

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

U.S. EPA-REGION 3-RHC
FILED-17DEC2019AM11:31

In the Matter of:	:	
	:	
Jay Shree Ganesh LLC	:	U.S. EPA Docket No. RCRA-03-2020-0051
2344 State Route 487	:	
Orangeville, PA	:	CONSENT AGREEMENT
	:	
Respondent.	:	
	:	
Fuel Up Danville	:	Proceeding under Section 9006 of the Resource
Danville, PA	:	Conservation and Recovery Act, as amended,
	:	42 U.S.C. Section 6991e
	:	
Facility.	:	

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 Jay Shree Ganesh LLC (“Respondent”) (collectively the “Parties”), 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. This Consent Agreement and the attached Final Order (hereinafter jointly referred to as the “CAFO”) resolve Complainant’s civil penalty claims against Respondent under RCRA Subtitle I, 42 U.S.C. §§ 6991-6991m, and the Commonwealth of Pennsylvania’s federally authorized underground storage tank program for the violations alleged herein.
2. Effective September 11, 2003, pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c, and 40 C.F.R. Part 281, the Commonwealth of Pennsylvania was granted final authorization to administer a state underground storage tank (“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 provisions of the Pennsylvania UST management program, through this final authorization, 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.*

3. Section 9006(d) of RCRA, 42 U.S.C. § 6991e(d), authorizes the Administrator of the U.S. Environmental Protection Agency to assess a civil penalty against any owner or operator of an underground storage tank who fails to comply with, *inter alia*, 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. The Administrator has delegated this authority to the Regional Administrator who, in turn, has delegated it to the Complainant.
4. 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

5. The U.S. Environmental Protection Agency has jurisdiction over the above-captioned matter, as described in Paragraphs 1 - 4.
6. The Consolidated Rules of Practice govern this administrative adjudicatory proceeding pursuant to 40 C.F.R. § 22.1(a)(4).
7. EPA has given the Commonwealth of Pennsylvania prior notice of the issuance of this CAFO in accordance with Section 9006(a)(2) of RCRA, 42 U.S.C. § 6991e(a)(2).

GENERAL PROVISIONS

8. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CAFO.
9. Except as provided in Paragraph 8, above, Respondent neither admits nor denies the specific factual allegations set forth in this Consent Agreement.
10. 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 CAFO.
11. For purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in this CAFO and waives its right to appeal the accompanying Final Order.
12. 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.
13. Respondent shall bear its own costs and attorney's fees in connection with this proceeding.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

14. 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.
15. At all times relevant to this CAFO, Respondent has been a limited liability company doing business in the Commonwealth of Pennsylvania.
16. Respondent is 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 this CAFO, Respondent has been the “operator”, as this term is defined in Section 9001(3) of RCRA, 42 U.S.C. § 6991(3), and 25 Pa. Code § 245.1, of “underground storage tank(s)” and “underground storage tank system(s)” as these terms are defined in Section 9001(10) of RCRA, 42 U.S.C. § 6991(10), and 25 Pa. Code § 245.1, at the Fuel Up Danville facility, located at 600 East Market Street in Danville, Pennsylvania (“Facility”).
18. On April 12, 2018, an inspection of the Facility was conducted by the U.S. Environmental Protection Agency (“EPA”) pursuant to Section 9005 of RCRA, 42 U.S.C. § 6991d.
19. At the time of the April 12, 2018 inspection, and at all times relevant to the applicable violations alleged herein, a 10,000 gallon regular gasoline UST (“UST-1”), 6,000 gallon super gasoline UST (“UST-2”), and 4,000 gallon diesel UST (“UST-3”), all containing “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.

Count I - Failure to Conduct Line Leak Detector Testing

20. The allegations of Paragraphs 1 through 19 of his Consent Agreement are incorporated herein by reference.
21. Pursuant to 25 Pa. Code § 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.
22. At the time of the April 12, 2018 inspection, and at all times relevant to the applicable violations alleged herein, the piping associated with UST-1, UST-2, and UST-3 conveyed regulated substances under pressure, and were equipped with automatic line leak detectors.
23. No evidence was provided to demonstrate that required annual operational testing was conducted of the automatic line leak detectors on pressurized piping associated with

UST-1, UST-2, and UST-3 UST systems Facility from at least January 1, 2015 through April 25, 2018.

24. Respondent's role as operator in the acts or omission as alleged in Paragraph 23 constitute violations by Respondent of 25 Pa. Code § 245.445(1).
25. In failing to comply with 25 Pa. Code § 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 Investigate a Possible Release

26. The allegations of Paragraphs 1 through 25 of his Consent Agreement are incorporated herein by reference.
27. Pursuant to 25 Pa. Code § 245.304, owners or operators of storage tanks and storage tank facilities shall initiate and complete an investigation of an indication of a release of a regulated substance, which includes conditions set forth at 25 Pa. Code § 245.304(1)-(7), as soon as practicable, but no later than seven (7) days after the indication of a release.
28. No evidence was provided to demonstrate that an investigation of an indication of a release of a regulated substance was initiated and completed within seven (7) days after an indication of a release at the Facility from August 11, 2016 through July 26, 2017.
29. Respondent's role as owner in the acts or omission as alleged in Paragraph 28 constitute violations by Respondent of 25 Pa. Code § 245.304.
30. In failing to comply with 25 Pa. Code § 245.304, Respondent is subject to the assessment of penalties under Section 9006(d)(2) of RCRA, 42 U.S.C. § 6991e(d)(2).

