

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

In the Matter of:)	
)	
Fleet Management Administration)	
Department of Public Works	)	U.S. EPA Docket Number
Government of the District of Columbia	)	RCRA-03-2009-0193
1725 15 th Street, N.E.)	
Washington, D.C. 20002	)	Proceeding Under Section 9006 of the
	)	Resource Conservation and Recovery Act,
RESPONDENT,	)	as amended, 42 U.S.C. Section 6991e
)	
Georgia Avenue Fuel Facility)	
5101 Georgia Avenue, NW)	
Washington, DC 20011)	
FACILITY.)	
)	

2009 JUN 25 AM 11: 29
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CONSENT AGREEMENT

This Consent Agreement ("CA") is entered into by the Director, Land and Chemicals Division, U.S. Environmental Protection Agency, Region III ("Complainant") and the Fleet Management Administration of the Department of Public Works of the Government of the District of Columbia ("Respondent"), 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"), 40 C.F.R. Part 22, including, specifically 40 C.F.R. §§ 22.13(b) and .18(b)(2) and (3).

This CA and the Final Order (collectively "CAFO"), resolve violations of RCRA Subtitle I, 42 U.S.C. §§ 6991-6991m, and the District of Columbia's federally authorized underground storage tank program by Respondent in connection with its underground storage tanks at Respondent's facility located at 5101 Georgia Avenue, NW, Washington, D.C. 20011 (the "Facility").

Effective May, 4, 1998, pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c, and 40 C.F.R. Part 281, Subpart A, the District of Columbia was granted final authorization to administer a state 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 District of Columbia UST management program, through this final authorization, are enforceable by EPA

pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991*e*. The District of Columbia's authorized UST program regulations are set forth in the District of Columbia Municipal Regulations, Title 20, Chapters 55 *et seq.*, and will be cited hereinafter as 20 DCMR §§ 5500 *et seq.*

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 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, Respondent hereby expressly waives its 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. Respondent consents to the issuance of this CAFO and agrees to comply with its terms and conditions.
6. Respondent shall bear its own costs and attorney's fees.
7. The person signing this CA on behalf of the Respondent certifies to EPA by his signature herein that Respondent, as of the date of this CA, is in compliance with the provisions of RCRA, Subtitle I, 42 U.S.C. §§ 6991-6991m, and the District of Columbia's federally authorized underground storage tank program set forth at 20 DCMR §§ 5500 *et seq.* at the Facility referenced herein.
8. The provisions of this CAFO shall be binding upon Respondent, and its officers, directors, employees, successors and assigns.
9. This CAFO shall not relieve Respondent of its 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 any regulations promulgated 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 Respondent to EPA regarding matters at issue in the CAFO are false or, in any material respect, inaccurate. Respondent is aware that the submission of false or misleading information to the United States government may subject Respondent to separate civil and/or criminal liability.

11. Respondent agrees 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 District of Columbia 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. The United States Environmental Protection Agency - Region III ("EPA" or the "Region") and EPA's Office of Administrative Law Judges have 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) and .4(c).
14. At all times relevant to the violations in this CAFO, Respondent has been the "owner" and/or "operator," as those terms are defined in Section 9001(3) and (4) of RCRA, 42 U.S.C. § 6991(3) and (4), and 20 DCMR § 6899.1, of the "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. Respondent is a "person" as defined in Section 9001(5) of RCRA, 42 U.S.C. § 6991(5), and 20 DCMR § 6899.1.
15. On September 28, 2007, Respondent entered into a Consent Agreement, Final Order and Settlement Conditions Document with EPA to perform a Multi-Facility Underground Storage Tank Compliance Audit, EPA Docket No. RCRA-03-2007-0045.
16. On February 12, 2009, Aarcher, Inc. performed an audit of the Facility on behalf of Respondent pursuant to the terms of the Settlement Conditions Document issued by the EPA to Respondent as indicated in Paragraph 15, above.
17. At the time of the February 12, 2009 audit, and at all times relevant to the applicable violations alleged herein, one (1) UST was located at the Facility as described in the following subparagraph:
 - A. A four thousand (4,000) gallon double-walled fiberglass reinforced plastic tank that was installed on or about April 1992, and that, at all times relevant hereto, routinely contained and was used to store diesel fuel, 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 (hereinafter "UST No. 1").

