

**BEFORE THE UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION III**

In the Matter of:	:	Consent Agreement and Final Order
Mechanicsville Burchmart 28270 Three Notch Road Mechanicsville, MD, 20659,	:	U.S. EPA Docket Number RCRA-03-2014-0056
<b>Facility,</b>	:	Proceeding Under Section 9006 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6991e
Burch Oil Company 24660 Three Notch Road Hollywood, MD 20636,	:	
<b>Respondent.</b>	:	

REGIONAL HEARING CLERK  
EPA REGION III PHILA. PA

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**CONSENT AGREEMENT**

**I. PRELIMINARY STATEMENT**

1. This Consent Agreement ("CA") is entered into by the Director of the Land and Chemicals Division, U. S. Environmental Protection Agency, Region III ("Complainant" or "EPA" or "Agency") and Burch Oil ("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 of Practice")*, 40 C.F.R. Part 22 (with specific reference to 40 C.F.R. §§ 22.13(b), 22.18(b)(2), and (3)).
2. This CA and the Final Order resolve Respondent's violations of Subtitle I of RCRA, 42 U.S.C. §§ 6991-6991m, and the State of Maryland's federally authorized Underground Storage Tank ("UST") Program that occurred at the Respondent's Facility located at

Mechanicsville Burchmart, 28270 Three Notch Road, Mechanicsville, MD, 20659

("Facility").

3. In accordance with 40 C.F.R. §§ 22.13(b), 22.18(b)(2), and (3), Complainant hereby simultaneously commences and resolves, as part of the settlement set forth herein, EPA's civil claims alleged in Section III ("Findings of Fact and Conclusions of Law") of this Consent Agreement.

## II. GENERAL PROVISIONS

4. The settlement agreed to by the parties in this Consent Agreement reflects the desire of the parties to resolve this matter without litigation.

5. The Respondent consents to the issuance of this CAFO and agrees to comply with its terms and conditions.

6. For purposes of this proceeding, the Respondent admits the jurisdictional allegations set forth in this Consent Agreement and the attached Final Order, hereinafter collectively referred to as the "CAFO."

7. Except as provided in Paragraph 6 of this Consent Agreement, for purposes of this proceeding, the Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this Consent Agreement.

8. The 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.

9. For purposes of this proceeding only, the Respondent hereby expressly waives any right to contest any issue of law or fact set forth in this Consent Agreement and any right to appeal the accompanying Final Order.

10. Each Party to this Consent Agreement shall bear its own costs and attorney's fees in connection with this proceeding.

11. The person signing this Consent Agreement on behalf of Respondent certifies to EPA by his or her signature herein that Respondent, as of the date of this CA, is in compliance with the provisions of Subtitle I of RCRA, 42 U.S.C. §§ 6991-6991m, and the State of Maryland's UST Management Program regulations set forth at COMAR § 26.10.01.01 *et seq.* at the Facilities referenced in this Consent Agreement.

12. This Consent Agreement and the accompanying Final Order shall apply to and be binding upon the Respondent, Respondent's officers and directors, and Respondent's successors and assigns.

13. 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 Subtitle I of RCRA, 42 U.S.C. §§ 6991-6991m, or any regulations promulgated thereunder.

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

15. The Respondent is aware that the submission of false or misleading information to the United States government may subject the Respondent 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 the 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.

### III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

16. In accordance with 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and (3), Complainant alleges and adopts, and the Respondent neither admits nor denies, the Findings of Fact and Conclusions of Law set forth immediately below.

17. Pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c, and 40 C.F.R. Part 281, a state may administer a state UST management program in lieu of the Federal Underground Storage Tank Management Program established under Subtitle I of RCRA, 42 U.S.C. §§ 6991-6991m. Effective July 30, 1992, pursuant to Section 9004 of RCRA, 42

U.S.C. § 6991c, and 40 C.F.R. Part 281, EPA granted the State of Maryland final authorization to administer a state underground storage tank management program (“Maryland UST Management Program”) *in lieu* of the Federal Underground Storage Tank Management Program established under Subtitle I. *See 57 Fed. Reg.* 29034 (June 30, 1992). Through this final authorization, the provisions of the Maryland UST Management Program became requirements of RCRA Subtitle I and are, accordingly, enforceable by EPA pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e. Maryland Authorized UST Management Program’s regulations are set forth in the Maryland Administrative Code as Underground Storage Tanks (“MD UST Regulations”), COMAR § 26.10.01.01 *et seq.*

18. On July 21, 2011, EPA gave the State of Maryland notice of the issuance of this CAFO in accordance with Section 9006(a)(2) of RCRA, 42 U.S.C. § 6991e(a)(2).

19. The Respondent is a “person” as defined in Section 9001 of RCRA, 42 U.S.C. § 6991, in 40 C.F.R. § 280.12, and in COMAR § 26.10.02.04.

20. At all times relevant to this CAFO, the Respondent has been the “owner” and/or “operator” of “underground storage tanks” (“USTs”) and “UST systems,” as those terms are defined in Section 9001 of RCRA, 42 U.S.C. § 6991, 40 C.F.R. § 280.12, and in COMAR § 26.10.02.04, located at the Facility.

21. On September 14, 2010, an EPA representative conducted a Compliance Evaluation Inspections (“CEI”) of the Facility pursuant to Section 9005 of RCRA, 42 U.S.C. § 6991d.

22. At the time of the September 14, 2010 CEI, and at all times relevant to the applicable violations alleged herein, six USTs, as described in the following subparagraphs, were located at the Facility:

A. Three ten thousand (10,000) gallon tanks ("Tanks One, Two and Three") constructed of composite steel covered by fiberglass reinforced plastic that were installed on or about December 1985, and that, at all times relevant hereto, routinely contained respectively regular, midgrade, and premium gasoline;

B. One four thousand (4,000) gallon tank ("Tank Four") constructed of composite steel covered by fiberglass reinforced plastic that was installed on or about December 1985, and that, at all times relevant hereto, routinely contained diesel fuel;

C. One one thousand (1,000) gallon tank ("Tank Five") constructed of composite steel covered by fiberglass reinforced plastic that was installed on or about December 1985, and that, at all times relevant hereto, routinely contained kerosene; and

D. One five hundred and fifty (550) gallon tank ("Tank Six") constructed of composite steel covered by fiberglass reinforced plastic that was installed on or about December 1985, and that, at all times relevant hereto, routinely contained heating oil.

23. At all times relevant to the applicable violations alleged in this CA, the tanks at the Facility have been used to store three grades of gasoline, diesel fuel, kerosene, and heating

oil, which are petroleum products. These liquids are "regulated substances" as that term is defined in Section 9001 of RCRA, 42 U.S.C. § 6991, 40 C.F.R. § 280.12, and in COMAR § 26.10.02.04. The tanks at the Facility and their associated piping therefore constitute "petroleum UST systems" as that term is defined in 40 C.F.R. § 280.12 and in COMAR § 26.10.02.04.

24. During the CEI, the inspector observed that Tank Four was missing its ball float, a method of overfill protection.

25. During the CEI, the inspector observed that the dispenser for Tank Five had metal piping in contact with the ground and did not have cathodic protection for the piping.

26. As a follow-up to the CEI, pursuant to RCRA Section 9005, 42 U.S.C. § 6991d, on January 11, 2011, EPA issued an Information Request Letter ("IRL") to the Respondent concerning the UST systems at the Facility.

27. In a response to the IRL, the Respondent stated that the ball float was removed on July 27, 2010, and replaced on September 21, 2010.

28. In a response to the IRL, the Respondent provided information that showed it had cathodic protection for Tank Five dispenser's piping installed on September 14, 2010.

Count 1

29. Paragraphs 1 through 28 of this Consent Agreement are incorporated by reference as if fully set forth herein.

30. Pursuant to COMAR § 26.10.04.01, all owners and operators of UST systems must have a method of overfill protection installed.

31. From July 27, 2010 through September 21, 2010, the Respondent did not have a method of overfill protection installed for Tank Four.

