

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
4 Penn Center
Philadelphia, Pennsylvania 19103



In the Matter of:

Fowler Oil Co. d/b/a Uptown Shell
PO BOX 271
Honesdale, PA 18431

Respondent.

Uptown Shell
1223 Main Street
Honesdale, PA 18431

Facility.

:
:
: U.S. EPA Docket No. RCRA-03-2023-0145
: CONSENT AGREEMENT
:
:
: Proceeding under Section 9006 of the Resource
: Conservation and Recovery Act, as amended,
: 42 U.S.C. Section 6991e
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CONSENT AGREEMENT

PRELIMINARY STATEMENT

1. This Consent Agreement is entered into by the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region III (“Complainant”) and Fowler Oil Co. d/b/a Uptown Shell (“Respondent”) (collectively the “Parties”), pursuant to Section 9006 of the Solid Waste Disposal Act, commonly referred to as the Resource Conservation and Recovery Act, (“RCRA”), 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. Section 9006 of RCRA, 42 U.S.C. § 6991e, authorizes the Administrator of the U.S. Environmental Protection Agency to assess penalties and undertake other actions required by this Consent Agreement. The Administrator has delegated this authority to the Regional Administrator who, in turn, has delegated it to the Complainant. This Consent Agreement and the attached Final Order (hereinafter jointly referred to as the “Consent Agreement and Final Order”) resolve Complainant’s civil penalty claims against Respondent under RCRA Subtitle I for the violations alleged herein.
2. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant hereby simultaneously commences and resolves this administrative proceeding.

JURISDICTION

3. The U.S. Environmental Protection Agency (“EPA”) has jurisdiction over the above-captioned matter, as described in Paragraph 1, above.
4. The Consolidated Rules of Practice govern this administrative adjudicatory proceeding pursuant to 40 C.F.R. § 22.1(a)(4).
5. EPA has given the Commonwealth of Pennsylvania , through the Pennsylvania Department of Environmental Protection (“PADEP”), prior notice of the issuance of this Consent Agreement and Final Order in accordance with Section 9006(a)(2) of RCRA, 42 U.S.C. § 6991e(a)(2).

GENERAL PROVISIONS

6. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this Consent Agreement and Final Order.
7. Except as provided in Paragraph 6, above, Respondent neither admits nor denies the specific factual allegations set forth in this Consent Agreement.
8. Respondent agrees not to contest the jurisdiction of EPA with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of this Consent Agreement and Final Order.
9. For purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in this Consent Agreement and Final Order and waives its right to appeal the accompanying Final Order.
10. Respondent consents to the assessment of the civil penalty stated herein, to the issuance of any specified compliance order herein, and to any conditions specified herein.
11. Respondent shall bear its own costs and attorney’s fees in connection with this proceeding.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

12. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(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. Section 9006(d) of RCRA, 42 U.S.C. § 6991e(d), authorizes EPA to assess civil penalties against any owner or operator of an underground storage tank (“UST”) who fails to comply with, *inter alia*, any requirement or standard of a State program that has been approved pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c, for the violations alleged herein.

