

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III**

**1650 Arch Street
Philadelphia, Pennsylvania 19103-2029**

In the Matter of:)

Bowie's, Inc.)
1337 E. Street, SE)
Washington, DC 20003)

) U.S. EPA Docket Number
) RCRA-03-2011-0183
) Consent Agreement

RESPONDENT;)

Bowie's Inc.)
1337 E. Street, SE)
Washington, D.C. 20003)

FACILITY.)

CONSENT AGREEMENT

I. PRELIMINARY STATEMENT

1. This Consent Agreement is filed pursuant to Section 9006 of the Solid Waste Disposal Act, commonly referred to as the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984 (collectively referred to hereinafter as "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"), 40 C.F.R. Part 22. The Complainant is the Director, Land and Chemicals Division, United States Environmental Protection Agency, Region III ("Complainant").

2. Pursuant to Sections 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules, this Consent Agreement and the attached Final Order (“CAFO”) both commence and conclude an administrative proceeding against Bowie’s Incorporated (“Respondent”), brought under Section 9006 of RCRA, 42 U.S.C. § 6991e, to resolve alleged violations of Subtitle I of RCRA at Respondent’s facility located at 1337 E. Street, SE, Washington, D.C. (the “Facility”).
3. The factual allegations and legal conclusions in this Consent Agreement are based upon the provisions of the District of Columbia Authorized UST Management Program, set forth in District of Columbia Municipal Regulations, Title 20, Chapters 55 *et seq.* These provisions will be cited hereinafter as 20 DCMR §§ 5500 *et seq.*
4. EPA has given the District of Columbia, through the District of Columbia Department of the Environment (“DCDOE”), prior notice of the issuance of this CAFO in accordance with Section 9006(a)(2) of RCRA, 42 U.S.C. § 6991e(a)(2).
5. This Consent Agreement constitutes a settlement of EPA’s claims against Respondent for civil penalties pursuant to Sections 9006(a) and (d) of RCRA, 42 U.S.C. §§ 6991e(a) and (d), for the violations alleged in the Findings of Fact and Conclusions of Law in this Consent Agreement.
6. For the purposes of this proceeding, Respondent admits the jurisdictional allegations in this Consent Agreement.

7. Respondent neither admits nor denies the Findings of Fact and the Conclusions of Law set forth in this Consent Agreement, except as provided in Paragraph 6, above.
8. 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 the Findings of Fact and Conclusions of Law in this Consent Agreement, and any right to appeal the accompanying Final Order.
9. The settlement agreed to by the parties in this Consent Agreement reflects the desire of the parties to resolve this matter without continued litigation.
10. Respondent consents to the issuance of this Consent Agreement and to the attached Final Order and agree to comply with their terms. Respondent agrees not to contest Complainant's jurisdiction with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement thereof.
11. This Consent Agreement and Final Order resolve only EPA's claims for civil penalties for the specific violations alleged in this Consent Agreement. 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.
12. 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 Consent Agreement and Final Order, following its filing with the Regional Hearing Clerk. Respondent reserves all available rights and defenses it may have to defend itself in any such action.

13. Nothing in this Consent Agreement and Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations.
14. Respondent is aware that the submission of false or misleading information to the United States government may subject it to separate civil and/or criminal liability. Complainant reserves the right to seek and obtain appropriate relief if Complainant obtains evidence that the information provided and/or representations made by Respondent to Complainant regarding the matters at issue in the Findings of Fact and Conclusions of Law are false or, in any material respect, inaccurate.
15. Each party shall bear its own costs and attorney's fees in connection with this proceeding.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

16. This section represents the Findings of Fact and Conclusions of Law made by Complainant in this matter. As set forth in Paragraph 7 above, Respondent neither admits nor denies these Findings of Fact and Conclusions of Law, but agrees to this settlement to avoid further litigation, as set forth in Paragraph 9, above.