32. The Respondent's failure to have a method of overfill protection installed for Tank Four constitutes separate violations of COMAR § 26.10.04.01 for each day that an overfill of the tank was possible.

Count 2

33. Paragraphs 1 through 32 of this Consent Agreement are incorporated by reference as if fully set forth herein.

34. Pursuant to COMAR § 26.10.03.02.C, all owners and operators of UST systems must provide cathodic protection for piping that is in contact with the ground.

35. From November 10, 2008 until June 26, 2010, the Respondent failed to provide cathodic protection for piping that is in contact with the ground for Tank Five dispenser's piping.



36. The Respondent has violated COMAR § 26.10.03.02.C by failing to provide cathodic protection for Tank Five dispenser's piping from November 10, 2008 until June 26, 2010.

37. The Respondent's failure to provide cathodic protection for Tank Five dispenser's piping constitutes separate violations of COMAR § 26.10.03.02.C for each day that portions of the piping routinely conveyed regulated substances.

#### IV. CIVIL PENALTY

38. Section 9006(d)(2) of RCRA, 42 U.S.C. § 6991e(d)(2), authorizes the Administrator of EPA to assess a penalty not to exceed \$ 10,000 for each tank for each day of violation of any requirement or standard promulgated by EPA under Section 9003 of RCRA, 42 U.S.C. § 6991b, or that is part of an authorized state underground storage tank program that EPA has approved pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c. Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. 101-410, as amended, and its implementing regulation, the *Adjustment of Civil Monetary Penalties for Inflation Rule*, codified at 40 C.F.R. Part 19, EPA has subsequently raised the maximum civil penalty not to exceed \$11,000 for each tank for each day of violation for all violations occurring from March 15, 2004 through January 12, 2009, and to \$ 16,000 for each tank for each day of violation for all violations occurring after January 12, 2009 and to the present.

39. In this matter, in settlement of EPA's claims for civil penalties assessable for the violations alleged in this Consent Agreement, the Respondent consents to the assessment of a civil penalty in the amount of seven thousand, nine hundred and seventy-two dollars (\$

7,972.00) which the Respondent shall be liable to pay in accordance with the terms set forth below.

40. The penalty becomes due and payable within thirty (30) days after Respondent's receipt of a true and correct copy of this CAFO.

41. The Parties represent that the settlement terms are reasonable and are based upon EPA's consideration of a number of factors, including the penalty criteria set forth in Section 9006(c) of RCRA, 42 U.S.C. § 6991e(c), i.e., the seriousness of the violation alleged by EPA and any good faith efforts to comply with the applicable requirements. Section 9006(e) of RCRA, 42 U.S.C. § 6991e(e) authorizes EPA to also take into consideration the compliance history of the owner or operator and any other factors that EPA considers appropriate. EPA applied these factors to the particular facts and circumstances of this case with specific reference to EPA's *Penalty Guidance for Violations of UST Regulations ("UST Penalty Guidance")*. In applying these factors, EPA took into account that the last amendment to 40 C.F.R. Part 19 (See 73 Fed. Reg. 75340 (2008)) and the December 29, 2008, memorandum by EPA Assistant Administrator Granta Y. Nakayama entitled, *Amendments to EPA's Civil Penalty Policies to Implement the 2008 Civil Monetary Penalty Inflation Adjustment Rule* modified the *UST Penalty Guidance* and authorized EPA to assess penalties using penalty matrix values larger than those stated in the *UST Penalty Guidance*.

42. Payment of the civil penalty amount assessed in Paragraph 39, above, shall be made by either cashier's check, certified check, or electronic wire transfer, in the following manner:

A. All payments by Respondent shall reference Respondent's name and address, and the Docket Number of this action, i.e., RCRA-03-2014-0056;

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 for delivery to:

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

Contact: Heather Russell 513-487-2044

D. All payments made by check and sent by overnight delivery service shall be addressed for delivery 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

Contact: 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 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"

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/PAYGOV

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

I. Additional payment guidance is available at the following internet address:

[http://www.epa.gov/ocfo/finservices/make\\_a\\_payment.htm](http://www.epa.gov/ocfo/finservices/make_a_payment.htm)

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

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

and

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

#### **V. EFFECT OF SETTLEMENT**

43. This CAFO constitutes a settlement by EPA of its claims for civil penalties pursuant to Section 9006(a) of RCRA, 42 U.S.C. § 6991e(a), for the violations alleged in this Consent Agreement. Compliance with this CAFO shall not be a defense to any action commenced at any time for any other violation of the federal laws and regulations administered by EPA.