14. Effective September 11, 2003, pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c, and 40 C.F.R. Part 281, EPA granted the Commonwealth of Pennsylvania final approval to administer a state UST management program (“Pennsylvania UST management program”) *in lieu* of the Federal UST management program established under Subtitle I of RCRA, 42 U.S.C. §§ 6991-6991m. The approved provisions of the Pennsylvania UST management program are enforceable by EPA pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e. The Pennsylvania UST management program regulations are set forth in the Pennsylvania Code, Title 25, Chapter 245, Sections 245.1 *et seq.*, and will be cited hereinafter as 25 Pa. Code 245.1 *et seq.*
15. At all times relevant to the alleged violations in this Consent Agreement and Final Order, Respondent has been a Pennsylvania corporation doing business in the Commonwealth of Pennsylvania.
16. At all times relevant to the alleged violations in this Consent Agreement and Final Order, Respondent has been a “person” as defined in Section 9001(5) of RCRA, 42 U.S.C. § 6991(5), and 25 Pa. Code § 245.1.
17. At all times relevant to the alleged violations in this Consent Agreement and Final Order, Respondent has been the “owner” and/or “operator” of USTs and “UST systems,” as those terms are defined in Sections 9001(3), (4), and (10) of RCRA, 42 U.S.C. § 6991(3), (4), and (10), and 9 VAC § 25-580-10, respectively, at Uptown Shell facility located at 1223 Main Street, Honesdale, Pennsylvania 18431 (“the Facility”).
18. The Complainant sent the Respondent an information request letter regarding the Facility identified in Paragraph 17 on August 10, 2021 (the “IRL”) pursuant to Section 9005 of RCRA, 42 U.S.C. § 6991d.
19. At the time of the IRL, and at all times relevant to the applicable violations alleged herein, USTs and UST systems (which includes the attached piping and associated equipment pertaining to the UST) used to contain “regulated substance[s]” as this term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and 25 Pa. Code § 245.1, were present at the Facility. The Facility had three (3) USTs that were installed on November 1, 1987 and are constructed of cathodically protected double wall steel (galvanic) and utilized pressurized piping. UST 1 has a 6,000-gallon capacity and contained premium gasoline. UST 2 has a 6,000-gallon capacity and contained a petroleum product. UST 3 has an 8,000-gallon capacity and contained regular gasoline. USTs 1 and 3 were equipped with automatic line leak detectors.
20. At all times relevant to the alleged violations in this Consent Agreement and Final Order, USTs 1, 2, and 3 are “existing underground storage tank systems,” as defined in 25 Pa. Code § 245.1, which states that an “existing underground storage tank system” means a tank system “used to contain an accumulation of regulated substances or for which installation has commenced prior to December 22, 1988.”

COUNT I

(Failure to Conduct Annual Testing of the operation of Automatic Line Leak Detectors for USTs 1 and 3)

21. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
22. Pursuant to 25 Pa. Code §§ 245.442(2)(i)(A) and 245.445(1), owners and operators of petroleum underground storage tank systems with pressurized piping equipped with automatic line leak detectors are required to conduct an annual test of the operation of the leak detectors in accordance with manufacturer's requirements.
23. At all times relevant to the applicable violations alleged herein, the piping associated with UST systems 1 and 3 at the Facility conveyed regulated substances under pressure and were equipped with automatic line leak detectors.
24. Respondent did not conduct an annual test of the automatic line leak detectors on UST systems 1 and 3 at the Facility between September 30, 2018 and February 3, 2020.
25. Respondent conducted an annual test of the automatic line leak detectors on UST systems 1 and 3 at the Facility on February 3, 2020. Respondent was due to conduct an annual test of the automatic line leak detectors on UST systems 1 and 3 at the Facility by February 3, 2021. Respondent did not conduct an annual test of the automatic line leak detectors on UST systems 1 and 3 at the Facility until September 22, 2021.
26. Respondent violated 25 Pa. Code §§ 245.442(2)(i)(A) and 245.445(1) by failing to annually test the automatic line leak detectors for proper operation for USTs 1 and 3 at the Facility.
27. In failing to comply with 25 Pa. Code §§ 245.442(2)(i)(A) and 245.445(1), Respondent is subject to the assessment of penalties under Section 9006(d)(2) of RCRA, 42 U.S.C. § 6991e(d)(2).

Count II

(Failure to Conduct Annual Line Tightness Testing or Monthly Monitoring of Pressurized Piping for USTs 1 and 3)

28. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
29. Pursuant to 25 Pa. Code §§ 245.442(2)(i)(B) and 245.445(2), owners and operators of petroleum underground storage tank systems with pressurized piping are required to have an annual line tightness test or have monthly monitoring conducted in accordance with 245.445(3).
30. At all times relevant to the applicable violations alleged herein, the piping associated with UST systems 1 and 3 conveyed regulated substances under pressure and were equipped

with automatic line leak detectors.