17. Respondent is, and was at the time of the violations alleged herein, a corporation and a "person" as defined in Section 9001(5) of RCRA, 42 U.S.C. § 6991(5), and as defined in 20 DCMR § 6899.1.
18. Respondent is, and was at the time of the violations alleged herein, an "owner," as that term is defined in Section 9001(4) of RCRA, 42 U.S.C. § 6991(4), and 20 DCMR § 6899.1, of several "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 20 DCMR § 6899.1, located at the Facility, including a 6,000 gallon UST system that has been partitioned to store gasoline (Tank 1A) and diesel fuel (Tank 1B), as follows:
- a. A 2,000-gallon UST (Tank 1A), containing regular gasoline; and
 - b. A 4,000-gallon UST (Tank 1B), containing diesel fuel.
19. Tanks 1A and 1B at the Facility were installed in 1998, and are "New tank system[s]" as that term is defined at 20 DCMR § 6899.1.
20. At all times relevant to the violations alleged herein, Tanks 1A and 1B have been used to store gasoline and diesel fuel, both of which constitute petroleum products and are a "regulated substance" as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and 20 DCMR § 6899.1. Tanks 1 and 2 at the Facility are therefore "petroleum UST systems" as that term is defined at 20 DCMR § 6899.1.

Count 1

21. With exceptions not relevant here, 20 DCMR § 5705.2(a)-(c) provides that in order to prevent overfilling associated with the transfer of regulated substances, each owner and operator of new and upgraded USTs (i.e. "New tank systems") *must use* overfill prevention equipment that does the following: (a) automatically shuts off flow into the tank when the tank is no more than ninety-five (95%) full; or (b) Alerts the transfer operator when the tank is no more than ninety percent (90%) full by restricting the flow into the tank or triggering a high-level alarm; or (c) for tanks with a capacity of 4,000 gallons or more, equipment which will restrict flow 30 minutes prior to overfilling, or automatically shut off flow into the tank so that none of the fittings located on the top of tank are exposed to product due to overfilling.
22. From approximately July, 1998 to November 6, 2010, Respondent violated 20 DCMR § 5705.2 by failing to use overfill prevention equipment at the Facility which meets the requirements referenced in § 5705.2(a)-(c).

III. CERTIFICATION OF COMPLIANCE

23. As to all relevant provisions of RCRA and the District of Columbia Authorized UST Management Program allegedly violated as set forth in the Findings of Fact and Conclusions of Law, above, Respondent certifies to EPA that, upon investigation, to the best of Respondent's knowledge and belief, Respondent is currently in compliance with all such relevant provisions and regulations.

IV. CIVIL PENALTY

24. Respondent agrees to pay a civil penalty in the amount of six thousand eight hundred and forty seven dollars (\$6,847.00), which Respondent agrees to pay in accordance with the terms set forth below. Such civil penalty amount shall become due and payable immediately upon Respondent's receipt of a true and correct copy of this CAFO fully executed by all parties. In order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with such civil penalty as described in this CAFO, Respondent must pay the civil penalty no later than thirty (30) calendar days after the date on which a copy of this CAFO is mailed or hand-delivered to Respondent.
25. Having determined that this Consent Agreement is in accordance with law and that the civil penalty amount was determined after consideration of the statutory factors set forth in Section 9006(c)-(e) of RCRA, 42 U.S.C. § 6991e(c)-(e), which include the seriousness of the violation, any good faith efforts to comply with the applicable requirements, the compliance history of the owner and operator, and any other appropriate factors, EPA hereby agrees and acknowledges that payment of the civil penalty shall be in full and final satisfaction of all civil claims for penalties which Complainant may have under Section 9006(d) of RCRA, 42 U.S.C. § 6991e(d), for the violations alleged in this Consent Agreement and Final Order.
26. 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.

- a. Interest on the civil penalty assessed in this Consent Agreement and Final Order will begin to accrue on the date that a copy of this Consent Agreement and Final Order is mailed or hand-delivered to Respondent. EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest on the portion of the civil penalty not paid within 30 calendar days 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).
- b. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the 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.
- c. A penalty charge of six percent per year will be assessed monthly on any portion of the 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 the debt be

required, it shall accrue from the first day payment is delinquent. 31 C.F.R.
§ 901.9(d).

27. Respondent shall remit the full penalty, and/or any interest, administrative fees and late payment penalties, in accordance with this Section IV, via one of the following methods:

a. All payments made by check and sent by regular mail (except as noted in Paragraph 27.c., below) shall be addressed to:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

The customer service contact for this address is Eric Volck, who may be reached at 513-487-2105.

b. All payments made by check and sent by overnight delivery service (except as noted in Paragraph 27.c, below) shall be addressed to:

U.S. Bank
Government Lockbox 979077
U.S. EPA, Fines & Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

The U.S. Bank customer service contact for overnight delivery is 314-418-1028.

c. All payments made by check in any currency drawn on banks with no branches in the United States shall be addressed for delivery to the following address:

Cincinnati Finance

US EPA, MS-NWD
26 W. M.L. King Drive
Cincinnati, OH 45268-0001

- d. All payments made by electronic funds transfer (“EFT”) shall be directed to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York NY 10045

Field Tag 4200 of the Fedwire message should read “D 68010727
Environmental Protection Agency”

The Federal Reserve customer service contact may be reached at 212-720-5000.