CIVIL PENALTY

31. 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 TWENTY-SEVEN THOUSAND ONE HUNDRED AND THIRTY-SEVEN dollars (\$27,137), which Respondent shall be liable to pay in accordance with the terms set forth below.
32. The civil penalty is based upon EPA's consideration of a number of factors, including the penalty criteria ("statutory factors") set forth in Section 9006(c) of RCRA, 42 U.S.C. § 6991e(c), requires EPA to take into account, including, the following: the seriousness of the violation and any good faith efforts to comply with the applicable requirement. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA's October 5, 2018 *Interim Consolidated Enforcement Penalty Policy for Underground Storage Tank (UST) Regulations and Revised Field Citation Program and ESA Pilot* and November 1990 *U.S. EPA Penalty Guidance for Violations of UST Regulations* which reflects the statutory penalty criteria and factors set forth at Section 9006(c) of RCRA, 42 U.S.C. § 6991e(c), 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.

33. 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-03-2020-0038;
- 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 979077
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 to:

Jennifer M. Abramson
Senior Assistant Regional Counsel
U.S. EPA, Region III (3RC50)
1650 Arch Street
Philadelphia, PA 19103-2029
Abramson.Jennifer@epa.gov

34. 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.

35. 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 CAFO. Receipt by Respondent or Respondent's legal counsel of such copy of the fully executed CAFO, with a date

stamp indicating the date on which the CAFO 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).

36. INTEREST: In accordance with 40 C.F.R § 13.11(a)(1), interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of the fully executed and filed CAFO is mailed or hand-delivered to Respondent. 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).
37. 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). Pursuant to Appendix 2 of EPA's *Resources Management Directives – Case 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.
38. 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).
39. Respondent agrees not to deduct for federal tax purposes the civil penalty assessed in this CAFO.

GENERAL SETTLEMENT CONDITIONS

40. By signing this Consent Agreement, Respondent acknowledges that this CAFO will be available to the public and represents that, to the best of Respondent's knowledge and belief, this CAFO does not contain any confidential business information or personally identifiable information from Respondent.
41. To the best of its knowledge, Respondent certifies that any information or representation it has supplied or made to EPA concerning this matter 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 CAFO, 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

42. 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

43. Nothing in this CAFO 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 CAFO does not constitute a waiver, suspension or modification of the requirements of RCRA, or any regulations promulgated thereunder.

RESERVATION OF RIGHTS

44. This CAFO resolves only EPA's claims for civil penalties for the specific violation[s] alleged against Respondent in this CAFO. 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, the regulations promulgated thereunder and any other federal law or regulation to enforce the terms of this CAFO after its effective date.

EXECUTION /PARTIES BOUND

45. This CAFO 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 CAFO.

EFFECTIVE DATE

46. The effective date of this CAFO 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

47. This CAFO 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 CAFO.

For Respondent: Jay Shree Ganesh LLC


Date: 11-18-19

By: 
Alpesh Patel
Jay Shree Ganesh LLC

For the Complainant:


After reviewing the Consent Agreement and other pertinent matters, I, the undersigned Director of the Enforcement and 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.

Date: DEC 13 2019

By: 
Karen Melvin
Director, Enforcement and Compliance
Assurance Division
U.S. EPA – Region III
Complainant

Attorney for Complainant:

Date: 12/5/19

By: 
Jennifer M. Abramson
Senior Assistant Regional Counsel
U.S. EPA – Region III

**BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY**

REGION III

U.S. EPA-REGION 3-RHC
FILED-17DEC2019am11:31

In the Matter of:

**Jay Shree Ganesh LLC
2344 State Route 487
Orangeville, PA**

Respondent.

**Fuel Up Danville
Danville, PA**

Facility.

:
:
: **U.S. EPA Docket No. RCRA-03-2020-0051**
:
: **FINAL ORDER**
:
:
: **Proceeding under Section 9006 of the Resource**
: **Conservation and Recovery Act, as amended,**
: **42 U.S.C. Section 6991e**
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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, Jay Shree Ganesh LLC 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 October 5, 2018 *Interim Consolidated Enforcement Penalty Policy for Underground Storage Tank (UST) Regulations and Revised Field Citation Program and ESA Pilot* and November 1990 *U.S. EPA Penalty Guidance for Violations of UST Regulations*; the statutory factors set forth in Section 9006(c) of RCRA, 42 U.S.C. § 6991e(c); 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 of the Resource Conservation and Recovery Act (“RCRA”), as amended, 42 U.S.C. § 6991e, 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 ***TWENTY-SEVEN THOUSAND ONE HUNDRED AND THIRTY-SEVEN DOLLARS (\$27,137)***, in accordance with the payment provisions set forth in the Consent Agreement, 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.

Dec 17, 2019
Date



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

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

1650 Arch Street

Philadelphia, Pennsylvania 19103-2029

IN RE:

Jay Shree Ganesh LLC
2344 State Route 487
Orangeville, PA 17859

Respondent,

Fuel Up Danville
Danville, PA

Facility.

U.S. EPA-REGION 3-RHC
FILED-17DEC2018am11:32

Docket No. RCRA-03-2020-0051

CERTIFICATE OF SERVICE

I certify that on DEC 17 2019, the original and one (1) copy of the foregoing *Consent Agreement and Final Order*, were filed with the EPA Region III Regional Hearing Clerk. I further certify that on the date set forth below, I served a true and correct copy of the foregoing to each of the following persons, in the manner specified below, at the following addresses:

Copy served via Certified Mail, Return Receipt Requested to:

Alphesh Patel
Jay Shree Ganesh LLC
2344 State Route 487
Orangeville, PA 17859

Copy served via Hand Delivery or Inter-Office Mail to:

Jennifer Abramson, Esq.
Office of Regional Counsel
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103

Dated: DEC 17 2019



Regional Hearing Clerk
U.S. Environmental Protection Agency, Region III

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