31. Respondent did not have either an annual line tightness test or monthly line monitoring of pressurized piping conducted on UST systems 1 and 3 at the Facility between September 30, 2018 and May 31, 2019.
32. Respondent conducted a Facility Operations Inspection (“FOI”), also known as a Third Party Inspection, performed by an inspector on May 31, 2019. During this inspection, the inspector marked the sumps as dry. The next piping release detection was due June 30, 2019. Respondent did not conduct either annual line tightness test or monthly line monitoring until February 3, 2020.
33. Respondent conducted an annual line tightness test of pressurized piping for USTs 1 and 3 at the Facility on February 3, 2020. Respondent was due to conduct an annual line tightness test of pressurized piping for UST systems 1 and 3 at the Facility by February 3, 2021. Respondent did not conduct an annual line tightness test of pressurized piping on UST systems 1 and 3 at the Facility until September 22, 2021.
34. Respondent violated 25 Pa. Code §§ 245.442(2)(i)(B) and 245.445(2) by failing to conduct annual line tightness testing or monthly monitoring of the pressurized piping for USTs 1 and 3 at the Facility.
35. In failing to comply with 25 Pa. Code §§ 245.442(2)(i)(B) and 245.445(2), Respondent is subject to the assessment of penalties under Section 9006(d)(2) of RCRA, 42 U.S.C. § 6991e(d)(2).

CIVIL PENALTY

36. In settlement of EPA’s claims for civil penalties for the violations alleged in this Consent Agreement, Respondent consents to the assessment of a civil penalty in the amount of **FORTY THOUSAND FIVE HUNDRED NINETY DOLLARS (\$40,590.00)**, which Respondent shall be liable to pay in accordance with the terms set forth below.
37. The civil penalty is based upon EPA’s consideration of a number of factors, including the penalty criteria (“statutory factors”) set forth in Sections 9006 (c) and (e) of RCRA, 42 U.S.C. §§ 6991e(c) and (e), which includes the seriousness of the violation, any good faith efforts to comply with the applicable requirements, the compliance history of the owner or operator and any other factors considered appropriate. In developing a proposed penalty for the violations alleged in this Consent Agreement, EPA will take into account the particular facts and circumstances of this case with specific reference to EPA’s November 1990 U.S. E.P.A. Penalty Guidance for Violations of UST Regulations (“UST Penalty Policy”), the 2018 Revised Interim Consolidated Enforcement Penalty Policy for Underground Storage Tank Regulations (“Enforcement Penalty Policy”) (collectively the “UST Penalty Policies), the appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to 40 C.F.R. Part 19, and the applicable EPA memoranda addressing EPA’s civil penalty policies to account for inflation.

38. Payment of the civil penalty amount, and any associated interest, administrative fees, and late payment penalties owed, shall be made by either cashier's check, certified check or electronic wire transfer, in the following manner:

- a. All payments by Respondent shall include reference to Respondent's name and address, and the Docket Number of this action, *i.e.*, Docket No.: RCRA-03-2023-0145;
- b. All checks shall be made payable to the "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 979078
St. Louis, MO 63197-9000

- d. For additional information concerning other acceptable methods of payment of the civil penalty amount see:

<https://www.epa.gov/financial/makepayment>

- e. A copy of Respondent's check or other documentation of payment of the penalty using the method selected by Respondent for payment shall be sent simultaneously via email to:

Jeffrey S. Nast
Sr. Assistant Regional Counsel
nast.jeffrey@epa.gov

and

U.S. EPA Region III Regional Hearing Clerk
R3_Hearing_Clerk@epa.gov

39. 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 of the penalty as specified herein shall result in the assessment of late payment charges including interest, penalties and/or administrative costs of handling delinquent debts.
40. Payment of the civil penalty is due and payable immediately upon receipt by Respondent of a true and correct copy of the fully executed and filed Consent Agreement and Final Order. Receipt by Respondent or Respondent's legal counsel of such copy of the fully executed Consent Agreement and Final Order, with a date stamp indicating the date on

which the Consent Agreement and Final Order was filed with the Regional Hearing Clerk, shall constitute receipt of written initial notice that a debt is owed EPA by Respondent in accordance with 40 C.F.R. § 13.9(a).