- e. 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
Account No.: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - Checking

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

Customer service contact: Jesse White, at 301-887-6548, or REX, 1-866-234-5681.

- f. On-line payment option:

WWW.PAY.GOV

Enter “sfo 1.1” in the search field. Open and complete the form.

g. Additional payment guidance is available at:

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

28. All payments by Respondent shall include Respondent's full name and address and the EPA Docket Number of this Consent Agreement (RCRA-03-2011- 0183).

29. At the time of payment, Respondent shall send a notice of such payment, including a copy of the check, EFT authorization or ACH authorization, as appropriate to:

Lydia Guy
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region III (Mail Code 3RC00)
1650 Arch Street
Philadelphia, PA 19103-2029

and

Benjamin M. Cohan
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency
Region III (Mail Code 3RC50)
1650 Arch Street
Philadelphia, PA 19103-2029

30. Respondent agrees not to deduct for civil taxation purposes the civil penalty specified in this Consent Agreement and the attached Final Order.

V. PARTIES BOUND

31. This Consent Agreement and the accompanying Final Order shall apply to and be binding upon the EPA, Respondent, Respondent's officers and directors (in their official

capacities) and Respondent's successors and assigns. By his or her signature below, the person signing this Consent Agreement on behalf of Respondent acknowledges that he or she is fully authorized to enter into this Consent Agreement and to bind Respondent to the terms and conditions of this Consent Agreement and the accompanying Final Order.

V. ENTIRE AGREEMENT

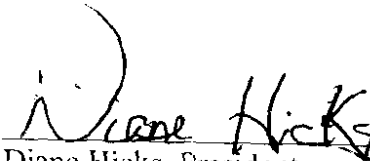
32. This Consent Agreement and the attached Final Order constitute the entire agreement and understanding of the parties concerning settlement of the above-captioned action and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed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

VII. EFFECTIVE DATE

33. The effective date of this Consent Agreement and Final Order is the date on which it is filed with the Regional Hearing Clerk after signature by the Regional Judicial Officer or Regional Administrator.


For Respondent Bowie's Inc:

Date: 4/27/11

By: 
Diane Hicks, President
Bowie's Inc.

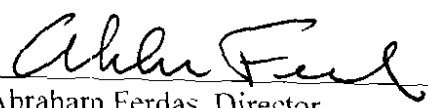
For Complainant United States Environmental Protection Agency, Region III:

Date: 5/11/11

By: 
Benjamin M. Cohan
Senior Assistant Regional Counsel

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

Date: 5/18/11

By: 
Abraham Ferdas, Director
Land and Chemicals Division

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

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FACILITY.)

FINAL ORDER

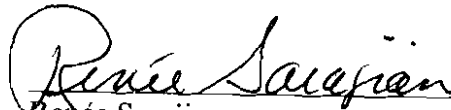
The Director, Land and Chemicals Division, U.S. Environmental Protection Agency - Region III ("Complainant") and Bowie's Incorporated ("Respondent"), have executed a document entitled "Consent Agreement" which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice 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 9006(a) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6991e(a), and based on representations in the Consent

Agreement that the penalty agreed to in the Consent Agreement is based on a consideration of the factors set forth in Section 9006(c)-(e) of RCRA, 42 U.S.C. § 6991e(c)-(e), Bowie's Inc. is hereby ordered to pay a civil penalty of six thousand eight hundred and forty seven dollars (\$6,847.00), as set forth in Section IV of the Consent Agreement, and to comply with the terms and conditions of the Consent Agreement.

The effective date of this document is the date on which it is filed with the Regional Hearing Clerk after signature by the Regional Administrator or Regional Judicial Officer.

Date: 5/19/11



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

CERTIFICATE OF SERVICE

I hereby certify that the original and one copy of the foregoing Consent Agreement and Final Order – Bowie, Inc. (Docket No. RCRA-03-2011-0183) was hand-delivered to the Regional Hearing Clerk, EPA Region III, and that true and correct copies were mailed via UPS Mail, to the following persons:

Diane Hicks, President
Bowie, Inc.
1337 E. Street, SE
Washington, DC 20003

5/23/11
Date


Benjamin M. Cohan
Sr. Assistant Regional Counsel