



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

REPLY TO THE ATTENTION OF:

LR-8J

Ms. Carol Saterfield  
Chief Environmental Counsel  
88 ABW/CEV  
5490 Pearson Road, Building 89  
Wright-Patterson AFB, Ohio 45433-5332

Re: Consent Agreement and Final Order  
Wright-Patterson Air Force Base, Ohio  
Docket No:

Dear Ms. Saterfield:

Enclosed please find an original signed fully-executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The originals were filed on August 6, 2008 with the Regional Hearing Clerk (RHC).

Please pay the civil penalty in the amount of \$34,128 in the manner prescribed in paragraphs 29 through 31 of the CAFO, and reference all checks with the number BD 2750842R010 and docket number RCRA-05-2008-011. Your payment is due immediately upon Respondent's receipt of this CAFO.

Thank you for your cooperation in resolving this matter.

Sincerely,

Willie H. Harris, P.E.  
Chief, RCRA Branch  
Land and Chemicals Division

Enclosure

cc: Lori Stevens, Ohio BUSTR (w/CAFO)



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

In the Matter of: )  
)  
Department of the Air Force )  
Wright-Patterson Air Force Base, OH )  
)  
Respondent. )  
)  
)  
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EPA Docket Number: RCRA-05-2008-0011

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

**CONSENT AGREEMENT AND FINAL ORDER**

This Consent Agreement and Final Order (“CAFO”) is entered into by the Director, Land and Chemicals Division, U.S. Environmental Protection Agency, Region 5 (“EPA”) and the Department of the Air Force (“Respondent”), 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”), 40 C.F.R. Part 22, including, specifically 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and (3), and 22.37.

This CAFO addresses violations of RCRA Subchapter IX, 42 U.S.C. §§ 6991-6991m, in connection with Respondent’s underground storage tanks at its facility located at 88 ABW/CEV 5490 Pearson Road, Wright-Patterson Air Force Base, Ohio 45433 (the “Facility”).

**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.
3. Respondent agrees not to contest EPA’s jurisdiction with respect to the execution or the enforcement of this CAFO.
4. For the purposes of this proceeding only, Respondent hereby expressly waives its right to a hearing, any right to contest the allegations in this CAFO, and any right to appeal this

CAFO. In addition, Respondent waives its right to confer with the Administrator pursuant to Section 6001(b)(2) of RCRA, 42 U.S.C. § 6961(b)(2).

5. Respondent consents to the assessment of the civil penalty stated in this CAFO and the issuance of this CAFO and agrees to comply with its terms.
6. Respondent shall bear its own costs and attorney's fees.
7. The person signing this CAFO on behalf of the Respondent certifies to EPA by her signature that Respondent, as of the date of this CAFO, is in compliance with the provisions of RCRA, Subchapter IX, 42 U.S.C. §§ 6991-6991m, at its Facility.
8. The provisions of this CAFO shall be binding upon Respondent, and its officers, directors, employees, successors and assigns.
9. This CAFO shall not 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, Subchapter IX, 42 U.S.C. §§ 6991-6991m, or any regulations promulgated thereunder.

#### **FACTUAL ALLEGATIONS AND CONCLUSIONS OF LAW**

10. EPA has 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).
11. Respondent is a department, agency, and/or instrumentality of the United States as referred to in Section 9007 of RCRA, 42 U.S.C. § 6991f, and is a "person" as defined in Section 9001(5) of RCRA, 42 U.S.C. § 6991(5).
12. Subchapter IX of RCRA, 42 U.S.C. §6991 *et seq.*, regulates the installation and use of underground storage tanks ("USTs") which are defined in Section 9001(1) of RCRA, 42 U.S.C. §6991(1), and 40 C.F.R. § 280.12.
13. Section 9003 of RCRA, 42 U.S. C. § 6991b, requires the Administrator to promulgate release detection, prevention and correction regulations applicable to all owners and operators of USTs. These regulations are codified in 40 C.F.R. Part 280.
14. Section 9006 of RCRA, 42 U.S.C. § 6991e, authorizes U.S. EPA to initiate an enforcement action against any person found to be in violation of any requirement of RCRA, Subchapter IX.
15. On March 19 through March 23, 2007, EPA conducted a Compliance Evaluation Inspection of the Facility pursuant to Section 9005 of RCRA, 42 U.S.C. § 6991d.

16. At the time of the inspection, and at all times relevant to the applicable violations alleged in this CAFO, Respondent owned and operated approximately 100 USTs at the Facility which were used to hold petroleum products.
17. Respondent is the "owner" and/or "operator", as defined in 40 C.F.R. § 280.12, of facilities, where petroleum underground storage tanks (USTs) are located, and is therefore subject to regulation under RCRA.
18. On October 9, 2007, EPA issued a Notice of Intent to File a Civil Administrative Complaint against Respondent.
19. On November 1, 2007, Respondent replied to EPA's October 9, 2007, notice letter.
20. On December 6, 2007, EPA requested additional information from Respondent regarding the USTs located at the Facility.
21. On January 4, 2008, Respondent supplied EPA with additional factual information regarding the USTs located at the Facility.
22. Pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e, and based on the information alleged in this CAFO, Respondent violated Section 9003 of RCRA, 42 U.S.C. § 6991b, and its implementing regulations, as follows:

**COUNT 1**

(Failure to perform release detection)

23. The UST regulation set forth at 40 C.F.R. § 280.40(a)(1) requires owners and operators to provide a method of release detection capable of detecting a release from a tank or piping that routinely contains product.
24. Respondent, at its Facility, failed to provide a method of release detection at the following USTs: #337, #338, #339, #341, #342, #343, #344, #347, #348, #349, #350, #351, #352, #353, #155, and #186.
25. Respondent's failure to provide a method of release detection at each of the USTs identified in paragraph 24 constitutes violations of 40 C.F.R. § 280.40(a)(1) and of Section 9003 of RCRA, 42 U.S.C. § 6991b.