41. INTEREST: In accordance with 40 C.F.R § 13.11(a)(1), interest on the civil penalty assessed in this Consent Agreement and Final Order will begin to accrue on the date Respondent is notified of its debt to the United States as established upon ratification and filing of the fully executed Consent Agreement and Final Order with the Regional Hearing Clerk. However, EPA will not seek to recover interest on any amount of the civil penalties 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).
42. ADMINISTRATIVE COSTS: The costs of the EPA'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). If payment is not received within 30 calendar days of the effective date of this Consent Agreement, EPA will also 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.
43. LATE PAYMENT PENALTY: A late payment penalty of six percent per year will be assessed monthly on any portion of the civil penalty that 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).
44. Respondent agrees not to deduct for federal tax purposes the civil penalty assessed in this Consent Agreement and Final Order.
45. The parties consent to service of the Final Order by e-mail at the following valid e-mail addresses: nast.jeffrey@epa.gov (for Complainant), and rechnerc@ptd.net (for Respondent).

GENERAL SETTLEMENT CONDITIONS

46. By signing this Consent Agreement, Respondent acknowledges that this Consent Agreement and Final Order will be available to the public and represents that, to the best of Respondent's knowledge and belief, this Consent Agreement and Final Order does not contain any confidential business information or personally identifiable information from Respondent.
47. Respondent certifies that any information or representation it has supplied or made to EPA concerning this matter, including information on ability to pay, was, at the time of submission true, accurate, and complete and that there has been no material change regarding the truthfulness, accuracy or completeness of such information or representation. EPA shall have the right to institute further actions to recover appropriate

relief if EPA obtains evidence that any information provided and/or representations made by Respondent to the EPA regarding matters relevant to this Consent Agreement and Final Order, including information about Respondent's ability to pay a penalty, are false or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action that EPA may have, civil or criminal, under law or equity in such event. Respondent and its officers, directors and agents are aware that the submission of false or misleading information to the United States government may subject a person to separate civil and/or criminal liability.

CERTIFICATION OF COMPLIANCE

- 48. Respondent certifies to EPA, upon personal investigation and to the best of its knowledge and belief, that it currently is in compliance with regard to the violations alleged in this Consent Agreement.

OTHER APPLICABLE LAWS

- 49. Nothing in this Consent Agreement and Final Order shall relieve Respondent of its obligation to comply with all applicable federal, state, and local laws and regulations, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on the validity of any federal, state or local permit. This Consent Agreement and Final Order does not constitute a waiver, suspension or modification of the requirements of RCRA Subtitle I, or any regulations promulgated thereunder.

RESERVATION OF RIGHTS

- 50. This Consent Agreement and Final Order resolves only EPA's claims for civil penalties for the specific violations alleged against Respondent in this Consent Agreement and Final Order. 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. 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). EPA reserves any rights and remedies available to it under RCRA, Subtitle I, the regulations promulgated thereunder and any other federal law or regulation to enforce the terms of this Consent Agreement and Final Order after its effective date.

EXECUTION /PARTIES BOUND

- 51. This Consent Agreement and Final Order shall apply to and be binding upon the EPA, the Respondent and the officers, directors, employees, contractors, successors, agents and assigns of Respondent. By his or her signature below, the person who signs this Consent Agreement on behalf of Respondent is acknowledging that he or she is fully authorized by the Respondent to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of this Consent Agreement and Final Order.

EFFECTIVE DATE

52. The effective date of this Consent Agreement and Final Order is the date on which the Final Order, signed by the Regional Administrator of EPA, Region III, or his/her designee, the Regional Judicial Officer, is filed along with the Consent Agreement with the Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

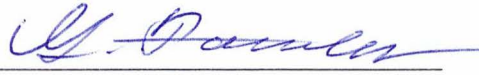
ENTIRE AGREEMENT

53. This Consent Agreement and Final Order constitutes the entire agreement and understanding between the Parties regarding settlement of all claims for civil penalties 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 Consent Agreement and Final Order.