18. At all times relevant to the applicable violations alleged in this CAFO, UST No. 1 has been a "petroleum UST system" and an "existing tank system" as these terms are defined in 20 DCMR § 6899.1.
19. UST No. 1 is and was, at all times relevant to the applicable violations alleged in this CAFO, used to store "regulated substance(s)" at Respondent's Facility, as defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and 20 DCMR § 6899.1, and has not been "empty" as that term is defined at 20 DCMR § 6100.7.

COUNT 1

(Failure to perform automatic line leak detector testing annually on piping)

20. The allegations of Paragraphs 1 through 19 of this CAFO are incorporated herein by reference.
21. 20 DCMR § 6000.2 provides that the owner and operator of each UST system, regardless of the date of installation, shall immediately comply with the release detection requirements for all pressurized piping as set forth in 20 DCMR §§ 6004.2 and 6004.3.
22. 20 DCMR § 6004.1 provides that the owner and operator of a petroleum UST system shall regularly monitor all underground piping that contains or conveys regulated substances for releases in accordance with 20 DCMR § 6004.
23. 20 DCMR § 6004.2 provides that underground piping that conveys regulated substances under pressure shall be equipped with an automatic line leak detector, in accordance with § 6013.2 of this chapter.
24. 20 DCMR § 6013.2 provides, in pertinent part, that the owner or operator shall conduct an annual test of the operation of the leak detector, in accordance with the manufacturer's requirements.
25. From September 28, 2004 until February 12, 2009, the piping for UST No. 1 was underground and routinely conveyed regulated substances under pressure.
26. Respondent conducted a testing of the automatic line leak detector for the piping associated with UST No. 1 on October 1, 2006 and June 19, 2008.

27. Respondent failed to perform an annual test of the automatic line leak detector for the underground piping associated with UST No. 1 in 2004, 2005, and 2007.
28. Respondent's acts and/or omissions as alleged in Paragraph 27, above, constitute violations by Respondent of 20 DCMR § 6004.2 and 20 DCMR § 6013.2.

COUNT 2

(Failure to perform line tightness testing or monthly monitoring on piping for UST No. 1)

29. The allegations of Paragraphs 1 through 28 of this CAFO are incorporated herein by reference.
30. From September 28, 2004 until February 12, 2009, the piping for UST No. 1 was underground and routinely conveyed regulated substances under pressure.
31. Respondent conducted a testing of the piping associated with UST No. 1 only on October 1, 2006 and June 19, 2008.
32. Respondent failed to perform an annual line tightness testing in accordance with 20 DCMR § 6013.3 or have monthly monitoring conducted in accordance with 20 DCMR § 6013.4 in 2004, 2005 and 2007 for the underground piping associated with UST No. 1.
33. Respondent's acts and/or omissions as alleged in Paragraph 32, above, constitute violations by Respondent of 20 DCMR § 6004.3.

COUNT 3

(Failure to maintain records of release detection)

34. The allegations of Paragraphs 1 through 33 of this CAFO are incorporated herein by reference.
35. 20 DCMR § 6000.1 provides that each owner and operator of a new or existing UST system shall provide a method, or combination of methods, of release detection that meets the requirements described therein.
36. Pursuant to 20 DCMR §§ 6003.1 through 6003.5, tanks which are part of a petroleum UST system must be monitored at least every 30 days for releases using one of the methods listed in 20 DCMR §§ 6008 through 6012, except that: (1) prior to December 22, 1995, certain UST systems could have been monitored using a combination of inventory control and tank tightness testing in compliance with the requirements of 20 DCMR

§§ 6005 through 6007; and (2) tanks with a capacity of 550 gallons or less may use weekly tank gauging conducted in accordance with 20 DCMR § 6006.