**COUNT 2**

(Failure to maintain release detection records)

26. The UST regulation set forth at 40 C.F.R. § 280.45 requires owners and operators to maintain release detection monitoring records.

27. Respondent, at its Facility, failed to provide release detection monitoring records for the following facility violations at Building 20070 (#384), Building 20252 (#369), Building 34021 (#371 & #374), Building 30154 (#454), and S-Farm (S-18, #259)
28. Respondent's failure to provide release detection records for the USTs at the facilities identified in paragraph 27 constitutes violations of 40 C.F.R. § 280.45 and of Section 9003 of RCRA, 42 U.S.C. §6991b.

### CIVIL PENALTY

29. In settlement of EPA's claims for civil penalties for the violations alleged in this CAFO, Respondent agrees to pay a civil penalty in the amount of \$34,128. The civil penalty amount is due and payable immediately upon Respondent's receipt of an executed copy of this CAFO.
30. In determining the penalty amount for settlement, EPA considered 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 EPA's Penalty Guidance for Violations of UST Regulations ("UST Guidance") dated November 4, 1990.
31. Respondent shall pay the amount described in Paragraph 29, above, by sending a certified or cashier's check payable to the "United States Treasury," as follows:

By Regular US Postal Service Mail:

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

Payment of the penalty as required by this CAFO may also be made by electronic transfer to:

#### Wire Transfers

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")

Automated Clearing House (ACH) Transfers

PNC Bank  
ABA = 051036706  
Environmental Protection Agency  
Account 310006  
CTX Format  
Transaction Code 22 - checking  
808 17<sup>th</sup> Street, NW  
Washington, DC 20074

Payment by Respondent shall reference Respondent's name and address, the assigned billing document number, and the EPA Docket Number of this CAFO. A copy of Respondent's check or a copy of Respondent's electronic transfer shall be sent simultaneously to:

Regional Hearing Clerk  
U.S. EPA, Region 5  
77 West Jackson Blvd. (E-13J)  
Chicago, IL 60604

Richard M. Murawski  
Associate Regional Counsel  
U.S. EPA, Region 5  
77 West Jackson Blvd. (C-14J)  
Chicago, IL 60604

**SCOPE OF RESOLUTION AND RESERVATION OF RIGHTS**

32. This CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in the CAFO.
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. 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 Anti-Deficiency 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.

**ENTIRE AGREEMENT**

36. This CAFO constitutes the entire agreement and understanding of the parties concerning settlement of this matter and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this CAFO.

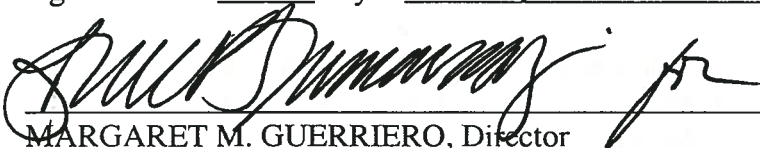
**AUTHORITY TO BIND THE PARTIES**

37. Each undersigned representative of a party to this CAFO certifies that she is fully authorized to enter into this consent agreement and to bind that party to its terms.

Agreed to this 7 day of July, 2008

  
\_\_\_\_\_  
COLLEEN M. RYAN  
Colonel, USAF  
Commander

Agreed to this 31 day of July, 2008

  
\_\_\_\_\_  
MARGARET M. GUERRIERO, Director  
Land and Chemicals Division  
U.S. Environmental Protection Agency  
Region 5



IN THE MATTER OF:  
**Department of the Air Force**  
**Wright-Patterson Air Force Base, OH**

**FINAL ORDER**

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order disposes of this matter pursuant to 40 C.F.R. §§ 22.18 and 22.31.

Ordered this 4<sup>th</sup> day of August, 2008.

By:

Walter W. Kavalich  
for  
Bharat Mathur  
Acting Regional Administrator  
U.S. EPA Region 5

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IN THE MATTER OF: **Department of the Air Force, Wright-Patterson Air Force Base, OH**  
DOCKET NO:

**CERTIFICATE OF SERVICE**

I hereby certify that today I filed the original of this **Consent Agreement and Final Order** and this **Certificate of Service** in the office of the Regional Hearing Clerk (E-13J), United States Environmental Protection Agency, Region 5, 77 W. Jackson Blvd., Chicago, IL 60604-3590.

I further certify that I then caused true and correct copies of the filed document to be mailed to the following:

Ms. Carol Saterfield  
Chief Environmental Counsel  
88 ABW/CEV  
5490 Pearson Road, Building 89  
Wright-Patterson AFB, OH 45433-5332

Return Receipt # 7001 0320 0006 0185 0102

Dated: August 6, 2008

Dayo Cuenegatan for Katrina Jones  
Katrina Jones, Administrative Program Assistant  
RCRA Branch  
United States Environmental Protection Agency  
77 W. Jackson Boulevard  
Chicago, IL 60604-3590  
(312) 353-5882

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