For Respondent:

Fowler Oil Co. d/b/a Uptown Shell

Date: 9.20.23

By: 
Geoffrey O. Fowler
Vice-President

For the Complainant:

After reviewing the Consent Agreement and other pertinent matters, I, the undersigned Director of the Enforcement & Compliance Assurance Division of the United States Environmental Protection Agency, Region III, agree to the terms and conditions of this Consent Agreement and recommend that the Regional Administrator, or his/her designee, the Regional Judicial Officer, issue the attached Final Order.

By: _____

[Digital Signature and Date]

Karen Melvin

Director, Enforcement and Compliance

Assurance Division

U.S. EPA – Region III

Complainant

Attorney for Complainant:

By: _____

[Digital Signature and Date]

Jeffrey S. Nast

Senior Assistant Regional Counsel

U.S. EPA – Region III

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
4 Penn Center
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FINAL ORDER

Complainant, the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region III, and Respondent, Fowler Oil Co. d/b/a Uptown Shell, 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 (with specific reference to Sections 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 November 1990 U.S. E.P.A. Penalty Guidance for Violations of UST Regulations (“UST Penalty Policy”), and the 2018 Revised Interim Consolidated Enforcement Penalty Policy for Underground Storage Tank Regulations (“Enforcement Penalty Policy”) (collectively the “UST Penalty Policies) which reflects the statutory penalty criteria and factors set forth Section 9006(c) of the Resource Conservation and Recovery Act (“RCRA”), and the appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to 40 C.F.R.

Part 19, and the applicable EPA memoranda addressing EPA's civil penalty policies to account for inflation.

NOW, THEREFORE, PURSUANT TO Section 9006(d) of RCRA, 42 U.S.C. § 6991e(d), and Section 22.18(b)(3) of the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty in the amount of **FORTY THOUSAND FIVE HUNDRED NINETY DOLLARS (\$40,590.00)**, in accordance with the payment provisions set forth in the Consent Agreement and in 40 C.F.R. § 22.31(c), and comply with the terms and conditions of the Consent Agreement.

This Final Order constitutes the final Agency action in this proceeding. This Final Order shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief, or criminal sanctions for any violations of the law. This Final Order resolves only those causes of action alleged in the Consent Agreement and does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of RCRA and the regulations promulgated thereunder.

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

By: _____
[*Digital Signature and Date*]
Joseph J. Lisa
Regional Judicial and Presiding Officer
U.S. EPA Region III

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
4 Penn Center
Philadelphia, Pennsylvania 19103**

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Uptown Shell	:	Proceeding under Section 9006 of the Resource
1223 Main Street	:	Conservation and Recovery Act, as amended,
Honesdale, PA 18431	:	42 U.S.C. Section 6991e
	:	
Facility	:	
	:	

CERTIFICATE OF SERVICE

I certify that the foregoing *Consent Agreement and Final Order* was filed with the EPA Region III Regional Hearing Clerk on the date that has been electronically stamped on the *Consent Agreement and Final Order*. I further certify that on the date set forth below, I caused to be served a true and correct copy of the foregoing to each of the following persons, in the manner specified below, at the following addresses:

Copies served via email to:

Christine Rechner, Esq.
Rechner Law Office
942 Church Street
Honesdale, PA 18431
rechnerc@ptd.net

Jeffrey S. Nast
Senior Assistant Regional Counsel

U.S. EPA, Region III
nast.jeffrey@epa.gov

Caitlin Stormont
RCRA Branch, Enforcement and Compliance Assurance Division
U.S. EPA, Region III
stormont.caitlin@epa.gov

[Digital Signature and Date]

Bevin Esposito
Regional Hearing Clerk
U.S. EPA, Region III