37. 20 DCMR § 5602.4(c) provides that each UST system owner or operator shall maintain information of recent compliance with release detection requirements pursuant to 20 DCMR § 6001.
38. Pursuant to 20 DCMR § 6001.1, owners and operators of each UST systems shall maintain records in accordance with 20 DCMR § 5602 demonstrating compliance with all applicable requirements of DCMR.
39. 20 DCMR § 6001.2 provides that all written performance claims pertaining to any release detection system used, and the manner in which these claims have been justified or tested by the equipment manufacturer or installer, shall be maintained for 5 years from the date of installation.
40. 20 DCMR § 6001.3 and .4 provide that the results of any sampling, testing, or monitoring shall be maintained for 3 years, except the results for tank tightness testing conducted in accordance with 20 DCMR § 6007 shall be retained until the next test of the UST system is conducted.
41. 20 DCMR § 6001.5 provides that written documentation of all calibration, maintenance, and repair of release detection equipment permanently located on the UST system site shall be maintained for at least 3 years after the servicing work is completed.
42. 20 DCMR § 6001.6 provides that all schedules of required calibration and maintenance provided by the release detection equipment manufacturer shall be retained for five (5) years from the date of installation of the UST system.
43. From September 28, 2004 until February 12, 2009, Respondent performed release detection for UST No. 1.
44. From at least September 28, 2004 until February 12, 2009, Respondent failed to maintain records of release detection monitoring for UST No. 1 in accordance with 20 DCMR § 5602.4(c) and 20 DCMR § 6001.3 and .4.
45. Respondent's acts and/or omissions as alleged in Paragraph 44, above, constitute violations by Respondent of 20 DCMR § 5602.4(c) and 20 DCMR § 6001.

CIVIL PENALTY

46. In settlement of Complainant's claims for civil penalties for the violations alleged in this CA, Respondent agrees to pay a civil penalty in the amount of Five Thousand Three Hundred Seventy Dollars (\$5,370.00). The civil penalty amount is due and payable immediately upon Respondent's receipt of a true and correct copy of this CAFO. If Respondent pays the entire civil penalty of Five Thousand Three Hundred Seventy Dollars (\$5,370.00) within thirty (30) calendar days of the date on which this CAFO is mailed or hand-delivered to Respondent, no interest will be assessed against Respondent pursuant to 40 C.F.R. § 13.11(a)(1).
47. 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.
48. In accordance with 40 C.F.R. § 13.11(a), 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 Respondent. 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).
49. 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.
50. 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).
51. 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 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

with EPA's Penalty Guidance for Violations of UST Regulations ("UST Guidance") dated November 4, 1990.

52. Respondent shall pay the amount described in Paragraph 46, above, by sending a certified or cashier's check payable to the "United States Treasury," as follows:

- a. All payments by Respondent shall reference Respondent's name and address, and the Docket Number of this action, *i.e.*, RCRA-03-2009-0193;
- b. All checks shall be made payable to "**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-Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Contact: Eric Volck, 513-487-2105

- d. All payments made by check and sent by overnight delivery service shall be addressed and mailed to:

U.S. Environmental Protection Agency-Fines and Penalties
U.S. Bank
Government Lockbox 979077
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

Contact: Natalie Pearson, 314-418-1028

- e. All payments 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

- f. All payments made by electronic wire transfer shall be directed to:

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 Fedwire message should read "D 68010727
Environmental Protection Agency"

- g. 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
Contact: Jesse White 301-887-6548 or REX, 1-866-234-5681

- h. On-Line Payment Option:

WWW.PAY.GOV

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

- j. Additional payment guidance is available at:

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

53. A copy of Respondent's check or a copy of Respondent's electronic transfer shall be sent simultaneously to:

Regional Hearing Clerk (3RC00)
EPA Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103 - 2029, and

Louis F. Ramalho
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency - Region III
1650 Arch Street
Philadelphia, PA 19103-2029.

