gallon double walled fiberglass reinforced plastic tank located at Station 1 – Building 2474 that was installed in or about May 1995 and that, at all time relevant hereto, routinely contained diesel, a "regulated substance" as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and 9 VAC § 25-580-10 (hereinafter "UST No. 5").
- F. A twenty thousand (20,000) gallon double walled fiberglass reinforced plastic tank located at Station 1 – Building 2474 that was installed in or about May 1995 and that, at all time relevant hereto, routinely contained diesel, a "regulated substance" as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and 9 VAC § 25-580-10 (hereinafter "UST No. 6").
- G. A twenty thousand (20,000) gallon double walled fiberglass reinforced plastic tank located at Station 1 – Building 2474 that was installed in or about May 1995 and that, at all time relevant hereto, routinely contained diesel, a "regulated substance" as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and 9 VAC § 25-580-10 (hereinafter "UST No. 7").

- H. A thirty thousand (30,000) gallon double walled fiberglass reinforced plastic tank located at Station 1 – Building 2474 that was installed in or about May 1995 and that, at all time relevant hereto, routinely contained JP8, a “regulated substance” as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and 9 VAC § 25-580-10 (hereinafter “UST No. 8”).
 - I. A twenty thousand (20,000) gallon double walled fiberglass reinforced plastic tank located at Station 2 – Building 1800 that was installed in or about November 1992 and that, at all time relevant hereto, routinely contained diesel, a “regulated substance” as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and 9 VAC § 25-580-10 (hereinafter “UST No. 9”).
 - J. A twenty thousand (20,000) gallon double walled fiberglass reinforced plastic tank located at Station 2 – Building 1800 that was installed in or about November 1992 and that, at all time relevant hereto, routinely contained JP8, a “regulated substance” as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and 9 VAC § 25-580-10 (hereinafter “UST No. 10”).
 - K. Two fifteen thousand (15,000) gallon double walled fiberglass reinforced plastic tanks located at Station 3 – Building 2870 that were installed in or about November 1992 and that, at all time relevant hereto, routinely contained JP8, a “regulated substance” as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and 9 VAC § 25-580-10 (hereinafter “UST No. 11/12”).
 - L. An eight thousand (8,000) gallon single walled fiberglass reinforced plastic tank located at MATES – Building 134 that were installed in or about August 1986 and that, at all time relevant hereto, routinely contained diesel, a “regulated substance” as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and 9 VAC § 25-580-10 (hereinafter “UST No. 13”).
 - M. An eight thousand (8,000) gallon single walled fiberglass reinforced plastic tank located at MATES – Building 134 that were installed in or about August 1986 and that, at all time relevant hereto, routinely contained diesel, a “regulated substance” as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and 9 VAC § 25-580-10 (hereinafter “UST No. 14”).
17. At all times relevant to the applicable violations alleged herein, UST Nos. 1-12 have been a “petroleum UST system” and “new tank system” and UST Nos. 13 and 14 have been a “petroleum UST system” and “existing tank system” as those terms are defined in 9 VAC § 25-580-10.

18. UST Nos. 1-14 were, at all times relevant to the applicable violations alleged in this CAFO, used to store a “regulated substance” at Respondent’s Facility, as defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and 9 VAC § 25-580-10, and have not been “empty” as that term is defined at 9 VAC § 25-580-310.1.

COUNT 1

(Failure to perform annual line leak detector testing)

19. The allegations of Paragraphs 1 through 18 of the CA are incorporated herein by reference.
20. 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.
21. 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.
22. 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.
23. Respondent conducted a testing of the automatic line leak detectors for the piping associated with USTs Nos. 1 - 14 only on November 8, 2010.
24. From November 8, 2011 until October 16, 2012, the piping for USTs Nos. 1 - 14 was underground and routinely conveyed regulated substances under pressure.
25. Respondent failed to perform an annual test of the automatic line leak detectors for the underground piping for USTs Nos. 1 -14 from November 8, 2011 until October 16, 2012.
26. Respondent’s acts and/or omissions as alleged in Paragraph 25, above, constitute violations by Respondent of 9 VAC § 25-580-140.2.a. and 9 VAC § 25-580-170.1.