#### **VI. RESERVATION OF RIGHTS**

44. This Consent Agreement and the accompanying Final Order resolve only EPA's claims for civil monetary penalties for the specific violations alleged in Section III ("Findings of Fact and Conclusions of Law") herein. EPA reserves the right to commence action against any person, including the Respondent, in response to any condition that 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 40 C.F.R. § 22.18(c). 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.

#### **VII. AUTHORITY TO BIND THE PARTIES**

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

#### **VIII. EFFECTIVE DATE**

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

#### **IX. ENTIRE AGREEMENT**

47. This Consent Agreement and the accompanying Final Order constitute the entire agreement and understanding of the parties regarding settlement of all claims pertaining to the specific violations alleged herein and there are no representations, warranties,

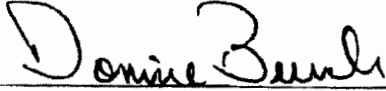
covenants, terms, or conditions agreed upon between the parties other than those expressed in this CAFO.



In Re: Mechanicsville Burchmart  
RCRA-03-2014-0056

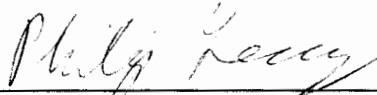
For Respondent Burch Oil Company:

Date: 4-2-14

  
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Donnie Burch  
Vice President  
Burch Oil Company

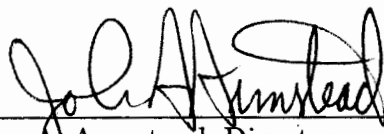
For Complainant:

Date: 12/26/13

  
\_\_\_\_\_  
Philip Yeany  
Senior Assistant  
Regional Counsel

After reviewing the foregoing Consent Agreement and other pertinent information, I hereby recommend that the Regional Administrator, or his designee, the Regional Judicial Officer, issue the attached Final Order.

Date: 1.9.14

  
\_\_\_\_\_  
John A. Armstead, Director  
Land and Chemicals Division  
U.S. EPA Region III

**BEFORE THE UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION III**

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In the Matter of:	:	Consent Agreement and
	:	Final Order
Mechanicsville Burchmart	:	
28270 Three Notch Road	:	U.S. EPA Docket Number
Mechanicsville, MD, 20659,	:	RCRA-03-2014-0056
	:	
Facility,	:	Proceeding Under Section 9006 of the
	:	Resource Conservation and Recovery
Burch Oil Company	:	Act, as amended, 42 U.S.C. § 6991e
24660 Three Notch Road	:	
Hollywood, MD 20636,	:	
	:	
Respondent.	:	

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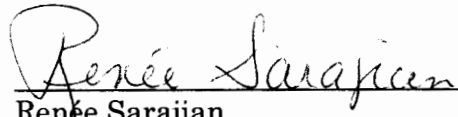
**FINAL ORDER**

Complainant, the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency - Region III, and the above-captioned 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*, 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 40 C.F.R. § 22.18(b)(3) and Section 9006(c) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6991e(c), 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 Sections 9006(c) and (d) of RCRA, 42 U.S.C. §§ 6991e(c) and (d), IT IS HEREBY ORDERED that Respondent pay a civil penalty of seven thousand, nine hundred and seventy-two dollars (\$ 7,972.00) 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 the foregoing Consent Agreement and this FINAL ORDER is the date on which this FINAL ORDER and the Consent Agreement are filed with the EPA Regional Hearing Clerk.

Date: 4/3/14

  
\_\_\_\_\_  
Renee Sarajian  
Regional Judicial Officer  
U.S. EPA - Region III