FULL AND FINAL SATISFACTION

54. 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

55. 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. 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

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

AUTHORITY TO BIND THE PARTIES

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

ENTIRE AGREEMENT

58. 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

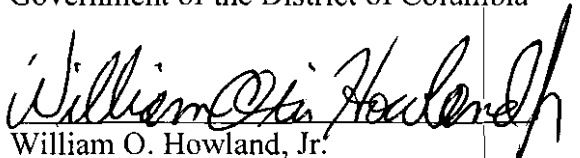
59. This CAFO shall become effective upon filing with the Regional Hearing Clerk.

For Respondent:

Fleet Management Administration of the
Department of Public Works of the
Government of the District of Columbia

6-16-2009

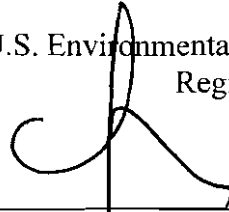
Date


William O. Howland, Jr.
Director of the Department of Public Works

For Complainant:

U.S. Environmental Protection Agency,
Region III

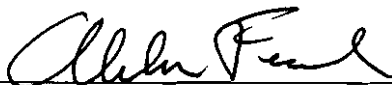
6/22/09
Date



Louis F. Ramalho
Senior 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.

6/23/09
Date

By: 

Abraham Ferdas, Director
Land and Chemicals Division
EPA Region III

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

In the Matter of:)	
)	
Fleet Management Administration)	
Department of Public Works	)	U.S. EPA Docket Number
Government of the District of Columbia	)	Docket No. RCRA-03-2009-0193
1725 15 th Street, NE)	
Washington, DC 20002	)	Proceeding Under Section 9006(a) of the
	)	Resource Conservation and Recovery
RESPONDENT,	)	Act, as amended, 42 U.S.C. § 6991e(a).
)	
)	
Georgia Avenue Fuel Facility)	FINAL ORDER
5101 Georgia Avenue, NW)	
Washington, DC 20011)	
FACILITY.)	
)	

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FINAL ORDER

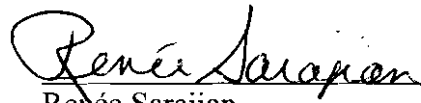
Complainant, the Director, Land and Chemicals Division, U.S. Environmental Protection Agency - Region III, and Respondent, Department of Public Works of the Government of the District of Columbia have executed a document entitled "Consent Agreement" which I hereby ratify as a Consent Agreement in accordance 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 22.18(b)(3) of the *Consolidated Rules of Practice* and Section 9006(c) of the Resource Conservation and

Recovery Act, 42 U.S.C. § 6991e(c) ("RCRA"), and having determined, based on the representations of the parties in the attached Consent Agreement, that the civil penalty agreed to therein was based upon a consideration of the factors set forth in Section 9006(c) of RCRA, 42 U.S.C. § 6991e(c), **IT IS HEREBY ORDERED** that Respondent pay a civil penalty of Five Thousand Three Hundred Seventy Dollars (\$5,370.00) Dollars in accordance with the payment provisions set forth in the attached Consent Agreement, and comply with each of the additional terms and conditions as specified in the attached Consent Agreement.

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

Date: 6/25/09


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

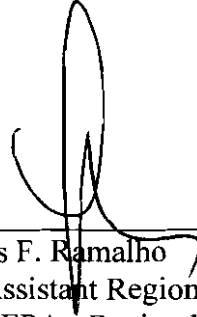
CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the date listed below, the original of the foregoing Consent Agreement and Final Order, EPA Docket No. RCRA-03-2009-0193, was filed with the Regional Hearing Clerk, U.S. EPA - Region III, 1650 Arch Street, Philadelphia, Pennsylvania, 19103-2029, and that a true and correct copy was sent via first class mail to the following:

Ms. Pamela B. Washington
Assistant General Counsel
Office of Attorney General
Government of the District of Columbia
Department of Public Works
2000 14th Street., N.W.
Washington, DC 20009

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6/25/09
Date



Louis F. Ramalho
Sr. Assistant Regional Counsel
U.S. EPA - Region III
1650 Arch Street
Philadelphia, PA 19103-2029