CIVIL PENALTY

27. 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 **Forty-One Thousand Four Hundred Twenty-Seven Dollars (\$41,427.00)**. The civil penalty amount is due and payable immediately upon Respondent's receipt of a true and correct copy of this CA and attached FO.
28. 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.
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 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.
30. Respondent shall pay the amount described in Paragraph 27 above, by sending a certified or cashier's check payable as follows:
 - a. All payments by Respondent shall reference Respondent's name and address, and the Docket Number of this action, *i.e.*, **RCRA-03-2013-0170**;
 - 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. EPA - Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Contact: Eric Volck, 513-487-2105 or
Craig Steffen 513-487-2091

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

U.S. EPA - Fines and Penalties
U.S. Bank
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

31. Respondent may also pay the amount described in Paragraph 27 above, 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 = 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
Environmental Protection Agency, Account No. 310006

CTX Format Transaction Code 22 - checking

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

Contact: Jessie White 301-887-6548 or
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:

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

Donzetta Thomas (3RC50)
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency - Region III
1650 Arch Street
Philadelphia, PA 19103-2029.

FULL AND FINAL SATISFACTION

32. 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

33. 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. 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.
34. Failure to obtain adequate funds or appropriations from Congress does not release Respondent from its 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.

OTHER APPLICABLE LAWS

35. 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

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

ENTIRE AGREEMENT

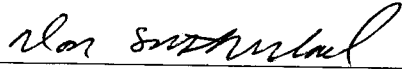
37. This CA and the attached FO constitute the entire Agreement and understanding of the parties concerning settlement of the above-captioned action and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this CA and the attached FO.

EFFECTIVE DATE

38. This CA and attached FO shall become effective upon filing with the Regional Hearing Clerk.

For Respondent:

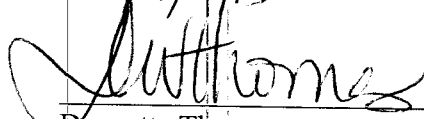
Date: *9 July 2013*



COL Donald R. Sutherland
United States and Property and Fiscal Officer
US Army - Fort Pickett
Building 316, Fort Pickett
Blackstone, VA 23824
434-298-6161

For Complainant:

Date: *7/11/13*



Donzetta Thomas
Senior Assistant Regional Counsel
US EPA, Region III
1650 Arch Street (3RC50)
Philadelphia, PA 19103
215-814-2474

