

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

_____)
 In the Matter of:)
)
 Petersburg Deli)
 140 East Washington Street)
 Petersburg, VA 23803)
)
Facility,)
)
 Solo Properties Inc.,)
 1336 Gravatt way)
 Midlothian, VA 23114,)
)
 and)
)
 Petersburg Deli Inc.,)
 140 East Washington Street)
 Petersburg, VA 23803,)
)
)
Respondents.)
 _____)

Docket No.: RCRA-03-2014-0062
**Proceeding Under Section 9006 of the
 Resource Conservation and Recovery
 Act, as amended, 42 U.S.C. Section
 6991e**
CONSENT AGREEMENT

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 EPA REGION III, PHILA. PA

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”), Solo Properties Inc., and Petersburg Deli Inc., (collectively “Respondents”), 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)).

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, Title 9, Agency 25, Chapter 580, Sections 10 *et seq.*, and will be cited hereinafter as 9 V.A.C. § 25-580-10 *et seq.*

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.

GENERAL PROVISIONS

1. For purposes of this proceeding only, Respondents admit the jurisdictional allegations set forth in this CAFO.
2. Respondents neither admit nor deny the specific factual allegations 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 CA, the issuance of the attached Final Order ("FO"), or the enforcement of the CAFO.
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.
5. Respondents consent to the issuance of this CAFO and agree to comply with its terms and conditions.
6. Respondents shall bear their own costs and attorney's fees.
7. The person(s) signing this CA on behalf of the Respondents certify to EPA by their signatures herein that Respondents, as of the date of this CA, are 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 as 9 V.A.C. § 25-580-10 *et seq.* at the Facility referenced herein.
8. The provisions of this CAFO shall be binding upon Respondents, and their officers, directors, employees, successors and assigns.
9. 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 of any regulations promulgated or authorized 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 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.

11. Respondents agree 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 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

13. EPA has jurisdiction over this matter pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e, and 40 C.F.R. § 22.1(a)(4).
14. Each Respondent is a “person” as defined in Section 9001(5) of RCRA, 42 U.S.C. § 6991(5), and 9 V.A.C. § 25-580-10.
15. At all times relevant to this CAFO, Respondents have been the “operator” and/or “owner”, of “underground storage tanks” (“USTs”) and “UST systems,” as those terms are defined in Section 9001 of RCRA, 42 U.S.C. § 6991, 40 C.F.R. § 280.12, and 9 V.A.C. § 25-580-10, at the Facility.
16. On December 19, 2012, an EPA representative conducted a Compliance Evaluation Inspection (“CEI”) at the Facility pursuant to Section 9005 of RCRA, 42 U.S.C. § 6991d.
17. At all times relevant to the applicable violations alleged herein:
 - (a). a pressurized 10,000 gallon “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 V.A.C. § 25-580-10, was located at the Facility;
 - (b). a pressurized 8,000 gallon “petroleum UST system” with connected underground piping (hereinafter “Tank 2”), 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 V.A.C. § 25-580-10, was located at the Facility; and
 - (c). a pressurized 6,000 gallon “petroleum UST system” with connected underground piping (hereinafter “Tank 3”), 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 V.A.C. § 25-580-10, was located at the Facility.

18. At all times relevant to the applicable violations alleged herein, the piping associated with each of the petroleum UST systems described in Paragraph 17, above, conveyed regulated substances under pressure.
19. Pursuant to RCRA Section 9005, 42 U.S.C. § 6991d, EPA issued an Information Request letter to Respondents on March 4, 2013 concerning the petroleum UST systems at its Facility.

COUNT 1

FAILURE TO CONDUCT LINE LEAK DETECTOR TESTING

20. Paragraphs 1 through 19 are incorporated by reference as if fully set forth herein.
21. At all times relevant to the applicable violations alleged herein, the piping associated with the petroleum UST system, Tank #3, described in Paragraph 17, above, was equipped with an automatic line leak detector.
22. Pursuant to 9 V.A.C. § 25-580-170(1), an annual test of the operation of the automatic line leak detector must be conducted in accordance with the manufacturer's requirements.
23. Respondents failed to conduct required annual operational testing of the automatic line leak detector on pressurized piping associated with the petroleum UST system, Tank #3, from at least March 10, 2012 through October 30, 2013.
24. Respondents' acts and/or omissions as alleged in Paragraphs 21 through 23, above, constitute violations by Respondents of 9 V.A.C. § 25-580-170(1).

COUNT 2

FAILURE TO CONDUCT TANK RELEASE DETECTION

25. Paragraphs 1 through 24 are incorporated by reference as if fully set forth herein.
26. Pursuant to 9 V.A.C. § 25-580-140(1), tanks must be monitored at least every 30 days for releases using one of the methods listed in 9 VAC 25-580-160, which include inventory control, manual tank gauging, tank tightness testing, automatic tank gauging, vapor monitoring, groundwater monitoring, or interstitial monitoring.
27. Respondents failed to employ any of the methods of release detection every 30 days for the petroleum UST system, Tank #3, from May 2010 through October 2010; April 2011 through October 2011; and from April 2012 through October 2012.

28. Respondents' acts and/or omissions as alleged in Paragraph 27, above, constitute a violation by Respondents of 9 V.A.C. § 25-580-140(1).