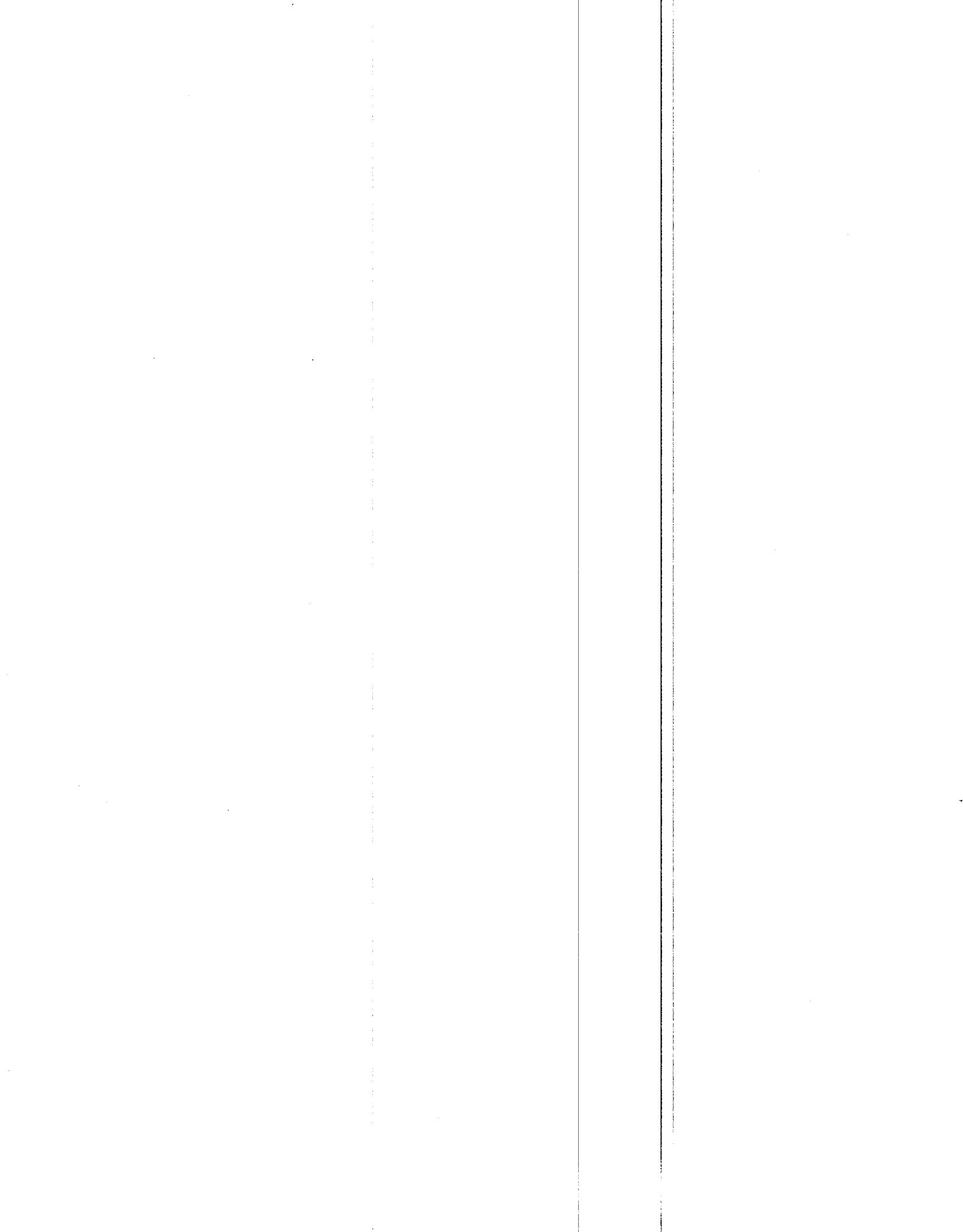
After reviewing the foregoing Consent Agreement and other pertinent information, the Land and Chemicals Division, EPA Region III, recommends that the Regional Administrator or the Regional Judicial Officer issue the Final Order attached hereto.

JUL 22 2013

By:



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



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

In the Matter of:)
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RESPONDENT,)
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FACILITY.)

Docket Number: RCRA-03-2013-0170
Proceeding Under Section 9006 and 9007
of the Resource Conservation and
Recovery Act, as amended, 42 U.S.C.
§ 6991e and f.

FINAL ORDER

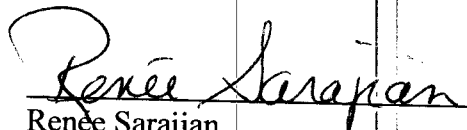
Complainant, the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency - Region III, and Respondent, the US Army - Fort Pickett, have executed a document entitled "Consent Agreement" which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of 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 of **Forty-One Thousand Four Hundred**

Twenty-Seven Dollars (\$41,427.00) 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 **Forty-One Thousand Four Hundred Twenty-Seven Dollars (\$41,427.00)** in accordance with the payment provisions set forth in the attached Consent Agreement and comply with each of the additional 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 CAFO is filed with the Regional Hearing Clerk of U.S. EPA - Region III.

Date: 7/25/13


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

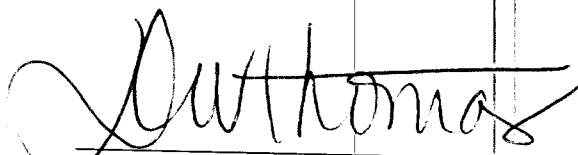
CERTIFICATE OF SERVICE

I hereby certify that, on the date listed below, the original and one copy of the foregoing Consent Agreement and Final Order, Docket No. RCRA-03-2013-0170, was filed with the EPA Region III Regional Hearing Clerk, and that a correct copy of the same was sent in the following manner to the person listed below:

Via United Parcel Service to:

COL Donald R. Sutherland
United States and Property and Fiscal Officer
Building 316, Fort Pickett
Blackstone, VA 23824

7/30/13
Date



Donzetta W. Thomas (3RC50)
Counsel for Complainant
U.S. Environmental Protection Agency, Region III
(215) 814-2474