COUNT 3

FAILURE TO CONDUCT PIPING RELEASE DETECTION

29. Paragraphs 1 through 28 are incorporated by reference as if fully set forth herein.
30. Pursuant to 9 V.A.C. § 25-580-140(2)(a)(2), owners or operators of petroleum UST systems, including the underground piping that conveys regulated substances under pressure must have an annual line tightness test conducted in accordance with subdivision 2 of 9 V.A.C. § 25-580-170 or have monthly monitoring conducted in accordance with subdivision 3 of 9 V.A.C. § 25-580-170.
31. Respondents failed to employ any of the methods of piping release detection listed above for the petroleum UST system, Tank #3, from March 10, 2012 through October 30, 2013.
32. Respondents' acts and/or omissions as alleged in Paragraph 31, above, constitute violations by Respondents of 9 V.A.C. § 25-580-140(2)(a)(2).

CIVIL PENALTY

33. 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 nine thousand, one hundred and fifty five dollars (\$9,155), in accordance to the payment schedule in the following chart:

Payment	Interest	Due	Total
1. \$2,288.75	\$0	w/in 30 days	\$2,288.75
2. \$2,283.12	\$17.17	w/in 90 days	\$2,300.29
3. \$2,288.70	\$11.59	w/in 180 days	\$2,300.29
4. \$2,294.43	\$5.86	w/in 270 days	\$2,300.29

The first payment of the civil penalty is due and payable immediately upon Respondents receipt of a true and correct copy of this CAFO. If Respondents pay the entire civil penalty of nine thousand one hundred and fifty five dollars (\$9,155) within thirty (30) calendar days after Respondents 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).

34. 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.

35. In accordance with 40 C.F.R. § 13.11(a)(1), 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 Respondents. 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)(3).
36. Except those owed by State and local governments, 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.
37. Except those owed by State and local governments, 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(c). 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).
38. 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.
39. Respondents shall pay the amount described in Paragraph 33, above, by sending a certified or cashier's check payable to the "United States Treasury", as follows:
 - a. Mailing (*via first class U.S. Postal Service Mail*) a certified or cashier's check, made payable to the "United States Treasury" to the following address

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

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

b. Via Overnight Delivery of a certified or cashier's check, made payable to the "United States Treasury", sent to the following address:

U.S. Bank
Government Lockbox 979077
US EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
314-418-1028

c. All payment 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

d. By electronic funds transfer ("EFT") to the following account:

Federal Reserve Bank of New York
ABA 021030004
Account No. 68010727
SWIFT Address FRNYUS33
33 Liberty Street
NY, NY 10045
(Field tag 4200 of Fedwire message should read "D
68010727 Environmental Protection Agency")

e. By automatic clearinghouse ("ACH") to the following account:

U.S. Treasury REX/Cashlink ACH Receiver
ABA 051036706
Account No. 310006
Environmental Protection Agency
CTX Format
Transaction Code 22 - checking

Contact: John Schmid
202-874-7026

f. Online payments can be made at WWW.PAY.GOV by entering “sfo 1.1” in the search field, and opening the form and completing the required fields.

g. Additional payment guidance is available at:

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

All payments shall also reference the above case caption and docket number, DOCKET NO.: RCRA-03-2014-0062. At the same time that any payment is made, Respondents shall mail copies of any corresponding check, or provide written notification confirming any electronic wire transfer, automated clearinghouse or online payment to Lydia A. Guy, Regional Hearing Clerk (3RC00), U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029 and to Melissa Toffel (3LC70), U.S. Environmental Protection Agency, Region III, Office of Land Enforcement, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029.

FULL AND FINAL SATISFACTION

40. 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

41. 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.

OTHER APPLICABLE LAWS

42. Nothing in this CAFO shall relieve Respondents of any duties otherwise imposed on it by applicable federal, state or local law and/or regulations.

AUTHORITY TO BIND THE PARTIES

43. The undersigned representative of Respondents certify that he or she is fully authorized to enter into the terms and conditions of this Consent Agreement and bind Respondents hereto.

ENTIRE AGREEMENT

44. 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

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

For Respondent:

Solo Properties, Inc.

1-21-2014
Date

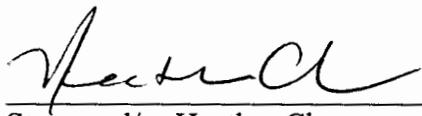


Sameer Al-Ashari, President

For Respondent:

Petersburg Deli, Inc.

1-21-2014
Date



Steve and/or Heather Choe

For Complainant:

U.S. Environmental Protection Agency,
Region III

1/30/14
Date

Jennifer Neunood
for Russell Swan (Jennifer Neunood)
Assistant Regional Counsel

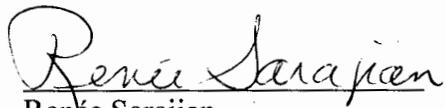
After reviewing the foregoing Consent Agreement and other pertinent information, the Land and Chemicals Division, EPA Region III, recommends that the Regional Administrator or the Regional Judicial Officer issue the Final Order attached hereto.

2.4.14.
Date

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

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 the U.S. EPA Region III or the Regional Judicial Officer, is filed with the Regional Hearing Clerk of U.S. EPA - Region III.

Date: 3/4/14



Renée Sarajian
Regional Judicial Officer
United States Environmental Protection Agency
Region III

CERTIFICATE OF SERVICE

I hereby certify that on the date set forth below, I hand-delivered to the Regional Hearing Clerk of the U.S. Environmental Protection Agency, Region III, the original and one copy of the foregoing Consent Agreement and Final Order (CAFO), Docket No. RCRA-03-2014-0062, and further, that I caused true and correct copies of the foregoing CAFO to be transmitted via United Parcel Service next day air delivery, to the following addressees:

Sameer Al-Ashari,
President, Solo Properties Inc.
1336 Gravatt Way
Midlothian, VA 23114

Steve and Heather Choe,
Petersburg Deli Inc.
140 East Washington Street
Petersburg, VA 23803

03/05/2014
Date


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